

Proceedings of the
CONSTITUTIONAL CONVENTION
OF HAWAII
Of 1968

Volume II

Proceedings of the
**CONSTITUTIONAL
CONVENTION OF HAWAII**
Of 1968

— VOLUME II —

COMMITTEE OF THE WHOLE DEBATES

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Debates in Committee of the Whole on **BILL OF RIGHTS**

(Article I)

Chairman: DELEGATE TADAO BEPPU

Tuesday, September 10, 1968 • Morning Session

The Committee of the Whole was called to order at 9:35 o'clock a.m.

Delegate Beppu presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order.

We have before this committee Standing Committee Report No. 55 and Proposal No. 11. Chairman Meyer Ueoka, what is your pleasure?

DELEGATE UEOKA: Mr. Chairman, your Committee on Bill of Rights considered Article I of the State Constitution and Article I involves twenty sections. Your committee recommended four amendments and however, in view of the fact that there were over forty-one proposals introduced relating to Article I, I would like to move at this time that we take up Article I by sections.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: You've heard the motion. All in favor say "aye." Opposed, "no." Carried. Chairman Ueoka.

DELEGATE UEOKA: Section 1 of the State Constitution reads as follows: "All political power of this State is inherent in the people; and the responsibility for the exercise thereof rests with the people. All government is founded on this authority."

Your committee moved for the status quo by unanimous vote. I move that Section 1 be retained as it is.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

CHAIRMAN: Are you ready for the question? All in favor say "aye." Opposed, "no." Carried. Chairman Ueoka.

DELEGATE UEOKA: Section 2, your committee recommends that we retain the status quo as it relates to rights of man. I move that we adopt Section 2—move to retain Section 2.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: You've heard the motion. Any discussion? Ready for the question? All in favor say "aye." Opposed, "no." Carried. Chairman Ueoka.

DELEGATE UEOKA: Section 3 relates to freedom of religion, speech, press, assembly and petition. Your committee has unanimously recommended that we should retain the status quo. I move that we retain the status quo.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: You've heard the motion. Any discussion? Ready for the question? All in favor say "aye." Opposed, "no." Carried. Chairman Ueoka.

DELEGATE UEOKA: Section 4 relates to due process and equal protection. Your committee has unanimously recommended that we retain the status quo. I move that we retain the status quo in Section 4.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: Any discussion?

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Just a short recess.

CHAIRMAN: Recess subject to the call of the Chair.

At 9:36 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:38 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Any amendments? Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, there is an amendment being prepared and I would like to have this deferred for a few minutes.

CHAIRMAN: No objection. So ordered.

At 9:39 o'clock a.m., the Committee of the Whole

stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:50 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, I have an amendment to Committee Proposal No. 11, which reads as follows:

"Committee Proposal No. 11 is hereby amended by adding an amendment to Section 4 of Article I deleting the word 'civil.'

"As amended the section shall read: 'No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.'"

CHAIRMAN: Proceed.

DELEGATE ADUJA: I move that this amendment be approved.

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I second the motion.

CHAIRMAN: You've heard the motion. Any discussion? Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, this particular amendment of Section 4, Article I of the State Constitution merely removes the word "civil" before the word "rights." Now, the reason for this amendment is clear as stated on page 2 of the Standing Committee Report No. 55, "Elimination of the word 'civil' would have the effect of expanding the applicability of that section to protect a person's natural, political and personal rights as well."

Now, you will notice, Mr. Chairman, that according to Black's law dictionary, civil rights are such rights which belong to every citizen by virtue of the citizenship in a state or community and are not connected with the organization or administration of government. That does not include political right or the natural right, as well as the personal right of man. We are dealing with the rights of man in this particular instance and I feel that this removal of the word "civil" will enlarge naturally the right.

But if you will notice, Mr. Chairman, we have already agreed to accept Section 2 as it is, the rights of man. And there it spells out inherent and inalienable rights. Yet, we are brave enough to say that this right should be continued by using the word "civil" in Section 4. If you agree that there is such thing as inherent and inalienable

rights, then other rights should be expected of our citizenship, of every individual in the State of Hawaii. Therefore, we should not curtail the meaning of "right" by including the word "civil." We need not fear as to the proper definition of this word "right." I think the courts will be available to have the definition as it should be and rather than curtail it we should not do it now.

This is a step forward, Mr. Chairman. We have had many debates in this matter, and contrary to the chairman, it was not a unanimous approval. It was less than unanimous approval because we feel that the rights of man should continue to be a right of man and not a curtailed right of man. Therefore, Mr. Chairman and to the delegates of this Convention, let us vote for this amendment. It is more than right that we vote for this amendment if we wish to continue in our process of giving every man equality of rights. Thank you.

CHAIRMAN: Is there any further discussion? Delegate Larson.

DELEGATE LARSON: Mr. Chairman, I'd like to speak briefly in favor of this particular provision. Mr. Chairman, in our Constitution presently we have a number of various sections similar to Section 4 which relate to anti-discrimination clauses. In other words, that a person should not be discriminated against because of his race, religion, sex or ancestry in the enjoyment of his rights. However, Section 4 deals only with such protections as they apply to man's civil rights. It says nothing about nor does it apply to man's political rights, such as those involved in suffrage and elections. Nor does it deal with many other sections in our Constitution. Let me elaborate briefly. Besides having Section 4 dealing with discrimination clause relating to enjoyment of one's right, if you'll notice, Section 6 of Article I deals with a similar subject. Section 7 deals with discrimination in military enlistment. Section 12 deals with discrimination on the basis of jury selection. Article IX, Section 1, deals with—it contains within that section an anti-discrimination clause relating to public education facilities of our State. I feel, Mr. Chairman, as Delegate Aduja, that by eliminating the word "civil" this section would be applicable then to all other sections in our Constitution and would probably grant us recognition of the extent to which civil liberties have become important to the citizens of our State and that they should not only be related to civil rights as such but also to political rights, natural rights, economic rights, personal rights, as Delegate Aduja mentioned. Therefore, I would urge this body to support this particular amendment. Thank you.

CHAIRMAN: Thank you.

DELEGATE O'CONNOR: Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak strongly against this amendment. Section 4 in its special wording as now exists has a specific and definite meaning. It refers specifically to civil rights and I would suggest to this body that the words "civil rights" today in America have a definite meaning which has been outlined

successively year after year by the Supreme Court of the United States in many cases and has been further outlined by legislation and definition.

Mr. Chairman, if we remove the word "civil" before the word "right" in Section 4, nowhere else in this Constitution is there a provision which has to do with discrimination in Hawaii as far as the exercise of civil rights go for any reason. And, Mr. Chairman, for one, I would suggest that if we change "civil rights" to "rights," that word has quite a difference in meaning and may not include or may not be all inclusive from a constitutional definition standpoint than the words "civil rights." Mr. Chairman, I would suggest that the intent of the movers and the proponents of this amendment would not be effectuated. I would further suggest that political rights today as the words "civil rights" are used are included in that word. More specifically, the Supreme Court cases having to do with voting rights in the South and the legislation which adopts civil rights as passed by the United States Congress has had to do with suffrage and elections.

I would further suggest, Mr. Chairman, that under Section 20, the rights and privileges which are not otherwise talked about in the Bill of Rights are retained by the people, and all we'd be doing if we take the word "civil" out of Section 4 is once again stating Section 20. We'd be repeating ourselves. Section 4 is there for a specific reason. It's there to pertain to our civil rights and to reserve to us the exercise thereof. And Mr. Chairman, I would suggest that passing this amendment would be wrong.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: This amendment first came up in the Bill of Rights Committee. At that time, as a former chairman of the Bill of Rights Committee of the first Constitutional Convention, I knew there was a definite reason for leaving or having the language in this fashion, civil rights. Upon reflection, since the day we discussed it in the Bill of Rights Committee, and as we went through the various amendments, I have now come to the conclusion that the reason for this word "civil rights" was the fear on the part of the many of the delegates at the first Constitutional Convention that if we had it in any other fashion, it would be in conflict with the Hawaiian Homes Commission provision in the Constitution. And I am amazed at the present time, Mr. Chairman, that all the defenders of the faith have not jumped up immediately after this amendment has been offered. Thank you.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I rise to speak against this proposed amendment. Delegate Aduja read from a portion of the committee report but there was another portion that he did not read. At the top of page 3, the committee report says in part, "Such an expansion of the scope of this section," talking about the proposed amendment "would include many areas which your committee feels

have not been sufficiently defined." Now that's the essence of the reason why I feel that it would be unwise to adopt this particular amendment.

Delegate Larson has spoken of—in terms of the meaning of this amendment, he spoke in such terms as natural rights, economic rights, personal rights, political rights, and it's difficult for me at least, in my own mind, to pinpoint exactly what these specific rights are in concrete terms. And unless we know—if we start to talk about discrimination in the exercise of rights because it relates to religion, sex or ancestry, and if we really don't know what rights we're talking about in the first place, it all becomes very vague in my mind and if this amendment were to go through, I would feel that this body would be passing something, the meaning of which this body actually did not know. And I think that this kind of thing is just ill advised.

CHAIRMAN: Thank you. Any further discussion? Delegate Ho.

DELEGATE HO: Would it be possible to address a question to the mover of the amendment to determine whether personal rights, natural rights, political rights are not included within the meaning of civil rights and whether there has ever been an adjudication to this effect?

CHAIRMAN: Delegate Aduja, would you care to answer that question?

DELEGATE ADUJA: It is my understanding from case law, and there are many of them, that civil rights is very, very narrow in its meaning. As you will notice that meaning grew up of the southern states' inability to exercise their right to vote. In those days we used to have a great number of poll taxes and so on down the line. So we feel that if we remove the "civil" before the "rights," we are going to expand the very meaning of the word "rights."

DELEGATE HO: Well, Mr. Chairman, do any of these decisions foreclose any other interpretation of the words "civil rights"?

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: Not necessarily.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I would like to just add to this discussion that we're not talking about all of a sudden in this section giving people particular rights. This section reads, if I can just paraphrase it, that "No person shall be discriminated against in the exercise thereof" applying to civil rights "because of race, religion, sex or ancestry."

Mr. Chairman, I wouldn't think a person in this room would think a person should be discriminated against in the exercise of his political rights. I'm speaking of the rights that are contained under Article II of our Constitution relating to the power of a citizen to participate directly or indirectly in the processes of

government. We are not proposing an amendment which will grant any new rights that we do not already have. We are just, by deleting the word "civil," bringing the section up to date, 1968.

And secondly, I think we are merely expressing the belief that a person in the exercise of what is natural rights as conveyed in Section 2 of Article I or whether you're referring to his political rights, his rights to an education, that he should not be discriminated against. We're not talking about giving people these rights all of a sudden. They already have them. We're just talking about, by deleting the word "civil," making this section applicable to all the scope of other rights that are not included within the word "civil."

CHAIRMAN: Thank you. Is there any further discussion? Are there any further questions? The motion is to adopt the delegate from the 8th District's amendment to Proposal No. 11, which is marked No. 5 and which reads as follows:

"Committee Proposal No. 11 is hereby amended by adding an amendment to Section 4 of Article I deleting the word 'civil.'

"As amended the section shall read: 'No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.'"

All those in favor say "aye." Opposed, "no." The motion is lost. Delegate Meyer Ueoka is recognized.

DELEGATE UEOKA: Mr. Chairman, Section 5 relates to seizures and—

CHAIRMAN: Excuse me, Delegate Ueoka, we have a motion yet to adopt the section. Your original motion.

DELEGATE UEOKA: I so move.

DELEGATE TAKAHASHI: Second.

CHAIRMAN: You heard the motion duly made and seconded. All in favor say "aye." Opposed, "no." Carried. Delegate Ueoka.

DELEGATE UEOKA: Section 5 relates to searches and seizures and your committee has recommended an amendment by adding the phrase "and invasions of privacy" after the word "seizures," appearing on the third line. I move for its adoption.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I second the motion, Mr. Chairman.

CHAIRMAN: You heard the motion. Delegate Larson.

DELEGATE LARSON: Mr. Chairman, I'd like to speak in favor of the committee proposal, if I may.

CHAIRMAN: Before we go further, Delegate Ueoka, will you identify it by number, your amendment.

DELEGATE UEOKA: The amendment is Committee Proposal No. 11, Section 5. I yield to Delegate Larson.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: Mr. Chairman, the right of privacy has been defined in many ways. Mr. Justice Clark called it the right to be let alone, to live one's life as one chooses, free from assault, intrusion or invasion except as they can be justified by the clear needs of community living, under a government of law. Privacy has also been defined as a right to be let alone, the right of personality, or man's individuality and human dignity.

Mr. Chairman, I feel that each of us has his own definition of the so-termed "right of privacy" which is meaningful to himself. If we attempted to define freedom of speech, right of assembly or the right to be secure in your home from unreasonable search, we might have some difficulty but I feel that all of us have a sense, an inkling or feeling of what these terms mean, that somehow they relate very intimately to ourselves and to what we think of as freedom. Personally, there are several main reasons why I feel such an addition of the right of privacy to this section would be worthwhile for inclusion in our Constitution.

First of all, Mr. Chairman, I feel there is a demand, yes, a necessity for such a provision in our Constitution and in our Bill of Rights. The best progress made in what is called surveillance technology or more simply eavesdropping devices, wiretapping, hidden television cameras and many other such devices have brought into being, in part, such a right. Should a telephone conversation be considered private? This is one question. Secondly, the growing files or dossiers of personal data about merits of our citizens by the government has brought this right also to our attention. Should agencies be allowed uncontrolled to assemble vast amounts of information about our merits of our citizens, and indeed is this information to be considered private.

Another area which has been under consideration in modern times is that of marital privacy. To what extent is government to be allowed into the intimacy of such a relationship, whether by regulating contraceptive devices or by specifying what can and what cannot be engaged in, in the intimacies of one's bedroom.

Secondly, Mr. Chairman, I feel the inclusion of such a right of privacy would be reflective of our times. The idea of right is an evolving concept constantly changing with the times. To the delegates of the 1950 Convention, it was important that we would not disqualify a juror because of sex or discriminate against persons in military enlistment. As some guarantees, Mr. Chairman, become obsolete or archaic, others become important. A Bill of Rights should not only mirror ages past but should also recognize up to date demands upon human rationality

and society. Many other states which have comparatively new constitutions have recognized such a right of privacy. Maryland, New York, Puerto Rico, Arizona and others.

Thirdly, Mr. Chairman, I feel that the right of privacy is indeed one mark of freedom or democracy in our times. One of the great differences between countries which are called totalitarian or dictatorial and those which are called democratic or swingy is that of respect for the individual, in appreciation of the individual's right insofar as possible to live his life without undue interference on the part of the state or of the government.

Finally, Mr. Chairman, I feel that this provision has struck a good compromise between society's need for protection and the individual's right to be left alone. By this provision, reasonable searches, whether by phone or in the home are permitted as specified by law. None of our rights are absolute. Each is within limits subject to reasonable regulation or prohibition as specified by law. The inclusion of a right to privacy would similarly to the rights of freedom of speech, association, be subject to statutory regulation. It would not be an absolute prohibition against the telephone company or the police department but it would be an expression of right which I feel our society in 1968 very much needs.

Mr. Chairman, I urge my fellow delegates to support this amendment. Thank you.

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, isn't an amendment in order at this point or would you prefer to hear the proponents more fully on the motion as it stands. I would like to offer an amendment and I do move for the adoption of Amendment No. 1 which reads:

"Section 5 of Article I as set forth in the Committee Proposal is amended by deleting the period and adding the following:

"or the communications sought to be intercepted."

It would add to this section, to Section 5 which is under discussion.

DELEGATE PYO: Mr. Chairman, I second the motion.

CHAIRMAN: Proceed.

DELEGATE RHODA LEWIS: Mr. Chairman, this amendment does not invade the area which is under discussion here, that is, the addition of the words "and invasions of privacy." As stated by the last speaker, the Maryland proposed Constitution has gone into this area. However, in a little more detail I feel that the intent is the same. However, in the Maryland proposed Constitution, the words which I would like to add here have been added. The subject matter is in the area of the attaining of a warrant. The present Constitution uses the archaic language which has been in effect from time

immemorial which provides that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

Now those last words I think require some expansion in order to keep up with the addition made in the first part of the section. In the first part of the section, we're adding "invasion of privacy" with reference to wiretapping among other things. Now the question is, if the legislature provided for it, and I'm aware that it is not provided for now, would the constitutional language be broad enough so that a warrant might issue upon probable cause, upon observing all necessary safeguards to intercept a communication.

I submit that the language, the archaic language, "describing the place to be searched," is not apt. The language "and the persons or things to be seized" is not apt. Therefore, we should, as was done by the Maryland convention, add the words "or the communications sought to be intercepted," merely indicating that under a procedure prescribed by the legislature if it sees fit to do so and upon probable cause duly shown a warrant may issue in this area. The federal law specifically provides that if authorized by state statute, the principal prosecuting attorney of the state may obtain from a judge of competent jurisdiction an order authorizing interception of wire or communication. It's a paraphrase. Therefore, this would all be in conformity with the present state of the law.

CHAIRMAN: Any further discussion? Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, as one of the proponents of the amendment, I see no objection to Delegate Lewis' amendment. She is more interested in housekeeping procedures, sort of clarifying the areas concerned and I defer to her wisdom in this area.

CHAIRMAN: Thank you. Delegate Hasegawa.

DELEGATE HASEGAWA: Mr. Chairman, I'm a police officer.

CHAIRMAN: You're a delegate today.

DELEGATE HASEGAWA: I'm speaking for the amendment. I concur with the remarks made by the honorable lady delegate. I'm a police officer. I'm very, very interested in wiretapping. I feel that wiretapping is a necessary operational procedure in present-day police investigation.

The recent kidnapping case that happened two weeks ago in Los Angeles is a graphic example in which the permitted monitoring of the telephone resulted in the recovery of the child and also the apprehension of the criminal. Our existing statute prohibits any form of wiretapping or eavesdropping on a telephone. This was specified by a member of the Attorney General's office at the committee hearing. We cannot even monitor a telephone call on the extension telephone. I feel this is a necessity for police investigational technique. And I

heartily recommend that this Convention approve this amendment. Thank you.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Meyer Ueoka.

DELEGATE UEOKA: I have a question to ask of Delegate Lewis.

CHAIRMAN: Proceed.

DELEGATE UEOKA: The term "invasion of privacy," Delegate Lewis, is used in a very general way. Now, if the amendment were added, would that sort of restrict the meaning of the term "invasion of privacy" and limit it merely to communications?

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, that was certainly not my intent and I think the record of the proceedings will show that the Convention had no such intention. I would think that invasion of privacy in its full sense is subject to the police power, as previous speakers have said, and is subject to the usual procedures as to obtaining a warrant. That was all that I was attempting to say. In some other fields where invasion of privacy is involved, the present language as to the obtaining of a warrant might fit but I felt that it was not broad enough.

CHAIRMAN: Any further discussion? Delegate Ueoka.

DELEGATE UEOKA: Such being the intent, I don't see any objection as stated by Delegate Mizuha insofar as the amendment is concerned.

CHAIRMAN: Any further discussion? Delegate Dyer.

DELEGATE DYER: I have no objection to include in the Constitution the prohibition against unreasonable invasions of privacy. But I am concerned with the placement of such a provision in Section 5. And my reasons are simply this, I don't know if—let me start out this way, we do have on the books, at the present time, a statute that prevents wiretapping. If this amendment goes through, as I understand it, assuming that the statute is eliminated, we would then have a situation where that is—assuming those provisions in the statute that prevent police wiretapping are eliminated, we would then have a situation where this wiretapping by police would be governed instead by provisions in the Constitution. In other words, as I read it, before the police could do their job, a warrant would have to be issued. Now, I don't really know what police requirements are. All I do know is that Delegate Hasegawa, at our committee meeting, read from a federal statute that laid down certain safeguards for police wiretapping and this was a detailed statute that as I recall, at least two pages in single space, so that what I'm trying to say is that if this amendment goes through, I suspect that police wiretapping would be limited to doing it by warrant. Now, maybe this is good, maybe this is bad. I don't know enough about it, to be

perfectly frank, and that's why I'm disturbed to find this business of, you might say, police inquiries by way of wiretapping put in this particular Section 5 and mixed up with unreasonable searches and seizures. If it were a separate amendment, I would have no objection to it but the way it is placed here, I see problems.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: At the present time, New York State has a law against wiretapping and electronic eavesdropping similar to the statute that was passed by our state legislature a few sessions ago. In the now famous case of *Burger v. New York*, the Supreme Court of the United States laid down the rules under which the police department of any of the cities and counties of New York can secure warrants to eavesdrop or wiretap and they are a stringent set of rules. And that is the only guideline we have at the present time for securing warrants for wiretapping and eavesdropping. If this amendment passes, it's nothing new. At the present time, under our state statutes we have provisions laid down by law and if any of the police organizations desire to get warrants to secure evidence by wiretapping and eavesdropping, they must go to the courts. I'm a bit confused by Delegate Hasegawa's statement to the effect that they can't even get a warrant to do it or that they're absolutely prohibited. On that point I disagree.

This is a matter for the courts to decide as to what evidence the police must have before they can get a warrant to tap a wire or to put in a device known as the "bug." And I believe there shouldn't be any objection at the present time because this merely elaborates the status of the law in this State by virtue of the statute passed by the legislature.

CHAIRMAN: Any further discussion?

DELEGATE NOGUCHI: Mr. Chairman.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: I would just like to make a comment here that this particular amendment was discussed in the committee and although the chairman expressed his sentiments here on the floor that it might be all right, I'd like to point out that it was discussed in committee and the thing—one of the things I would like to point out is that we felt that this language was broad enough to cover the situation as even Delegate Hasegawa brought out. It states, "unreasonable searches and seizures and invasions of privacy." In other words, the invasions here must be unreasonable. And if and when the state legislature sees fit that the police may issue warrants to interrupt communications or to wiretap for certain reasons then that would come under the purview of reasonable. And as the present law here prevents the police from wiretapping, and as Delegate Dyer pointed out, this particular language would then permit the police to wiretap the citizenry of the State, with a warrant and I think we should leave this to our state legislature.

CHAIRMAN: Any further discussion? Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I wonder if the delegate from Kauai, Delegate Mizuha, would yield to a question?

CHAIRMAN: Delegate Mizuha, will you yield?

DELEGATE MIZUHA: If I can answer it.

CHAIRMAN: Proceed.

DELEGATE O'CONNOR: Mr. Chairman, Delegate Mizuha was recently a part of the Supreme Court which came down with the decision called *Fergerstrom v. Hawaiian Ocean View Estates*, having to do with the right of privacy. In this decision, the Supreme Court decided that in Hawaii, there was a cause of action for an invasion of the right of privacy. Now, in order to make a record here, Delegate Mizuha, I wonder if you would say whether or not you recall this case having to do with the taking of pictures and using of pictures. I wonder if you would say that in your feeling, the invasion of privacy that we're talking about would extend to a Fergerstrom situation where pictures were taken from a distance and later those pictures were attempted to be utilized in evidence. Those pictures taken without warrant.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I believe so.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Therefore, I take it, Delegate Mizuha, that putting this decision of the Supreme Court of the State of Hawaii together with our constitutional language if we adopt this provision, then a police officer would be prohibited from ever taking a picture, no matter what the distance, unless he went and got a warrant to take that picture if the picture included an individual?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, this decision of the Supreme Court was for exploitation of somebody's privacy for commercial gain and that's a great deal of difference from invasion of privacy with reference to the prosecution of a criminal defendant. And as I have stated, unfortunately, I didn't bring the long decision of *Burger v. New York*, in which the Supreme Court of the United States in interpreting the New York statute prohibiting eavesdropping and wiretapping stated in concise language in about nine separate paragraphs the conditions under which the police department may intercept communications and use it as evidence in the prosecution of a defendant charged with criminal violation in the State of New York.

CHAIRMAN: Thank you. Any further discussion? Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I would like

to speak on this for a minute. Up to this time, in the committee's hearing on this matter and here in the Committee of the Whole, the words "invasion of privacy" have been linked to wiretapping and communication interception. But if you ladies and gentlemen who are delegates here heard my question to Delegate Mizuha, we have in the State of Hawaii, a Supreme Court case which has to do with the taking of photographs in which the Supreme Court of the State of Hawaii had said that this was an invasion of privacy. True, it was a civil case. True, it went to the utilization of those photographs in commercial advertising but nevertheless, it's there, and it can be linked with these words that we intend to put in the Constitution.

Additionally, other than wiretapping and communications of eavesdropping, where else does the word "privacy" go? What other evidence may be barred from the prosecution of a criminal because of the inclusion of these words? I don't think we know. And I would suggest that the Supreme Court case that Delegate Mizuha talks of only goes to wiretapping and communications eavesdropping. And there is an area left open. We are adopting into our Constitution, Mr. Chairman, words which already in Hawaii have meaning to include photographs. Words which can be embroidered upon, I believe, way outside the area of communications and wiretapping. And I would suggest that we seriously consider the vote taken on these words. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Ho.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Ho has been recognized.

DELEGATE MIZUHA: I believe we are in the process of questions and answers, Mr. Chairman, and I believe I should explain this position—

CHAIRMAN: Delegate Mizuha, we'll come to you after we get through Delegate Ho first. Delegate Ho.

DELEGATE HO: Thank you, Mr. Chairman. Mr. Chairman, I'd like to direct a question to Delegate Mizuha. Mr. Chairman, I have not read the opinion which Delegate O'Connor refers to although I get the gist of it that it does revert to the invasion of privacy. But I believe, Mr. Chairman, we are speaking to Amendment No. 1 over here which tags to the end of the sentence "or communications sought to be intercepted." I would ask Delegate Mizuha whether he considers the light which is cast upon film so as to create a picture, a communication to be intercepted within the meaning of the decision which Delegate O'Connor refers to.

DELEGATE MIZUHA: Although I don't know of any decision, it's very difficult for me to extend the principle that Delegate O'Connor refers to electronic devices, telephone wires and so forth. And may I make it clear that today, there's nothing to interfere from the police officer who observes this crime committed on private premises from effecting an arrest.

DELEGATE HO: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE HO: Will the respondent answer the question?

DELEGATE MIZUHA: I believe I answered it. It has nothing to do with the kind of communications that are intended with reference to what he talks about, the lights on the camera or something like that.

CHAIRMAN: Delegate Ho.

DELEGATE HO: My question was, Mr. Chairman, whether the taking of a photograph can be construed to be in your opinion, as he responded to Mr. O'Connor, the interception of a communication.

CHAIRMAN: Delegate Mizuha, will you answer the question?

DELEGATE MIZUHA: No, it has nothing to do with it.

DELEGATE HO: Thank you.

DELEGATE MIZUHA: Mr. Chairman, may I explain. Delegate O'Connor is talking about a photograph taken on some private property in full view of the policeman. Why it's just like he's looking at it. And if nothing today prevails to prevent the policeman from rushing into private premises when he sees an offense being committed, to just make an arrest in his full view. So we're not talking about that kind of a situation where a photograph is taken or something tangible that can be reproduced from camera lens. What we're talking about is something behind closed doors, not in the view of the policeman from the outside. And that is what we mean when we talk about telephone lines or some kind of listening device by laser beam or something like that. But it has nothing to do with what can be seen. If the policeman sees an offense, no matter where it is, it is his duty to go in and make an arrest.

CHAIRMAN: Thank you. Delegate Noguchi.

DELEGATE NOGUCHI: Mr. Chairman, as you can see, as arguments go back and forth here, one of the reasons why the majority of us in the committee turned down this particular amendment as proposed by Delegate Lewis is the fact that you have all these various questions around you. And what about communications, all communications that you overhear in a room. Is that a communication that needs a warrant, et cetera, et cetera. And for these very reasons we left the language broad enough here to cover the word and the word "unreasonable" I think is a guideline for the courts to decide in determining their judicial decision. And for this very reason we left it broad enough and general enough and flexible enough so that in future years this particular provision can be used as the time dictates and what is reasonable and unreasonable.

CHAIRMAN: Delegate Dyer first.

DELEGATE DYER: Mr. Chairman, I would like for the Convention to know that in committee this proposal was first turned down. It was only upon a second vote that it was adopted. Now, I would also like the Convention to know that the introducer of this proposal had in mind, as I understand from my conversation with him—

DELEGATE MEDEIROS: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE MEDEIROS: Mr. Chairman, I'm wondering if Delegate Dyer is talking about Delegate Rhoda Lewis' amendment or the proposal.

DELEGATE DYER: I'm talking about the—actually I'm talking about the proposal.

DELEGATE MEDEIROS: Aren't we discussing the amendment, Mr. Chairman?

CHAIRMAN: Your point is well taken. Delegate Dyer, will you restrict yourself to the proposed amendment.

DELEGATE HITCH: Mr. Chairman.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: While I'm inclined to be sympathetic with Delegate Lewis' proposed amendment, I have some difficulty in visualizing the mechanics of it. It would add to the phrase "and particularly describing the place to be searched and the persons or things to be seized," "or the communications sought to be intercepted," if I understand it correctly. A place to be searched exists physically and can be described. A person or a thing to be seized does exist physically and can be described. But a communication to be intercepted does not exist until the communication is being made. Now, communicators could be identified and described and a warrant could be issued to intercept the communication of certain communicators who are described but how the communication can be described before it's been communicated, I can't understand.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I confess I adapted that from the Maryland Convention's work and I think in my own mind, it's perfectly plain as a short statement. Otherwise, one could go on for pages. It is an identification of a communication sought to be intercepted. As we have debated here, we have to grasp from the subject matter from this particular amendment to the point where one is putting to extreme doubt as to the wisdom of the amendment in itself. I did not understand that Supreme Court case to go as far as Delegate O'Connor seems to think it does. I certainly thought that the invasion of privacy consisted in the commercialization. Otherwise, fellow delegates, do consider. Are we passing an amendment which says that the press cannot go around taking pictures without

getting the permission of everybody on the scene. Surely there is no intention that the mere taking of a picture of someone who is outside his home and in public view is an invasion of privacy. Coming back to the exact point of the amendment which is what is actually on the floor—I had the language here a minute ago, I'm sorry, from the federal act, a particular description of a type of communication sought to be intercepted—that is the exact language of the federal act. So that when we speak of just grabbing the communication sought to be intercepted, the only words missing are “the type of communications sought to be intercepted.” I think the language in my offered amendment is better, however, because it also includes other matters which are required by the federal act, the identity of the persons involved, that's known, the place the communication is to be intercepted and the like. All of this could be included in the words “describing the communications sought to be intercepted.”

CHAIRMAN: Thank you.

DELEGATE MIZUHA: Mr. Chairman, may we have a short recess.

CHAIRMAN: Recess subject to the call of the Chair.

At 10:41 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:07 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Any further discussion before we go to the question? Are you ready for the question? The motion is to adopt the amendment proposed by the delegate from the 16th District, Miss Lewis. All in favor of the motion say “aye.” Opposed, “no.” The motion is lost.

DELEGATE DYER: I ask for a division of the house.

CHAIRMAN: A division of the house is requested. All in favor please stand. Opposed, please rise. The motion is carried.

We go back to the main motion to adopt Section 5 as proposed by the committee and as amended. All in favor say “aye.” Opposed, “no.” Carried.

DELEGATE ADUJA: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE ADUJA: When you say the motion is lost and now the motion is carried, which is the proper statement?

CHAIRMAN: We had two motions, Delegate Aduja. One was the amendment, the other was the main motion to adopt Section 5.

DELEGATE ADUJA: In other words the last motion, the last request you made was not whether it was going to be a roll call? I thought that you were asking for a roll call.

CHAIRMAN: I didn't ask for a roll call. I asked for the adoption of the main motion to adopt Section 5, as amended.

DELEGATE ADUJA: Thank you very much.

CHAIRMAN: Is there any amendment to Section 6? No amendment. Section 7, no amendment? Section 8—

CLERK: There is an amendment, Mr. Chairman. It's been offered by Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I move that Section 8 of Article I be amended as follows:

“Section 8 of Article I of the State Constitution is amended to read as follows:

“Section 8. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces when in actual service in time of war or public danger. No person shall be indicted while his preliminary hearing is pending. Any bail posted pending a preliminary hearing shall be applied to bail required by the circuit court. No person shall be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against himself.”

DELEGATE LARSON: Mr. Chairman, second the motion.

CHAIRMAN: You heard the motion. Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I feel somewhat at a loss to find the division of opinion rendered by the several attorneys this morning in a matter of a great concern to all the people of the State of Hawaii. I'm concerned too, Mr. Chairman, I'm very much concerned for the rights of some of the people of the State of Hawaii. I'm concerned on the matter of a pending preliminary hearing in the district court for an accused person. I'm concerned also, according to the amendment, the bail to which the accused has put up in the district court so that in this concern I am concerned also, especially on the guaranteed rights that the individual has stated in the Constitution which is already approved.

Mr. Chairman, may I read from Section 4, “Due process and equal protection. No person shall be deprived nor be denied the equal protection of the laws.” I'm concerned in this area, the equal protection of the laws to

be given to all people. Mr. Chairman, in my illustration of this concern, I appeared before the committee upon its invitation to express the intent and purpose of my proposal that I had offered, Proposal No. 282. I believe in the committee I made every attempt to honestly present the intent and purpose of the proposal. As an illustration of my concern, Mr. Chairman, I'm concerned when an accused person is before the district court and has requested a preliminary hearing on the charge with which he is answerable before the court. I'm concerned that while this preliminary hearing is pending before the district court that he's been denied the due process of equal protection of laws when the public prosecutor under present practices, while a case is pending before, under preliminary hearing before the district court, the prosecutor appears before the grand jury and the presentment of the facts and evidence on the case. The grand jury has no recourse but on the presentation on the evidence presented by the public prosecutor to present an indictment. Here, Mr. Chairman, is the denial of the right of equal protection of the law when a person who has requested a preliminary hearing in the district court that his has been denied him in the first instance. In further illustration of this denial of the equal protection, I'd like to illustrate it in other matters.

Take for instance the person who kills, who cannot put up any bail and unfortunately he has to be kept in jail. On his appearance before the district court the charges are read to him. In the meantime he is asked to plead guilty or not guilty or if he is ready to plead and if he is not, the case is put over. Then the cost of the layover continue to the case he still is unable to provide bond for appearance. He goes back to jail. Then he has the inclination to go before court and demand and ask that the court furnish him a court-appointed counsel. This is done after qualifying himself for the need for court-appointed attorney. I see the role of the court-appointed attorney in trying to prepare his defense against the accused person. And the only area that he may have some inquiry as to the charges placed or what type of evidence the police may have against his client is to ask for a preliminary hearing to be one instance. The other reason for preliminary hearing is affording the opportunity to prepare defense and to meet with his client in the preparation of a reasonable defense. Also in the preparation of having bond raised so that the accused person can be free to appear again before court. Here again, Mr. Chairman, this equal right of protection of the law has been denied the defendant when and the primary reason behind my proposed amendment is that the preliminary hearing as requested has been denied the accused person. I also said in my amendment that if he is able and capable to provide bond for his appearance in the district court, that is to put public prosecutor under the present practices in denying the equal protection of law to any accused person runs before the grand jury and have the person indicted. That if the indictment is returned as a true indictment, then that bond in the district court should continue into the circuit court because this is only a bond for appearance before the courts.

I've seen many cases, Mr. Chairman, where this right of equal protection of law had been denied individuals and

my concern has been for individuals who are unable to furnish, provide the necessary bond so that they could be released. My concern is the individual who has not been able to be provided the full extension of the law in having his case heard before the district court under preliminary hearing. I feel, Mr. Chairman, that this denial of right makes a mockery of the sections of the article on civil rights which we have approved, Section 2 and Section 4 particularly. If we mean what we have said in the adoption of these two sections of the Constitution on Article I of the Bill of Rights, then let us extend this right of equal protection under the laws to an accused person when he demands preliminary hearing. Rather than permit the county public prosecutors to run into the courts and secure an indictment or presentation of evidence, where they alone, with their witnesses can indict a person who has been denied in the first instance their rights of a preliminary hearing in his behalf.

CHAIRMAN: Thank you.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Perhaps I should explain, give a little background as to what a preliminary hearing is for those who are non-lawyers. A preliminary hearing is held in the district court before a magistrate and the purpose of it is to determine whether or not a crime has been committed and there's probable belief that the defendant or the accused had committed the crime and it's for the purpose of legally holding the accused until the grand jury takes action.

Now, insofar as the grand jury proceeding is concerned, it's a secret proceeding. However, it is one-sided in that only the prosecution presents the evidence in absence of the accused or his representative. And so, under the present practice, a person may be charged first in the district court for the purpose of legally holding him or the prosecution may go directly to the grand jury and have an indictment returned. Now, under the proposed provision it states, "No person shall be indicted while his preliminary hearing is pending." Well, I can see if the preliminary hearing is pending, perhaps there should not be any indictment. However, what the prosecutor will do is rather than go to district court, go directly to the circuit court for a grand jury indictment and as a result the accused may never have a hearing before the district court or have a preliminary hearing and I'm afraid, Delegate Kauhane, that—Mr. Chairman, that under the present wording, I don't believe that it will accomplish what you're trying to attain. The proper wording would be perhaps, "A preliminary hearing—an accused shall be entitled to a preliminary hearing," would be a more proper phrase than the phrase, "No person shall be indicted while his preliminary hearing is pending."

CHAIRMAN: Thank you.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, if this is the essence of the committee's feelings on this proposal, then I ask that a short recess be granted so that the corrected version of the proposal can be made possible by the attorneys of the Convention. In the presentation of this amendment, this amendment is verbatim as to the proposal that I introduced, Proposal No. 282, and I again will say that upon the invitation to appear before the committee in support of the intent and purpose of Proposal 282, I sensed there was some feeling that this can be corrected. That this amendment—intent and purposes—can be acceptable. But at no time did I, during my sitting in, in the hearing, upon my completion of my testimony—and I removed myself from the hearing in order to permit the committee to deliberate amongst themselves—did I hear any report coming out from the committee that this possibility of a change or an amendment as offered by the chairman was a possibility as a corrective measure to attain the purposes and intent for which this Proposal 282 was introduced, and to provide the earlier concern as expressed in this proposal and also in this amendment, for the concern of the protection of law to all persons. If this is so, Mr. Chairman, I ask that we take a recess in order that the attorneys will prepare the proper language.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak against the amendment and to answer Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I rise on a point of order.

CHAIRMAN: State your point of order.

DELEGATE KAUHANE: I have asked for a recess in order that the proper language can be prepared. In view of my requesting for a recess for which the Chairman has not seen fit and reasonable to grant, I feel that I've been deprived of getting this amendment prepared.

CHAIRMAN: Delegate Kauhane, your statement was a suggestion, not a request.

DELEGATE KAUHANE: I thought I clearly stated that—

CHAIRMAN: No, you were suggesting a recess.

DELEGATE KAUHANE: I thought I clearly stated in my suggestion that we take a recess in order that the attorneys will be able to prepare the right wording of the amendment as expressed by the chairman of the committee. If my suggestion was not in the form of a formal request, I now ask and request that we take a recess so that this amendment be—

CHAIRMAN: Delegate Ueoka, what is your pleasure?

DELEGATE UEOKA: The question was—

CHAIRMAN: Delegate Kauhane, will you make a request of the chairman or make a suggestion at this

particular time.

DELEGATE UEOKA: Well, our committee, Mr. Chairman, has voted to retain or maintain the status quo and I support the committee's position.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE LUM: I want to know if everytime a request for a recess is asked, we're going to have to check it with the chairman before we actually have the recess.

CHAIRMAN: I think that's the proper procedure, to ask the chairman of the committee because they worked on this proposition.

DELEGATE UEOKA: I think with due respect to Delegate Kauhane, I think we should give him a chance to submit whatever proposal or amendment that he wants.

DELEGATE KAUHANE: I rise to a point of information.

CHAIRMAN: State your point of information.

DELEGATE KAUHANE: Mr. Chairman, I'm willing to abide by your ruling. I don't want you to circumvent your ruling by making a special condition for me in my request for a recess. If this is the policy that you want to carry out, I do hope that this Convention, whoever presides at the Convention, will live by the ruling that the request for recess can only be granted, if we are considering committee proposals or amendments, that the chairman be first asked for this permission. Secondly, Mr. Chairman, I would like the record of this proceeding of the Convention to record my protest in the granting of recess, upon a mere request by any delegate as against a legitimate request that has been made—

CHAIRMAN: Delegate Kauhane, may I say this. The Chair has not made a decision yet so you're out of order. Recess subject to the call of the Chair.

At 11:16 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:44 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order. Delegate Kauhane.

DELEGATE KAUHANE: Yes, Mr. Chairman.

CHAIRMAN: Do you want to withdraw your original amendment in light of your new amendment?

DELEGATE KAUHANE: Yes, Mr. Chairman.

CHAIRMAN: No objections. Delegate Kauhane.

DELEGATE KAUHANE: In withdrawing the original amendment that I proposed this morning, I will substitute the amendment that has been prepared by counsel of the Convention which is marked No. 9, I believe, and which reads as follows:

"Section 8 of Article I of the State Constitution is amended to read as follows:

"Section 8. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the armed forces when in actual service in time of war or public danger. No person shall be denied the right of preliminary hearing and no indictment shall be returned prior to the conclusion of such hearing. No person shall be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against himself."

I move that the amendment be agreed to.

CHAIRMAN: Is there a second?

DELEGATE KAMAKA: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Kamaka has seconded the motion. Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I have already elaborated on the intent and purpose of offering this amendment. I would like to say, Mr. Chairman, in conclusion that in the offering of the amendment to permit a person—that, "No persons shall be denied the right of preliminary hearing and no indictment shall be returned prior to the conclusion of such hearing," that whatever the result of the preliminary hearing the district court does not preclude a public prosecutor from further appearing before the grand jury after the preliminary hearing has been held to present his case in request for an indictment.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak against the amendment. This matter was fully debated in the committee and the consensus of the committee was, this was a matter of criminal rules of the Supreme Court of the State of Hawaii which was better handled under the criminal rules.

Mr. Chairman, I believe you will recall that we have allowed, under the Judiciary article, the Supreme Court to establish certain rules. Those rules have been established and are presently in existence. The rules now provide that, "No person can be indicted until the grand jury has returned a true bill or unless he has had a preliminary hearing and the matter has been referred to the circuit court by the district court."

Now, Mr. Chairman, I for one fully agree with

Delegate Kauhane. Under the present situation, the prosecuting attorney can essentially deprive a person of a preliminary hearing. But this matter goes deeper than simply the deprivation of a preliminary hearing. The preliminary hearing is not a right and it does not aid in an expeditious furtherance of a criminal case. In many cases the defendant does not want a preliminary hearing. In many cases, in order to have a just and speedy trial, it is necessary to move the matter forward and to have the grand jury determine the matter early and a true bill returned. If a vice does exist, Mr. Chairman, in the present situation it should be corrected in the rules of the court and not in the Constitution. Section 8 of our Constitution is identical with the section of the United States Constitution and it reserves to the people the right to have in a capital or otherwise infamous crime a grand jury indictment or presentment. And I would suggest that these words be left as they are and that if a vice does exist in the present procedural method of handling cases in the courts of Hawaii that that vice be corrected in the rules of the court where it should properly be corrected and not in the Constitution.

CHAIRMAN: Any further discussion? Delegate Doi.

DELEGATE DOI: Mr. Chairman, I would like to share with the members of this Convention, some of the thoughts involved in the consideration of this question. To begin with, a preliminary hearing becomes operative only when a felony has been committed and then the alleged felon has been arrested. In some of the lesser offenses, the only charge brought is before a grand jury. In the more serious felonies such as murder and rape, the police authorities would immediately bring a charge against the defendant. So that the charge is based on facts and credible facts, our statute, Mr. Chairman, provides that there shall be a preliminary hearing before a magistrate. And the magistrate will hear the facts and only so much of the facts as is necessary to establish a probable cause or basis for the charge brought by the police. This is not a right given to the defendant for him to find out what kind of evidence the prosecution might have. This is only a provision adopted by the legislature to assure the charge brought by the police is based on credible evidence and there is proper cause. Therefore, it would appear that not all felony cases, presently anyway, would go through the process of a preliminary hearing. The new proposed amendment by Delegate Kauhane uses the words "preliminary hearing." I want to say, and this is based on five years of experience on my part, that the words "preliminary hearing" have very little in the way of assuring the defendant that he will be able to find out the kind of case that the prosecution might have against him. Many times the preliminary hearing only lasts about an hour, enough to satisfy the magistrate that there is probable cause. True, in some cases where the principal witness was involved in the commission of the offense as a victim, for example, there may be—the defendant may be able to elicit more evidence than normal. But normally very little evidence is elicited by the defendant. Therefore, Mr. Chairman, I do not believe that this new proposed amendment using the words "preliminary hearing" would give much to the defendant

in the way of finding out what kinds of evidence the prosecution might have. To begin with, Mr. Chairman, I think the question of whether we would give or should give the defendant that right to find out the nature of the case of the prosecution should be another question in another section, Mr. Chairman. I think that as pointed out by Delegate O'Connor here, the defendant is assured that in a case of civil felony he shall be charged by either an indictment or a presentence and that should suffice with at this time.

CHAIRMAN: Are you ready for the question? Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I would just like to answer some of the questions raised here. The supreme court can correct the present situation by rules and regulations. I grant that the supreme court can and may, but I also want to say that the supreme court had full opportunity in the past to correct the existing practices but they have done nothing about it. It is also said that this is not a right, that the defendant does not want a preliminary hearing, or as the lawyers talk, most of the time they would advise their client not to ask for a preliminary hearing. I'm concerned particularly, Mr. Chairman, with people who are, I would say, are ignorant of the procedure of the law and its application. These are the people that I'm concerned with, that this defendant would want a preliminary hearing. That the attorney who represents this defendant would want a preliminary hearing. It's been said here that preliminary hearing does not serve the purpose to provide for the attorney the necessary information that he seeks. That a preliminary hearing only provides the district court magistrate determination of probable cause to say that the defendant shall be bound over to the circuit court. Preliminary hearing in my layman's thinking is the same as reference in civil cases when attorneys appear and ask for bill of particulars. What is a bill of particulars? Facts that appealed in the civil case by one attorney which is denied by another attorney unless the full trial is held and this will be disclosed during the course of the hearing. Some attorneys have taken advantage by asking the court, "I would like to defend a bill of particulars." So a bill of particulars in this vein is similar to a preliminary hearing. There have been times when cases were presented to the grand jury. That the charges placed by the police show may be sufficient because of their investigation on the type of crime committed and yet the grand jury in its determination as to the degree of the charge being placed against the defendant has come out with a much lesser charge by the way of indictment on the presentation of the same evidence to which the prosecutor has been furnished by the police department. And this is no denial that such matters have not taken place. But, Mr. Chairman, if it is the will of the Convention that this proposal be voted down, I have no quarrels, I respect the rights of everyone that wants to vote on this matter. But at the same time, I beg of them to have some concern to extend the full protection of the law to the people who are greatly concerned in this matter.

CHAIRMAN: Ready for the question? The motion is to adopt Amendment No. 9 to Committee Proposal

No. 11 as proposed by the delegate from the 11th District. All in favor, say "aye." Opposed, "no." The noes have it.

Section 9—any amendment?

DELEGATE YOUNG: Mr. Chairman.

CHAIRMAN: Delegate Young.

DELEGATE YOUNG: I rise to speak in favor of Committee Proposal No. IX (a).

CHAIRMAN: Proceed.

DELEGATE YOUNG: This deals with Section 9 and it reads, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. The court may, except for a defendant charged with an offense punishable by life imprisonment, dispense with bail if reasonably satisfied that the defendant or witness will appear when directed."

Bail, in its common usage, is money or credit deposited with the court to permit an arrested person to be temporarily released from jail on the assurance that he will come back for trial at the proper time. It has long been accepted in anglo-American history that all penalties should be in proportion to the nature of the offense. That the law be humane, that the punishment does not shock the conscience of society nor be completely disproportionate to the offense for which the defendant was convicted.

This amendment simply clarifies the scope with respect to the requirement of bail and would remove doubt, if any, as to the discretionary powers of the court in the matter of bail. This amendment would make it less likely for the wealthy to escape by payment of a token pecuniary penalty nor render the privilege of bail useless to the poor.

The courts in Hawaii are already exercising this discretionary power with respect to bail. Under the "O. R." or Own Recognizance Program, an accused may be released without posting bail if the court, with the help of the investigative services of the Adult Probation Division O. R. Unit, is reasonably convinced that an accused rich or poor being considered for release prior to trial is a suitable risk. Moreover, recent studies of various bail reform projects have shown that only a very small percentage of those released before trial without posting bail failed to appear for trial. For example, the Manhattan Bail Project ending in 1964 showed that of 3,505 persons who have been released prior to trial before posting bail upon examination of personal background, only 1.4% of the total failed to appear for trial as compared with the 3% released on bail bonds.

I therefore urge the adoption of Section 9, Article I, as amended.

CHAIRMAN: Delegate Young, will you move for the adoption.

DELEGATE UEOKA: Mr. Chairman, I might state that the committee has an amendment "A" and it incorporates all of the arguments presented by Delegate Young.

Amendment "A" reads as follows:

"Section 9 of Article I of the State Constitution in Committee Proposal No. 11 is amended to read as follows:

"Section 9. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. The court may, except for a defendant charged with an offense punishable by life imprisonment, dispense with bail if reasonably satisfied that the defendant or witness will appear when directed."

CHAIRMAN: Will you so move?

DELEGATE UEOKA: I so move.

CHAIRMAN: Any second?

DELEGATE YOUNG: I second.

CHAIRMAN: You have heard the motion duly made and seconded. Any discussion?

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I have an amendment to this particular section, Section 9, on the desk which is Amendment No. 3, Section 9 which would so move to prohibit capital punishment in our state.

The full amendment reads as follows:

"Section 9 of Article I of the State Constitution in Committee Proposal No. 11 is amended to read as follows:

"Section 9. Excessive bail shall not be required nor excessive fines imposed, nor cruel, unusual or capital punishment inflicted. The court may, except for a defendant charged with an offense punishable by life imprisonment, dispense with bail if reasonably satisfied that the defendant or witness will appear when directed."

I so move now.

CHAIRMAN: Why can't we take it separately. We'll take this one first.

DELEGATE LARSON: Fine.

CHAIRMAN: Thank you. Delegate Ueoka.

DELEGATE UEOKA: Amendment "A" restores the provision that excessive bail shall not be required and that is the only change, Mr. Chairman.

CHAIRMAN: Thank you. Are you ready for the question?

DELEGATE KAUHANE: Mr. Chairman, I would like to ask—

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I would like to ask the chairman of the committee a question.

CHAIRMAN: Proceed.

DELEGATE KAUHANE: I'll direct the question to you—to the Chairman. Has the matter of bail been decided upon by the various magistrates or judges of the various courts as to the amount of bail that is being required?

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: In offenses where the penalty is more than ten years, the jurisdiction is with the circuit court. And for any offenses where the penalty is up to ten years the circuit court judge or the district court magistrate may set the bail.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: In my experience, the district court magistrate in some instances, because of an agreement perhaps reached with the circuit court judges with respect to bail, have approved the lifting of bails that may be contrary to what the circuit court judge may set and the police have accepted some of this type of bail when the person is charged and held pending bail. Will this type of bail accepted by the district court be tantamount to bail set by the circuit court?

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I yield to Delegate Mizuha.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, as a proponent of this amendment, I wish to assure the delegate who is so well versed in district court affairs that if this amendment passes, the court in this case might either be the district court or the circuit court and the district court magistrate will after the passage of this amendment determine how much bail he will require from any defendant under his jurisdiction. There won't be any buck-passing as the delegate is so much concerned with at the present time. And in most cases, I look forward to the time when the bail will be minimal, may be only for \$1.00 or even if sometimes the defendant doesn't even have the dollar he will be out on his own recognizance because the magistrates in the various areas in this state know the defendants who may be brought before them.

CHAIRMAN: You heard the motion to adopt IX

(a), amendment to Section 9.

DELEGATE STEINER: Mr. Chairman.

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Will the chairman of the committee yield to a question.

CHAIRMAN: Yes, I will.

DELEGATE STEINER: Mr. Chairman, reading on in the committee report on page 5, I see that the committee has rejected a suggestion that we, in the Constitution, prohibit capital punishment. The matter's already covered by statute. If for any reason the legislature reinstated capital punishment—

DELEGATE MIZUHA: Mr. Chairman, point of order.

CHAIRMAN: State your point of order, Delegate Mizuha.

DELEGATE MIZUHA: We're supposed to discuss capital punishment under Delegate Larson's amendment, but if it refers to bail then maybe then the question is apropos because this amendment as proposed by the committee proposal says except those crimes in which the maximum punishment will be life imprisonment without bail which includes capital punishment.

CHAIRMAN: The point is well taken. Delegate Steiner, will you restrict yourself to Proposal IX (a).

DELEGATE STEINER: That's exactly the matter I was concerned with. Justice Mizuha read my mind. I'm concerned if the legislature should reinstitute capital punishment, would a defendant then be able to go out on bail whereby for a lesser crime in which there could only be life imprisonment he could not. I see an inconsistency here, Mr. Chairman, and I direct the question to the chairman to answer the question whether or not there is an inconsistency. Or a possibility of an inconsistency.

CHAIRMAN: Will Delegate Mizuha answer the question?

DELEGATE MIZUHA: There is of course distinct possibility for inconsistency here but I don't look forward to any fears of Delegate Steiner's here because certainly if the legislature reinstates capital punishment then it will be a more serious offense than life imprisonment without parole and hence it will be accepted under the provisions of this amendment or committee proposal and I think Delegate Steiner has performed a great service to the people of this state by having it now recorded in the minutes of the Committee of the Whole the fact that if capital punishment is reinstated that the dispensing of bail provisions will not be applicable inasmuch as it is a more serious type of offense than that of life imprisonment with parole.

CHAIRMAN: Thank you. Delegate O'Connor.

DELEGATE O'CONNOR: A question to Delegate Mizuha. Is it not a fact, Delegate Mizuha, that rules of construction, since capital punishment is not now imposed for any crime that if it is in the future, since life imprisonment is now imposed, capital punishment will also be applicable in this area?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: That is just what I have stated, but since Delegate Steiner has raised the question, it will clarify the minds of any justice of the Supreme Court that it is so intended.

CHAIRMAN: Are you ready for the question as to amendment to Committee Proposal IX (a). All in favor will say "aye." Opposed, "no." Carried.

DELEGATE KAUHANE: Mr. Chairman, may I rise to a parliamentary inquiry?

CHAIRMAN: Proceed.

DELEGATE KAUHANE: Mr. Chairman, would it be in order for a motion to take a recess now?

CHAIRMAN: Delegate Kauhane, let's take one more on Section 9, then we can take a recess if there's no objection. Any more amendments to Section 9?

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I have an amendment to Section 9 as proposed Amendment No. 3 which would serve to prohibit capital punishment in our state. I so move.

DELEGATE KAUHANE: Second the motion.

CHAIRMAN: You have heard the motion. Any discussion? Delegate Larson.

DELEGATE LARSON: Mr. Chairman, I do not wish to get into a debate over the pros and cons of capital punishment in this assembly. I feel that the matter of capital punishment has been sufficiently debated in our times and in our state and is indeed reflected in the statutes of the State of Hawaii which prohibits capital punishment in our state.

But, Mr. Chairman, I feel that the death penalty is primitive, repulsive, useless and probably harmful right to the society which imposes it. Society itself does not believe in the value. It has no proven effect upon crime prevention. It's probably a symptom of pseudo sickness. Certainly not a mark of civilized man. The death penalty might be defined as the reply of society to whoever breaks the law, its moral law. Man may at times obey the laws of—or rather the role of the dictates of nature or emotion but law by definition cannot obey the same rules as nature or emotion. If

murder is in the nature of man then the law is not intended to imitate this particular nature or reproduce this particular nature, is intended to correct it. Therefore, Mr. Chairman, I feel the matter of capital punishment or the death penalty in our state and in our time is so important that it needs to be constitutionalized. I do not think that a statutory provision is enough in this particular case. At some further time, under the furor of public opinion over some hideous crime, the statutory provision relating to capital punishment might be abolished. The Bill of Rights, Mr. Chairman, deals with the rights of the citizen as related to his government. It deals with his civil rights, his rights to his government. It deals with his civil rights, his rights before the law and what right is so precious as that of life as stated in the Constitution even under Section 2 if I may misinterpret it slightly the enjoyment of life. A slight misinterpretation but I think this indeed is proper subject matter, capital punishment for the bills of rights and needs to be included within the Bill of Rights in our time. Thank you.

CHAIRMAN: Thank you.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: In 1957, as chairman of the Senate Judiciary Committee, I had a small part in securing the passage of that statutory provision that wiped out capital punishment. I want to say, at that time the studies made by the legislators on the question of whether the retention in the books of a provision to provide capital punishment would discourage crimes, deter crimes or not, and all the studies by the best experts indicated that it has not or very, very little effect in discouraging the commission of crimes that would call for a penalty of execution.

I agree with all the other remarks made by Delegate Larson and do want to endorse his position that this is important enough a question to provide for in our Constitution. I urge the adoption of the amendment.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: I speak in behalf of this amendment. I take it one further than that. In 1955, in the Territorial legislature, this problem came about and in 1957 it became law by Act 282. The last hanging, Mr. Chairman, in the State of Hawaii—in the Territory of Hawaii, I believe it was in 1948, I say the last hanging because before 1957, we were able to hang a murderer or any person who murdered our races. I say there is no need for such a thing today, if we have, we would go back to the same procedures we had prior to 1957. We're involving not only the judge, the prosecutor, the defense attorney, we also involve the person who pulls the switch and also the family of these individuals.

I say we're already in the period when we should not go back to the dark ages. So I urge the delegates to

vote in favor of this amendment.

CHAIRMAN: Any further discussion? Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak against the amendment. I'm not for capital punishment, but we're writing a Constitution here, we're not writing a statute.

Delegate Doi correctly referred to the studies which were rejected by the legislature in 1955 and 1957 as reflecting at that time the penologist outlook on capital punishment. These are not studies, Mr. Chairman, which may go on into eternity and we hope that our Constitution will. These are not studies which reflect from day to day the situation which prevails in our state. But our Constitution is an abiding document. I suggest that the proper place to outlaw capital punishment if it shall be outlawed in this state is in the Revised Laws of Hawaii. It's a statutory matter and not in the Constitution.

More cogently and from a pure practical matter, Mr. Chairman, I would point out to my fellow delegates that our work product goes before the public of this State in November. This matter of, should there be or should there not be capital punishment was not fully heard at a public meeting. There was never an announcement put in the paper that we would discuss capital punishment pros and cons in this Constitutional Convention and I would suggest that this is another of those things like fluoridation. If we put it in the Constitution, the outcry from the public, from certain segment of the public, one way or another, will be heard all the way from Kauai to Hawaii.

DELEGATE LARSON: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE LARSON: I don't think we're discussing that we did not have a particular mandate by the people that come to the Constitutional Convention to consider the pros and cons of capital punishment. Neither did we with other sections. I don't think this is the question. Nor do I think the matter of submission to the people is involved here. So I certainly would have some contrary remarks to make in regard to this particular point. I think the point under discussion whether or not we should constitutionalize this particular capital punishment exclusion in our Constitution.

CHAIRMAN: Your point is well taken. Proceed, Delegate O'Connor.

DELEGATE O'CONNOR: Do I understand that my debate is cut off in that particular area, Mr. Chairman?

CHAIRMAN: Will you restrict yourself to the amendment.

DELEGATE O'CONNOR: I'll restrict myself to the

amendment, Mr. Chairman. This amendment will cause an uproar if adopted. This amendment is not needed. It's covered adequately in the statute. Whether I'm for or against capital punishment is not the issue. The issue is should it be included in the Constitution. And I urge you fellow delegates that this is a matter which should not be included in our Constitution.

CHAIRMAN: Delegate Hasegawa.

DELEGATE HASEGAWA: Mr. Chairman, I rise to speak against this proposal. Capital punishment is a social concept prohibiting the death penalty. It provides a definite limit on the sentencing of one particular crime on the basis of social value. The purpose of this proposal is probably would serve to guard against the danger that it could be re-enacted without mature deliberation in response to a particular serious crime or series of crimes.

Mr. Chairman, I'm sure we all recognize that social values and principles change. With such changes of concept the placing of this restriction in our Constitution fails to provide the flexibility of being able to meet such changes which is contrary to the concept of the legislature pursuing the great task of meeting common problems of the community. Capital punishment is a form of a penalty prescribed for the commission of a criminal offense. It is the function to enact criminal laws and prescribe punishment by the legislature. Limitations should not therefore be placed on its discretion by including this matter in the Constitution. Further, we have a statute now which prohibits capital punishment. Therefore there is no need of it being placed in the Constitution. I feel that this is not a constitutional matter. Therefore, I will vote against this proposal.

DELEGATE JAQUETTE: Mr. Chairman.

CHAIRMAN: Delegate Jaquette.

DELEGATE JAQUETTE: I rise to speak in favor of the proposed amendment. I believe that capital punishment is wrong from social aspects and the practical aspects and from a spiritual aspect. I happen to believe that there is that of God in every man including the criminal, that we have no right to take his life, that we should constitutionalize the prohibition against capital punishment.

CHAIRMAN: Thank you. Delegate Medeiros.

DELEGATE MEDEIROS: Mr. Chairman, during committee, we discussed this very thoroughly as far as capital punishment was concerned. I am not standing here today to say that I am for capital punishment or I am against capital punishment. What I am saying here is that we're talking about a very emotional subject. Other delegates who spoke before me have said that it should not be constituted in our Constitution. I think an emotional subject as it is when we talk about capital punishment, I think it is only proper that this issue should be justifiably brought before the public and the citizens of our state should make a decision on an issue

such as capital punishment. Capital punishment isn't something one must go to college to find out what the ramification or definition of it is. Everybody knows what capital punishment is. And because of this I think that it should be an issue that should be brought before the people and let them make this decision. Thank you.

CHAIRMAN: Thank you. Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, I have a question. I wonder if this Committee of the Whole did not act on this question a few minutes ago when it overwhelmingly approved the retention of Section 4 which seems to me to provide for the possibility of capital punishment when it says, "No person shall be deprived of life without due process of law."

CHAIRMAN: Is that a statement or a question? Anybody wants to answer the question?

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I'll try to answer it. It says here in Section 4 that basically a person cannot be executed by society unless it's a lawful execution. This is precisely what the exclusion of capital punishment by Amendment No. 3 to Section 9, I was trying to exclude that a person cannot be executed by society period as some other delegates have said.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: I rise on a point of equal time for TV.

CHAIRMAN: Thank you. Any further discussion? Are you ready for the question? Delegate Hara.

DELEGATE HARA: I would like to ask a question of the introducer. From the practical standpoint. On the assumption that this proposal, this amendment is adopted, and this proposition is placed before the people and I'm asking this question because I was one of those involved in having this enacted and I understand the emotional background of all of this that took place. In the event that this is adopted by this body and included in the Constitution, or the proposal is submitted to the people, and if the people reject this, is this then that we, the legislators, whoever be elected in the future legislature, is this to be a mandate then that they too shall take this to heed and abolish and go back to capital punishment? Or what would be your explanation to this sort of a situation?

DELEGATE ADUJA: May I answer that? If this amendment does not pass, the Constitution remains unchanged and said sections will remain as is.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: Yes, Mr. Chairman. No, the question is, on the assumption that this body adopts this amendment and submits this to the people in this

coming November and the people reject this and not getting the majority, then would—

DELEGATE ADUJA: That is still my answer.

CHAIRMAN: Thank you. Ready for the question? Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I want to speak against the amendment.

CHAIRMAN: Proceed.

DELEGATE DYER: I believe it wiser to leave this to the discretion of the legislature. For example, you can have a man that has committed murder in the first degree and he is sentenced to Oahu Prison for life without possibility of parole. There is really no control over that man from that point forward. For example, if he—should he escape and while he's out, there's absolutely no deterrent upon him as far as committing another murder is concerned. He's already received the worst that he could possibly get. If the police were to attempt to retake him, he would have nothing to lose by taking another life, and I just feel that—I'm very hesitant to constitutionalize this thing and I would feel much happier if it were left to the discretion of the legislature to handle as the various situations arose.

DELEGATE ANDO: Mr. Chairman, point of order.

CHAIRMAN: Delegate Ando, state your point of order.

DELEGATE ANDO: Would you try to take a census of how many are going to speak on this so you can determine whether there is a recess in order, Mr. Chairman.

CHAIRMAN: Thank you. I would like to have a count of possible speakers on this subject pro and con. How many of you are—show of hands please.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: What are you trying to find out, Mr. Chairman?

CHAIRMAN: So we can find out how many speakers are left. Just one? Delegate Medeiros is the last speaker.

DELEGATE MEDEIROS: Mr. Chairman, if you would permit me to try to attempt to answer Delegate Hara's question. His question was that should this be approved here and put before the people and at the time of ratification the people would turn it down, what then would the law do? Was that the proper question?

DELEGATE HARA: From there, where would we go? That was my question. I appreciate the fact that we have a statute on the books that is bringing about the

punitive emphasis much more than the so-called punishing effect in this area of capital improvement. This is the law, it's a statute. I appreciate this. My question is, if this is the case and this body submits the proposal to the people and the people reject this, where do we go from there as far as future action. Here we have a law on the books saying that we have prohibited capital punishment in the statement. Do we go back and repeal this thing? Go back to capital punishment?

DELEGATE MEDEIROS: Isn't it so that we have a representation to represent the people and change the laws accordingly as we see fit? Let's assume now that we had our salary raise put before the people and the people turn it down—

DELEGATE LUM: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE LUM: I think it is irrelevant to the issue on the floor.

DELEGATE MEDEIROS: I'm just trying to clarify my point, Mr. Chairman.

CHAIRMAN: All right. Thank you. You ready for the question? How many of you request a roll call? Insufficient number. Let's go by voice vote. All those in favor say "aye." Opposed, "no." The noes have it. The motion is lost.

At this time, the Chair will entertain a motion to recess until—

PRESIDENT PORTEUS: Mr. Chairman, I ask that the Chair declare a recess until 2:00 o'clock.

CHAIRMAN: The Chair will declare a recess until 2:00 o'clock.

At 12:28 o'clock p.m., the Committee of the Whole stood in recess until 2:00 o'clock p.m.

Afternoon Session

The Committee of the Whole reconvened at 2:00 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. We are on Section 10. Any amendments?

CLERK: There are none to Section 10, Mr. Chairman.

CHAIRMAN: No amendments. Section 11?

CLERK: There is an amendment on the desk of all the delegates, it's numbered No. 6, and reads:

"Section 11 of Article I as set forth in Committee Proposal No. 11 is hereby amended by inserting the word 'adequate' between the words 'provide' and 'counsel' in the last sentence of said

proposal.”

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, the intent of my motion is to include in the committee proposal the qualifying word “adequate” before “counsel.” The reason for this being that although all states are mandated by the Supreme Court to supply counsel in certain serious crime, it has been the case in many places in the country that the counsel, the system used in the various—in a particular state has been less than adequate. This section and my amendment to it goes to the issue not of competent counsel which would be covered under due process provisions but to the system that this state establishes that the system of counsel supplied for indigent defendants be such that those indigents get the same right as they would have had they adequate funds.

However, it is my feeling, and in talking to knowledgeable people in this area, that it is unnecessary to move this amendment and it is my feeling and the feeling of those that I talked to that this amendment—committee proposal as written supposes that counsel is qualified by adequate and I would ask the chairman of the committee if it is the intention of the committee that counsel for indigents in this state be an adequate system.

CHAIRMAN: Thank you. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, may I have the consent of the chairman of the committee to speak against this amendment.

DELEGATE GOEMANS: The amendment is withdrawn, delegate.

DELEGATE MIZUHA: Thank you.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: According to your provision, you would want to provide counsel when a defendant is charged in offense punishable by imprisonment of more than sixty days. My question is, why set sixty days as the dividing line?

DELEGATE UEOKA: Mr. Chairman, I'll yield to Delegate Mizuha.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: If Delegate Loo objects I say for all offenses perhaps indigent defendants should have counsel. But it was the feeling that perhaps on offenses where the imprisonment might be for sixty days or more, an indigent defendant should have counsel provided for by the state. The question he asks why, we should ask counsel by answering by, did the Supreme Court say only with reference to felonies where the imprisonment is only for one year. On any kind of situation where you have a specific figure, a specific period of imprisonment, a specific salary, the

question can be asked why. And it's almost impossible to answer but we feel, and I feel, that sixty days will be an adequate number of days in which we could base and impose upon the state to pay for counsel for indigent defendants. If Delegate Loo wishes to amend this and say for all offenses, I'd be very happy to second his motion to amend.

CHAIRMAN: Thank you. Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I would like to direct a question through you to the delegate who just got through talking. I, too, am concerned like Mr. Loo. Why did they select imprisonment for more than sixty days for indigent people. What about those indigent people that face imprisonment for thirty days? Should there be a division as to how we're going to treat any indigent person who may be imprisoned for sixty days against one who may be imprisoned for thirty days?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I am again saying the same thing that I said in answer to Delegate Loo. If Brother Kauhane wants to amend and say for all offenses, I'll be happy to second his motion.

DELEGATE DYER: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: As I understand it, there's nothing on the floor at this point to purport to amend this section, so I don't know why the discourse that we're having.

CHAIRMAN: The point is well taken. Delegate Goemans.

DELEGATE GOEMANS: I was going to make a point of order also because I asked for a specific point of information from the committee chairman, and that point was that the chairman, the intent of the committee as to the scope of the word “counsel” in the committee proposal. The reason why I asked this is because the Supreme Court mandates in Merinda, Escobido, Gideon and so forth, mandates states to provide counsel for indigents, but so far the Supreme Court has not ruled on what that word means. And many states have felt that virtually any system which was established, even the most inequitable assigned counsel system using only newly admitted people, newly admitted to the bar, attorneys meets the Supreme Court mandate. Now, my question is whether the word “counsel,” the intention of the committee regarding the word “counsel” is that the system that we set up in this state shall be such that an indigent would have the opportunity for the same representation that he would have if he were not indigent. My question is directed to the chairman of the committee.

DELEGATE UEOKA: Mr. Chairman, I'll yield to Delegate Mizuha.

DELEGATE AMANO: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE AMANO: I would like to know whether Delegate Goemans withdrew his amendment or is his amendment still on the floor?

CHAIRMAN: He withdrew his amendment.

DELEGATE AMANO: Then there's no sense in arguing.

CHAIRMAN: No, the question is on the section, Section 11.

DELEGATE MIZUHA: Mr. Chairman, I think Delegate Goemans deserves an answer. I thought I adequately explained to him what counsel meant and I thought he withdrew his amendment because he has accepted my explanation. But now he rises again before this committee. Until such time as counsel handles the case before the courts of law, no one can judge whether he has given the defendant adequate representation. And in answer to Delegate Goemans' statement that the Supreme Court has not defined what adequate counsel may be, that is true, but it has in many, many cases reversed the decision of the appointed court and has remanded cases back to the lower court on the basis that the defendant was not adequately represented by his counsel. And that can only be determined by an analysis of what the counsel did during the trial and during the appellant procedure and in his argument to the appellant court.

DELEGATE FERNANDES: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE FERNANDES: Let's get the show on the road. The answer there's nothing before us. If we're going to keep this on, I raise this point and ask you to rule.

DELEGATE GOEMANS: I'm not altogether satisfied with the answer, Mr. Chairman, because I think the delegate from Kauai is mixing apples and oranges. He's talking about competent counsel which was to fall under the provisions of a due process clause as to whether a particular defendant had or had not had—denied a due process. I'm talking about the provisions for system of counsel for indigent defendants. I'm not talking about individual cases. I'm talking about whether a system as set up by the state meets the mandate of the Supreme Court under Escobido and so on. Now, that system can be such that great inequities are worked. That system can be such that if the bar association is running the assigned counsel system and the bar association chooses only certain attorneys can be assigned cases, only certain attorneys collect the fees, those attorneys go in and plead guilty, collect the \$250.00 and go home. It can be set up in such a way that only people who are newly admitted to the bar,

the only ones who will do this sort of work, collect their fees, cup of tea, or have inadequate training to handle the problem. That's the type of system.

The question to the committee is, is it the intention that we have an adequate counsel system in this state or are we only going to—we only mandating the legislature to meet the Supreme Court provisions that we supply some kind of counsel regardless of whether it's equitable or not. There are big differences. There are cases throughout this country today on this question on whether the system that has been set up in the state supply adequate counsel. There's a serious question as to whether assigned counsel systems are adequate or whether public defender systems are necessary to meet the provisions of Escobido and other cases. Therefore, my question is directed to this section, not the due process clause. My question is directed to whether this committee and this body intends that this state set up a system which supplies adequate counsel to the indigent. And adequate means that counsel that would be available to him if he were not indigent. Plain and simple. Now, are we going to meet the spirit of the law as well as the word of the law, or are we going to meet the word of the law? That's my question.

I withdrew my amendment because personally I think this is—that is the intent of the committee and intent of this body I'm satisfied. If it's a matter of record, the minutes of this body, that that is the intent I think that's sufficient because courts are going to have to rule on this: The Supreme Court is going to have to rule on this. And it will have to be a ruling according to us. I would like to have it in the minutes of this body that that was the intention, if it was, of the committee. Now, my question is to the committee chairman.

CHAIRMAN: Delegate Ueoka, do you care to answer the question?

DELEGATE UEOKA: Mr. Chairman, it's not the intention of the committee to solely restrict adequate counsel to the system, it's all inclusive. It also means adequate and competent counsel.

CHAIRMAN: Thank you. Any further discussion? If not, Chairman Ueoka, will you move to adopt Section 11?

DELEGATE UEOKA: Mr. Chairman, I move for the adoption of the amendment, the committee proposal.

DELEGATE MIZUHA: Second the motion.

CHAIRMAN: Delegate Mizuha seconded the motion.

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Will the chairman of the committee yield to a question?

CHAIRMAN: Chairman Ueoka?

DELEGATE UEOKA: I certainly will, Mr. Chairman.

CHAIRMAN: Proceed.

DELEGATE DEVEREUX: Mr. Chairman, I would like to ask if this Section 11 means that every indigent is provided with an attorney under any circumstances or only after he is charged with an offense to be in prison for more than sixty days? I'm a little confused in the reading of this. My reading of the existing Constitution implies to me that every person shall be—shall have the right to counsel whether or not they can afford it. This is the way I read the existing Constitution. Now, we have an amendment which provides for a sixty-day situation and I'd like an explanation of this before I vote on this motion.

DELEGATE UEOKA: Well, the amendment, Mr. Chairman, extends to those who are indigent and where the penalty of this particular crime is more than sixty days. We do have a general provision in our Constitution, but the application of it has been limited to felonies. I quite realize the term is going towards extension of counsel to misdemeanors. The committee felt that those who are charged and who would be incarcerated for more than sixty days that they are entitled to counsel and of course, counsel means a situation where the Escobido as well as the Miranda cases situation applies. That is, whenever a person is hauled in for investigation, he is entitled to counsel at that stage.

CHAIRMAN: Thank you. Delegate Devereux.

DELEGATE DEVEREUX: I'm a little concerned, Mr. Chairman, about this sixty days. I'm trying to put myself in the place of the defendant who has been arrested, charged with a crime which will be punishable by sixty days or more and assuming that this defendant is charged with a crime of less than sixty days as that defendant, I'm conceding in my own mind my shame, my sorrow, all the rest of the things that I would be feeling, whether the penalty is a week, two weeks, three weeks, thirty days, forty-five days or sixty days. And it would seem to me that the crime committed, misdemeanor if you will, regardless of the term of ultimate penalty, the person should deserve counsel.

And again I go back to the fact that my interpretation of the existing Constitution is that they are entitled to it. Now, are we to understand by the amendment that the committee believes that the existing Constitution does not entitle indigents to counsel regardless of the situation and therefore, have put in this sixty days and over time period to provide counsel.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I believe now we should go to some basics with reference to the provision in the Constitution of the State of Hawaii and the United States Constitution from which it was copied verbatim,

that the words, "And to have the assistance of counsel for his defense," do not mean counsel to be paid for by the state. It wasn't until 1955 in the famous case of *Gideon v. Wainright*, Ed Fortas, now justice of the United States Supreme Court, argued the case before the United States Supreme Court and the Supreme Court came out with a decision that only felony cases, indigent defendants were entitled to have the help of counsel paid for by the state. In the South, they never heard of such a thing before. And this came out from Georgia. The case came up from Georgia. Now, many jurisdictions in the United States, since *Gideon v. Wainright*, have adopted by court rule the provision that indigent defendants shall have the right to counsel, some for any violation of crimes in which the imprisonment might be for sixty days, ninety days, 120 days, six months, and up to a year. There are other states not as liberal as this great State of Hawaii and say that, "We won't do anything about it and let the poor indigents go to jail even though they have a good defense." As I have stated, sixty days was picked as a figure because of the fact that I don't know of any crime today in which a defendant may be charged with in this state where the maximum imprisonment is less than sixty days.

Just recently, the City and County of Honolulu revised its traffic code and for any traffic offense in Honolulu at the present time, the maximum fine is \$200 and there is no provision for imprisonment. Likewise, with reference to all state offenses, I believe that most of them carry a term of imprisonment of ninety days or more. Only offenses like petty larceny, assault and battery, and so forth carry offenses from ninety days to one year. And I would love it if this Convention, by all the delegates assembled here, would like to say that for any indigent, for any kind of offense even including traffic offenses, that the State should provide counsel. But I'm afraid that the very people who are speaking in this hall know when they go back to the legislature next spring refuse to appropriate adequate funds for the defense of indigent defendants. As a result, indigent defendants of this state at the present time, those young people who don't have any money, who are indicted for possessing marijuana, heroin and all the other drugs who have counsel appointed by the judges in the circuit court, and the counsel is provided the measly sum of only \$75.00 for the defense of an indigent defendant accused of a felony. If they have to break down the counseling to break down the time they spend on the defense of these indigent defendants, they will be given almost fifty cents an hour for the amount of time they spend.

It is well, Mr. Chairman, and I suggest to all of those who are concerned about all the indigent defendants in Hawaii that they re-examine their philosophies now that they are so much concerned that our indigent defendants should have counsel or representation, that when they go back to the halls of the legislature this spring, they will vote adequate sums of money to provide counsel for indigent defendants which we do approve of this amendment. Thank you.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE DEVEREUX: Mr. Chairman.

DELEGATE GOEMANS: With the permission of the Chairman I would like to further answer Delegate Devereux. I think as I see her question, she is concerned with the previous part of the sentence and to have the assistance of counsel for defense. She's asking whether the addition by the committee restricts that. Now, Delegate Mizuha's answer is likely and I think, somewhat answered that but not altogether. The answer is that the simple statement that the Constitution now provides that counsel—the defendant has the right to counsel if he can afford it. But that doesn't go far enough because we have the Gideon case which shows in a series of cases. Gideon case established the proposition that the right to counsel in capital cases should be supplied by the State to indigents. Now, that's been extended through a variety of cases to the point where we're almost at the position that the right to counsel shall be supplied by the State to indigents charged for misdemeanors. In other words, we're just putting in here—we're expanding the previous sentence beyond what the Supreme Court has so far ruled but perhaps we haven't gone as far as the Supreme Court will rule. We have the more recent decisions in which the Supreme Court tells that juveniles charged with a criminal offense, an offense carrying a penal sentence, have a right to counsel, counter to accepted principles in our judicial system, so that this sentence here does expand the previous and long-standing right of assistance to counsel. It extends beyond what has heretofore been ruled by the Supreme Court. I don't personally, as I understand Delegate Mizuha, I personally don't think it goes far enough but because there are few offenses punishable for less than sixty days, I think it probably covers the situation. In other words, we are meeting our obligation which expands the rights that we had before.

CHAIRMAN: Delegate Taira.

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux.

DELEGATE TAIRA: Mr. Chairman, I yield to Delegate Devereux.

DELEGATE DEVEREUX: I wish to thank Delegates Mizuha and Goemans for clarifying this question. Not being an attorney I do not understand all these answers but they have made it fairly clear and I do appreciate it.

CHAIRMAN: Thank you. Delegate Taira.

DELEGATE TAIRA: Thank you, Mr. Chairman. I'd like to ask a question or two. It's my understanding that at the present time defendants who are categorized as indigents are being afforded counsel at the expense of the state. Is this right?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Only in felony cases. And a felony case is one in which the imprisonment may be over one year.

DELEGATE TAIRA: My next question, Mr. Chairman, is this type of assistance that's being rendered to the indigent defendants must have some legal basis. Is this legal basis in the statutes of our state or in some administrative regulations of the courts?

DELEGATE MIZUHA: Mr. Chairman, as I explained very carefully in the statement in answer to Delegate Devereux's question and ably assisted by my good friend Delegate Goemans, up to the date when the Supreme Court ruled on *Gideon v. Wainwright* this language which now appears in our Constitution of the United States. And up to 1955 there was no definitive decision by the United States Supreme Court who said—

DELEGATE TAIRA: Mr. Chairman, I'm looking for a simple answer here.

CHAIRMAN: Delegate Mizuha, will you confine yourself to the question.

DELEGATE MIZUHA: That's what I'm doing.

CHAIRMAN: In a very concise statement, please.

DELEGATE MIZUHA: Well, it's very difficult to say just yes or no in this kind of situation because we have the interpretation of the language by the United States Supreme Court. Then I have to explain to him how this decision of the United States Supreme Court became applicable to Hawaii as a state under the 14th amendment, under the due process clause and so forth. It's almost impossible, Mr. Chairman, I give up.

DELEGATE TAIRA: Mr. Chairman, my question was, is there a statutory basis for paying attorneys to be counsel for the indigent defendants, or is there some administrative regulation that's been approved by the judicial system? That's all I wanted to know, Mr. Chairman.

DELEGATE MIZUHA: Mr. Chairman, there is no statute that says that counsel must be provided for indigent defendants. This became applicable to Hawaii under the 14th amendment after *Gideon v. Wainwright*. Hawaii does have a statute however in which the legislature does provide counsel for indigent defendants but they appropriated very meager sum of money for the counsel to defend these people in the circuit court for \$75.00 each defendant, comes up to about 50 cents an hour.

CHAIRMAN: Thank you. Delegate Taira.

DELEGATE TAIRA: Well, Mr. Chairman, I think I had enough. Thank you.

CHAIRMAN: Are you ready for the question? Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, will the

delegate from Kauai yield to a question?

DELEGATE MIZUHA: I will yield to anything that is within sense and reason. Now, we're not getting any sense and reason around here.

CHAIRMAN: Delegate Steiner, proceed.

DELEGATE STEINER: Mr. Chairman, my question is this. Can we have a definition for the record as to what is meant by an indigent person.

DELEGATE MIZUHA: Mr. Chairman, I just said within sense and reason. This is out of all bounds of reason.

CHAIRMAN: Are you ready for the question?

DELEGATE STEINER: Mr. Chairman, I still haven't had an answer to my question. I'd like to know, Mr. Chairman, what reason, what the definition is—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Mr. Chairman, I agree with Delegate Steiner. The record is so fouled up on this issue, let's vote already. Because all the free information passed as alleged to be evidence in the future some day has been so inaccurate and such a waste of time that it's useless anyway.

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, again I ask the question. Perhaps the chairman of the committee that considered and adopted this proposal could tell us what the committee had in mind by an indigent person. Is it a person who chronically is without funds? Is it a person who is temporarily without funds? What do you mean? What class of persons are we seeking to benefit here? I think my question is germane—

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, the term "indigent defendant" as I see it, refers to those who do not have sufficient funds, which includes property, to hire counsel for his defense. It's a matter at the time that he is being investigated or charged.

CHAIRMAN: Thank you. Are you ready for the question?

DELEGATE STEINER: Mr. Chairman.

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: One further question again to the committee chairman.

CHAIRMAN: What's the question, Delegate Steiner?

DELEGATE STEINER: Would the definition of an indigent person include the son of the president of a large corporation, that person being over 18 and under 20 and without funds in his own name to pay for counsel? Yet his parents have adequate means and resources to pay. Are we suggesting that this person would be an indigent and therefore the cost of counsel would be borne by the state?

DELEGATE GOEMANS: Point of order, Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE GOEMANS: I think we're in a discussion that is entirely far afield. This is not a self-executing provision. There's no basis for this body to be appropriating money or setting up programs. This is direction to the legislature. The legislature shall define the terms as they see fit. We now have assigned counsel, we have a system whereby examination is made by the legal system of this state as to what is an indigent. And under this program, under this mandate for the legislature, the legislature will determine. We will not determine what is an indigent. And any discussion in this area, I think, is irrelevant.

CHAIRMAN: The point is well taken. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, taking the example of Delegate Steiner, if the parents of this youngster refuse to provide any funds to hire an attorney, that youngster, notwithstanding the fact that his parents have lots of money, needs adequate counsel.

CHAIRMAN: Thank you. I think we had enough discussion in this area. The motion is to adopt Section 11, as proposed by Committee Proposal No. 11. All in favor, say "aye." Opposed, "no." The motion is carried.

PRESIDENT PORTEUS: Mr. Chairman, may we have a very brief recess.

CHAIRMAN: Recess subject to the call of the Chair.

At 2:35 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:40 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE AMANO: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE AMANO: Can I inquire of Delegate Dodge as to the occasion of the lei that he is wearing now?

CHAIRMAN: Delegate Dodge, care to answer the question?

DELEGATE DODGE: I just happen to have a nice secretary who took me to lunch and bought a lei—it's her last day of work.

CHAIRMAN: Now, we're on Section 12. Any amendment? No amendments. Section 13, any amendments? No amendments. Section 14, any amendments? No amendments. Section 15, no amendments?

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I would like to, with some misgivings, speak against the retention of Section 15, the so-termed "the right to bear arms" section.

CHAIRMAN: Proceed.

DELEGATE LUM: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE LUM: Isn't it necessary to have an amendment to delete before we can discuss it?

CHAIRMAN: What is your point, Delegate Larson.

DELEGATE LARSON: Mr. Chairman, I was under the impression that essentially the committee recommendation to keep the status quo would be an informal type proposal, if you wish, delete this section, it would not be necessary. If not, I would like to make a verbal amendment to delete Section 15, if I may.

CHAIRMAN: Delegate Larson, I think you know the rules of the Convention. If you're going to proceed to take section by section to speak against it, I will request a blanket motion for all sections.

DELEGATE LARSON: I see. Then—

CHAIRMAN: At that time you can make your presentation.

DELEGATE LARSON: Mr. Chairman, my concern with this section is merely one of clarification. If I may be just allowed to speak for the record, I feel that the record does need to be cleared in regard to Section 15. I do not feel that it is clear at the present time. So if I may be allowed to say a few words in regard to Section 15 without putting any amendment—

CHAIRMAN: Proceed.

DELEGATE LARSON: Mr. Chairman, in committee I did put in such an amendment to—or proposal to delete Section 15. At this time, I think it would be worthwhile for the record to state several points which hopefully might clarify for the record, this particular section.

In 1950, contrary to the committee report, there was some confusion in the minds of the delegates as to whether this particular section referred to the individual's right to bear arms or to the collective right of the militia or the national guard to be armed. The Legislative Reference Bureau studies indicate that there was such confusion in the minds of the delegates. The committee report, on page 7, states that "Section 15 is retained by your committee without amendment. The Committee feels that reference must be made to the report of the 1950 Constitutional Convention in order that the people of this State not misconstrue the intent of this section."

I'd like to make it clear for my fellow delegates that the average person, upon reading Section 15, will read this section and he will probably infer that the section either means that he personally has the right to bear arms, whether or not he is in the militia or that he has the right to bear arms when he is in the militia or in case he might be called in to the militia. I'd like to make it clear for the record that this provision through a series of Supreme Court cases over the last thirty or forty years historically and through such court cases means that the individual does not have the right to bear arms necessarily, that this section refers to, and I am sure that the good delegate from Kauai, the articulate delegate from Kauai, might bear me out in this respect, refers to the collective right of the militia to bear arms.

Now, why am I concerned with bringing out this point today to this committee? Mr. Chairman, I think for the purposes of dispelling the illusion and perhaps for the purposes of clearing this for the delegates to this Convention and also to the people of our State, Section 15, the so-called "right to bear arms" provision, does not refer to the individual's right, it refers to the militia, to the national guard. Thank you.

CHAIRMAN: Thank you. Section 16, no amendments? Section 17, no amendments? Section 18.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: For the record also. I'd like to ask the chairman of the committee some questions about this particular provision. "Private property shall not be taken for public use without just compensation." Is it also to include property that may have been taken away because of court decisions, Supreme Court decisions?

CHAIRMAN: Are you directing the question to the chairman? Chairman Ueoka.

DELEGATE UEOKA: I would like to have Delegate Lum illustrate as to the type of property taken away or the—

DELEGATE LUM: I'm talking about a Supreme Court decision in this State whereby the highwater mark was moved because of the decision to a higher point

and some property—property owners along the beach that were taken away for, as the decision as I recall, for public use.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, in Section 18, the amendments proposed by the committee, relate to private property taken for public use or damage and it seems to me that it has no reference to the types or cases which Delegate Lum has illustrated.

DELEGATE O'CONNOR: Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: If I may answer Delegate Lum's question, Section 18, both as it presently stands and as the committee proposed it to be amended, has to do with eminent domain. The recent Supreme Court case to which Delegate Lum referred, has to do with the interpretation of certain Hawaiian words used in grants of land describing the makai boundaries of most of the properties, seaward properties, on these islands. Those words were once interpreted by the courts of this state and by certain statutory action as meaning the highwater mark. A recent decision by the Supreme Court of the State of Hawaii indicated that that historical definition was no longer correct and the Supreme Court now says those words mean the highest reach of the water or a vegetation line. This has nothing to do with eminent domain and there has been no taking as such. There has simply been a reinterpretation by the Supreme Court and I might add, Mr. Chairman, that case is presently being reconsidered by our Supreme Court and there is presently going to be a hearing on reconsideration. So the situation that Delegate Lum refers to has nothing to do with Section 18 of the Constitution.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: The words "or damage" as I understand it are now being used. Is that correct?

CHAIRMAN: There's no motion yet, but there will be a proposal on this matter, Proposal No. 11.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: I move for the adoption of the proposal.

CHAIRMAN: Delegate Takahashi. Delegate Lum.

DELEGATE LUM: I second.

CHAIRMAN: You heard the motion. Any discussion? Delegate Sutton.

DELEGATE SUTTON: I wonder if the original proposer, Delegate Peter Lewis, would be willing to answer a question on the words "or damage."

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: This explanation will come about by Delegate O'Connor in his presentation.

CHAIRMAN: I think Delegate O'Connor already explained his position.

DELEGATE HO: Mr. Chairman.

CHAIRMAN: Delegate Ho. Excuse me, Delegate Sutton.

DELEGATE SUTTON: I wonder if I could ask Mr. Peter Lewis a question on it?

DELEGATE PETER LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE PETER LEWIS: Delegate O'Connor and myself both planned to speak on this particular issue. We planned to cover it very extensively and after we are through covering it, if Delegate Sutton would defer his question until that time, we may have answered him.

CHAIRMAN: Delegate Ho.

DELEGATE HO: Mr. Chairman, I wonder if I can ask a question of the chairman of the committee.

CHAIRMAN: Proceed.

DELEGATE HO: Was there any adjustment by your committee as to what the increase in payments the State would have to make—what would be the increase of payments the State would have to make in the event his particular provision were inserted in the Constitution on account of condemnation?

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, there was no discussion of that. In fact, it's a matter for the court to ultimately determine as to what the cost is going to be which we can't foresee at this time. It could be \$1.00. It could be \$10.00. It could be \$2,000, \$5,000.

CHAIRMAN: Delegate Ho.

DELEGATE HO: Thank you, Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak in favor of the committee proposal.

CHAIRMAN: Proceed.

DELEGATE O'CONNOR: The present Section 18, Mr. Chairman, was devised by the Constitutional Convention of 1950 and limits the compensation paid

to people whose property is taken only to those circumstances where there is a physical taking of the property. I would call the delegates' attention to the first line of Section 18 which reads, "Private property shall not be taken for public use" in its present context. This limits any compensation paid to people only to those circumstances where there has been in fact a physical taking of the property or a physical taking of some right which is appurtenant to the property. This has, over the years, limited compensation to people because there have, in certain circumstances, been takings of right, property right from people which did not go along with the physical taking of the land and in certain circumstances where the state has seen fit to run a highway or easements or to condemn land for various reasons and has deprived the person of certain rights which were inherently his and his property, of adjoining property, there has been no compensation.

Now, we have—your committee has proposed the addition of the words "or damages" after the word "taken" in the first line of Section 18 to partially correct the inequities which have grown out of this situation. Let me give you a little history.

The 1950 Convention considered the words "or damages" when they considered Section 18 and they discarded it. And the reason for discarding the words "or damages" in 1950 was the feeling on the part of the delegates that it would be difficult to interpret and to decide what damages meant.

Since 1950, there have been certain extensions on an old body of law which initiated in Illinois which today has grown to a point where your committee feels that the time has come where we can add "or damages" in our Constitution and provide sufficient guidelines to both the courts and the attorney general's office and any other governmental body which is included in the condemnation so that adequate and compensable damages can be paid to people where their property rights are taken for public use and their actual property isn't touched in any way.

For the record, Mr. Chairman, I would indicate that the committee considered strongly the case of *Michael Rigny v. the City of Chicago* which was an Illinois case, 1882, from which this body of law has grown. Illinois, in the year 1870 amended its Constitution exactly as the committee today proposes for the Hawaii Constitution and included in a section which is rather identical to ours the words "or damaged" after the word "taken." This case to which I refer was the first case considered by the Illinois court after this amendment had been made. It was a case involving a home which was on a corner and the City of Chicago came along and built a big viaduct right in front of the home on a major by-way of the city, major street which land on side of the home depriving the access of the owner of the property to this major street except for two stairs which they put into the viaduct. The owner of the property sued the City of Chicago and it showed that by appraisal his property was worth considerably less after this viaduct had been built and its access was deprived of this major street than it was

before. He also showed that the two rental units he had on the property could not rent for as much after the viaduct was built as they could before.

There had been no physical taking of this man's property at all. The viaduct didn't even touch his property, but nevertheless it deprived him of access to its major street and did in fact damage him. The Supreme Court of Illinois allowed Michael Rigny recovery in this case and said that, and I want to read some of the language from this case to you, Mr. Chairman, said that, "In a case of this nature, not every case where there is a direct physical obstruction or injury to the right of the user or enjoyment of private property by which the owner sustains some special pecuniary damage in excess of that sustained by the public generally is compensated but certain cases are." And this particular case was held to be one where there was a physical disturbance of a right, public or private, which the plaintiff enjoyed in connection with his property which gave it additional value and by reason of the disturbance he had sustained a special damage with respect to his property in excess of that sustained by the public in general.

Mr. Chairman, there has been, as I have indicated, over the years, a large body of law growing out of this particular case of *Rigny v. the City of Chicago*. It is the intent of your committee that the words "or damage" added to the Hawaii Constitution should fall into that body of law. It was the further intent of your committee that our Supreme Court be guided, not be controlled, but be guided by that body of law in its interpretation of these words, "or damage." And your committee feels that if such be the case in the future, there will be just compensation, not complete compensation, not whole compensation, but just compensation to those who have had a certain proprietary right deprived because of an action by the government in a taking situation which did not in fact take their property but took from them some proprietary right. Now, the word "damage" as we construe it, must of course, by the very wording of Section 18, be damage for public use. In other words, we construe this to mean in an eminent domain situation. This particular section of the Constitution would certainly not apply in any other situation. And while these other situations, for example, would be a tort situation which is covered under the State Tort Act, it must of course apply to property. It does not apply to persons because someone is put out or because he is for some personal reason disjointed because of a taking which does not give him a cause of action or a right under this section. His property must be affected. And of course it must be an action by the government for public use.

I would point out one large area, Mr. Chairman, of a body of law which we do not intend to affect by this particular section of the Constitution. And that, of course, is the police power. Eminent domain historically has been subordinate to the police power. Therefore, zoning where it has a substantial relation to the public good would not be covered under Section 18 of our Constitution and we would say that the present body of

law covering zoning which is covered by the police power in the health, safety and welfare of the State is not subject to be changed by this amendment. This would go to such statutory enactments as the Green Belt Law. It would go to such situations as utilization of planning and a master plan, but I would of course draw the attention of the delegates to the fact that in every case, such an exercise of police power must be to a substantial relation to public good.

In summation, Mr. Chairman, I would heartily suggest that this committee accept the Committee Proposal and include in Section 18, after the word "taken," the words "or damaged" for public use without just compensation.

CHAIRMAN: For the benefit of the stenographer, we will take a short recess subject to the call of the Chair.

At 3:00 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:08 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Lewis.

DELEGATE PETER LEWIS: Mr. Chairman, I rise to speak in favor of the Committee Proposal with respect to Section 18. The purpose of this amendment to Section 18 of Article I is to provide greater and more complete financial or monetary relief to a property owner when the government constructs interstate and other highways and other public improvements and causes damage to a property owner in the process.

Our present Constitution provides that property may not be taken for public use without just compensation. Today, there is no requirement of payment when private property is not taken in the legal sense of the word and yet it has been extensively damaged. By way of introduction, and I would like to further follow up on the previous speaker's remarks regarding an explanation of what is meant by the phrase "taking and damaged." By taking one's property, the courts have interpreted this as requiring an actual physical entry and direct physical entry often depriving the person of possession of his property. By way of contrast, let us look at the phrase "property damaged," when compared with the phrase "property taken." Under the phrase "property damaged" we do not speak of actual physical invasion of buildings and land but rather of a physical obstruction or entry to the property right of use and enjoyment. Our present Constitution requires an actual taking of a person's land or building while the new concept before us today involves damage to the right of use or enjoyment of a person's land and building and does not require the State to have entered upon any part of the person's land.

An excellent example of the type of case involving the principle of damages where there is no so-called taking exists in Honolulu today in connection with the

construction of the H-1 interstate freeway. Some of you may recall reading in the newspapers several months ago about the case of the apartment owner who has been living in his apartment minding his own business before the state constructed its elevated H-1 freeway in the vicinity of Keeaumoku and Piikoi Streets. When the state built the freeway, they never actually touched or took any of this man's property but rather came within a few feet of his bedroom window. Suddenly there were cars and trucks going by his bedroom all day and all night and there were headlights shining in his window all night. No one can argue that this man's right to the use and enjoyment of his property has not been damaged. Yet, there was no actual physical taking of his land or building. Nevertheless, this man was damaged.

Under our present Constitution, which only permits a claim for a physical taking of a man's land or building, the state must say to this man, "We are very sorry, we know you have been damaged but our Constitution prevents you—prevents us from paying you one penny." Now, this man's damages are not one penny. Let us say, for example, and I will give a hypothetical case to illustrate my point, that our apartment owner owns a two-story thirty-unit apartment building and that all of his second story units, fifteen in number, have been affected in the same manner by the noise and headlights of these automobiles. Before the elevated freeway is built, he was renting each unit for \$300 a month. And for the sake of illustration, let us say that he had 100% occupancy rates. And let us also say that after the freeway was built, he could rent the same units for only \$150 a month. This man has actually been damaged to the extent of \$2,250 a month as multiplying 15 times 150 or \$27,000 per year. Are you going to tell this man, "We're sorry but our Constitution does not permit us to pay you one penny for your losses"?

To dramatize the arbitrariness of our present Constitution, if we had two such apartment buildings on adjoining pieces of land, Apartments A and B, and the State actually took a small piece of Apartment owner A's land, let us say one foot of his land, and took nothing of Apartment owner B's land under the principle of what is called severance damages, the State could presently pay the owner of Apartment A severance damages which would reflect the full \$27,000 per year damages and would pay the owner of Apartment B nothing. Let me ask you, are the rights of man really being protected in this type of case?

Having given the above example, let me state what ground rules would apply in order to grant relief in damage cases where there has been no physical taking of a person's property. Since Illinois adopted the constitutional principle of "taking and damages" back in 1870, twenty-five other states have adopted this provision in their Constitutions, and a considerable body of law has been built up over the years interpreting the meaning of the phrase "and damages."

As set forth in the Illinois cases, Illinois courts require that there be a direct physical obstruction or injury to the property right of use or enjoyment which

the owner enjoyed in connection with his ownership of the land or building and by which the owner sustains some special, and it emphasized the word special, pecuniary money damage in excess of that sustained by the public generally. In order to recover for his damages, a property owner must meet all of the tests set forth in the above rule. For example, if the property owner's losses were not greater in kind as well as amount than there is suffered by the general neighborhood or community there would be no recovery by anyone. In addition, there could be no recovery for remote, contingent, or special other damages. Finally, the injury must be to a property right and not constitute a mere personal inconvenience or injury. The entry must affect the value of his property rights. An example where recovery would be permitted, would be in the \$27,000 apartment building I just gave.

In giving the above example of what is intended by Section 18, it should be emphasized that a property owner has a series of hurdles he must overcome before he can get relief. The property owner cannot merely walk into court and say, "I have been damaged by \$10,000 and where's my money." The real safeguard against exorbitant and speculative claims is that the property owner carries the burden of proof as to his damages. He must prove at least five things: (1) That he has in fact been monetarily damaged and the value of his land and improvement is lost after the construction of the freeway than before. (2) That the construction of the freeway is the approximate cause of the property owner's loss of value. (3) That he has been specially damaged in greater kind and amount than the public or surrounding neighborhood in general. (4) That his damage arises out of some property rights such as the right to use or enjoyment of his land; and finally (5) that his claim is not merely speculative, conjectural or remote. Having overcome this rather large hurdle and only then is he entitled to relief and only to the extent of the damages he can prove in court such as loss of rental.

I therefore urge my fellow delegates to support the passage of Section 18 of Committee Proposal No. 11 from which would spring new life which does not exist under our present Constitution.

CHAIRMAN: Thank you.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE LUM: Is that an actual case?

CHAIRMAN: Delegate Lewis.

DELEGATE PETER LEWIS: The single property owner, this was recorded in the papers. I did not check this out as to—

DELEGATE LUM: Thank you.

CHAIRMAN: Recess subject to the call of the Chair.

At 3:16 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:18 o'clock p.m.

CHAIRMAN: Will the committee please come to order. Delegate Sutton.

DELEGATE SUTTON: May I ask a question, Mr. Chairman, of Delegate Lewis.

CHAIRMAN: Proceed. Delegate Lewis.

DELEGATE SUTTON: Delegate Lewis, on page 8 of this particular report, the very last paragraph labeled Section 3 mentions specific action of the state. Nowhere do I see mentioned in this particular report those authorities that have been given power of eminent domain on the various statutes such as the public utilities. Now, assuming, for example, one of the public utilities should exercise this power of eminent domain, say the Hawaiian Electric Company, would this particular phrase "or damage" be applicable to the party exercising an eminent domain proceeding?

DELEGATE PETER LEWIS: The answer to that is in the affirmative.

DELEGATE SUTTON: And then the second question I have is, "Would this not involve such cost so that the Hawaiian Electric Company would in turn have to include contingent cost in its rate structure?"

DELEGATE PETER LEWIS: The answer to that is purely conjectural at this point.

DELEGATE SUTTON: Thank you.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Mr. Chairman, will Delegate Lewis yield to a question?

CHAIRMAN: Delegate Lewis.

DELEGATE PETER LEWIS: Go ahead.

DELEGATE GEORGE LOO: If we are the people—if this Convention approves your proposal and if the people approve the proposal, when will this take effect?

DELEGATE PETER LEWIS: It will take effect upon the adoption of the amendments of the Constitution unless the Committee on Style would have ruled otherwise. Although as Committee Proposal 11 indicates, there is no contrary date.

DELEGATE GEORGE LOO: Would it be retroactive to your example?

DELEGATE PETER LEWIS: In that particular case, the person might have a continuing cause of action but it would not have a retroactive effect except to a

continuing cause of action.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, I would like to ask a question of Delegate Lewis. In the example that was cited by Delegate Lewis, I presume that there is no taking by any government authority. Is that correct? The second-story apartment owner?

DELEGATE PETER LEWIS: I'd like to emphasize, in reference to Delegate Lum's question, my example of the single apartment owner was one that appeared in the papers. My apartment building owner with his fifteen units was hypothetical, used to illustrate the point. Under either case, the state did not take any part of the land or building in relation to the apartment building.

DELEGATE ARIYOSHI: I wondered what difference there is between the elevated highway and the highway that goes—that affects someone on the first floor.

DELEGATE PETER LEWIS: With respect to the owner of the apartment on the first floor, he could conceivably also have a cause based on a different concept, being deprived of sunlight.

DELEGATE ARIYOSHI: What troubles me, Mr. Chairman, is that, and I would like to have Delegate Lewis respond to this, it appears as though that the property owner can do anything he wants with his property and build anything he wants on his property and yet the state, as the owner of the property is restricted to the kind of use that the state can make, and I'd like to have Delegate Lewis respond and give me his thoughts on this.

CHAIRMAN: Delegate Lewis.

DELEGATE PETER LEWIS: I'm not sure I follow your question, could you—

DELEGATE ARIYOSHI: Well, the property owner can build anything he wants and make any use of his property within a legal limits and it would appear to me as though the state now could not make the kind of use that it wants to make of its own property without being liable for damages?

DELEGATE PETER LEWIS: The answer to this question is a matter of philosophy. You have your property owner who is there and in fact minding his own business when the state then comes along and constructs a freeway just outside his property and damages that man's property. It's a question of man's philosophy whether you think that property owner should be taken care of for the damage he has sustained and I emphasize the damage that has been proven in court.

DELEGATE ARIYOSHI: Well, supposing instead of the state owning the property adjacent to that, that property was owned by a private owner also and the

private owner next to that put up a high-rise building right next to it, isn't the first property owner in the same kind of suit?

DELEGATE PETER LEWIS: I'm not sure I have an answer to that question. If he did have any action, it would be within a tort action. It would have nothing to do with eminent domain. Actually I do not have an answer to that.

DELEGATE ARIYOSHI: Well, the point I'm trying to make is that it appears as though there are two standards, one for private property owners and one for public owned property, and in the instance where the private property owner puts up his structure to block off sunlight, for example, there's no right of compensation to the person for damage; and yet when the state comes along, according to the delegate, there appears to be some damages. This is what troubles me.

CHAIRMAN: Thank you. Any further discussion? Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I too speak in favor of the Committee Proposal but I don't agree that the statement made by Delegate O'Connor as to its meaning should stand without some challenge. I refer to his inference that—or statement that an individual may claim against the state for taking or damage only in cases of eminent domain. I think the court should be free to determine how and to what extent the action of the government has damaged the property rights of any citizen. Thank you.

CHAIRMAN: Any further discussion? Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, will Delegate Lewis yield to a question?

CHAIRMAN: Lewis to Lewis.

DELEGATE PETER LEWIS: Yes, calabash cousins.

DELEGATE RHODA LEWIS: Lewis to Lewis—there's a statement in the committee report that there are some twenty-five states which have added the phrase "damage" to their constitutions and I understand that there is a body of case law that would serve as precedence if this provision is adopted. Is that correct?

DELEGATE PETER LEWIS: That is affirmative. The states of Alabama, Arizona, Arkansas, California, Colorado, Georgia, Illinois, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, West Virginia and Wyoming.

DELEGATE RHODA LEWIS: Well then, what puzzles me is that the committee report sets out some cases where witnesses testifying that they felt apparently compensation should be allowed and it's my opinion that this convention should not go so far as to rule on these specific cases, page 8 of the committee report.

Rather we should look to the precedence and let the court decide exactly what is and what is not covered by the phrase "or damaged." I would like to have the record state what is the opinion of this Committee of the Whole and either you or perhaps the committee chairman clarify the point. Personally, I would be adverse to putting in the phrase "or damaged" coupled with any specific decisions by this body that we're covering or not covering such matters as moving costs, plans and drawings and such specifics as that.

DELEGATE PETER LEWIS: In response to your question, this matter was discussed with the committee chairman and it is understood that in writing up the Committee of the Whole report a reference will be made to these other twenty-five states and that we're attempting to follow a general body of law that has been set forth over the years by the twenty-five states that have adopted this provision "and damaged."

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: Then, Mr. Chairman, if I might then pursue the point a little further, it's my understanding that the Committee of the Whole report will control unless the Convention is not putting any interpretation on this phrase "or damaged" in reference to the specific matters that witnesses called to the attention of the committee.

DELEGATE PETER LEWIS: I would believe that if the Committee of the Whole report is written up in a proper manner, this could probably be accomplished.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I want to be clarified a little bit on something. Delegate O'Connor, when he was making his statement at the opening, said that the condemnation must be an action by the government and then Delegate Lewis in response to a question from Delegate Sutton gave me the impression that he was saying that this "or damaged" would imply to the taking by eminent domain by a public utility. As the record—if I'm correct in what Delegate Lewis said, there is conflict in our record here, Delegate O'Connor saying it has to be an action by government and Delegate Lewis indicating that it would apply to the others. Can we have that cleared up?

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: This particular provision applies to government as well as semi-public organizations.

CHAIRMAN: Thank you. Delegate O'Connor, would you care to answer Delegate Dodge's questions?

DELEGATE O'CONNOR: Yes, Mr. Chairman. The public utilities presently enjoy their right pursuant to statute. We certainly don't imply by this change of the Constitution that that right cannot continue by statute

since it is granted to them by the government and we would infer from our change in the Constitution that the entire change also be applicable to the public utilities and this be done statutorily.

CHAIRMAN: Thank you.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I have another question to ask referring to this particular area. There is a highway going through my district and through your district, Mr. Chairman. And this highway, supposedly by the businessmen of the particular area, is going to cut off the business. If these businessmen should lose their businesses, if the business is going down and some of them run out of business, could they have recourse?

CHAIRMAN: Delegate Lewis.

DELEGATE PETER LEWIS: Mr. Chairman, I believe the answer to that question would fall into the latter part of the requirement that is set forth by the court cases and that is that the damages not be general in nature but specific as to an individual and in the case that you refer to and I believe you're referring to the business district of Kaimuki, this would be a general damage and would not be compensable.

DELEGATE LUM: Mr. Chairman, I'm referring to the individual businessman either being run out of business or forced to lose part of his business.

CHAIRMAN: Delegate Lewis.

DELEGATE PETER LEWIS: The individual businessman still falls in a class and that is what we're getting at under the rule here. A general class that has been damaged as opposed to an individual.

DELEGATE LUM: Mr. Chairman, I cannot agree with that definition of "damage." I think damage also refers to business. I cannot agree and I don't see how this Convention can come out with a report saying that "damage" means this and this because a set of people say this.

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, this is the very point I rose on and with all respect to the previous speaker I think that if we are going to adopt this we necessarily must take the position that the courts will rule on each case as it comes up in the light of rulings of federal provisions and other constitutions. If we're going to adopt this coupled with our own interpretation of sporadic cases such as appear in the committee report in two items or three, and such as may have been brought up by questions on the floor, I think we're off to a poor start and that we're going to get into a complexity of we don't know what. In my mind, the only clear course is to say we're adopting this as it was adopted in other states and where the meaning

that the courts may find that it has after careful studies of all the case laws in similar states.

CHAIRMAN: Delegate O'Connor, on what point do you rise?

DELEGATE O'CONNOR: I rise to end the debate on this matter for the committee unless anyone has anything further to say.

CHAIRMAN: The Chair would like to find out how many people would like to speak.

DELEGATE YOSHINAGA: Mr. Chairman, I have two questions I would like to ask. One is a matter of clarification. Delegate Dodge asked a question and I thought the first answer was the language as proposed would apply to so-called public utilities and then there seemed to be another answer to say that whether it applied to public utilities or not would depend on statutory implementation. What is the answer now?

CHAIRMAN: Delegate Meyer Ueoka, did you have an answer for that?

DELEGATE UEOKA: It applies to semi-public organizations which exercise eminent domain.

CHAIRMAN: So that includes public utilities?

DELEGATE UEOKA: That's correct.

CHAIRMAN: Thank you. Delegate Yoshinaga.

DELEGATE YOSHINAGA: So that the record is as cluttered up as it's been this morning we have testimony to the effect that it does not apply to public utilities unless implemented by statute and we have testimony here that it applies as soon as this provision is adopted by the people of the State of Hawaii. Second question I have to ask is, the committee report seems to indicate that the language of the proposal is a direct quote from the Illinois constitution and that some twenty-five other states have adopted the exact language. My question is, is the language in the committee proposal the exact language of the Illinois constitution or the constitutional amendment? And is the language of the twenty-five other states exactly the same?

DELEGATE PETER LEWIS: Mr. Chairman, the language—

CHAIRMAN: Delegate Lewis, will you answer that.

DELEGATE PETER LEWIS: I do not have the language of the twenty-five other states before me. It is my understanding that Illinois does in fact have the language "taken or damaged," exactly the language we have adopted. And with respect to the first question Delegate Yoshinaga raised, I think the point that was being made before is that a public utility gets its right of eminent domain from statute only so if the legislature would take away a utility's right of eminent domain, next year this constitutional provision would

then not apply to that utility because it had no right of eminent domain.

DELEGATE YOSHINAGA: Thank you very much. At least that much has been cleared up.

CHAIRMAN: Are there any other speakers? If not, Delegate Dennis O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, first to clear the record. If in my summation when I first spoke I said that this provision only applied where there was condemnation, I spoke erroneously. This is not so. This provision would apply where there is any action by the government for public use which disturbs the rights of an owner in connection with the ownership of the property, and this may or may not be in conjunction with condemnation. The example that I gave where the City of Chicago built a viaduct in front of someone's house, for example, did not have anything to do with condemnation as far as that person was concerned because the viaduct was built on a public street.

To bring the matter to a close, Mr. Chairman, I would heartily suggest that we adopt the Committee Proposal in this area to give to those people of this state the right to compensation in this area where they have not had it before. I would suggest that unless we act in this matter in this Constitution, there can be no other right given to these people in this area.

DELEGATE RHODA LEWIS: Mr. Chairman, I—

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: I must apologize since Delegate O'Connor has made the closing remarks but just previous to that the question was asked as to when this will take effect. I think this is a very, very important point. Perhaps, if we had a short recess we could clarify that.

CHAIRMAN: Recess subject to the call of the Chair.

At 3:36 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:43 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Dennis O'Connor, you have thirty seconds.

DELEGATE O'CONNOR: Mr. Chairman, to further briefly summarize, the committee would like to point out that the situations presented here on the floor and those three presented on the bottom of page 8 of the committee report were simply given to illustrate the situation before this body and were not in any way given to, in the future, bind any court interpreting this particular section if such court look to such illustrations for guidance. We are looking primarily to the body of law which has grown out of the Illinois decision

previously discussed for court guidance in this particular matter.

CHAIRMAN: Thank you. You ready for the question? The question is to adopt Section 18 of Committee Proposal No. 11. All in favor say "aye." Opposed, "no." Carried.

Section 19, no amendment? Section 20, no amendment? Mr. Clerk, any other amendments on the desk?

CLERK: Mr. Chairman, we have three amendments numbered 4, 7 and 8, all of which propose new sections to the article.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: I was instructed to withdraw these hippy amendments but—the delegate has returned but if he wants to make the motion himself I'll go along.

CHAIRMAN: Thank you. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I believe Delegate Dodge has an amendment and by priority I shall defer to the illustrious delegate from Oahu.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I was going to defer to the delegate from Kauai. Mr. Chairman, I have an amendment No. 4, which would add a new section to the Bill of Rights, and it would read, "No claim of sovereign immunity shall be asserted by the State in any proceeding." I want to move for the adoption of that amendment.

DELEGATE KAMAKA: Mr. Chairman.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: I second the motion.

CHAIRMAN: You've heard the motion. Delegate Dodge.

DELEGATE DODGE: I must confess that I don't know how to spell very well. I spelled the word "sovereign" wrong, so reverse the "e" and the "i." I have the same difficulty with the word "foreign."

Mr. Chairman, this idea was proposed first by a woman lawyer on the Island of Hawaii during the time that the convention delegates were holding hearings on that island and I don't think that it occurred to any of the delegates that were present. It was discussed by some of the lawyers that were in that group touring the island, none of us could find any good reasons for not having this kind of a provision in the Constitution. The only distinction between governmental and proprietary functions which used to be used by the courts to

distinguish or to deny liability on the part of government when it was engaging in a governmental function as distinguished from the proprietary function was abolished by our Supreme Court, I don't know, a dozen years or so I guess, by decision coming out of the Island of Hawaii offered by Justice Stainback.

A few years ago, we adopted the Tort Claims Act for the State, substantially abolishing the concept of sovereignty as a defense to actions arising out of negligence or torts. About the only area that remains are the areas that are currently excluded from the operation of the Tort Claims Act. I believe the committee report mentions discretionary actions of public officials that are excluded from that and the determination of property rights as between a claimant to land and the state which may claim the land.

I asked the Legislative Reference Bureau, upon my return from Hawaii, to do some research on this for me and to find out what the results would be if this kind of a provision were put in. I was informed that there were a number of states that had abolished the concept of sovereign immunity either by constitution or by statute or by judicial decision. There's no question but what our court can abolish in the concept because they are the ones that put it in in the first place. But I feel this kind of an idea is a very important forward step that Hawaii can take. We would not be charting any new ground because it has been done in many states. Its origin is sort of undemocratic. Its origin comes from the fact that the king could do no wrong. Now I'm not talking about the king of Hawaii necessarily, I'm talking about the kings of England where we got a substantial body of law. It seems utterly inappropriate today in the democratic society where we are the government that we should be able to raise a claim based upon an archaic principle. And I suggest that the delegates give serious consideration to it and approve it for inclusion in our Constitution.

CHAIRMAN: Any further discussion? Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak against Delegate Dodge's amendment.

As Delegate Dodge has pointed out, the concept of sovereign immunity is an ancient one in our law. In our body of law as we presently know, it has grown up around this concept. If there had been no concept of sovereign immunity, over the years, certain exceptions as to law suits against certain people in the government would have had to, by necessity, been built into our statutes. For example, no one wants an unhappy litigant to be able to sue a judge because of his decision. No one wants an unhappy person who is involved in a law suit to see a judge because of something he says in a decision which may or may not affect that individual. No one wants a person to be able to sue the governor every time he signs an executive order because it might affect him one way or another. All of these matters are now precluded because they fall in discretionary or policy-making area of the law, and sovereign immunity protects those people who make these decisions.

Now, if we adopt Delegate Dodge's suggestion, then we must go in and build up an entire body of law on the exceptions. Mr. Chairman, we've come along in this state and in the majority of this country where we've come from the other direction. We had sovereign immunity initially and we have built up a series of exceptions to sovereign immunity. Included among these are the most logical inclusions as the State Tort Claims Act and the Federal Tort Claims Act, where if an employee of the government or the government itself acting through some other agency injures you, then you may sue government. And there are other exceptions built in the specific acts which are passed by the legislature, both of this state and by the federal government. These exceptions have grown over the years and are now regularly accepted. And I would suggest that we leave our law the way it is and not force the legislature to go back and re-enact statutes which provide immunity for people that we would do away with by the adoption of this amendment.

Mr. Dodge is correct when he says that this is actually an injunction of the courts because it did come from the common law from the case law over the years. And by the same token, the courts in specific instances may waive it for certain reasons, and they have. I would suggest, Mr. Chairman, that the courts have waived it for certain reasons, the legislature has waived it for certain reasons and as we stand today in the State of Hawaii, the concept of sovereign immunity does not affect any one of us to the extent where we should rearrange our whole line of thinking on our body of law.

CHAIRMAN: Thank you. Any further discussion?

DELEGATE TAKAHASHI: Mr. Chairman.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I also would like to vote against the amendment. I support the arguments presented by Delegate O'Connor. I think he's right. I would like to just add one more thing.

Any time any person has a meritorious claim against the sovereign government, he can come before the legislature and in all my years in the legislature, I don't believe that we have ever denied anybody any claim against our sovereign government. I think we ought to vote down this particular amendment.

CHAIRMAN: Any further discussion? Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, may we have a short recess please.

CHAIRMAN: Recess subject to the call of the Chair.

At 3:52 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:03 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, after consultation with the chairman of the committee and on the understanding that he has a statement to make, I will withdraw the amendment.

CHAIRMAN: Thank you. Delegate Ueoka please.

DELEGATE UEOKA: Mr. Chairman, I realize that Delegate Dodge has withdrawn his amendment No. 4. I would like to state that the matter that he was trying to bring up is properly a legislative matter and that while we recognize that in matters relating to land court title action where those who can afford it can bring the action, the state can be properly made a party to the suit whereas in certain types of action, commonly known as the "poor man's land court suit" the state has claim to immunity. And so, I would like to state at this time, if there is no objection, that we would like to include in our report, rather than our taking action on this, that the legislature is requested to review the present law. Of course, I would like to also state that this does not cover adverse possession against state or government land.

CHAIRMAN: Thank you. Any other amendments?

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I offer the following amendment to be appropriately numbered in the Bill of Rights to read as follows:

"Section _____. Every citizen of this State shall have the right to maintain a judicial action or proceeding against any officer, employee or instrumentality of the State, or political subdivision thereof, to restrain a violation of the provisions of the statutes and of this Constitution or the Constitution of the United States, including unconstitutional expenditures."

DELEGATE YOUNG: I second the motion.

CHAIRMAN: Delegate Mizuha, before you go into the motion, will you repeat the second to the last line, starting from "violation of the provisions of this . . ."

DELEGATE MIZUHA: "the provisions of the statutes."

CHAIRMAN: "of the statutes"?

DELEGATE MIZUHA: Yes, it's No. 10, a new redraft that was circulated to everyone. They must have forgotten—

CHAIRMAN: Recess.

At 4:07 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:08 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. So Delegate Mizuha, you move to have this Section amended?

DELEGATE MIZUHA: Mr. Chairman, in explanation of this amendment, I wish to state that at this time that in order for anyone to come into our state court to restrain a violation of the provisions of the statutes of this Constitution and the Constitution of the United States, including unconstitutional expenditures, he must prove himself to be a taxpayer especially in the field of unconstitutional expenditures and to show a loss to him of the revenues that he pays to this state as a taxpayer.

All of you have been familiar with the recent case with the special election on Maui for the election of that outstanding leader of the House of Representatives, the Honorable Elmer Cravalho, his election at the special election was contested by his brother Bulgo. Bulgo inferred that in order to gain access to the county court there on Maui in the Second Circuit Court, had to prove he is a taxpayer, that he owns property and that part of his property taxes went into the payment of the special election and the Supreme Court so recognized, Judge Black.

Now, it's a sad commentary to the judicial functions of our court to say that one has to be a taxpayer first before he can contest such an election. There are many people in this state who do not own property, who do not own lands as Bulgo owns on Maui where he can show that he did pay \$2,000 in taxes, part of it will go for a special election on Maui. Someone just told me that everyone is a taxpayer of this state because he buys cigarettes and there's a cigarette tax on those who don't own property.

I call your attention, Mr. Chairman and members of this Convention, that Rhoda Lewis wrote an opinion, Delegate Rhoda Lewis wrote an opinion in the Supreme Court called the "Air Terminal Services Case," that had to do with the concession in Honolulu Airport in which the bid will go to the highest bidder for 13 9/10% of the total revenues as rental. Yet, the Department of Transportation gave it to the second highest bidder who bid only 9%, 4 9/10% less, because he was supposed to be more qualified in the business of giving the public hot dogs and Coca Cola. And one of the parties to that suit and the Delegate wrote in her opinion that maybe they did not qualify or the taxpayers will contest the rules of this contract to International Host because whatever taxes he did show he paid was minimal. It was too little, too small to be considered to say that he had lost something in arrears because of the fact that the state forego—shall forego in the rule of the contract 4 9/10% of the total gross revenues per year for ten years.

Now, the time has come, ladies and gentlemen, and this I offer for whatever decision the delegates wish at this point to say, that here in Hawaii if there is any citizen who feels as though some public officer or some

department of government or some instrumentality of government is doing something in violation of the statutes, he does not have to prove himself a taxpayer where there is some loss of his payment of taxes for the maintenance of something that is in violation of the statutes especially with expenditures. There is now a body of law and this occurred in the decision that was written recently and I won't name the author with reference to the release of excess steer on the Island of Hawaii which was sustained by the Supreme Court. The Supreme Court did say in that decision that there is no such thing as qualifying as a taxpayer and the act of the officer of the State was unconstitutional, that the individual had a right to come to the court. This amendment is too full not only with the reference to the unconstitutional action but also to unconstitutional expenditures. And I suggest that what the Supreme Court said just a few months ago in connection with the Greenwell case may be changed by another Supreme Court. And I would like to see this written into the Constitution because not every one of us are land owners and taxpayers in the sense that we pay enough taxes to suffer because of the action, unconstitutional action, of a State or county employee. Thank you.

DELEGATE FASI: Mr. Chairman, a question.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I would like to pose a question to the Chair for Delegate Mizuha if I may.

CHAIRMAN: Proceed.

DELEGATE FASI: The question is, Delegate Mizuha, is it possible under the present provisions of the State Constitution as written as recommended by the committee that the legislature can make the necessary changes that appear apparent by statute?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I believe the legislature may be able to do that. I'm not absolutely certain. In view of the fact that this action of this Convention here and the discussion that preceded my amendment forced Delegate Dodge to withdraw his amendment, I feel that it would be rather difficult for the legislature to entertain this type of statute because of the fact that they are going to limit themselves to only an area in which would be in connection with lands and so forth with the land court. And I hope they will consider partition of lands too in which the doctrine of sovereign immunity has been raised. Now, if the legislature comes out explicitly in this language and passes a statute, I think it would be all right. But this is taken verbatim, as I might inform you all, that we are copy cats in a way, everything that has been written and said has been reproduced elsewhere. This came out of the New York Constitution. Did I answer your question? I think it's a round-about way but I think the legislature can but I don't think it will.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: For one minute to reply if I may and then sit down. I am pleased with the delegate's answer. The answer is that the legislature can enact a statute to take care of this. I am in complete sympathy with the purpose of adding a new section but I shall oppose it because the legislature can and will act if they find that it is necessary and I think they will. Thank you.

CHAIRMAN: Thank you. Delegate Dyer.

DELEGATE DYER: I rise to speak against the proposed amendment. There's a principle that exists in the law that requires a person to have an interest in a suit before that suit can be brought. Now, this principle is based, I believe, on common sense. You shouldn't be able to bring a suit in court and take the time of the court unless you have some definite interest in the litigation that's before the court. If I'm correct, being a taxpayer is one way in certain types of litigation, whereby you establish your interest. But I think this proposal now being presented is too broad because this, as I read it, would allow anybody whether they have any legitimate interest in the litigation or not, or whether or not this particular law affects them, or even a particular provision in the Constitution affects them, it will allow them to bring this suit in court and it seems to me that this idea of having to have an interest before you can bring litigation has considerable merit behind that. Therefore I oppose this particular proposal.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I rise to speak in favor of the amendment. And I think the delegates should know that our rules of court, that was referred to both by Delegate Dyer and Delegate Mizuha is even somewhat more restrictive than Delegate Mizuha said. You've got to, in some types of situations, not only show that you are a taxpayer but a taxpayer in a certain area. Right behind me is sitting Delegate Kageyama.

About four or five years ago, there was an improvement district put through what is known as the Kahuluu cut-off road. Delegate Kageyama at that time was a city councilman and believed very sincerely that the whole improvement district statute was invalid and that public moneys were being used solely for the benefit of a private subdivider. He brought an action in court as a citizen and a taxpayer alleging that the use of the public credit was unconstitutional under the provision that we just adopted earlier today. It's still in there. And the judge ruled that he did not reside within that improvement district and therefore his complaint was not even heard by the court.

All Delegate Mizuha's amendment would do would be to say that any citizen has standing to file a complaint in court. It may not be a good one but it should be tested on the merits of what it says rather than the individual who is saying it, and I firmly support this.

CHAIRMAN: Thank you. Any further discussion? Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I would like to refer to Standing Committee Report No. 38 which was already adopted in which there is discussion of a provision to give the Governor the power to force compliance with all constitutional and statutory mandate and the committee recommended and this body approved the omission of such a provision stating that there was no compelling reason for it and that the Attorney General, according to information received, has the power and authority to force compliance with Hawaii's statutes and constitution. It seems to me the same matter is now coming up in a different way, are the suggestion that any individual citizen can take over the office of the Attorney General and telling the court and delay whatever function or power is sought to be exercised. I think this distinctly should be left to the legislature.

CHAIRMAN: Any discussion? Delegate Dodge.

DELEGATE DODGE: In response to Delegate Lewis' comments just then, she's talking about apples and pears and not the same thing at all. The New York Constitution has a provision similar to the one she just referred to as far as the Governor is concerned. It also had the provision such as that proposed by Delegate Mizuha. Whether the executive needs or does not need that additional power, and that was my proposal I think that the committee rejected, to say that the executive branch of the government is a completely separate and distinct matter from what we're talking about now. Basically, it gets down to whether a complaint about an alleged violation or alleged—restrain the violation of a provision of our law will be tested by the merits of the complaint or by who brings it. That's the sole question that's before the House.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Meyer Ueoka.

DELEGATE UEOKA: Mr. Chairman, the committee considered the proposal and rejected that proposal. And I would like to read to you what appeared in the materials prepared by the Legislative Reference Bureau on page 124 relating to Article I, Bill of Rights.

It states: "Those who oppose instituting public action suit contend: (1) The delay occasioned by public action suits may unduly obstruct the completion of public projects and programs; (2) The potential for harrassment by such suits may encourage government immobility and inhibit progressive community action; (3) Frequent use of public action suits may add to court congestion and add to the expenses for courts and public legal staff; (4) Public action suits may push the concept of judicial review of legislative and executive actions too far (a) by calling upon the courts to sit in judgment of decisions taken by the political branches of government, when no one is sufficiently injured thereby, to have standing as an individual, public action suits may undermine the independence and prestige of the judiciary, thus

impairing its ability to perform more traditional judicial functions, (b) by making legislative and executive actions more readily subject to judicial reversal, public action suits may encourage irresponsibility and lack of creativity on the part of those branches; (5) Existing opportunities for taxpayers' suits adequately permit a basis for challenging the constitutionality of legislative and executive decisions; (6) Checks on illegal actions are better obtained through executive control." One scholar has said: "I must list a heretical statement that a good budget staff and a good personnel office will do more to preserve the liberties of people than a good court, because they will be in operation long before a potential wrong is done." Thank you.

CHAIRMAN: Thank you. Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak against the amendment. And I speak against the amendment for the very example given by Delegate Dodge in support of it. With all due respect to Delegate Kageyama, the situation of the Kahului cut-off road shows exactly why we should retain our present system.

Thousands of people who have legitimate standing in court were affected by that particular cut-off road and the expenditures for it. None of them chose to bring an action to terminate the expenditure. Any one of them could have. And I would suggest that under our present body of law, people who are affected by expenditures can spend their own money paid in as taxpayers can bring exactly the type of action that Delegate Mizuha envisions by his amendment. Furthermore, under the recent decision that he speaks of, anyone who is affected by the constitutionality of a provision or statute of this state or of our state constitution may bring an action challenging the action of the government under that particular provision. And I would suggest that all we're doing by—if we adopt this amendment is allowing a large number of people who should have no standing in court the ability to bring actions by whim or by desire and all it would do would be to clog up our judicial system.

CHAIRMAN: Any further discussion?

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Are there any people who want to speak before Delegate Mizuha? Delegate Sutton.

DELEGATE SUTTON: I wish to just concur with Delegate Mizuha.

CHAIRMAN: Thank you very much. Are there any other delegates? If not, Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, will you please ask if there are any other delegates. I'll close the debate and I will not waive any of the rules with reference to anyone wishing to speak after I finish.

CHAIRMAN: Proceed.

DELEGATE MIZUHA: Like all things, when you

read from a report, you have the good points and the bad points. My brother delegate from Maui read some of the bad points. I'm going to read from the same book as follows: "Arguments commonly given in support of public action suits are the following: (1) In many instances the public action suit is necessitated by the absence of alternative means for correcting illegal practices by government officials which would otherwise be irreparable." And that is the situation in Hawaii. Here you have to prove yourself a taxpayer like Mr. Bulgo was on Maui, a big taxpayer. Then you will restrict the great majority of the citizens of this state access to the court and that's unequal protection of the law.

"(2) The constitutionality of many legislative and executive actions may be sufficiently subtle so that such questions cannot be effectively settled by the electoral process." And I call your attention now, my good delegates, to the recent almost a fiasco, when this State almost gave away Magic Island for \$100,000 a year for 55 years. What happened? For a rather flimsy complaint that there are certain unconstitutionality and following the decision of the Greenwell case, the Republicans got into the Circuit Court and got a restraining order against the then director of the Land Board. And then after a continuance he withdrew his offer of Magic Island for \$100,000. Think what would happen if you have to look over the bay here and see another Coney Island at \$100,000 a year go to this State for 55 years if we couldn't go to the court to restrain that kind of action.

"(3) Public action suits better obtain control over the expanding governmental bureaucracy." And if you just look around you, you will see how much bureaucracy we have in our government. "Formal majorities register judgments only occasionally and then as a rule not on specific issues but on total performance. In the meantime officialdom," and we have lots of it in Hawaii, "develops policies and makes decisions, some of which express its own professional and personal interests." I repeat, "its own professional and personal interests." And there are some delegates here always talking about some people in government bureaucracy asserting their own professional and personal interest and campaign on these issues and still fighting and speaking against my amendment.

"Insofar as the individual seeks to enforce the formal expression of majority will through the public action suit, his effort is consistent with the basic premises of democratic control." You are now going to give, if you approve this amendment, a voice to all the people of Hawaii. Not only to the affluent rich who own property and pay taxes. How many of you do? Everyone here, but not the rest of them in the City and County of Honolulu.

"(4) There are limitations on the utility of the taxpayers' suit. Since the taxpayers' standing rests on an alleged misuse of public funds, he cannot sue to test an act which, though illegal, does not have an adverse effect on the treasury. Furthermore, the taxpayers' suit is an artificial effort to meet the traditional

requirements of standing."

CHAIRMAN: Delegate Mizuha, you have one minute.

DELEGATE MIZUHA: "The financial impact on the taxpayer plaintiff is frequently speculative, minute and shared with an indeterminate number of others. The need recognized by the taxpayers' suit is more realistically provided by the public action suit," as I proposed.

"(5) Public action suits recognize litigation as a new form of political expression." There's a quotation from the Supreme Court but I am now being cut off. If you people want two classes of citizens in Hawaii, the affluent rich who are taxpayers and who can have standing in court and the other class that do not pay property taxes and do not have standing in court, then vote down my amendment.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Thank you. Delegate Kauhane.

DELEGATE KAUHANE: I want to yield five minutes of my time to the learned jurist so that he can enlighten us more about this.

CHAIRMAN: I don't think he needs that. He ended it with a period.

DELEGATE KAUHANE: Well, Mr. Chairman, I would like to say that I will support everything that he has said. We finally agreed that we should have protection for all people under due process of the protection of law. We finally have seen the light.

CHAIRMAN: Thank you. Any further discussion? You ready for the question? How many of you want roll call, please raise your hand. Mr. Clerk, call the roll.

Roll call having been ordered, the motion to adopt a new section to Article I was put by the Chair and failed to carry by a vote of 37 ayes and 40 noes with Delegates Ajifu, Akizaki, Alcon, Amano, Amaral, Ando, Ansai, Ariyoshi, Bryan, Chang, Donald Ching, Dyer, Hara, Harper, Hidalgo, Hitch, Ho, Jaquette, Kaapu, Kage, Kamaka, Kudo, Lalakea, Peter Lewis, Rhoda Lewis, George Loo, Medeiros, Morioka, Noguchi, O'Connor, Oda, Pyo, Saiki, Souza, Steiner, Taira, Uechi, Ueoka, Yoshinaga, Mr. President and Chairman Beppu voting no; and 5 excused with Delegates Hung Wo Ching, Goemans, Kato, Schulze and Ushijima being excused.

CHAIRMAN: The motion dies. Any other amendments?

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I can take solace in the fact that the vote changed by certain delegates changed the

votes of this Convention. I'm very happy to say that the delegate from Waipahu says that he will introduce a bill in the next session of the legislature incorporating this amendment and as such I know that the members of this Convention who are delegates and who are legislators or who may be legislators will pass this—

DELEGATE FERNANDES: Point of order.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE FERNANDES: You're out of order.

DELEGATE MIZUHA: I have an amendment.

CHAIRMAN: Delegate Ariyoshi, state your point.

DELEGATE ARIYOSHI: I rise on a point of personal privilege. I did not intend to change my vote. I meant to—when I said "aye" I meant to say "no" and when I realized that, I tried to stop the Clerk and get my vote changed.

CHAIRMAN: The point is well taken.

DELEGATE FASI: May I rise to a point of personal privilege, Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I would like to remind Delegate Mizuha that I voted for his amendment.

CHAIRMAN: Thank you. Delegate Mizuha.

DELEGATE MIZUHA: The amendment is on your desk.

CHAIRMAN: Number—?

DELEGATE MIZUHA: No. 7. I move that we adopt this unnumbered section to amendment to the proposal on the Bill of Rights reading as follows: "The right of the people to economic security, sufficient to live with dignity, shall not be violated. The legislature shall provide protection against the loss or inadequacy of income and otherwise implement this section."

DELEGATE YOSHINAGA: Mr. Chairman, I second the motion.

CHAIRMAN: You've heard the motion. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, in speaking on behalf of my motion, I want to read an article that appeared in the illustrious daily, the *Honolulu Advertiser* on September 6, 1968, relative to poverty in this beloved paradise of ours.

"Under the section entitled 'Public Welfare,' Hawaii's public welfare system is a liberal one but limitations on it still prevent it from preparing recipients for full

participation in society." From preparing recipients for full participation in society. Any welfare program of any state in this nation of ours is supposed to prepare those recipients for participation as co-equals in our economic, social and political life. Not just to feed them everyday but to give them something that will recognize their dignity as citizens in the community. This article goes on to say, "We now pay welfare recipients about 90% of the minimum needed for bare subsistence. It is unjust and inhumane for the state to contribute to the continuation of poverty by not assuring that its welfare payments reach at least a minimum standard for living." The figure should be 100%, not 90% and that is what my amendment proposes to do, ladies and gentlemen.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: If the delegate is through, I would like to ask a question of the delegate.

DELEGATE MIZUHA: I'm not finished yet.

DELEGATE KAUHANE: I said that if the delegate is through I would like to ask a question of the delegate.

CHAIRMAN: Delegate Mizuha, proceed.

DELEGATE MIZUHA: Somehow my presentation loses its effect when I'm interrupted like this, Mr. Chairman.

CHAIRMAN: Delegate Mizuha, you have seven more minutes.

DELEGATE MIZUHA: The minimum standard is determined by the cost of those goods and services needed for a family to live in decency and in health. Food is the largest item and the allotment for it is based on nutritional standards set nationally and adopted to local eating habits and food supplies. Hawaii's food allotment is close to the 100% minimum standard but the average mother is not as skilled as the college expert to determine the minimum necessary for proper nutrition. She is not trained to buy food carefully enough nor to prepare it adequately enough to provide her family with proper nutrition. If she is not an expert buyer and cook her family either fails to get adequate nutrition or else she has to take additional food money from some other part of her budget.

Shelter is the second major item in welfare payments. The standard is based on the minimum housing available using information supplied by the Hawaii Housing Authority. Since much of the available housing in Honolulu is substandard, many welfare clients end up living in deteriorating or delapidated, overcrowded units. The biggest need for large welfare payments is in the area of housing.

Food, rent and utilities account for 80 to 85% of the usual welfare payment. The remaining includes

necessities for personal care and hygiene, household supplies and educational and community activities. Clothing needs are not included in a family's budget when calculating eligibility for welfare. Now, this report goes on to state that to correct this inadequacy, it is recommended that the 1969 state legislature appropriate enough money to assure that the Department of Social Services can provide welfare payments equal to 100% of the minimum standards including a clothing allowance which they don't have now.

I have heard the statement made continuously that this is a matter for the legislature to take care and I know my beloved friends who are now serving in the legislature and who will again be elected to serve the good people in Hawaii, will see to it that they will get 100% this time not based on the standards of California and New York but under our Hawaiian standards. And perhaps the legislators will take care of our poor. But somehow or other, my good friends, I think it is now time as the architects of the New Hawaii joining the Democrats who started out in 1954 that we write into our State Constitution, that we would like to see everyone in Hawaii, no matter how poor he is, how unfortunate he is, to live in dignity and in good health.

And after all, we have asked, we have been asked, our nation has been asked, throughout the years in World War II, to contribute close to 160,000,000,000 dollars to have other people in other areas of the world to live in dignity and in good health. And that the last session of the congressional budget provided for something like two billion dollars paying foreign government in the area of health and welfare. We are now being asked to contribute to the support of the starving people in Biafra, Africa, in North Africa. But right here at home, amazing as it is, no wonder we cannot rehabilitate the poor when we give them only 90% of the minimum standard for decency and good health.

If you want to continue in this state, my good friends, the kind of poverty with only 90% assistance, then please vote down my amendment.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I'd like to ask the delegate who just finished speaking, if his amendment also guarantees the protection of the minimum wage?

CHAIRMAN: Delegate Mizuha.

DELEGATE KAUHANE: Because I'm all for him.

DELEGATE MIZUHA: There's nothing about minimum wage in my amendment but it provides, for instance if the person gets laid off and he has only 50% of his income and the state says that your minimum income should be for decency and good health so much, then the state will provide the rest.

DELEGATE FASI: Mr. Chairman, may we—

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: May we have a recess.

CHAIRMAN: Recess subject to the call of the Chair.

At 4:45 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:53 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Any further discussion?

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I rise to speak against this proposal. I consider this the most fantastic proposal that hit the floor of this Convention. Actually what this proposal does is to provide a guaranteed income to everybody in the state. And not only will we be talking about everybody in the state but as Representative Devereux mentioned just a few minutes ago this would open the flood gates of people coming from the mainland to Hawaii to live here all at our expense, we to take care of them. Further, I can't think of anything that would more quickly destroy individual initiative than to know that you had a guaranteed income for the rest of your life. I'm like everyone else, I'd like to just lie on the beach and not have to work hard. But that isn't the way the facts of life are and if we have such a proposal—if such a proposal went through, it would not only bankrupt the state but I think it would destroy the individual initiative of most of us. I said enough. This is fantastic.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: I rise to speak for and against the amendment.

CHAIRMAN: Please state your point again.

DELEGATE FERNANDES: I rise to speak for and against the amendment.

CHAIRMAN: How about taking one position—

DELEGATE FERNANDES: Well, I'll take it right now. I speak for because the paper, the *Star-Bulletin*, because my colleague read from another paper, I feel equal time. The *Star-Bulletin* quotes here, "Garden Island's image is suffering. The lawless spirit of Kauai youth." And it goes on and says, "the hippy problem." Now, I say, the proposal made here will take care of the hippies, will give them sufficient funds for them to live. On the other hand, I must agree that my colleague, if he yields to the question first and a short answer, what would be the cost of this program for the state?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I cannot give—

DELEGATE FERNANDES: Thank you very much. And now, I speak against the proposal. I speak against the proposal because I can't agree that the cost would take care of certain problems but it would not bankrupt the state. I disagree on that because we could always raise more taxes to take care of that problem. But I think Delegate Mizuha realizes the problems that are facing us and we'll try in all sincerity to take care of it in this proposal. I ask my colleagues to vote the proposal down.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: First, I'd like to make a point of information, Delegate Dyer—

CHAIRMAN: State your point.

DELEGATE FASI: Delegate Dyer pointed out that this amendment would open a flood gates of people coming to Hawaii to be taken care of. The fact of the matter is this has already been decided for us by decision of the United States Supreme Court in the spring session of this year when the Supreme Court ruled that people who move into a state, into a new state do not have to declare or have to go by any residency requirements. Anybody coming to the shores of Hawaii the very first day can qualify for welfare payments. But in speaking—well, I'm not going to speak for or against. I have a question to ask Mr.—

CHAIRMAN: You have already spoken.

DELEGATE FASI: That was a point of information. I want to ask a question of Delegate Mizuha.

CHAIRMAN: You can ask the question now.

DELEGATE FASI: Thank you. I'd like to ask about the word "shall." The legislature "shall" provide and so forth and so on. Does that mean that the very next session of the legislature that they are mandated to reassess all people in the state who must be covered by some type of legislation to give them what this section purports to give?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, certainly the legislature is entitled to some leeway in this matter. It's a mandate to the legislature to carry out what they carry now, but what they are doing now is they say only 90%, and 90% allowance is sufficient. And they say without the 10% they'll starve on the 10%. This will mandate the legislature what's defined to be by the experts to be 100% will be given 100%. Thus, the sum and substance of it. Anything further, Mr. Fasi?

CHAIRMAN: Thank you. Delegate Fasi.

DELEGATE FASI: Yes, I'd like to ask would the delegate be violently in opposition to changing the word "shall" to "may"?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Oh, that is the delegate's prerogative. If he wants to offer another amendment, he may do so.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I'm honestly trying to find out how Delegate Mizuha feels. I wish he would be more responsive. Would he be willing to agree to that change?

CHAIRMAN: I think he tried his best. Now, Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, I suspect I probably looked into the pros and cons of a guaranteed annual income about as much as the delegates here. There are far more things to be said for it than Delegate Dyer has indicated, there are far more things to say against it than Delegate Dyer has indicated.

I would suggest that if this delegation wants to take this amendment seriously, it should refer it back to committee, give the committee at least two months to analyze it carefully and then come back with a full report.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, I rise to speak against the amendment. But in doing so, I think we should bear in mind the number of things which are happening in our nation today and it may well be that some of the delegates are not aware of these changes that are taking place.

The latest amendments in Congress to the Social and Rehabilitating Services Act are providing that welfare payment, financial determination is to be separated from social services. That persons on low income who have to go to the government for assistance—financial assistance are going to have a great deal more dignity in the future than they ever have had in the past. That there will be more money available to match state money that is being given to assist people in the problem bracket. Now, here in Hawaii, I believe that we are quite proud of the fact that we have been gradually bringing up the level of assistance. I can remember a few years ago when it was much lower than 90%, and each year improvements have been made. More and more, our Department of Social Services is making an honest attempt to meet the needs of the families in the low income bracket. More houses are being built, more buildings are being built in order to provide standard housing for these people. Our elderly are being better cared for than they ever had before. Every attempt is being made to meet the needs of our own people who cannot meet their own needs.

So I do not believe that we should be discouraged. I do not believe that we should be discouraged. I do believe however that such an amendment would call attention to the entire nation to the fact that if you go to the State of Hawaii and live there and become a resident you may have all the benefits that are provided. Now we have difficulty meeting the needs of our own people right now. But we are going to meet them. And we are getting closer and closer to meeting all of their needs by the minimum standards. It isn't what you and I would like but it is the best that we will be able to do. And we cannot expect our taxpayers to help people who cannot help themselves live in luxury. We certainly can expect them to help them to live modestly so that their needs are met.

I urge you not to vote in favor of this amendment, although at the same time, I'm very sensitive and very sympathetic to the needs of those people who cannot take care of themselves. I think that we all are and I think we all realize the spirit in which this amendment has been proposed. And I want to thank Delegate Mizuha for his interest in this matter and hope he will continue this interest in the future because we're going to need support and we're going to need interpretation to the community of the way in which we spend our tax dollars in this area.

DELEGATE TAIRA: Mr. Chairman.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: I rise to speak against this proposed amendment and in so doing I'd like to echo the remarks of sister Devereux as Delegate Mizuha would like to call her, I'm sure.

I just want to point out one thing, Mr. Chairman. I'm looking at page 11 of the Standing Committee Report from this committee and there it says very clearly that the Committee on Bill of Rights considered this idea and decided as a majority that this is an area that is best left to the legislature because as has been pointed out, there are many important implications of funding an approach of this type. I also would like to say that I agree with Delegate Hitch, that there are so many ramifications to this that if we are going to really study this, we better send it back to the committee. But in the meantime I ask this committee to vote this down.

CHAIRMAN: Are you ready for the question? Delegate Ansai.

DELEGATE ANSAI: Mr. Chairman, I don't see how I can vote for this amendment knowing some of the financial facts of the fiscal matter of the State. I think the delegate from Kauai is sincere when he says he would like to see everyone live in dignity and in honor. I think we all are concerned about the less fortunate. But after all, the state has only an "x" number of dollars to spend for this kind of thing or cases. If we do give them 100% of what they need, it will mean

that you will carry just that few a load. I've heard by the folks of the Social Services Department that this percentage has dropped as low as 65% of standard. Not 90 as he said. And one reason for that is because the federal subsidy or the federal grant that comes to Hawaii to help these cases has dropped likewise. We all like to help them. The question comes out as how much can we afford. If we are to give them 100% and if we are giving them 90 that will mean 10% of the people who really are needy are going to be dropped from the rolls. That's all I have to say.

CHAIRMAN: Thank you. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, when Delegate Hitch stood up and said that we might have to stay here another two months, I would like to have the unanimous consent of the delegates here, Mr. President, to withdraw the second sentence of my amendment which reads, "The legislature shall provide protection against the loss or inadequacy of income and otherwise implement this section."

CHAIRMAN: Delegate Yoshinaga, you agree to that?

DELEGATE YOSHINAGA: Yes, sir.

CHAIRMAN: Thank you.

DELEGATE MIZUHA: Mr. Chairman, if there are no other speakers to this amendment I would like to close.

CHAIRMAN: Are there any other speakers? Delegate Larson.

DELEGATE LARSON: I have a question of the movant as to what the effect of the deletion of the last sentence in this amendment would mean. Perhaps, the delegate is going to explain that for the—

DELEGATE MIZUHA: Mr. Chairman, this merely means that I'm not going into the area of guaranteed annual income to supplement any loss of income for those people who need that income to have a minimum standard of living. But this constitutional amendment now tells the legislature that it should give 100% of the minimum standard that is necessary for health, shelter, food and all those other things that go with life itself for people to live in dignity in this state.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I can't completely agree with the interpretation just given by Delegate Mizuha because you would then have right in the constitutional right to economic security sufficient to live with dignity. Now, if you got a right, surely you must be able to enforce it. And at the moment, I'm not sure exactly of the mechanics but at least in the back of my mind there lurks a possibility of some sort of suit against the government to enforce this right. And if he did have

such a right that could be enforced by litigation, you're going to run into the same economic problem that we've been discussing for the last fifteen minutes. I think that even in the amended form the proposal is objectionable.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I rise to speak against this amendment. I'd like to point out one area in government where the legislature has within the last two years been very much concerned—the area of medical payments to indigents. We have tried very hard in 1967 to estimate exactly what the amount was. The 1967 legislature came out with the amount we thought was right and we found out we were way off as far as the rest of us were concerned. So in 1968, we made adjustments. I think it is true as said here on the floor that we have been trying very much to do what the delegate from Kauai wants us to do. But somehow we had to make ends meet and we had to do it within a particular budget. And I can see this particular position as possibly initiating some kind of a suit against the government by some group of taxpayers or individual taxpayer saying that we have not protected their right to economic security. And so therefore I say we should vote down this amendment.

CHAIRMAN: Are you ready for the question?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Just for Delegate Dyer's information, if you will refer to Section 2, we speak of rights that sometimes are difficult to understand. Among these rights are the enjoyment of life, liberty and the pursuit of happiness which may not necessarily always be mathematically definable and enforceable in court. I think that all this amendment intends, as it stands before this body now, is that there is at least a strong expression of the people of Hawaii as to the kind of economic right we believe that each and everyone of us in the State of Hawaii is entitled to. I regret that this amendment is not going to be adopted because I introduced a proposal before this Constitution that is similar and backed the committee with hardly a word. Few seconds ago, I had a resolution addressed to a seminar here in Hawaii directed to the Commission on Manpower asking them to look into the so-called things such as guaranteed annual income, family maintenance, et cetera and that got very little attention too. It seems to me that if eighty-two people or at least forty-two here are not ready for this kind of advance, philosophy toward our fellow men, it seems to me that if the people in Hawaii who are supposedly the leadership such as in the Commission of Manpower and the seminar that provide are not ready for it, it seems to me that it is very difficult to believe that the legislature, many of its members of whose members are here may not be ready for it.

I believe 1968 will go down in annals District of Hawaii as a great day for the people of Hawaii because of the fact that something good was not done. So, it was a Republican who brought this matter to the Convention through this amendment. It was a Republican who single-handedly spoke up for all the people of Hawaii and the people of the mainland also, for all Americans. Regardless of where Americans live, a few selfish people in Hawaii had no right to deprive them of the opportunity to come to these islands to enjoy the sunlight, the beautiful weather, the scenery and the fine people we have. And in the near future, within a short time, I'm sure there will be a Republican president, a Republican congress who will continue to lead this fight as they are now doing and we will realize throughout these United States. Thank you very much.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: Mr. Chairman, I rise to speak in favor of the amendment. Before this particular amendment was further amended, I would have voted against this particular provision. As it stands now, I cannot help but to concur with the good Delegate Yoshinaga and also Delegate Mizuha that indeed this is an expression of the progress that our country and our state has made in this century. I think that sometimes it is useful indeed to stop for a minute and then look back to the past and look back from where we have come and where we are now. The time, place and location.

Thirty or forty years ago, Mr. Chairman, child welfare laws were nonexistent. Labor provisions were minimal. Social security was not a reality of life. Neither were unemployment compensation and so forth. We have now become a welfare state, and yet we enjoy the highest standard of living of just about any country in the world with a few middle eastern exceptions. I think by the inclusion of such an amendment in the Constitution that we have recognized the progress that we have made, the concern that we have felt for our people of our state in our numerous, many intertrying welfare provisions. I think also that we had reached the state of affairs in our state where we have somewhat embodied that sentiment expressed in the Preamble to the Constitution of the United States that we should and ought to seek the goal of promoting the general welfare. I think, Mr. Chairman, that this particular provision does recognize the immense progress that has been made in our state and in the United States in this area of concern and that this indeed ought to be recognized in our Constitution.

CHAIRMAN: Are you ready for the question?

DELEGATE MIZUHA: Mr. Chairman, I have the right to close the debate as the movant of this amendment.

CHAIRMAN: Delegate Mizuha, you have spoken twice and I think this has been covered pretty well by now.

DELEGATE MIZUHA: I'm answering the question.

I have not spoken to close the debate, Mr. Chairman.

CHAIRMAN: What's the question you are going to answer?

DELEGATE MIZUHA: There has been, whenever this kind of an amendment has been proposed, the hue and cry that everybody else in the United States in the union will come to Hawaii. Why, under the decisions of the United States Supreme Court today anyone who comes to Hawaii and who is an indigent has the right to qualify for welfare and to get the kind of welfare as described in this newspaper article. And it amazes me that distinguished paper of ours, the morning edition, should as the Delegate from Maui said, the good senator from Maui said, "misquoted the facts." Instead of 90%, that delegate said 65% of the minimum requirements for decency and health. Now, what I am asking for in this amendment is that anyone who is eligible for welfare aid in this state as determined by the regulations of the Department of Public Welfare is to get a 100% allotment, not a 90% allotment or 60% allotment. And may I remind you people who say that all the people from the mainland will be coming to Hawaii, even as of this date they come to Hawaii and qualify for welfare aid if they stay here a minimum number of days as required by the decisions of the United States Supreme Court.

I don't think we should be insolent in our thinking. Many of you who visit in the halls of the legislature and this Convention to speak against residency requirement and now when this humane amendment is being proposed for adoption by this Constitutional Convention you say, "We don't want the foreigners to come to Hawaii." And yet, when it comes to other residency requirements, you say, "We should lower the requirements and bring them in."

All men that come to this beloved shore of ours may be good people or they may be mediocre people or bad people. No one knows. But certainly, as a citizen of this beloved state of mine, I want to say to all of them who choose to come to Hawaii, just as those of my forebearers who came to Hawaii from an alien land that they're welcomed here and we are not afraid of them that they will come here and contribute to the welfare of Hawaii and build up a great state right here in the middle of the Pacific. And for those of you who are afraid, it is a sad day for Hawaii Nei.

CHAIRMAN: Are you ready for the question? All in favor of the amendment will say "aye." Opposed, "no." The noes have it. Any other amendment, Mr. Clerk?

CLERK: Mr. Chairman, we still have—I don't know what Delegate Mizuha wishes to do with Amendment No. 8, that is the remaining—

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I withdraw all amendments. I'm ready to retire from the Convention.

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CHAIRMAN: Thank you. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I move that this committee rise and report progress to the Convention, that it has completed deliberations on Standing Committee Report No. 55.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I second the motion, Mr. Chairman.

CHAIRMAN: You've heard the motion. All those in favor say "aye." Opposed, "no." Carried.

The Committee of the Whole adjourned at 5:17 o'clock p.m.

Debates in Committee of the Whole on **SUFFRAGE AND ELECTIONS**

(Article II)

Chairman: DELEGATE HOWARD MIYAKE

Wednesday, August 14, 1968 • Morning Session

The Committee of the Whole was called to order at 9:31 o'clock a.m.

Delegate Miyake presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE UEOKA: Mr. Chairman—

CHAIRMAN: One moment, please. The Chair declares in accordance with Rule 25 of our Convention Rules that there is a quorum present for the Committee of the Whole to do business.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, so that the delegates will be better informed and oriented, I would like to take the liberty of reading portions of Standing Committee Report No. 23 covering Article II of the State Constitution, Suffrage and Elections. The committee, having conducted public hearings and deliberated upon the subjects covered by the proposals, presents for your consideration Section 1, Section 2 and Section 5 of Article II of the Hawaii Constitution amended as follows:

Section 1 of Article II, relating to qualifications is amended to read as follows:

“Section 1. Every citizen of the United States who shall have attained the age of 18 years, have been a resident of this state not less than one year next preceding the election and be a voter registered in accordance with law shall be qualified to vote in any state or local election.”

Your committee established the age of 18 years as the minimum age qualification for voting. This lowers the minimum voting age from the existing 20 years to 18 years. The many criteria applied and the varying degrees of emphasis on each of the criteria applied afforded the witnesses for the retention of 20 years and the witnesses for the lowering to 18 years wide latitude in presenting a respectable case for each side. Some of the reasons most often advised in favor of lowering the voting age to 18 years were: (1) Those who are old enough to fight for their government are old enough to

vote for it; (2) A high proportion of young people assume the duties and responsibilities of adulthood long before attaining their twentieth birthday by entering the full-time labor force or by contracting marriage; (3) The high standards of education as compared to the year 1950 have made Hawaii's young people at least as well informed on public affairs as many of their elders.

The arguments rebutting these read by those who favor retaining the voting age of 20 years were: (1) Military service is an irrelevant argument because military service requires an entirely different set of skills, attitudes and components of maturity than does voting; (2) Similarly, a higher education level does not necessarily mean political maturity; (3) The traditional practice of equating the voting age with the age of majority is soundly based. Hawaii's age of majority being 20 years, an 18-year-old escapes much of the duties and responsibilities of adulthood; (4) More and more young people go on to school after attaining the age of 18 so that their entry into the labor market is delayed.

However meritorious these reasons may be to those advancing them, your committee initially studied the functions of voting in order to understand and arrive at the criteria most relevant to determine the readiness of an 18-year-old to vote.

Dr. Allen Saunders, as a witness before your Committee on Bill of Rights, described the functions of voting as follows: “The function of voting is the function of participating in decision-making, the function of choosing the wisest course of action. No one can assure that this course is a wise one, but it is the function of choosing; and in an American democracy, fortunately we can choose in a fashion that makes it possible to alter that choice in the light of its experience. It is not a final choice. The special function of voting is different from the function of fighting; different from the function of marriage; different from the function of making a contract.

“As I see it, it is a function of evaluating the quality of a candidate and the relevance of the platform that he has offered to the electorate.”

Inherently suggested, in such a function of voting, is the requirement of political maturity. It is noted, also, that at the 1950 Constitutional Convention, the Committee on Suffrage and Elections in rejecting the voting age of 18 years, felt that a person was not politically mature at this age and two years will bring

the necessary interest and understanding of the political life of Hawaii.

However, that may have been in 1950. Your committee finds that in 1968, the 18-year-olds are politically mature to responsibly exercise the voting privilege with the passage of time and a change in our social environment and culture. The growing arguments for the 18-year-old vote have become increasingly convincing. The higher level of education which all witnesses acknowledge has equipped the youths of today's Hawaii to become more politically aware, socially sophisticated, and intelligently informed than the youths of a generation ago.

The advance of mass television has made possible the visual exposure to an awareness of political issues, candidates and activities so that there is ready opportunity for understanding and similarly, the involvement in the political life of Hawaii not before existing.

In the context of this readiness, the youths denied their franchise and their share of involvement in the making of social change could understandably exercise other means of involvement and expression such as the demonstrations of these recent years precipitated by youths.

Additionally, your committee believes that the lowering of the voting age to 18 will have a salutary effect in the representative form of government.

Senate majority leader Mike Mansfield described it as follows: "Lowering the voting age to 18 will tend to bring about a more equitable balance in the electorate of the nation. As life expectancy rises the number of older voters increased, a corresponding expansion in younger voters will not only broaden the political base of government, it may well provide concurrently a more balanced approach in the nation's general political outlook."

There were other proposals which sought to lower the age to 18½ and 19 years, mindful that a selection of an age is perforce arbitrary, your committee believes 18 to be a rational demarcation as a person of this age has normally graduated from high school and in many cases, entered college or the labor market. Several proposals sought to amend Section 1 by lowering the state residency requirement from one year to six months. Your committee has found no compelling reason to change the one-year requirement which is of reasonable duration to insure that the voter makes an informed decision about the candidates and issues. Thirty-three other states include a one-year period in their constitutions.

Hawaii has large pockets of military transients and their dependents, most of whom are on short tours of duty unlikely to have an interest in the outcome of an election in Hawaii. The participation of an unconcerned body of transients in the population based for voting may well cause significant imbalance in the weight of a voter's vote. It should be noted also that the desirability

of interstate movers who were once disqualified from voting for the President and Vice President of the United States because of the one-year residence requirement has recently been removed by Act 42 of the Session Laws of Hawaii 1968.

The literacy requirement has been removed in its entirety. Hawaii's centralized education system has resulted in an unusually literate citizenry and the provision does not appear to be a significant factor in the disenfranchisement of potential voters. There is no test or standard established to determine literacy, and the provision has seldom, if ever, been enforced. Literacy is relating to only the English or Hawaiian language; ignores the other languages commonly spoken, read and written by the several ethnic groups which make up Hawaii. It is also inconsistent with the spirit of the Federal Voting Rights Act of 1965 which provides in part: that if a person residing in a state where English literacy is required, has completed at least six grades in an "American-flag" school (a school in the United States or its territories), in which the predominant classroom language was other than English, his inability to read, write, understand or interpret any matter in the English language, shall not be the basis for denying him the right to vote. For these reasons, the literacy requirement appears surplusage in fact and suspect in spirit of the law.

Section 2 of Article II relating to disqualifications is amended to read as follows: "Section 2. No person—"

CHAIRMAN: May I interrupt here, Delegate Ueoka? Do you intend to read the rest of the Committee Report in its entirety?

DELEGATE UEOKA: That's correct, Mr. Chairman. I would like to read the entire report which covers the entire proposal and thereafter I would like to move that the article be taken up in series, item by item.

CHAIRMAN: All right, you may read the entire report although we do it differently in the legislature.

DELEGATE FERNANDES: Mr. Chairman, may I ask for—

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: —may I ask for a very short recess—just because I don't want to raise a point of order but could I ask for a short recess.

CHAIRMAN: No objections; the Chair declares a recess, subject to the call of the Chair.

At 9:43 o'clock a.m., the Committee of the Whole stood in recess.

The Committee of the Whole reconvened at 9:45 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Proceed, delegate.

DELEGATE UEOKA: The report is rather lengthy; however, I would like to summarize by stating that Section 2 of the Article II was amended so that anyone who is convicted for a felony is entitled to vote as long as he is not in prison. The other change is to Section 5 of Article II which provides in addition to the existing provisions, that there shall be a presidential preference primary in a year a president is nominated and elected.

That, Mr. Chairman, summarizes the balance of our report.

At this time, Mr. Chairman, I move that Article 2—that Committee Report No. 1 be taken up in series, item by item.

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE FRANK LOO: I second the motion.

CHAIRMAN: Any discussion? Ready for the question?

DELEGATE DEVEREUX: Point of information.

CHAIRMAN: State your point of information, Delegate Devereux.

DELEGATE DEVEREUX: If this motion is passed, does it mean that on each item each delegate is permitted to speak ten minutes?

CHAIRMAN: I would prefer that Delegate Ueoka—for your information, I'll answer you right away. Delegate, will you please withdraw your motion, and the Chair will set the ground rules.

DELEGATE UEOKA: All right, Mr. Chairman.

CHAIRMAN: And it will remove all difficulty, and after you have heard my ground rules, I don't think we will have any objections.

The Chair sets the following ground rules in handling this consideration of Proposal No. 1 before this Committee of the Whole, that we shall consider each section in Committee Proposal No. 1, section by section, and we shall entertain amendments chronologically in that order. After all amendments have been considered for each section, we shall take a vote whether that section shall be amended by this Committee of the Whole. After no further amendments are proposed by the members of this Committee to Section 1, we shall then next proceed to Section 2 and follow through with the same procedure; we shall entertain any amendments to be proposed by this Committee, and shall take a vote on such amendments. If there are no further amendments we shall then

proceed to Section 5 and consider any amendments. After all amendments to these three sections of the Article II have been considered by this Committee, then the Chair will open this Article II and Proposal No. 1 to further amendments before adoption of Proposal No. 1. Is that understood?

This means that new sections may be inserted into the proposal. You may further amend the original section as unamended, or you can even amend the original amended section of the proposal. Is that understood? Any questions?

DELEGATE DYER: Yes. Mr. Chairman, one question.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: The final vote today, is this going to be on Article II in its entirety, or—

CHAIRMAN: That is what it will amount to. As far as this Committee of the Whole is concerned. This does not mean the Convention, however.

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Bacon.

DELEGATE BACON: Would you please clarify once again the time allotted for each one to make a presentation and the time allotted for questions.

CHAIRMAN: That is the next time or ground rule that I will set. We shall follow the Convention Rules on the time for speaking. You will be granted ten minutes the first time, and after every delegate who has wished to speak on the issue at that time has finished, then you will be allowed to speak a second time for five minutes.

DELEGATE BACON: Mr. Chairman, that—

CHAIRMAN: And further, Delegate Bacon.

The Chair will entertain questions of a speaker as soon as he has completed his speech. Is that understood? Questions will be entertained by the Chair of the speaker who has immediately finished speaking. And please phrase your questions in a question form and not in a long ten-minute statement.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: The Chair will rule you out of order if your question is not a question and is a statement.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I would humbly request a recess. I'd like to offer an amendment that I understand from the expression of the President, that these amendments ought to be printed and circulated to the

members. For that purpose I'd like to—

CHAIRMAN: Delegate Kauhane, that was another matter I was about to talk about. The Chair will declare a recess. The Chair understands there are other amendments being considered by certain delegates and the Chair will declare a recess . . .

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: —to allow these additional amendments to Proposal No. 1 to be printed. So you will have sufficient time to look at these proposed amendments. Is that all right with you, Delegate Kauhane?

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE FRANK LOO: Before you declare a recess, I would appeal to the Chair as to a modification of his proposal for procedure. I had suggested to the Chairman of this Committee to take the items by series, especially on Section 1, you have two items there that are to be amended. One on the 18-year-old, and the second on the literacy requirement. And it is my fear, Mr. Chairman, if you take the whole section and vote it as an entire section, not separate the two, you may have a situation where opponents of each measure may be enough to defeat the entire section. That was the reason for the motion that we take this in series, so I would request to the Chair instead of making an appeal to the Chair, that it modify, especially to Section 1.

CHAIRMAN: The Chair will take that into consideration.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Any other questions? Delegate Doi.

DELEGATE DOI: I'm wondering whether we can't proceed. We have had four days, we've had a recess, and if these amendments being prepared now have nothing to do with Section 1, while they are being printed, can't we go ahead with this work here?

CHAIRMAN: We shall proceed immediately.

DELEGATE DOI: Thank you.

CHAIRMAN: However, I shall if necessary, if the proposed amendments from certain delegates are not ready and not printed, and they are not printed in time, then the Chair will declare a recess in order that the delegates may have these printed amendments in their hands.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Yes.

DELEGATE KAUHANE: The amendment that I offer deals primarily with Section 1.

CHAIRMAN: I see. Is there a tremendous difference as proposed to Section 1?

DELEGATE KAUHANE: The difference is dependent upon, Mr. Chairman, at which end do we look through the magnifying glass. From one prospective view they may have one position and opinion. From another prospective view we may have another view and opinion. I think mine, the amendment that I offer, is a constructive amendment that has some appeal with some of the delegates sitting in this Convention, looking at it prospectively.

CHAIRMAN: The Chair declares a very short recess only to talk to the Clerk.

At 9:54 o'clock a.m., the Committee of the Whole stood in recess.

The Committee of the Whole reconvened at 9:55 o'clock a.m.

CHAIRMAN: The Committee will please come to order.

The Chair now entertains amendments proposed to Section 1 and as suggested by Delegate Loo, the Chair shall take, since there are two matters involved in Section 1, one of each; and secondly, as to literacy requirement, the Chair will first consider amendments proposed to the first sentence of Section 1. Are there any amendments proposed to the first sentence of Section 1?

DELEGATE UEOKA: Mr. Chairman, I move for its adoption.

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: I propose an amendment that reads as follows:

“Section 1 of Article II of the State Constitution in Committee Proposal No. 1 is amended by deleting the words ‘eighteen years’ and substituting the words ‘majority as provided by law.’”

The words “18 years old” are deleted and the words “majority as provided by law” are substituted.

At this time, I am going to—

CHAIRMAN: Will you state that in a motion?

DELEGATE SUTTON: I make that as a motion that the words “18 years old” be deleted and there be substituted the words “majority as provided by law.”

May I have a second?

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Is there a second to the motion?

DELEGATE KAUHANE: I second that motion.

CHAIRMAN: It has been moved and seconded that the first sentence of Section 1 read in effect—I am trying to find your printed amendment here—

CLERK: Mr. Chairman, for purposes of identification it's printed No. 1.

CHAIRMAN: Printed No. 1.

DELEGATE SUTTON: Chairman Miyake, it's listed as Amendment to Committee Proposal No. 1.

CHAIRMAN: All right.

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of information. I hope to beg the indulgence of the Chair in my rising to speak—

CHAIRMAN: May we, Delegate Kauhane, will you please allow the Chair to state the motion first.

DELEGATE KAUHANE: Okay.

CHAIRMAN: It was moved and seconded that Section 1 of Article II of the State Constitution, Committee Proposal No. 1, be amended by deleting the words "18 years" and substituting the words "majority as provided by law." Any discussion on the amendment?

DELEGATE O'CONNOR: Yes sir. I am—

DELEGATE KAUHANE: Mr. Chairman, will you recognize me for the purpose of seeking an information?

CHAIRMAN: You rise on a point of information?

DELEGATE KAUHANE: That's right, yes, sir.

CHAIRMAN: State your point of information.

DELEGATE KAUHANE: Mr. Chairman, I note that all proposals as submitted will need to be moved and seconded. I was wondering, Mr. Chairman, whether we can, to the rules notwithstanding, that all amendments be received and be considered and the appropriate action will be undertaken when we take a roll call vote on the rejection or acceptance of this proposal amended rather than having the proponents to the amendment as offered be accepted by proper parliamentary procedure move to accept and need a second so that the matter will be brought before the attention of this convention. I'm asking the point here, Mr. Chairman, notwithstanding the rules which provide such procedure can these proposed amendments be accepted. And then action be taken upon it in case that we do take a roll call vote for the acceptance.

CHAIRMAN: Delegate Kauhane, the Chair cannot

suspend the rules according to the Convention rules. Suspension of the rules would require a two-thirds vote of the entire—I mean of the delegates present. And the Chair does not have the power to suspend the rules. However, if you wish to put it in a motion the Chair can entertain such a motion for suspension of the rules.

DELEGATE KAUHANE: Mr. Chairman, if I understand you correctly, the Chair hasn't the power to suspend the rules and if a motion is entertained for this purpose will the Chair be—would get that authority to proceed from then on?

CHAIRMAN: The Chair will proceed with what's the most reasonable means of arriving at the desired results—

DELEGATE KAUHANE: I so move, Mr.—

CHAIRMAN: —by also allowing the minority an opportunity to state their arguments.

DELEGATE CHING: Mr. Chairman, point of order.

DELEGATE KAUHANE: I so move, Mr. Chairman.

DELEGATE CHING: I'd like to raise a point of order.

CHAIRMAN: Please state your point of order.

DELEGATE CHING: The delegate has the floor on a point of information. I think the motion will be out of order. Delegate Sutton has the floor at the present time.

CHAIRMAN: That is true.

DELEGATE KAUHANE: I'm still on a point of information.

CHAIRMAN: Your point is well taken.

DELEGATE KAUHANE: Answer me, Mr. Chairman, I just wanted a further clarification from you. Now that you have stated your clear position and you've asked me whether I would put this in a motion it will be considered, I will now thank you for your instruction, Mr. Chairman. You ruled that notwithstanding the rules of the Convention that all proposals be accepted as offered and that at the appropriate time when actions are taken on the proposals by the delegates sitting in the Committee of the Whole, then the roll call vote will determine the acceptance or rejection of said proposal.

DELEGATE CHING: Mr. Chairman, I'd like to renew my point of order.

CHAIRMAN: Delegate Sutton, you have the floor.

DELEGATE SUTTON: Mr. Chairman, I want to point out four basic propositions that concern why I wish the words "age of majority" in place of the word "eighteen." And I will yield the floor to my delegate on the same committee who has issued a minority

report, Delegate O'Connor. and then I will make the summation. Delegate O'Connor please take—

CHAIRMAN: Are you yielding to Delegate O'Connor? You don't—

DELEGATE O'CONNOR: Thank you, Delegate Sutton.

CHAIRMAN: You're not the Chairman of the Committee of the Whole. Are you yielding to Delegate O'Connor? If you are yielding, I shall allow Delegate O'Connor to speak.

DELEGATE SUTTON: Mr. Chairman—

CHAIRMAN: You are not the Chairman of this Committee of the Whole and cannot authorize the delegates of this Committee to speak.

DELEGATE SUTTON: I will then make the presentation of our Committee. There is—

CHAIRMAN: You may yield, however, to Delegate O'Connor if you wish.

DELEGATE SUTTON: Then I will yield.

CHAIRMAN: Thank you, Delegate Sutton. Delegate O'Connor.

DELEGATE O'CONNOR: Thank you, Mr. Chairman.

Mr. Chairman, there is on the desk of each delegate here today, a Minority Report regarding the proposal which has been submitted concerning the change of Article II, Section 1. The proposed change from the Committee was to change the age of twenty as it is indicated in that Article to eighteen. Mr. Chairman, I rise to point out to the members of this Convention, the delegates to this Convention, that there is a very significant problem in changing the language as indicated and I have proposed an amendment and it has been moved by Delegate Sutton to change the wording as requested by the Committee from "eighteen" to "majority as established by law."

I'm going to say some things right now I guess which will be said over and over again in this Convention and that is, we're here, Mr. Chairman, to draft the Constitution. We're not here to legislate. We're here to create an abiding, meaningful, long-term—

CHAIRMAN: Delegate O'Connor, may I interrupt you?

DELEGATE O'CONNOR: Yes, Mr. Chairman.

CHAIRMAN: The Clerk informs me that there was no second to Delegate Sutton's motion to amend.

DELEGATE KAUHANE: I second.

CHAIRMAN: For the record, may we have a

second.

DELEGATE O'CONNOR: Delegate Kauhane seconded it.

CHAIRMAN: He did? All right. Will the Clerk please so note that Delegate Kauhane did second the motion. Proceed, I'm sorry to have interrupted you.

DELEGATE O'CONNOR: Thank you, Mr. Chairman. As I was indicating, Mr. Chairman, we're here to create a Constitution. And the wording which goes into it should be such that it will live and live on in this state without need for modification in the future. And therefore, the proposal to change this particular article to read that the age of majority as established by law shall be the voting age should be the most meaningful and a most abiding language that we can establish at this time. And why is this? Mr. Chairman, the reason for this is obvious. The age of majority is established statutorily. It is the statutory age of maturity. There is a statutory age in the age of the majority in the minority report which is before every delegate. It is the full age, the age by which by law a person is entitled to the management of his own affairs and to the enjoyment of civic rights. This is an age which has been established in Hawaii by the legislature. It has been modified in Hawaii by the legislature. Prior to the laws of 1869 the age of majority in Hawaii by common law was 21. In that body, the legislature established the age of 20 for males and 18 for females. In Hawaii those ages of majority lived until the legislature of 1919 which changed the age of majority for females from 18 to 20 and since 1919 the age of majority in Hawaii has been 20. This is an age at which a child becomes legally a man or woman. This is the age at which a child's contracts are binding upon it. This is the age at which a child can marry without having to obtain his parents' or guardian's consent. This is the age at which a child may finally dispose of his property by will. This is the age at which a child may finally, Mr. Chairman, establish his own business if he cares to. This is an age at which a child finally becomes responsible for his own torts, an age at which other men and women look to a child and have that child stand out in the community as someone who is responsible, Mr. Chairman, able to manage his affairs legally and by act of this state mature in the eyes of the law. This convention would from a legal standpoint establish, Mr. Chairman, an age of eighteen as an age at which certain civic rights are granted a child. And this convention would do that, Mr. Chairman, without even giving that child the ability to fully appreciate or exercise his rights of suffrage because that child would be unable to take himself into a court of this state and enforce his rights of suffrage or to compel by mandamus any official of this state to in any way further the electoral process.

Mr. Chairman, the Convention of 1950 considered this matter and considered it to some length. For those delegates who have not read the debates of the Convention of 1950, I call their attention to pages 48 to about 70 of Volume II. The men and women of that Convention who were the delegates considered this

matter to some length and the final criteria that they used for establishing the wording which now exists in our Constitution is the fact that the age of majority in Hawaii was then, as it is now, 20. Referring to those debates, Mr. Kometani came on very fully and said that the Committee which established this matter was fully aware of the fact that forty-seven out of forty-eight states had twenty-one years as their voting age and the age of majority in those states at that time was twenty-one and that Hawaii grants the age of majority at twenty. At twenty he has the right to marriage without parental consent and by law becomes fully responsible for his debts and so on. At that time, Judge Tavares who was a very able delegate to the Convention asked this question of Mr. Kometani. "May I ask the last speaker a question which I think will bring the situation out further. Is it not true that in most of those states that have twenty-one years as the voting, it is also the age of majority?" Mr. Kometani's answer was yes. Tavares said, "And therefore, if we are going to change the voting age to twenty-one, we ought to change the age of majority for other purposes to twenty-one. Is that not logical?" And Mr. Kometani, who was espousing the cause of the twenty-year-old vote, said, "That's right." Mr. Chairman, I suggest if we adopt the wording as proposed by the Committee, we create in Hawaii a legal anomaly. We create in Hawaii a situation where eighteen-year-olds may vote but may not enforce their right to vote. We create in Hawaii a situation where eighteen-year-olds have a voting right but cannot stand out in the community in any other way as a mature individual. I would suggest, Mr. Chairman, that a change of the wording of the present Constitution to age of majority would then allow the legislature of this state to enact as the age of majority the age of eighteen. And I would suggest, Mr. Chairman, for all the other reasons set out in the minority report that this Convention establish a binding, meaningful and long-term language in our Constitution which would read "age of majority for voting age." Thank you very much, Mr. Chairman.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi. Do you wish to raise a question of the speaker, Delegate Ueoka? Are you rising for that purpose?

DELEGATE UEOKA: Mr. Chairman, I have a question of the last speaker.

CHAIRMAN: Delegate O'Connor, will you please yield to Delegate Ueoka for questioning. Are you—Delegate Doi, were you going to raise a question?

DELEGATE DOI: He has the floor, I'm not yielding. I was going to speak on the question, sir.

CHAIRMAN: Oh, you were going to speak on the question. May we have the question raised by Delegate Ueoka as earlier stated.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Yes.

DELEGATE YOSHINAGA: I rise to a point of inquiry.

CHAIRMAN: State your point of inquiry.

DELEGATE YOSHINAGA: On Saturday, this body resolved itself into the Committee of the Whole. At that time because of my concern of this matter being handled fairly, expeditiously, in the best manner possible, I raised some basic fundamental questions so that this Convention could proceed to end the Convention somehow which I deem hard to see now, in the best interest of all of the people of Hawaii. Now, in that Committee of the Whole, that particular chairman, who was not you, laid down what you have called ground rules and it was the decision of that chairman to the rest of us here that as far as one procedure was concerned we were going to take up six speakers first. Now we have again resolved ourselves into the Committee of the Whole and now with you as a new chairman of the Committee of the Whole, we apparently have a new rule. After one speaker speaks, then questions are allowed. Now, do I understand that if there is any leadership in this Convention, and if there is any lack of leadership, that one rule has been established? With each Committee of the Whole chairman, he will establish rules of his or her own choosing.

CHAIRMAN: Delegate Yoshinaga, the Committee of the Whole last week which met, considered a resolution recommended by a committee. However, today, we are considering a proposal which intends to amend certain provisions in our Constitution, Article II. Therefore, the Chair feels that to delay questioning of a speaker after everyone has spoken on that section will question the memory of the person who has even spoken and even the memory of the questioner. Therefore, the Chair feels, since we are considering very important constitutional provisions, while the subject matter of each of the speakers is still fresh in the minds of all the delegates, the delegates be permitted to question the speaker immediately upon the termination of his speech.

DELEGATE YOSHINAGA: Mr. Chairman. On Saturday, I publicly admitted my confusion. This confusion has not been cleared up. My impression is that everybody else is confused around here. If I may understand your interpretation correctly, you are trying to tell us that it is not the body that counts, it is the form that counts. The fact that something's a resolution, something's a proposal, makes a hell of a lot of big difference with something or the other. You're trying to tell us that the discussion of unicameralism versus bicameralism has no meaning then, that somehow because some other subject matter is taking the form of a proposal that it has greater meaning. What is the situation here in this Convention?

CHAIRMAN: Delegate Yoshinaga, at that point, technical questions were raised by certain delegates here on the technicality and the method of developing guidelines. For your information, the Chair, the present Chairman, objected to the method utilized as vice-chairman of the committee which recommended the

adoption of the resolution. Because in effect, adoption of the resolution did not commit this convention at all on the issue of bicameralism or unicameralism. Now this is a different matter today. We are considering a proposal for adoption to be recommended to the Convention as a whole. Therefore, I feel that questions should be granted to a delegate as soon as a speaker has finished his speech while things are still fresh in our mind and not wait until everyone has had a chance to speak on the particular section involved.

DELEGATE DOI: Mr. Chairman.

DELEGATE YOSHINAGA: Mr. Chairman. All I was trying to find out is what the procedure is around here.

DELEGATE DOI: I rise to a point of parliamentary inquiry also.

CHAIRMAN: Delegate Doi, are you raising a point of order?

DELEGATE DOI: Yes, I am. I rise to a point of parliamentary inquiry and as it applies to the inquiry being raised by the good Delegate Yoshinaga, it's not the parliamentary requirement that all be given the chance to participate, that all the questions be explored and discussed and as to the particulars it lies in the discretion of the Chair and also with the discretion of the membership, that is the Committee of the Whole, rather than this very minute detail of fixed rule.

CHAIRMAN: The Chair will proceed as stated earlier on the ground rules that questions will be permitted after a delegate has spoken on the subject matter and as stated earlier this is in order that we may have intelligent, clear discussions without any confusion and misunderstanding while the subject matter of the speech is still fresh in our mind. I don't think we do have the memory where we can remember the speeches of delegates speaking on the subject matter at hand and try to raise questions after everyone has a chance to speak on the subject matter. I think this is proper at this time to consider and have free discussions and raise questions after a speaker has spoken. Therefore I call on Delegate Ueoka who has asked to raise questions of the last speaker.

DELEGATE UEOKA: Delegate O'Connor, do you have any serious objection if the Constitution were to include a provision that the age of majority shall be eighteen years?

DELEGATE O'CONNOR: Let me answer that in two parts, if I may, Mr. Chairman. First, I have no serious objection to the age of majority in the State of Hawaii being eighteen years old, nor do I personally have any serious objection to eighteen-year-olds voting. The second part of my answer must be that the age of majority is a matter for the legislature and if we are to legislate then we would include the age of majority in the Constitution of the State of Hawaii. And I would seriously ask every delegate to consider this matter each time any matter is raised because this is a matter just left to the legislature, altered by the legislature in the

past, and is a matter which in the future should be considered by the legislature to establish the age of legal maturity in the State.

CHAIRMAN: Any further questions? If not, I shall call upon—are you raising a question? Delegate Burgess?

DELEGATE BURGESS: Yes, sir. Delegate O'Connor, do you believe that the people of the State of Hawaii should have the right to decide whether the eighteen-year-olds should vote or not?

DELEGATE O'CONNOR: As I have indicated, I personally feel that eighteen-year-olds should vote.

CHAIRMAN: Delegate Burgess, will you face the podium when you speak and address the Chair?

DELEGATE BURGESS: If Delegate O'Connor felt that the people of the State of Hawaii should make the final decision on whether any age group should vote or not.

DELEGATE O'CONNOR: Mr. Chairman. If that decision is required to be made by an attempt to amend the Constitution to say that eighteen-year-olds should vote, my answer would be no. But if it is done in some other fashion, maybe, yes. But the Constitution of this State should be meaningful and abiding and not altered simply by a whim.

DELEGATE BURGESS: Second question. Is it not true that if we do allow the legislature to decide the age of majority, that the people of the State of Hawaii would have no say on whether the eighteen-year-old should vote or not?

CHAIRMAN: Delegate O'Connor, you wish to answer?

DELEGATE O'CONNOR: Mr. Chairman, the people of the State of Hawaii elect their own legislature and I feel that of course they will have a say in what the legislature does with regard to eighteen years as the age of majority.

CHAIRMAN: Any further questions of the last speaker?

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Delegate O'Connor—you mentioned that the decision relating to the age of majority is a decision which is the responsibility of the legislature. May I ask why is this necessarily so and could it not be the responsibility of the Constitution?

DELEGATE O'CONNOR: Mr. Chairman, in response to the last question, historically in this state, the purview of deciding this matter has been in the legislature. And it has been decided, as I have indicated previously, been changed several times, and the reason I say that it should not be now or in the future in the

Constitution and is in the purview of the legislature, is that this is something which is inherent with legislation. The different facets involved with changing the age of majority and the interlocking laws of this state which depend upon the age of majority and depend upon legal maturity are such that a body other than this one, namely, the legislature should hit very hard in many different areas. For example, just for one, a corporation cannot be formed today in this state by a child under the age of twenty. Should this be changed? How should it be changed? This is something for the legislature. The same thing goes with the drafting of a will. The same thing goes with our marriage situation. I believe that this is outside the purview of this particular body and is much better considered by a body which has before it the full scope of the statutory law and the ability to change it.

CHAIRMAN: Are there any further questions?

DELEGATE WRIGHT: Mr. Chairman.

CHAIRMAN: Delegate Wright.

DELEGATE WRIGHT: I have no questions but I would like to agree with Delegate O'Connor in speaking for the motion.

CHAIRMAN: Delegate Wright, will you please sit down if that is the reason you are rising. I would like to recognize Delegate Doi first.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Are you rising to ask a question?

DELEGATE LUM: Point of information. I'd like to know if it is in order for us to ask questions of the people who ask questions?

CHAIRMAN: I believe you will have that opportunity when they rise to speak in favor of a proposal as presented. Then I will grant you the right to ask questions of the speakers.

DELEGATE LUM: In other words, I interpret that if Delegate Ueoka gets up and asks a question and if he never gets up to speak again that I can ask him again a question?

CHAIRMAN: You may ask him questions, yes. No further questions of the last speaker? I shall now call on Delegate Doi.

DELEGATE DOI: Mr. Chairman, I would like to speak against the proposed route of the amendment. I do not want to repeat again the arguments presented by the Chairman of the Committee in favor of the Committee recommendation. I agree with them but in addition thereto I would like to recite another reason. Mr. Chairman, ours is a representative form of government. Our representation, we are told by the Supreme Court in 1964, must represent all human beings, all human beings including children, from the minute they are born to the time when they pass away.

And if we are, Mr. Chairman, to effectively accommodate this requirement, and I believe this Constitutional Convention is of the attitude that we would like to accommodate and make effective this particular concept enunciated by the U.S. Supreme Court, then certainly it behooves us to make reasonable and responsible adjustments downwards in the voting age. It is my position, Mr. Chairman, reasonable and responsible adjustment is down to the age of eighteen and you've already heard the reasons as set out in the committee report in support of the reason and responsibility.

Now in direct response to Delegate O'Connor, I would like to say this, the Constitutional Convention is a more basic organization than the legislature. More basic especially from the standpoint of structuring our government. The legislature is a lesser body. The question, Mr. Chairman, of who we should vote in our government is more basic than whether we should have a governor's office or not. Whether we should have a legislature. Or whether we should have a Supreme Court. I don't think anyone here would like to pass this question over to another body to decide for us as to whether we should have a legislature or a governor's office. It is our responsibility to meet the challenge, to decide clearly who will be the masters of the government for the State of Hawaii. And it's for us, therefore, and we are under duty to set the requirement clearly. As to the questions raised by the majority—rather as to the questions raised in regards to the majority age, I would say this is a lesser question. And let the lesser body decide this. Let them follow the leadership of the Constitutional Convention. Thank you.

CHAIRMAN: Are there any questions of the last speaker? If not, the Chair will entertain anyone who wishes to speak in support of the amendment. I would like to alternate speakers in favor of and against. So if there's anyone who wishes to speak in support of the amendment, I will call on such a delegate. If not, then is there anyone who wishes to speak against the amendment?

DELEGATE WRIGHT: Mr. Chairman, I'd like to rise and speak in support of the amendment.

CHAIRMAN: Delegate Wright, you have the floor.

DELEGATE WRIGHT: As I stated earlier, I agree with Delegate O'Connor and I believe that this House Bill that I have before me indicates that our legislature, both Houses, knew it and knew it was their duty and that they had the privilege and the right to act on such matters as this. For the Bill's sake and I will state briefly, changing the age from twenty to eighteen, also I would like to further state our Constitution gives our legislature the privilege, the right to make the amendments as being necessary and giving the voting to who it should be done by and that's the people by ratification. I don't think this body here is to legislate, or to take on what was passed to us from the legislature. I think it should be a duly weighed responsibility and that it rests with the people. Thank

you, Mr. Chairman.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, I'm speaking against the amendment. A new sound of music is in the making, "I'm 18, I'm 19, going on 20." I believe by voting against this amendment we are giving the opportunity to those 18 and 19 to vote because voting is not a right, it is a privilege. I believe that this amendment attempts to dilute the question and make it rather confusing for us delegates who are sitting here today. We are not here dealing with the question of allowing the 18-year-olds to sit in a jury, to sign a contract or to get married without authority. We are here to determine not a right, Mr. Chairman, we are here to determine a privilege which is entirely different. The qualification to vote to take advantage of making decisions for our government. That is the only question before us. I say to you, Mr. Chairman, that by allowing these 18-year-olds to vote and by not approving this amendment, we are in effect giving the teen-ager an adult life. It is not a magic number, Mr. Chairman. Actually there is no generation gap. Every person, I think, every newspaper article that we have said, even the presidents of these United States have indicated, senators as well, that 18-year-olds should be allowed to vote. Therefore, I urge the delegates of this Convention . . . let us not confuse the issues, let us stick to this privilege; the privilege to vote and not to go in to the age of majority which would require a little more attention because we would be dealing with their right. Thank you, Mr. Chairman.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching. Do you rise to ask questions of the speaker?

DELEGATE DONALD CHING: Not this speaker but the prior speaker. The reason I want to raise a question now is that the statement made by Delegate Wright may have caused some misinformation and I would like to clarify that by asking a couple of questions of Delegate O'Connor.

CHAIRMAN: Proceed, Delegate Ching.

DELEGATE DONALD CHING: Delegate O'Connor, under the present State Constitution, was it possible for the legislature to give the 18-year-olds the right to vote?

DELEGATE O'CONNOR: Not by statute, only by constitutional amendment.

DELEGATE DONALD CHING: It's only by your proposed amendment then that the burden would then shift to the legislature at setting the age of majority as well as the age to vote.

DELEGATE O'CONNOR: That is correct. Unless this amendment is made the legislature would not have the authority except by proposed constitutional amendment to change the age of the voter.

DELEGATE DONALD CHING: Thank you very much.

CHAIRMAN: Any other speakers?

DELEGATE YOUNG: Mr. Chairman.

CHAIRMAN: Delegate Young.

DELEGATE YOUNG: I would like to speak in favor of the amendment. I speak this morning as a lay person who has worked with young people. Much has been said about the voting age. Some have become cliches. We are living in a challenging era, we are living in an era where young voices are speaking for expression and a chance for participation in the affairs of government and society. We should encourage them to participate actively to the end that we may benefit from their representation and they from taking a new responsibility.

CHAIRMAN: One moment please, Delegate Young.

DELEGATE ADUJA: A point of information.

CHAIRMAN: What do you rise for?

DELEGATE ADUJA: A point of information. I believe that the speaker did and said that she is speaking for the amendment and the body of her reasons are against the amendment. May we have this cleared please so that we know what we're—

DELEGATE YOUNG: Oh, I'm speaking in favor of Committee Proposal No. 1 amending—

CHAIRMAN: She is speaking against the amendment. Delegate Young, is that understood? You are speaking against the amendment—adoption of the motion to amend the first sentence of proposed Section 1 which was made by Delegate Sutton. Is that correct?

DELEGATE YOUNG: Yes.

CHAIRMAN: Fine. Please proceed.

DELEGATE YOUNG: I believe our 18-year-olds are mature and informed about political issues confronting them and therefore I believe that they should be given the right to vote.

CHAIRMAN: Any questions of the last speaker? If not, since we have been in business for the last hour, I would like to grant a five-minute recess to give our steno a rest. The Chair declares a five-minute recess.

The Committee of the Whole stood in recess subject to the call of the Chair at 10:32 o'clock a.m.

The Committee of the Whole reconvened at 10:40 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order. The matter of business before this Committee at present is the consideration of amendment

to the motion to adopt the first sentence of Section I. Are there any speakers for or against the amendment proposed?

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Bacon. May I call on Delegate Hansen since she rose to speak just before we recessed? May we call on her? You being a gentleman I'm sure you'll allow the lady to speak first. Thank you, Delegate Bacon.

DELEGATE HANSEN: The reason I remained in school longer than my grandparents is that the history of civilization shows that society is constantly tending to become more and more complex. Consequently then, the period of development of responsible citizens tends to become longer and the proposal to lower the voting age to 18, I feel, runs directly counter to human experience. That is why I must speak against the original proposal and in favor of the amendment of Delegate O'Connor.

You've heard the arguments that if you are old enough to fight, you are old enough to vote. Nobody argues that because women don't fight—at least in military ways—that they should not be allowed to vote. Nor have we heard it said that if you're too old to fight you're too old to vote. And let me point out that the very basis of the desirability of setting the voting age at 18 is old-fashioned and out of date.

The World War II movement to lower the voting age concentrated on the age of 18 because during World War II this was the age of the eligibility for military draft. I called Colonel Oyasato of the Selective Service System on July 30 and he said that no one of 18 years of age could be eligible for the draft because of Public Law 473 passed by the 79th Congress on June 29, 1946, after the war had ended and the 18-year-old movement had started. It forbids drafting of 18-year-olds, and since 1946, no one of the age of 18 has been drafted in Hawaii. He stated that persons 17 years and older could volunteer but no one is forced to go to war unless they are 19 years of age. And let's look at the statistics. In June of this year, this last June, the draft call-up in Hawaii was 52 men, 14 of those were 19 years of age. Now in my opinion, fourteen 19-year-olds going into voluntary servitude does not constitute a need for allowing Hawaii's 18-year-olds to vote.

Then, we have heard it said that the young people of today are better informed and better educated than twenty years ago. This, perhaps, is true but is information and education the basis for the privilege of voting? I say no, because these educational tests went out in the 1800's. If education were still the basis for voting, then we should adopt an educational quiz to test the knowledge and information of the persons desiring to vote. This I know we all assume is ridiculous.

I say then that the criteria for voting is the responsibility and maturity of judgment of an individual.

My point is this: that at the age of 18, young people are not possessed with political maturity and a capability of making responsible choices. Patience, as I well know, is not a virtue of youth. And leaders of radical movements understand that radicalism, right or left, has the greatest appeal to the youth between 18 and 21.

In the Middle East today, India, Pakistan, Mexico, Japan, France, everyday you read of riots and radical movements in the universities which are appealing directly to this age bracket between 18 and 22. Hitler, Mussolini and Mao Tse-Tung understood this and the first thing they did when they attained power was to lower the age of voting if they had this to 18. These reasons being as they may, we see the trends of immaturity in today's youth. And mind you, I'm not making a generalization that all of today's youth are immature, but there are the exceptions as well as the rules.

Let me show you some statistics: The rate of automobile accidents caused by poor judgment and speeding by that age group is appalling. It constitutes over 30% of all accidents and their accidents cost three and one-half times as much as any other age bracket. Again, persons that use marijuana are of that age bracket, estimates run as high as 60 to 80 per cent. I am not moralizing on marijuana here, but I do say that, knowing the legal consequences thereof, if they continue to use the same, this in my opinion is a lack of maturity and good judgment.

I could go on and on with statistics but the point is that in themselves, these are not reasons for not giving the vote but they show a trend of immaturity and lack of judgment, which is a reason for not giving the vote to the 18-year-olds.

And then we have heard those who, and wrongfully so, contend that the extension of this franchise would give young people a rightful place in society. There is no tangible evidence at all to support this and it's not even logical to assume that if you're going to give the 18-year-olds the right to vote and the 20-year-olds have to wait until you're 20 to become an adult responsibly, then this will not make them feel, in my opinion, that society really needs and wants them.

Finally, the most illogical and fallacious reasoning as I see it is to give the right to vote to an 18-year-old and not to extend the other privileges of adulthood and responsibilities. I maintain that these two go hand-in-hand, whether at age 15, or 18, or 20, or 23, or 50.

In Hawaii we have many inconsistencies. We would give the right to vote to the 18-year-old, even though his parent is responsible for him in every respect until he is 20. We would give the right to him to vote although he is not responsible for any contract he may make. A person under 20 is still legally a child and cannot drink. This in order to, and I quote from statute, "to protect our young people by limiting their contact with potentially corruptive influences." If

accompanied by a parent or guardian they can go into "licensed premises." We are then to assume that a child whose parents must accompany him to the local beer parlor to protect him from corruptive influences can go to the polls and logically and maturely exercise the right and basis of democracy? We're saying in other words that drinking takes more maturity and responsibility than voting? I, personally, don't believe this is the case.

A person under 20 cannot start his own business or action. He does not have consent. He may be legally seduced, he cannot institute legal action of his own, he cannot execute wills, convey land, make loans, take the gift of securities, fully inherit, remains tax exempt as a dependent, cannot hold non-elective positions of public trust such as notary public, cannot make business and professional applications as in law and medicine, cannot get a license for insurance, mining, optometry, pharmacy, physical therapy, liquor, practical nursing, probate administrator or executor, real estate, teaching or veterinary medicine, cannot be employed as a bus driver, chauffeur, etc., etc., etc., and even has to ask his parents for the right to marry. And yet we would give this person the right to go to the polls and legally contract to bind this country by action of his vote.

I feel that there are too many illogical and irrational elements about this problem that we are not considering and I cannot accept. The most irrational of all is giving the 18-year-old the right to vote and not giving him the responsibilities of adulthood. Once a person has reached the legal age of adulthood all legal, social, political, economic and philosophic rights and privileges belong to that person.

We've heard arguments as a representative democracy we must represent all human beings and if this is applicable I would say then we should give the vote to all human beings regardless of residency, literacy, age. In other words, if anyone who wanted to vote was four years old, was told he could vote, he could vote. If this is a representative democracy this is the way it operates. We have to be arbitrary, I feel, about one age and this should be the age of maturity.

The arguments for lowering the voting age to 18 have been 90 per cent emotionalism and 10 per cent fact and that ten per cent, in my opinion, does not constitute a need. We should not be swept away by the idea of extending the franchise without giving consideration to these other rights and to those who say, "Let's give the 18-year-olds the right to vote and the other rights and privileges of adulthood and maturity will follow." I'd like to point out that in a recent correspondence with the Presidents of the Senates of Alaska, Georgia and Kentucky, which have voting ages lower than the age of majority, they say that this has created a peculiar problem which does not look soluble in the near future.

If we must be arbitrary about any age, I say let's be arbitrary about the age of majority. Thank you.

CHAIRMAN: Any questions to be raised of the

speaker? Are you rising to ask questions, Delegate Hitch?

DELEGATE HITCH: No, I rise to make a statement.

CHAIRMAN: Then I will call on Delegate Bacon who wanted the floor earlier. Delegate Bacon.

DELEGATE BACON: I'd like to know if the journal clerk was able to get all that down. Mr. Chairman, I would like to have Delegate Hansen clarify for us if there are any reports of the states who have 18-year-old voting, which definitely show that that state is merging into an immature chaos. Is there any kind of a report available from any state?

CHAIRMAN: Delegate Hansen, you care to answer the question?

DELEGATE HANSEN: Yes, I wrote to the President of the Senate and the Speaker of the House and the Attorney General and almost all of the elective officials of all three of these states and I have replies. I have a thick folder of replies, so I can give anyone who wishes, or we can have them xeroxed because they're too lengthy to read. But the evidence indicates that 18-year-olds are not mature, they are not using their judgment and it creates a very peculiar problem in these states and they would not recommend it in Hawaii.

DELEGATE BACON: I would like to know, Mr. Chairman, what is the delegate saying now. We're going to vote today. We'll not have time to read xeroxed copies. I'd like a summary statement of exactly what they're saying.

CHAIRMAN: Delegate Bacon, you'll have to accept the subject matter which she presented today and if you wish to study the facts, materials, documents that she may have, you're free to do so but I doubt very much that we shall be voting on this before lunch.

Any other questions of the last speaker? If not, I will call on Delegate Hitch who wishes to speak.

DELEGATE HITCH: I'm very much impressed with the argument in the minority report that the age of voting and the age of majority should be the same. It's entirely possible that the Committee has taken under consideration all of the issues and problems involved in lowering the age of majority to some number less than twenty but I see no evidence of it in the majority report. And I would therefore like to record my feelings that since the age of majority and the voting age should be the same and since apparently the committee, neither the committee nor this Convention has given any serious consideration to all of the intricate problems involved in lowering the age of majority, that we adopt the recommendations put forward by Mr. O'Connor with respect to setting the voting age as the age of majority. Perhaps in our report, suggesting to the legislature, if this is appropriate, that they take the matter of lowering the age of majority under serious study and review.

CHAIRMAN: Any questions of the speaker? If none, I'll call on Delegate Noguchi first, followed by Delegate Kato. Delegate Sutton, you were granted the floor earlier and you'll be granted the floor after everyone has spoken on this matter. Delegate Noguchi.

DELEGATE NOGUCHI: I'd like to speak against the amendment. I do so even though I concur that perhaps the best language here would be the age of majority. But I think that in this time and age where we've come, was it 18 or 18 years since the last constitutional revision, that many changes have been made and many progresses have been made and yet the age of 20 is still considered a pretty fair age for one to vote by those who advocate the age of majority. And I cannot see or foresee any danger where at the present time state the language to be 18.

Now, Article I, Section 1 in our present State Constitution states that, "All political power of this State is inherent in the people; the responsibility for the exercise thereof rests with the people. All government is founded on this authority." In other words, a basic premise in our form of government is that we are governed by elected representatives of people, by the people and for the people; and we accomplish this through the electoral process. In order to achieve this goal, we must broaden and improve the base of the electorate in order to have a government that is truly representative of the people.

Malapportionment in our state legislature is one instance in which government is not truly representative of the people.

This 1968 Convention was convened primarily to comply with the United States Supreme Court decision in the case of *Reynolds v. Sims* requiring that both houses of a state legislature be apportioned on the basis of population and that one person was entitled to one vote. The reason for this decision was that many voters who cast ballots, in reality, had less than a one-to-one representation. One of the most important objectives of this Convention is to correct this inequity. Whereas voters who were victims of malapportionment have had at least a portion of a vote and therefore some voice in government, we have still another instance of gross inequity in the denial of the viability of our young adults between the ages of 18 and 20 even though they comprise an integral part of our society. We have heard much previous testimony, which none of us can negate, that they enter the labor force, they marry and take on duties as parents, they serve in the armed forces and die as men, and they face prosecution in courts as adults. Despite these reasons as well as many others, they have no voice in determining the course of governmental programs and policies.

Mr. Chairman, it's the trend in modern America, equity, logic and justice dictate that we extend the franchise to the 18-year-old. No one can dispute the fact that the 18-year-old of today is not the 18-year-old of yesterday. The higher standards of education and the prevalence of high school instruction in government, civics and American history have made our young

people at least as aware and well-informed on public affairs as many of their elders.

The new generation wants answers to its questions immediately. They are not the meek-and-the-mild of the silent generation of the fifties. The tensions brought about by the numerous inequities that exist in this country today, the demands for change so zealously reported by the Fourth Estate, have not fallen on deaf ears. The involvement in the political "children's crusades," the riots at Berkeley and at Columbia, the participation in the civil rights causes, the voluntary service in VISTA and the Peace Corps, the expression of anger, futility and rejection of the new breed of aesthetes, all of these signal the rising importance of one thing: the disenchanting, the alienating, the unrepresented individual will discover alternative means to express his involvement in life in this society. Some expressions are meaningful and constructive, others will be destructive beyond our fears. But, very soon, even the constructive alternatives will cease to suffice in appeasing him. The vote, the simple exercise of marking a ballot, for those who can best express their desires for a better society, is not only a physical fact, it is a powerful psychic and intellectual need.

We have asked much of the youth of America. We have asked excellence and they have far surpassed our demands and, probably, our expectations of their potential development. Youth has proven its ability to take its place among those of us who are no longer existing in our teen years or even in our twenties. These youths expect a voice and have every right to expect a voice in our government which passes legislation directly affecting their livelihood and lives.

Apparently, the main fear among us is that we cannot trust in the sensible judgment of the youth of today. Some of us do not feel that they are emotionally or politically mature enough to take on the responsibility of the vote but I think, as I said before, we are grossly underestimating their abilities and capabilities.

The youth of today is fast becoming a growing and powerful force in the total community, and we cannot deny or continue to deny them this basic right and, I fear, they will not allow us to deny them this right any longer. And I say that this is a right and not a privilege. I disagree with old historians.

I believe that the mature, responsible 18-year-old will take the time and effort to register and vote. There will be a percentage of the youth who will not. But, then, isn't it as valid as among the adult population: there will always be those who just don't care, no matter how old you are.

I have every reason to believe that, once extended the opportunity to be heard as voters, we will be pleasantly reassured that all is not lost when they quickly and effectively assume this new responsibility.

Mr. Chairman and my fellow delegates, I urge you to broaden the base of the electorate to include our 18-

and 19-year-old citizens of our State. We must do this in order to achieve the kind of government that is truly representative of all the people. Thank you.

DELEGATE O'CONNOR: Mr. Chairman.

CHAIRMAN: Are you rising to ask a question of the last speaker?

DELEGATE O'CONNOR: I have two questions of Mr. Noguchi. First question is, Mr. Noguchi, Delegate Noguchi, do you feel that the riots and violence of Columbia, Berkeley, Stanford, Ohio State, the sit-ins at the University of Hawaii reflect an era of political maturity on the part of those 18- to 20-year-olds?

CHAIRMAN: Do you care to answer, Delegate Noguchi?

DELEGATE NOGUCHI: I do not think of destruction for the sake of destruction as being maturity. But then I think that those riots and revolts are a symptom of our society today. If somehow along the line, the youths of today are expecting to finally live up—for America to live up to some of the ideals that we have been preaching in our books and yet today you find that many of the idealisms as expressed in our historical books are fallacies.

Today they are lost, they need some kind of voice in government whether it be with the men who affect their lives and who determine our course of history in our State. And I believe that it will not perhaps entirely do away with riots and demonstrations such as Berkeley and others, but then I ask you one of the reasons there was, perhaps they had no channel of communication, no way of reaching the administrators, the ones up in the higher level. And then I say to you again, in this society that the voters and the citizens between the age of 18 and 20 who have no voice as yet. They must have some channels of communications open to our legislators, our representatives and I believe that this basic right through an electoral process is a democratic way and one that advocates non-violence.

DELEGATE O'CONNOR: My second question, Mr. Chairman—

CHAIRMAN: Do you wish to raise another question?

DELEGATE ANDO: Mr. Chairman, point of order.

CHAIRMAN: State your point of order, Delegate Ando.

DELEGATE ANDO: Mr. Chairman, I wish to have the Chairman invoke Rule 41. Delegate O'Connor whom you have granted the floor has had three opportunities to speak before the Convention. Rule 41 states that no delegate shall speak more than twice on one question. Granting of the floor just to ask a question or to make a ten-minute speech is equally an opportunity to present his views and I wish, Mr. Chairman, that you will invoke Rule 41 on this Committee of the Whole.

CHAIRMAN: The Chair, to allow healthy discussion on constitutional provisions, does not wish to prevent questions from being asked. However, since the question has been raised, the Chair will rule that questions will be permitted. Delegate Ando, do you wish to appeal the ruling of the Chair? You may do so.

DELEGATE ANDO: Mr. Chairman, this being a Committee of the Whole and not a meeting of the Convention I do not feel that this Committee of the Whole, nor its Chairman has a right to suspend the rules of the Convention and on that basis, Mr. Chairman, I appeal the decision of the Chair.

DELEGATE BURGESS: Mr. Chairman, point of information.

CHAIRMAN: State your point of information, Delegate Burgess.

DELEGATE BURGESS: Whenever someone asks a question, is this considered speaking for one time or two times?

CHAIRMAN: That is a fine point you are raising, Delegate Burgess.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: A short recess, please.

DELEGATE ANDO: Before the Chair declares a recess, I will withdraw my question.

CHAIRMAN: I think that's very wise. The Chair declares a short recess.

At 11:05 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:22 o'clock a.m.

CHAIRMAN: The Committee will please come to order. Delegate Ando. May I grant him the floor since he had the floor when we went into recess on a point of order and an appeal to the Chair.

DELEGATE ANDO: Mr. Chairman, first, I will say that I shall withdraw my appeal of the decision of the Chair. However, Mr. Chairman, I would like to raise a point with the assembly and with the Chair that Rule 41 provides that the mover of the proposition shall have the right to close the debate. And any member who is granted the floor by the Chair, whether he uses thirty seconds to ask a question or whether he spends ten minutes, ought to realize that he has been granted the floor and that he should use the opportunity to make his point at that time and not expect later on for the Chair to recognize him and grant him another ten minutes opportunity. I believe we can come to a common understanding without my appealing the decision of the Chair and therefore, Mr. Chairman, I

seek permission to withdraw my appeal of the Chair.

CHAIRMAN: Thank you, Delegate Ando. The Chair appreciates your withdrawing your appeal of the ruling of the Chair. What do you rise for, Delegate Larson?

DELEGATE LARSON: I'd like to have the opportunity to speak in favor of the Committee Proposal and against the amendment concerning the 18-year-old vote.

CHAIRMAN: Delegate Larson, Delegate Kato has been trying to obtain the floor. May I call on him and follow up with you? What did you wish to speak on, Delegate Dyer? Do you also wish to speak on the amendment?

DELEGATE DYER: No, Mr. Chairman, Delegate Ando has just made a statement interpreting Rule 41 and he has tried to read into Rule 41—

CHAIRMAN: Delegate Dyer, the matter is closed, please sit down.

DELEGATE DYER: Will I not be permitted to state that in my belief this interpretation—

CHAIRMAN: The matter is moot. The appeal of the Chair's ruling has been withdrawn. There is no business except the amendment before this Committee of the Whole.

DELEGATE DONALD CHING: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: May we have the Chairman's ruling restated so that we know how to abide by that ruling?

CHAIRMAN: If you will excuse me, Delegate Kato, will you be patient for a few seconds?

DELEGATE KATO: Thank you very much, Mr. Chairman. Just a short statement against the amendment.

CHAIRMAN: Wait, one moment, Delegate Kato. A point of information has been made.

DELEGATE KATO: Are you going to answer that question, Mr. Chairman?

CHAIRMAN: He has asked for reclarification of the Chair's ruling.

DELEGATE KATO: I will speak against the amendment so I'll sit down then, is that right?

CHAIRMAN: No, you will be granted the opportunity to speak but I would like to answer Delegate Ching's question. The Chair set the ground rules earlier for this Committee of the Whole, that questions will be allowed to be asked of the speaker.

The Chair will grant this questioning of the speaker by other delegates. However, the Chair, because of this question being raised by Delegate Ando, will ask that delegates, if you can help it, refrain as much as possible from asking questions until everyone has spoken. This will provide you with answers that you may have in mind when you ask or you have questions by other speakers who may speak on the subject matter on the question you may have in mind at the moment. However, I will not rule you out of order if you have questions that you ask for clarification.

State your reason for rising.

DELEGATE ADUJA: Mr. Chairman, I wonder if we could invoke a new rule. If this is in order I'd like to say that we adopt a rule for this Committee of the Whole that any person can ask a question of the speaker only if it refers to the gist, style or intent of the motion of the amendment and not to the body of his speech. Otherwise we're going to continue asking a lot of questions embodied in the speech rather than the gist of the motion or the amendment. I'd like to put that into a motion if it's possible.

CHAIRMAN: Is there a second to the motion? The motion died for the failure of a second. Now, I call on Delegate Kato.

DELEGATE KATO: Thank you very much, Mr. Chairman. I'd like to speak against the amendment. I'm wondering if we're not confusing the issue here by tying in the age of majority with the right for the 18-year-olds to vote. It seems to me that the maturity and responsibility argument as being raised loses sight of the fact that a lot of our voters who are over 20, over 30 or even 40, perhaps lack that same maturity as that age anyway.

It seems to me also that the tying in of a failure to enter into a binding contract when you're 18 years old with the right to vote does confuse the issue. I will concede that being old enough to fight is old enough to vote is in the same category of an argument. But if you'd like to ask this kind of question, how about the maturity and responsibility needed to drive a car? I haven't heard any of you crying over making the age of majority of the age to drive a car to be twenty years. I think it's fifteen years at this point.

I think the real issue on this question, or the real reason for voting for or against giving the 18-year-olds the right to vote is whether or not they are going to be informed and knowledgeable voters, when they argue the right to vote at 18. I think that they will be knowledgeable and informed. I urge the delegates to vote this amendment down.

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Delegate George Loo. Are you rising to ask a question?

DELEGATE FRANK LOO: Mr. Chairman, the wrong Loo, my brother is George. I'm Frank.

CHAIRMAN: Frank Loo, are you rising to ask a question?

DELEGATE FRANK LOO: Mr. Chairman, I'm rising to speak against the proposed amendment.

CHAIRMAN: Will you sit down. I'd like to recognize Delegate Larson first.

DELEGATE LARSON: Mr. Chairman, I'm rising to speak against the amendment and for the Committee Proposal in regards to the voting age. I'd like to request the opportunity to read a short one-page letter to this assembly from the Speaker of the House of Representatives George T. Smith from Atlanta, Georgia. May I ask such permission to read this?

CHAIRMAN: Is that a one-page letter?

DELEGATE LARSON: Yes.

CHAIRMAN: Proceed.

DELEGATE LARSON: This is a letter given to me by Diana Hansen, Delegate Hansen, and she mentioned in her comment that by and large the responses from the state that does have 18-year-olds voting have been negative. This is one letter given to her and passed on to me which has a different point of view. It says:

"Dear Miss Hansen:" then I go down to the body of the letter.

"I am very much in favor of reducing the voting age to 18. And it is of course of considerable pride to me that Georgia was the first State in the Union to adopt this provision as part of its Constitution. As you may know, the amendment to our Constitution reducing the voting age to 18 was ratified by the people of Georgia in 1943 and no one to my knowledge has had any occasion to regret this action. There are several reasons why I believe young people from 18 to 21 should be given the right to vote. Some of which are as follows: Generally speaking, our young people are well informed, politically aware and fully capable of intelligently addressing themselves to the political issues of our time. Secondly, I believe that the enthusiasm and idealism of youth is a decided asset to the political climate of opinion prevailing in a society at any given time. This enthusiasm and idealism is, in my opinion, valuable in offsetting, to some degree, the apathy and cynicism that frequently develops among many, many of our older citizens as they observe political processes and participate in them. Three, giving young people the right to vote offers them the possibility of bringing about changes in society through peaceful and democratic methods. In other words, it seems to me that if our young people were allowed to express their dissatisfaction with society at the poll, they would be less likely to express such dissatisfaction by destructive and unacceptable methods, such as the violent protests that have

been taking place in recent years. Of course, I realize that reducing the voting age to 18 would not automatically solve all the problems associated with the protest of youth but it seems only logical that taking this step could be an important factor in transferring such protests from the streets to the ballot box. Four, the proponents of lowering the voting age have almost made a cliché of the statement that those who are old enough to fight for their country are old enough to vote. Nevertheless, I believe that there is an important principle of justice involved in that statement. The notion that one's property cannot be taken by taxation without representation has an honored place in our history. But by denying the right to vote to young people who must serve in the armed forces, we are placed in the position of taking life without representation. It seems to me that justice requires the minimum voting age to never be above the minimum draft age. Because I feel strongly that the voting age should be reduced to 18, it is a disappointment to me that to date so few states have followed Georgia's lead in the field. But I am convinced that in the future all states will eventually join Georgia in believing that the youth of our country can make an important contribution to the health of our society by being allowed to express their views at the polling place on election day."

I have still another point, personal point, that I would like to make, Mr. Chairman. This concludes the letter by the Honorable George Smith, Speaker of the House of Representatives.

CHAIRMAN: Proceed, Delegate Larson, but you'll be limited to your 10 minutes.

DELEGATE LARSON: Yes, sir. First of all, I would like to say that I do strongly concur with Delegate Kato's comments concerning age of majority versus 18-year-old voting and so forth. I think that this assembly is divided into three main bodies of opinion. One, oppose 18-year-old voting. One, for the 18-year-old voting. The third body is one that says that we could have the age of majority as the age of voting. And they are also, by and large I do feel, are for the 18-year-old vote but they feel that full responsibility ought to come with the 18-year-old vote. In my opinion, I feel that there is no more basic question for our Constitution to decide than who shall vote, who shall have this right of voting. I say leave these details, bring total responsibilities to the age of 18, leave this to the legislature. Leave technicalities, such as who can go to court, to the legislature. But let this body decide who shall have the right to vote. Now, secondly, as to the comment that in the committee report we did not have any discussion as to age of majority, this is incorrect. We had a public hearing on this matter and no one showed up. And we did have much discussion in our Committee on age of majority by members of the committee who are again speaking on the subject today. And yet the committee voted overwhelmingly in favor of the 18-year-old vote.

Thirdly, I think I'd like to mention to this body that we're talking again not about technicalities but about legislative and statutory matters such as the age of majority. We're talking about twenty to twenty-five thousand youths. Shall we include these youths in our electorate or exclude them from participation. I think this is an important question that we must decide and not leave up to the legislature. Not leave it up to them to decide that in the next general session. This body should make such a decision. So I strongly implore this body to consider voting favorably for the committee proposal and voting against the amendment by Delegate O'Connor. Thank you.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FERNANDES: Mr. Chairman, I rise to ask a question of Delegate Larson.

CHAIRMAN: Delegate Fernandes, you have the floor.

DELEGATE FERNANDES: Delegate Larson, will you yield to a question?

DELEGATE LARSON: Yes, Delegate Fernandes.

DELEGATE FERNANDES: You mentioned there were twenty to twenty-five thousand youths who are 18-year-olds.

DELEGATE LARSON: Yes, sir.

DELEGATE FERNANDES: Could you give me a breakdown of where these 18-year-olds are located within our county area by islands?

DELEGATE LARSON: I do not know the figure. Perhaps someone else in this body would know. I feel that Chairman Ueoka perhaps has some figures available. Can Chairman Ueoka, Chairman of the Committee, answer the question here?

CHAIRMAN: No objection, we'll allow Delegate Ueoka to answer the question.

DELEGATE UEOKA: According to the statistics presented to the Committee by Mr. Robert C. Schmitt, we have 22,247 voters, between 18 and 19, in the State of Hawaii. In the City and County of Honolulu, there are 17,860 persons who are 18 and 19. In the County of Hawaii there are 1,795 persons between 18 and 19 years old. The County of Maui 1,651. In the County of Kauai 941, making the total of 22,247.

DELEGATE FERNANDES: Thank you very much.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FRANK LOO: Thank you, Mr. Chairman.

DELEGATE LUM: Mr. Chairman, may I ask a question of Delegate Ueoka pertaining to the same subject?

CHAIRMAN: What question do you have for him?

DELEGATE LUM: I want to ask him if the figures that he has in relation to the people that are eligible include people away on the mainland or are they only people who are residing here?

CHAIRMAN: That's a reasonable question, I will allow you—Delegate Ueoka, do you care to answer that or do you have any information to answer that question?

DELEGATE UEOKA: I do not mean that it covers those who are away on the mainland. It includes inmates of institutions and persons in military barracks.

CHAIRMAN: Thank you very much, Delegate Ueoka. Delegate Frank Loo.

DELEGATE FRANK LOO: Mr. Chairman, I concur with the proponents of those who wish to give the vote to 18-year-olds. In other words, I'm now speaking in opposition to this proposed amendment. In addition to what has been brought forth and given so eloquently by the other delegates, the proponents for 18-year-old votes, I would like to add this, that in a few days we may be voting on the basis for the districting of the legislature. In other words, whether it's going to be on registered voters or the total population. Looks like from all indications it would be on registered voters. And what I have to say may help this situation. It seems to me, Mr. Speaker, that we have what they call a generation gap in that the youngsters get out of high school, then they wait till they're twenty before they can vote. Now in the meantime they haven't had a chance to participate in the local process to talk about issues with their parents or their friends who are allowed to vote. If they had a chance to vote it would seem to me, Mr. Speaker, pardon me, Mr. Chairman, that they would take a more educational view of the news that are in the newspaper and in the other media and also the discussions by their friends when politics is mentioned.

Many of us are parents and we know that our youngsters learn by doing. Now, if you give a person or a youngster, let's say, a fish or an aquarium with a fish, before you know it he will ask different questions about it. He'll read about it. I know that has happened with my youngsters. And if you give him a camera, he'll start asking questions about it and he'll start reading the pamphlets on it. Now, the reason for that, it seems to me, Mr. Chairman, and fellow delegates, is that he has a meaningful activity or in this process whatever he's doing in this activity, and so if we give him—the 18-year-olds the right to vote, they will say, "Why we have a right to vote, now what will we do with it?" They'll start to ask questions, they'll start looking at the newspapers, start with that kind of thought in mind, who should they vote for. Now, in terms of adding to the registration if you get these people for two years after they get out of high school without the right to vote, they start to get into a rut; where they'll say, "Well I haven't voted, I haven't even thought about politics, I haven't even thought about the

candidates, I haven't even helped them campaign, so perhaps I just should continue." Perhaps if we should give these youngsters a little more time to get acclimated to the fact that they are in the process, that their vote is meaningful perhaps they would therefore go out and register and vote. I would like to suggest in helping this process, too, and getting more people to register and perhaps this is to suggest to the Lieutenant Governor's office, should this proposal pass, that is, giving the right to vote to 18-year-olds, that close to graduation that they set up desks in the various high schools and have the registrars there to register those who would prefer to register to vote among the 18-year-olds. And if we get these people then accustomed to register and perhaps go to vote, we will then have them continue in their life to register and vote. The other things, Mr. Chairman, I do know that the opposing side has given very diligent arguments against the giving the right to vote to the 18-year-old. And the discussions here reflect what I found in going through and talking to my constituents. That many of them, a substantial number of them, oppose to giving the vote to the 18-year-olds so should this proposal pass, that is, giving the right to vote to 18-year-olds, I would suggest that and if a motion be in order at that time, I would like to make that motion, that this particular proposal be put on the ballot separately so the people can vote to show whether they would like to allow the 18-year-olds to vote or not. Thank you, Mr. Chairman.

CHAIRMAN: Are there any other proponents for or speak against an amendment?

DELEGATE ANDO: Mr. President.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: I speak against the proposed amendment submitted by Delegate O'Connor although I agree with the concept that the privileges of the age of majority should be enjoyed by the 18-year-old whose franchised to vote in our State. I say this because it is evident by my proposal that I submitted to the Convention that the age of majority shall be 16 years old to be considered by one of our committees. I submitted it with my conviction that the 18-year-old should be granted this franchise in our State. I wanted to be sure that our Constitution states that the 18-year-old will be given this privilege. The issue is essentially political maturity. We say in behavioral psychology, educational psychology, that an individual has reached his peak capacity to grasp different ideals and concepts by the time he's eighteen. And he's reached the plateau during most of his life until senescence sets in. We say that American universal education and Hawaiian policy for education is that we require that children continue to be in our schools until they're 18 years of age. This we do to provide them the opportunity to develop to the fullest and to gain the maturity necessary to enjoy the privileges of a citizenship and to exercise their basic responsibilities. I believe we must be consistent, the basic law of this State must state that at 18 we will grant them this responsibility.

CHAIRMAN: Delegate Devereux, followed by Delegate Steiner. Not you now, Delegate Devereux, you have the floor.

DELEGATE DEVEREUX: Mr. Chairman, I feel compelled to rise to speak against this amendment as it is proposed because I believe that we have no assurance that if this amendment were to be passed that the legislature would in fact act at the next session. If our intent really is to provide an opportunity for the people of the State of Hawaii to decide once and for all whether we are to grant a vote to those 18-year-olds and over, we are not accomplishing that through this amendment. The only way to accomplish that is for this body to accept the premise that we should grant the vote to the 18-year-old, put it on the ballot in a form which the voters will have an opportunity to make their decision clear and once and for all until the next time we have a constitutional convention to clear this subject up. Mr. Chairman, I have had many years' experience in this community working with our young people from ages 16 and up. I've had ample opportunity to observe their actions. I have participated in panel discussions, debates, given talks, all the things you can think of with high school student groups in this community. I have talked to students on neighbor islands in the years past. I have found them by and large to be a mature group of young people. I am not convinced that we should vote for the 18-year-old because of the unrest among a certain small percentage of our youth. These are not the young people that I am concerned about getting the vote for. I am concerned about the vote for those young people whom we encourage to participate in the young Republican, young Democrat parties whom we encourage to enter into political activities in their high schools, who have had active participation in these affairs. But then when the time comes for the election which they have worked so hard for perhaps, for certain persons whom they wish to elect they are denied the privilege of exerting their right to vote. Young people at age 18 in our system in the State of Hawaii are preparing for one of two things. One is to go into the labor market and the other to go on to higher education. Our young women are being prepared for family life in the high school programs. Our young men also join in some of these programs. At this time, for those who are going on to higher education, either here or on the mainland, we will lose the interest of these young people and I would include also the young people who are going into the labor force or who are planning to get married. We will lose their interests between the ages of 18 and 20 in the political processes of our community unless we assure them an opportunity to fully participate. I do not agree with the arguments that because they cannot sign a contract, because they cannot be allowed to enter into a business that they should not be given an opportunity to have a choice in the selection of their elected officials. For my money, if I may use that term, I would just as soon allow a young person of 18 to enter into a business of his own. I read in the paper every week of older persons who are supposed to be mature, who are going bankrupt and I feel that our young people probably are a little bit more akamai at this time in history about business than some of the folks who started many years

ago and who have never kept up with the times. In my opinion, I feel this Convention will be making a grave error if we do not at least permit the voters or the people of this State to make the decision as to whether they wish to grant the franchise to the 18-year-olds. I will urge you to vote for it in order to let them make that decision. Thank you.

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, I rise in support of the amendment proposed by Delegate O'Connor. Mr. Chairman, it occurs to me that by voting for the amendment suggested by Delegate O'Connor, we are not saying 18-year-olds should not have the vote, all we're saying is that the decision which should be transferred to the legislature. Mr. Chairman, it seems to me a decision on when the age of maturity is reached is a decision that depends upon the times. If it is 18 today, as the Committee urges, it might be 17, ten years from now, it might be 15, 20 years from now. As I understand the amendment proposed by Delegate O'Connor, it would put the decision in the hands of the legislature, which should be attuned with the wishes of the people and the times. And if we adopt the amendment urged by Delegate O'Connor we would not have to have a constitutional convention or have the matter put out as a constitutional amendment as the times changed. In support of my reasoning, I draw your attention to page 4 of the Committee Report, which states in part as follows: "It is also noted that at the 1950 Constitutional Convention the Committee on Suffrage and Elections, in rejecting the voting age of 18 years felt that a person is not politically mature at this age and two years will bring the necessary interest and understanding of political life in Hawaii." However, that may have been in 1950. Your Committee finds that in 1968 the 18-year-olds are politically mature to responsibly exercise the voting franchise. It goes on with its reasons, you've heard some of them this morning, better education and so forth. Better education and other factors may dictate to the majority of the people that say in ten years the age ought to be lowered to the age of 17. I say keep that decision for the legislature which I believe, legislature and the governor, which I believe is responsive to the electorate. Thank you, Mr. Chairman.

CHAIRMAN: Thank you. At this time the Chair recognizes Delegate Medeiros.

DELEGATE MEDEIROS: Mr. Chairman, probably it would be best that this Committee here study the behavior of our 16-year-olds because by the time that we render our decision our present 18-year-olds will be 20.

CHAIRMAN: Thank you. The Chair at this time would like to take into consideration the fact that there are some public hearings scheduled for this afternoon. After the consultation with the officers—

PRESIDENT PORTEUS: Mr. Chairman, would the Chair mind ascertaining whether there is anyone else who wishes to speak on this particular amendment. If

there is no one else desiring to speak and this body is inclined to vote, I would suggest that the Chair ascertain that and take the vote on the amendment. If there is other discussion I agree with the Chair then that it ought to be deferred.

CHAIRMAN: Thank you, Mr. President. Are there any other speakers in favor or against the amendment? Are you ready for the question? The question is on proposed Amendment No. 1, copies of which are in your hands, deleting the words "18 years" and substituting the words "age of majority as provided by law." Mr. Clerk, call the roll.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: We are voting on the amendment proposed by Delegate Sutton—

CHAIRMAN: This is correct. This is the amendment to the motion made by Delegate Ueoka that the first sentence of Proposal No. 1 be adopted and this is the amendment to that main motion to adopt the first sentence.

DELEGATE YOSHINAGA: Therefore, if I understand correctly if we vote "aye" in this matter we are voting for the amendment and against the right of 18-year-olds to vote. Is that correct?

CHAIRMAN: That is correct, Delegate Yoshinaga.

DELEGATE YOSHINAGA: Thank you very much.

CHAIRMAN: You're welcome.

DELEGATE PETER LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE PETER LEWIS: Could we ask the delegates to use their microphones when they record their votes so that everybody may hear their votes?

CHAIRMAN: Yes, will you all please answer the roll call by speaking into the microphone.

DELEGATE AMARAL: Mr. Chairman.

CHAIRMAN: Delegate Amaral.

DELEGATE AMARAL: Would you again clarify your decision to Delegate Yoshinaga, please?

CHAIRMAN: The question put by Delegate Yoshinaga?

DELEGATE AMARAL: Yes.

CHAIRMAN: The motion we are voting on now is the amendment proposed by Delegate Sutton, and seconded by Delegate Kauhane, to the main motion which is the adoption of the first sentence of Section 1

of Proposal No. 1 and the amendment is the yellow printed copy before you numbered 1, which should in effect change the words "18 years" to "majority as provided by law." If you vote "aye" you are voting in favor of majority as the voting age. If you vote "no" you're voting against the amendment in support of—of course there will be another vote, however, you will in effect be voting in favor of 18 years. Is that correct? Any other questions? If not, call the roll, Mr. Clerk.

At this time, the Clerk called the roll.

DELEGATE KAGEYAMA: Mr. Chairman, is—

CHAIRMAN: One moment, please. Do you wish to change your vote?

DELEGATE KAGEYAMA: Yes. I wish to rise to correct my vote to vote "no."

CHAIRMAN: Mr. Clerk, will you please make the change as to Mr. Kageyama.

CLERK: I will, Mr. Chairman.

CHAIRMAN: Any other changes?

The motion failed to carry by a vote of 32 ayes, 48 noes and 2 excused; with Delegates Aduja, Ajifu, Amaral, Ando, Andrade, Ansai, Ariyoshi, Bacon, Beppu, Bryan, Burgess, Donald Ching, Devereux, Dodge, Doi, Dyer, Fasi, Goemans, Harper, Kaapu, Kageyama, Kawakami, Kawasaki, Kudo, Larson, Peter Lewis, Frank Loo, Matsumoto, Menor, Mizuha, Nakama, Nakatani, Noguchi, Oda, Pyo, Saiki, Schulze, Taira, Takahashi, Takamine, Ueoka, Ushijima, Yamamoto, Yim, Yoshinaga, Young, Mr. President, and Chairman Miyake voting no, and Delegates Hung Wo Ching and Kato being excused.

CHAIRMAN: The motion is defeated.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, may I ascertain from the Chair as to what time you would desire that this Committee of the Whole meet again? 4:00 o'clock this afternoon?

CHAIRMAN: The Chair would like to recommend that we recess until 4:00 o'clock this afternoon because of public hearings this afternoon.

PRESIDENT PORTEUS: In line with the recommendation of the Chair, I now move that this body stand in recess until 4:00 o'clock this afternoon.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Second the motion.

CHAIRMAN: It has been moved and seconded that this Committee of the Whole stand in recess until 4:00 o'clock this afternoon.

Question? All in favor say "aye," opposed "no." The motion is carried.

DELEGATE YOSHINAGA: Mr. Chairman, before we take a recess, let me ask you a question, please.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: If I understand the procedure correctly, hereafter we are not going to rise and report progress, and so forth, but we are going to take recesses like we're taking now; is that correct?

CHAIRMAN: It is proper to take a recess.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Are there any announcements before we recess?

(Announcements were made relative to committee meetings.)

DELEGATE NOGUCHI: Mr. Chairman.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: I would just like to have one point clarified here. Upon coming back after recess are we going to take a vote on the 18-year-old vote or are we going on to other proposals?

CHAIRMAN: No, we shall act on the main motion which was for the adoption of the first sentence of Section 1 in Proposal 1.

DELEGATE NOGUCHI: So in other words, we are coming to a final vote as the action of the Committee of the Whole as regards to the proposal of lowering the voting age to 18.

CHAIRMAN: As regards to the first sentence, yes.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Am I to understand by this ruling to the question as posed to you, that those proposals that deal with Section 1 will not be considered or—

CHAIRMAN: They will be considered.

DELEGATE KAUHANE: So there is still opportunity to—

CHAIRMAN: This is correct. As the Chair stated earlier at the beginning of this Committee of the Whole, when we have acted on each section of Committee Proposal No. 1, then the floor is still open for further amendments of the entire Proposal.

DELEGATE KAUHANE: So this will correct your previous statement that we're going to vote on the

committee report—

CHAIRMAN: No, we shall vote on that particular sentence, the first sentence; however, this does not shut out further amendments because the entire Proposal has not been adopted. This is according to *Robert's Rules of Order*, if I am not mistaken.

So, I will make it clear again. Once we have gone over the entire Committee Proposal section by section, the entire Proposal will be up before this Committee of the Whole for further amendments whereby you can make insertions of new sections under the Article; you can further amend the original sections; you can further amend the original amended sections; this is in compliance and in accordance with *Robert's Rules of Order*. Am I correct, Delegate Ando? Thank you very much.

DELEGATE KAMAKA: Mr. Chairman.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, the Committee on Agriculture had a meeting scheduled for 2:00 p.m. this afternoon. The meeting is being cancelled. On the other hand, will the members stop by my office prior to coming to session at 4:00 o'clock in order to sign committee reports. Thank you.

CHAIRMAN: Thank you, Delegate Kamaka. Any other announcements before we recess to 4:00 o'clock? If not, this Committee of the Whole stands in recess until 4:00 p.m. this afternoon.

At 12:07 o'clock p.m., the Committee of the Whole stood in recess.

Afternoon Session

The Committee of the Whole reconvened at 4:00 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Mr. Chairman, we are one short on our side. We hate to make this announcement but the Kauai Delegation has now nominated our Delegate Kawakami to carry on the Kauai section, and that our Delegate Kunimura has been taken to the hospital and has been confined; so we'd appreciate the record show the reasons why he won't be able to vote on the coming measures.

CHAIRMAN: Thank you very much, Delegate Fernandes, for informing us of this. I'm sure the other delegates are interested in his condition; we are very sorry this has happened and we welcome Delegate Kawakami as temporary chairman of your delegation.

Gentlemen, returning to the matter at hand, are there any further amendments to the first sentence in this concept under Section I on Article II?

DELEGATE KAUHANE: Mr. Chairman. I offered an—

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I offered an amendment this morning which was ordered to print by you, circulated to the members, and I believe it's numbered No. 8 and reads as follows:

"Section 1 of Article II of the State Constitution in Committee Proposal No. 1, is hereby amended by adding a new paragraph thereto, to read as follows:

"The age of 18 years, shall be the age of majority."

Mr. Chairman—

CHAIRMAN: Do all delegates have a printed copy of the proposed amendment by Delegate Kauhane numbered 8? It has been distributed.

DELEGATE ADUJA: Point of inquiry, Mr. Chairman.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: I just wanted to find out if the Chairman agrees that this proposal is not to be made to Section 1 of Article II; that it should be in another article.

CHAIRMAN: The Chair will rule in the light of what has been transacted so far today in this Committee of the Whole, that the defeat of the first amendment voted on by this Committee, that this proposed amendment would be much more appropriate under Article XIV, I believe, on Miscellaneous Constitutional Provisions.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I know in your wisdom, you are trying to make a ruling and perhaps offer constructive direction; but in my interpretation of the subject matter under consideration deals with the subject matter of the right to vote, lowering the voting age to 18 years, and it speaks for Section 1 of Article II. My proposal, proposed amendment, deals in that area. By qualifying further, Mr. Chairman, that the 18 years shall be the majority as prescribed by law, not as prescribed by law but the age of 18 shall be the age of majority. There still is this, Mr. Chairman, this change is within the realm of Article II, Section 1. Maybe, Mr. Chairman, in this proposal there may have been some misconception by some of the members as we have had; this misconception carried on this morning. Because

many statements were made to this respect, Mr. Chairman, that those who were voting for the acceptance of Proposal No. 1 as was offered by Delegate Sutton, would in essence repeat the right to lower the voting age to 18 years, this was not so.

DELEGATE ADUJA: Point of order.

CHAIRMAN: State your point of order.

DELEGATE ADUJA: I think the Chairman has made his ruling, and if the kind delegate would appeal, this ruling would be in order.

CHAIRMAN: Your point is well taken.

Delegate Kauhane, do you wish to appeal the ruling of the Chair?

DELEGATE KAUHANE: I do appeal the ruling of the Chair because I feel the proposal is within the realm of Section I, Article II.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, may I speak in support of Delegate Kauhane with reference to his appeal from the ruling of the Chair?

CHAIRMAN: I shall grant you the privilege. Proceed.

DELEGATE MIZUHA: The Chair entertained the first amendment to the first proposal on the first section of the proposal offered by the Bill of Rights Committee, and if the Chair will examine that first amendment proposed by Delegate Sutton and yielded to Delegate O'Connor, it referred to majority as provided by law and had nothing to do with voting. And yet we have spent two and a half hours debating that amendment. Now, perhaps Delegate Kauhane may have been a little inept in his amendment, but I would like to orally present his amendment so it will conform to the provisions as followed by Delegates Sutton and O'Connor.

CHAIRMAN: Delegate Mizuha, the amendment which was voted on by this Committee did have an effect on the election qualifications because the amendment proposed insertion and deletion of certain words in the proposed Section 1 of Article II. By inserting, instead of the age of 18 years, "majority as provided by law," this was directly involved with the election qualifications of the citizens. However, if you will—do you have a copy of the proposed amendment—

DELEGATE MIZUHA: I have a copy—

CHAIRMAN: —No. 8 which reads:—

DELEGATE MIZUHA: —of Delegate Kauhane's amendment. All that he seeks to do is to change the language a little and I have the committee's proposal in

front of me, Section 1 which reads: "Every citizen of the United States who shall have attained the age of 18 years," and right there is where Delegate Kauhane wants to insert "which shall be the age of majority," "which shall be the age of majority and have been a resident of this State not less than one year next preceding the election and be a voter registered in accordance with law." That's what Delegate Kauhane wants.

CHAIRMAN: Delegate Mizuha, the language proposed in this amendment, I see no reference at all to qualification for election. It's a sentence standing alone. There is no reference at all. The delegate has appealed from the ruling of the Chair and the Chair now places this appeal before the members of this Committee.

DELEGATE KAUHANE: Mr. Chairman, I rise on a parliamentary inquiry.

CHAIRMAN: State your point of parliamentary inquiry.

DELEGATE KAUHANE: In submitting the question for a decision to be made by this body, by you, if the vote sustains the Chair, does this mean, Mr. Chairman, that the citizens of the State of Hawaii will not have the opportunity to vote intelligently on the acceptance of the lowering of the voting age to 18 years?

CHAIRMAN: That is not the point, I think, of discussion. The Chair now places before you the appeal of the Chair's ruling; shall the ruling of the Chair be sustained. If you vote "aye"—

DELEGATE KAUHANE: I demand a roll call vote.

CHAIRMAN: —If you vote "aye" you are voting to support the Chair's ruling; if you vote "no" you are supporting the movant of the appeal of the Chair's ruling.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Roll call.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: I'm wondering if the Delegate Kauhane would yield to a standing vote or vote by hand instead of roll call so that we can get this Convention going on the other sections.

DELEGATE KAUHANE: I demand an "ayes" and "noes." I believe this is my privilege, Mr. Chairman. If you want to deny me this privilege, I ask you to make the ruling.

CHAIRMAN: Roll call, Mr. Clerk.

(Roll call having been ordered, the Clerk called the roll which showed 73 ayes, 7 noes, 1 excused and 1 absent; with Delegates Kageyama, Kauhane, Mizuha, Schulze, Sutton, Takamine and Yoshinaga voting no, and Delegate Kunimura being excused and Delegate Goemans being absent.)

CHAIRMAN: The ruling of the Chair has been sustained and the appeal is lost.

Are there any other amendments to consider to be offered?

DELEGATE KAUHANE: Mr. Chairman, may I at this time ask that I be permitted to withdraw the Proposal No. 8?

CHAIRMAN: Yes, there are no objections.

Any other amendments?

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: I would like to amend Section 1 of Article II of the State Constitution, is amended by adding at the end thereof the following sentence:—

CHAIRMAN: Delegate Sutton, are you getting into the area of the literacy provision?

DELEGATE SUTTON: Yes, sir.

CHAIRMAN: Will you hold it up?

DELEGATE SUTTON: Yes, sir.

CHAIRMAN: If there are no further amendments to the first sentence of Section 1—

DELEGATE HANSEN: Mr. Chairman.

CHAIRMAN: Delegate Hansen.

DELEGATE HANSEN: Mr. Chairman, I have an amendment, 13 which I introduced. I think this would revert it right back to the status quo keeping the voting age of the age of 20. I introduced this by request but I didn't put down "by request" this time. I wonder if this is proper or could I have a ruling from the Chair.

CHAIRMAN: One moment, please. No. 13? May I ask the Clerk whether this has been printed and distributed?

CLERK: Yes, it has, Mr. Chairman.

CHAIRMAN: Proceed, Delegate Hansen.

DELEGATE HANSEN: I move for the adoption of this amendment which is as follows:

"Section 1 of Article II of the State Constitution in Committee Proposal No. 1 is amended to read as follows:

"Every citizen of the United States, who shall have attained the age of twenty years, have been a resident of this State not less than one year next preceding the election and be a voter registered in

accordance with law, shall be qualified to vote in any state or local election.'"

CHAIRMAN: Is there a second to the motion?

DELEGATE DODGE: I'll second the motion.

CHAIRMAN: It has been moved and seconded that—

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Yes, Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, there is a motion before the body that changes the present Constitution. If every time there is a motion to change the present Constitution, if someone introduces an amendment to change it back, then all we are doing is taking two votes on the same subject. I think if anybody does not want the change, what they should do is vote "no" because if the change is voted down, automatically the provision of the Constitution stands. I don't believe the amendment to be in order because all it is is restating the same section in another form.

DELEGATE HANSEN: Mr. Chairman.

CHAIRMAN: Delegate Hansen.

DELEGATE HANSEN: I just wanted to ask for a ruling on this. I did this by suggestion; I wanted to know if this was proper at this time or not, or if this would be the case.

CHAIRMAN: You are asking for a ruling by the Chair, are you not? And are you withdrawing your motion?

DELEGATE HANSEN: If that is the wish of the Chair.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: I don't know exactly what you mean.

DELEGATE KAWASAKI: Mr. Chairman, perhaps, in order to help you arrive at a decision of the Chair, I think the position or the point made by Delegate Porteus is very well taken.

CHAIRMAN: The Chair takes into consideration the advice of the delegate and Delegate Hansen, in effect, if the proposed amendment to the first sentence of Section 1 is defeated on the vote, this will be tantamount to retention of the present provision. Will you be satisfied with that vote?

DELEGATE HANSEN: Of what?

CHAIRMAN: If the vote is negative for allowing the 18-year-olds—

DELEGATE HANSEN: Yes, yes, I understand. Okay.

CHAIRMAN: —then the result is the same as your proposed amendment. It will mean retention of the present provisions of the constitutional provision of Section I, Article II.

DELEGATE HANSEN: If it is a matter of principle, I withdraw the amendment.

CHAIRMAN: Thank you very much. Thank you for being cooperative.

Any other amendments? If not, we have a motion on the floor to adopt the proposed first sentence of Section I, Article II as provided in Committee Proposal No. 1. Ready for the question? Roll call, Mr. Clerk.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Are we being given the opportunity to discuss the proposal as submitted?

CHAIRMAN: To discuss the—do you wish to speak for or against the motion to adopt—

DELEGATE KAUHANE: The proposal as submitted by the Committee?

CHAIRMAN: Yes.

DELEGATE KAUHANE: Yes, I wish to speak.

CHAIRMAN: The Chair does not wish to cut off any debate on this, since we are in the Committee of the Whole. Proceed, delegate.

DELEGATE KAUHANE: Thank you very much for your consideration.

CHAIRMAN: You're welcome, sir.

DELEGATE KAUHANE: Finally the light has reached someone.

Mr. Chairman, I sat here this morning listening to all of the arguments submitted with respect to the needs for the adoption of this proposed amendment as submitted by the Committee as contained in Standing Committee Report No. 23 as well as the attached Committee Proposal No. 1. I have read this committee report with diligence and I find that there have been very limited areas to which arguments against the statements as contained therein leaves anyone room for voting against or arguing against the proposal. But I find myself involved in this question, Mr. Chairman. When the committee proposal was submitted, and we are about to vote for its acceptance, and I note that a committee report—that a good emphasis has been placed upon the 18-year-old who has to bear arms in defense of his country. I note also, Mr. Chairman, that in the support of the arguments for the reduction of the lowering of the age, that the Committee also took into consideration the arguments against the lowering of the age; and I want to thank the Committee for expressing

both views.

Mr. Chairman, I, too, made a personal poll of the number of people that I've spoken to, both young and old. And in our constitutional tour of the neighboring islands, meeting up with people who came up to testify before the group that was present, and I hope that this group was given full authority to submit reports; I was somewhat moved by the statement made by a young lady who felt that she, too, does not feel that the lowering of the age to 18 was a valid one for this Constitution to consider. She's a young lady attending the University of Hawaii, and sees with great concern over this privilege, I do not say this is a right, this is a privilege. But the maturity of these young people to be subjected to political participation in its fullest extent, an impact; that these 18-year-olds will have to get their direction from someone else and that this direction and decision that they will make will not be of their own choosing. I solemnly hesitate to accept this qualification of her statement. I feel that the 18-year-old as stated here having been fully educated—that our trend in the educational system today provides them with better opportunities and the facilities to be involved in political activities. There they are more far advanced than the 18-year-olds as expressed here in the report than those of the 1950 era. On my way down here, I picked up an old man who was waiting for the bus and brought him into town. I discussed the matter with him and told him the importance of the vote to be taken this morning, and asked him for his expression.

He, too, felt personally that the 18-year-olds are not old enough nor matured enough to participate in political activities that they would have to receive direction from someone else. And I am sure, Mr. Chairman, that many are youngsters within the age of 20 years permitted by law to vote, also take direction from someone else. When I asked him the question of whether or not the 18-year-olds should be granted full adulthood, that the age of majority should be set at 18, he said there's no reason why it should not; if you're going to extend the privilege for them to vote then you should extend that right, not privilege; the right of full participation, the right to sign a contract, the right to handle their own business without getting the direction from someone else, the right to manage their own affairs within reason without the need of counsel, the right to manage their affairs without the need of having trustees appointed for the management of their business affairs which involve property rights. And also, he said that if the proposal would contain that the age of 18 years shall be the age of majority as submitted to the people, that he was certain that the people make their decision that was when he felt he was ready to make his. He also stated that even if we submit only the question of lowering the age of 18 that he feels that this proposal would meet its defeat when it is submitted to the people. So that he ended by saying, "Charlie, I think you have the answer to the compromise by making the age of 18 years as the age of majority."

This afternoon I spoke to another individual who I feel has the respect and command of the people of this State, and we discussed this matter fully, and from him

comes somewhat of a similar expression. Mr. Chairman, if the right to bear arms is the only right we are trying to insert into this Constitution, the extension of the privilege to vote as a citizen by lowering the age, what about some of the business people who are concerned with the many problems they face because of this age limitation. You read in this morning's paper, and I am sure many of the—some of the attorneys present in this assembly have handled many opportunities to have to defend some business men because of this minority age factor that has caused a lot of problem and hardship not only that they were subjected to the loss of their license as well as being monetarily fined. That is the reason, Mr. Chairman, I felt that my feeling does not agree with your feeling, my attempt to propose what I would consider a compromise type of an amendment to this particular section was being denied—

CHAIRMAN: Delegate Kauhane, one more minute.

DELEGATE KAUHANE: In the one more minute left for me, Mr. Chairman, I would like to say this to you and the rest of the members, I appreciate your vote in sustaining the right of the Chair. That's why they call this democracy. But I also feel that there is a judgment day and that judgment day when we appear before the public to say this is what I did for the Constitutional Convention, and that's what we are to answer. Our work is here and I know we will defend our position in a better manner perhaps than was expressed here this morning or even with the vote to sustain the Chair's ruling that I made. I therefore feel, Mr. Chairman, that I would have to not because I do not feel that the 18-year-olds should not be given the right to vote, I would have to take the position because you know by your instruction and by those who have instructed you have denied me the opportunity to offer this amendment.

CHAIRMAN: Thank you for complying with the ten-minute requirement. Delegate Kauhane, the ruling of the Chair has not prohibited you from inserting your proposed amendment at a later date in an appropriate article of the Constitution. This shall accomplish what you are trying to accomplish by having it inserted in another article. I don't think it will prevent you from effectuating what you are trying to do.

Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I rise to speak against the adoption of the proposal.

CHAIRMAN: Proceed, Delegate Kamaka.

DELEGATE KAMAKA: I would be flattering myself if I were to believe that I could convince anyone here to change his or her vote. I would imagine that by this time we have all made up our minds. However, I believe it imperative that my position be stated, hopefully that it be understood. Regarding the reasons contained in Committee Report No. 23, I do not believe that physical fitness and draftability can necessarily be equated with or to the kind of maturity I believe desirable in a person granted the right to vote.

Regarding the statement that the high proportion of young people assume the duties and responsibilities of adulthood long before attaining their 20th birthday, by entering the full-time labor force or by contracting marriage, it would be interesting to know what a study would reveal in this respect. I imagine that it might well reveal that some of these people must enter these phases of adult life for various reasons. Undoubtedly, among them would be financial inability to continue with their education; it might also include the fact that some of these might be drop-outs; it might also reveal that some of these are the subjects of shot-gun weddings, as well as many other, perhaps better reasons. I am not intending and do not intend to insult or criticize our youth, but I imagine that it would be very interesting.

Regarding the high standards of education referred to, I believe that our youth would be capable of going from the classroom to the voting booth because what we may be doing would be relegating the ballot to another multiple choice test, this one, however, without benefit of grading. I read with astonishment that portion of the committee report stating that "your Committee finds that in 1968, the 18-year-olds" Upon what basis? I read the conclusion to be totally unsupported by fact to mean nothing more than a clever rationalization to support a recommendation. The statement was also made that the function of voting is the function of participating in decision-making. It's not the function of choosing the wisest course of action, recognizing that even adults don't always make the wisest decisions. Let's review for a moment, our own lives. Who among us having teenagers, 18 or 19-agers, would have them participate in the selection of decisions regarding the future of the family? I would venture to say that there is at the least, a great hesitancy by you who are parents. Be home before midnight. Be careful when you drive. Stay out of trouble. Why? Think about it. You may give your youth the right to vote and they would have the right to exercise their selection by referendum if that becomes a reality. It will no longer be only a selection process. Exercise of the vote in a referendum would pre-suppose a wiser voter. To their outcries of protest I suggest that giving them the right to vote does not resolve their concern. They need to be listened to, to be worked with, not to be ignored, and they do not demand the right to vote. Through all of this, Mr. Chairman, it seems that we have consulted everyone except those to be affected. During the month of March, 1967, a questionnaire was given to the 11th and 12th grade students at the three Windward high schools through the cooperation of the Department of Education. Permit me to read some of the questions that were proposed and the replies made to this questionnaire.

Q: Do you feel whether the youth of today, under 20, possess the maturity, interest and ability to make a contribution to all the community by voting?

A: "Yes." The first school had 48.6%; "No," 50.8%.

The second school, 66.5% "Yes," 32.0% "No." And

the third high school, 67.8% "Yes," and 31.0% "No."

Then the question: "Do you feel that a person 18 years old is sufficiently aware of the political issues and the operation of our government to contribute to the betterment of our community by voting?"

The first school answered: 32.1% "Yes," 57.1% "No."

The second school, 62.0% "Yes," 35.0% "No." And the third school, 56.3% "Yes," 41.0% "No."

In response to the question: "Do you feel given the right to vote, people under 20 would take a more active interest in community affairs and develop a great awareness of the political issues of our State?"

The first school answered: 59.2% "Yes," 39.4% "No." The second school, 73.2% "Yes," 24.6% "No." And the third school, 68.8% "Yes," and 29.2% "No."

In reply to the question: "Do you think that persons 18 years of age should be permitted to vote?"

The first school responded as follows: 40.2% "Yes," 58.0% "No." The second school, 61.0% "Yes," 35.0% "No." And the third school, 56.3% "Yes," and 41.0% "No."

There was a digest of varied reactions to other questions. And they did provide some comment: 591 or 34.8% said that they consider the 18-year-old too young and that the 19-year-old should be considered. This survey was participated in by 1,700 students in Windward Oahu. The entire survey was reacted to by Dr. Dan Tuttle, I think, for whom all of us have a great respect as far as being a pollster is concerned. And he did remark that in his view, this is the best survey conducted in this State, because of the degree of response. It approximated 43.0%. Well, this is what they say. So we can see that even among the teenagers, there is a great divergence of opinion. I have the greatest confidence in our youth, but at 18, I believe, they are still youth. There is only one failing factor in all of this, for we may have abandoned reason, we are not rewriting the Constitution. We do not have absolute authority in this Convention and I feel assured that the electorate will bring the matter back into proper perspective. Thank you.

CHAIRMAN: Does anyone else wish to speak?

DELEGATE WRIGHT: Mr. Chairman.

CHAIRMAN: Delegate Wright.

DELEGATE WRIGHT: I rise to speak against the motion.

CHAIRMAN: Proceed.

DELEGATE WRIGHT: I have in my own way, in my own manner, studied this subject very tediously trying to get as much evidence as possible, listening to

testimonies, et cetera. But I find much of the testimony that has been presented to us is misleading to the delegates and is misleading to our public, as the right to fight and die for your country does or should give the right of 18-year-olds to vote has been stated earlier and I will state again, the U.S. Selective Service Bill stated, and I quote: "No 18-year-old has been drafted since June 29, 1946." I believe here the corrections should be by Congress to enact laws which they are actually practicing or utilizing the drafting age requirement.

However, Mr. Chairman, those who are using this drafting as a "shadow" as I call it, to misconstrue, to gain sympathy through the emotions of the public, and maybe even of people like myself, is not a sound base of building a Constitution or giving the right of 18-year-olds to vote. It is interesting to note that there are numerous historical precedents which called upon young men to serve their country. And I quote in Chapter One, verse three of the Book of Numbers in the Old Testament:

"The Lord when speaking to Moses in the wilderness of Sinai, commands that, those twenty years on and upwards who are able shall go forth to war in Israel."

Maybe the 19, 18 and those who believe so much that our 18-year-olds are being drafted can use this as a basis appealing to our Congress to change the drafting age or criteria thereof.

However, again, this should not be used as a major issue giving the privilege to 18-year-olds to vote. There were mentioned this morning, on this floor, the Democrat and Republican parties giving some interest encouraging youngsters to take an active part in politics. I believe this to be true. However qualified the 18 to 20-year-old group may be, the guiding beacon of the two major political parties is numerical. Therefore, any covering of the surface of the birthday cake will be more palatable to either major party if it serves up the plate containing the political plum of approximately potential voters in Hawaii which was quoted this morning, somewhat 27,000 better. I believe, like that of one's religion in a home, a mommy and daddy are of one denomination; the children will likewise be of the same. And in politics, if mommy and daddy have a political preference, be it Republican or Democrat, likewise the children at 18 and 19 will have the same preference. Again, I don't believe this should be an issue of any warranty in any percentage form, giving the privilege to 18-year-olds to vote. I heard much mention of taxation without representation. As presented by the U.S. Census Bureau in 1966, the average median income is in the neighborhood of \$2,364 between the ages of 14 and 19. The State labor tax is 12% and that of Federal is 14.5%; gives a percentage of 26.5, that of \$2,364 which roughly comes down that all these people pay is \$23.82 in taxes. I just informed you, Mr. Chairman, that which our State, our Federal returns in subsidies and benefits to this people they can never buy on the street for \$23.82. Again, I don't find taxation without representation a means or a solid goal as to giving the privilege to 18, 19-year-olds to vote. I would

like to say, Mr. Chairman, that I heard much today. Our curriculum gives much more learning and teaching to the children than ten years ago. However, I don't see where any American History or World History, or as they call it today, American Problems, tells the 18- and 19-year-old children what is good common sense. I don't think in schools they teach a child of 18 and 19 years old how to judge one by character. When we vote for our public officials, we don't only vote on their platforms and what they present to us in brochures. We vote on their character which builds a good, sound government when the man is good. Mr. Chairman, I have other things to state, however, it was stated earlier this morning so I would like to thank you. However, before I close, I would like to say this, that the consensus is that this proposal may pass. However, I will leave the last judgment when such a proposal is ratified by the electorate and I will yield to them, the majority. Thank you.

CHAIRMAN: Thank you. Are there any further speakers for or against the motion on the floor of this Committee. I will ask your cooperation in restricting your arguments to new arguments and please let us not be repetitious. We have been sitting here for quite some time. I will ask your cooperation. Please kokua.

Delegate Fasi.

DELEGATE FASI: Mr. Chairman, like a lot of other delegates who have been sitting here, listening to a lot of repetition of arguments for and against the proposal, I am for the proposal. Incidentally, I think that we have been ready for a vote for some time. I want to add just a couple of minutes of new information if some of the delegates don't have it already. Republican Senator Hickenlooper introduced into the Congress of the United States a research done by the Republican National Committee on the voting habits of the American electorate: where they vote, how they vote, who votes, and who doesn't vote. It is interesting to note, and this very objective research report made by the Republican National Committee, that the average age of the American electorate is over 46 years. That even though the average age of the American people is not possibly two or three years higher than what it is here in Hawaii, middle-aged men and women actually control the various governments that we have in the United States, from the federal down to the local level. As far as the teenagers are concerned, and 18- and 19-year-olds, I think the same thing is going to happen as happened with the military who went to the Federal Courts and said, "We want the right to vote." When they were given that right to vote, I believe less than 50 registered to vote. I would like to give the right to vote to 18- and 19-year-olds, to those who really feel that this is a lifeline for them, the line of communication with the older generation. Possibly I could press hard what I am trying to get across a little more by telling a very short story. A minister walking through a hospital of young men walked from bed to bed. And he would ask each young man in the bed: "And how are you this morning?" He'd get his answer and move on to the next one. Finally he came to this ward where one young man alone, in an iron lung. He

walked up to the young man and he said, "And how are you this morning?" And the young man opened his mouth, moved it up and down, but no sound came out. He said, "I'm sorry, young man, I can't hear what you're saying. Would you mind repeating it?" And again, the young man opened his mouth, and nothing came out, and the minister being understanding said, "Here, why don't you write it on a piece of paper and tell me what you're trying to say?" The young man began to write. By the time he got to the bottom of the paper, he died, and the paper was crumpled up in his hand. The minister, of course, wanted to know what happened, what the last message of this young man was. So he very carefully opened up his fingers, one at a time, took out the sheet of paper and read what it said. And this is what it said: "You're standing on my damned air hose." The point I'm trying to make, Mr. Chairman, is that the lifeline of the youngsters who need communication with the older generation is being cut off by some of us who won't give those who need this line of communication. And this to me is a problem that we're going to continue to have. I would suggest that we cease and disperse with further debate on this question and get down to the business of voting on the proposal.

CHAIRMAN: Are you ready for the question or do we have any other speaker?

DELEGATE FERNANDES: Move for the question.

CHAIRMAN: The motion is for the adoption of Section 1 in the language presented in Committee Proposal No. 1.

Call the roll, Mr. Clerk.

(At this time, the Clerk proceeded to call the roll.)

CHAIRMAN: One moment, please. We are in the process of roll call, Delegate Yoshinaga.

DELEGATE YOSHINAGA: Yeah, but you are presenting the proposal wrong, I think. So we don't know what we're voting on. At least I don't.

CHAIRMAN: The motion is for, as stated earlier by the Chairman of the Committee, is for the adoption of the first sentence of Section 1 as presented in the Committee Proposal No. 1.

DELEGATE YOSHINAGA: Oh, first sentence.

CHAIRMAN: There is, may I correct—it is only one sentence, however, in that section.

DELEGATE YOSHINAGA: We're on Committee Proposal 1, and there's Section 1 there, right?

CHAIRMAN: Section 1, yes.

DELEGATE YOSHINAGA: This is the Committee Proposal now, not the existing Constitution—

CHAIRMAN: This is the Committee Proposal.

DELEGATE YOSHINAGA: Okay. Why don't you read Section 1 to us and see if there's only one sentence in there.

CHAIRMAN: Section 1 of Committee Proposal No. 1 reads:

"Every citizen of the United States who shall have attained the age of 18 years, have been a resident of this State not less than one year next preceding the election and be a voter registered in accordance with law shall be qualified to vote in any state or local election."

DELEGATE YOSHINAGA: That Section 1 as proposed by the Committee does not propose in the same Section 1, the sentence, "No person shall be qualified to vote unless he is also able, except for physical disability to speak, read and write the English or Hawaiian language," is that correct?

CHAIRMAN: For your information, Delegate Yoshinaga, we shall consider that after we have acted on this motion.

DELEGATE YOSHINAGA: Well, that is what I'm trying to straighten out here now. Are we voting now on the whole Section 1 of the Committee Proposal or are we voting on the first sentence of the Committee Proposal?

CHAIRMAN: We are voting on the first concept of Section 1 as presented in Committee Proposal No. 1 and we shall enter into the second concept which has been deleted by the Committee Proposal No. 1 after we have taken a vote on this first motion.

DELEGATE YOSHINAGA: Just so one delegate knows what he's voting on, we're voting only on that language dealing with the 18-year-old.

CHAIRMAN: That is correct. Thank you for your effort to clarify the issue before the Committee.

Mr. Clerk, call the roll.

(Roll call having been ordered, the Clerk proceeded to call the roll which showed 63 ayes, 17 noes and 2 excused; with Delegates Chang, Dodge, Fernandes, Hansen, Hasegawa, Hitch, Kamaka, Kauhane, Kawakami, Rhoda Lewis, George Loo, Lum, O'Connor, Ozaki, Steiner, Sutton and Wright voting no; and Delegates Kunimura and Nakama being excused.)

CHAIRMAN: Last chance to change your vote before the Chairman announces the result. Motion passes and that sentence has been adopted.

Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I would like to propose an amendment to Committee Proposal No. 1. Section 1 of Article II of the State Constitution in Committee Proposal No. 1 is amended by adding at the end thereof the following sentence, and this is verbatim

what is now in the present Constitution: "No person shall be qualified to vote unless he is also able, except for physical disability, to speak, read and write the English or Hawaiian language." May I have a second?

DELEGATE BURGESS: Mr. Chairman, point of order.

DELEGATE SUTTON: Can I have a second, first; because last time you didn't hear the second.

CHAIRMAN: Is there a second to the motion to amend Section 1?

DELEGATE SUTTON: There's a second right here, sir.

DELEGATE SCHULZE: Mr. Chairman, I'll second that.

CHAIRMAN: Delegate Schulze. It has been moved and seconded that we amend Section 1 by inserting the present language of the second sentence as provided in our Hawaii Constitution.

Delegate Burgess.

DELEGATE BURGESS: As the President has pointed out in regards to amending the 18 back to 20, I think this should be treated in the same way; if you want this matter included in the Constitution, simply vote against the proposed amendment by the Committee.

DELEGATE SUTTON: Mr. Porteus' ruling was that where it had been previously considered, now this has not been previously considered. However, we can consolidate the entire debate by making a vote to include or not to include, to leave the status quo or change the current Constitution.

DELEGATE DONALD CHING: Mr. Chairman, point of order.

CHAIRMAN: Point of order, state your point of order.

DELEGATE DONALD CHING: There is nothing before the house.

DELEGATE SUTTON: There's a motion before the house. That's a motion that I had made.

CHAIRMAN: Delegate Ching, there's a motion.

DELEGATE DONALD CHING: Mr. Chairman, this is the main motion then that Delegate Sutton is making?

CHAIRMAN: He is.

DELEGATE DONALD CHING: The committee report is not before the house the way I understand it. We only took the first sentence of Section 1.

CHAIRMAN: There is a deletion noted in Section 1. If you want to go through the technical process of having the Committee Chairman move to delete, we may do so but we are trying to avoid as much technical procedure as possible and take the shortest route. We are accomplishing what we are here for. I could have very easily called on Delegate Ueoka and he would have made the motion to delete the second sentence of Section 1, because there's a motion before the floor.

DELEGATE UEOKA: Mr. Chairman, if Delegate Sutton would withdraw his motion, I would move to delete that portion relating to literacy requirement.

DELEGATE SUTTON: I'm very willing.

CHAIRMAN: Wait, one moment, please. May I ask of Delegate Ching if he feels it necessary to have the Chairman of the Committee delete?

DELEGATE DONALD CHING: Mr. Chairman, I think that would be a more orderly fashion, that the Chairman of the Committee present the recommendation of the Committee in proper order, and I think that that would be the next motion.

CHAIRMAN: If that is the desire of the Delegate and the others, I have no serious objection to this, and Delegate Sutton, will you withdraw your motion?

DELEGATE SUTTON: Yes, I will.

CHAIRMAN: This will satisfy some of the questions on the minds of some of the delegates.

Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I move that we delete from Section 1 of Article II of the State Constitution, the following phrase: "No person shall be qualified to vote unless he is able, except for physical disability, to speak, read and write the English or Hawaiian language," commonly known as the literacy requirement.

CHAIRMAN: Before you have a second on that motion, may we correct the word "phrase" to "sentence," Delegate Ueoka? It is a sentence.

DELEGATE UEOKA: I'll accept that.

CHAIRMAN: Is there a second to the motion?

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that we delete the second sentence of Section 1 of Article II which reads: "No person shall be qualified to vote unless he is also able, except for physical disability, to speak, read and write the English or Hawaiian language." Discussion?

DELEGATE SUTTON: May I speak against the motion to delete?

CHAIRMAN: You may, proceed.

DELEGATE SUTTON: In my opinion, the literacy requirement such as is now in our Constitution, is a highly salutary proposition when you realize that what we're asking an individual to do will require them to read, and write and speak and be able to listen to the media of the press, of the individual candidates, of his neighbors, of his friends, and that he is going to make a weighted decision on the basis of the intelligence that he so receives. To state that there be no literacy requirement in our Constitution would be to state in so many words that for all intents and purposes we are inviting the proposition of voting solely without any concept of a thought process. We are in effect telling the electorate who elected us that we came here and we withdrew the one best limitation that there was; it is not a disenfranchisement, all it is is a limitation to insure that deliberative process will occur in an election.

Our Committee had numerous witnesses, and I think the most compelling witness was Mr. Edward DeMello of the ILWU. In his argument, he pointed out that this particular literacy requirement was not enforced. However, it is my belief that that particular concept of non-enforcement has been brought before all of our committees. I do not think that in a Constitutional Convention that we are in the position to demand enforcement. You have the Executive who is to enforce that. We have our election laws which require that enforcement. The mere fact that it is not now so enforced is not in and of itself a reason for us here, a Constitutional Convention, to withdraw something which is an insurance that the very process of democracy will find a deliberative process because the individual is able to, in his own mind, assemble data and then come out with a weighted decision. In my opinion, the 1965 Federal Voting Act which requires that there be at least a sixth-grade grammar school education in English, is covered by our present literacy requirement. We are not, in my opinion, inconsistent therewith. We are consistent, in my opinion also, we are consistent in having a literacy requirement where there is not a discrimination. Now when we state English and Hawaiian, Mr. DeMello stated that possibly we might have discrimination against only those who speak say, Japanese or Filipino. But, if you will examine who our electorate is, they have had to have as I pointed out, at least six grades of English school. And furthermore, were they a citizen who has become an American citizen through the five-year process of naturalization, they would have had to learn to speak the English language. Therefore, it is my concept that we are not disenfranchising or discriminating, and that when Mr. DeMello said that we might possibly be discriminating, the only group we could be discriminating against would be those citizens who became citizens before 1923. Those particular citizens do not have to learn to speak English, and therefore I must admit that there is a very, very small bit of discrimination towards those citizens. However, it is my belief, that because of the basic concept that we have here, of a weighted decision made by individuals through the process of finding out the issues and the candidates, that we are not making any type of

discrimination which could be called discriminatory.

Therefore, I would ask the indulgence of the delegates here assembled, to retain the present language status quo. I thank you.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I'd like to ask a question of Delegate Sutton, and then have a word to say on my own, if I may.

CHAIRMAN: Proceed.

DELEGATE FASI: Delegate Sutton, if you knew for a fact that by deleting or keeping the language which is presently in the Constitution, if you knew for a fact you were disenfranchising young men and women born in Hawaii, educated in our public school system, graduates from high school, still could not read and write English, would you allow this? Would you allow them to vote, or should they be penalized and not be allowed to vote?

DELEGATE SUTTON: I don't believe that your basic premise is correct, Mr. Fasi. I don't believe that it is possible for an individual to have the education that you so stated and then not be able to read and write the English language.

DELEGATE FASI: Thank you for your answer.

Now, Mr. Chairman, I would like to refer to a case in Judge Jamieson's court approximately two years ago—

CHAIRMAN: Delegate Fasi, are you speaking for or against the motion?

DELEGATE FASI: I'm speaking for the proposal.

CHAIRMAN: Proceed.

DELEGATE FASI: Now, I would like to point out that there are in Hawaii today graduates of our high school system who cannot read or write and understand the English language as we would require them to under the proposal that Mr. Sutton would like to keep in the Constitution. I refer this body to a case tried before Judge Jamieson about a year and a half or two years ago, of a young man, a graduate of one of our high schools on this Island, who convinced the judge and the prosecutor, his attorney did, after they brought his teacher in from the high school who testified under oath that even though he was a graduate of that high school, he could not substantially read and write English. There are, and this was shown in the testimony of this particular case—there are individuals, if this language is left in the Constitution, who technically, legally would be disenfranchised from the vote even though they were born and educated in our present public school system. Thank you.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I rise to speak against the motion. There are two points that I would ask the committee consider. First of all, I think that it should be recognized that if the committee proposition goes through, this enfranchises the completely illiterate person. Now, I'm not—I'm troubled to some extent by the person that can only speak say, Japanese or Filipino, and the reason why I am troubled is simply because I know that so much of our information comes from what we read, and I know that so much of the bulk of the printed material that is available does seem to be in the English language. As I say, I am troubled to some extent with those who can only read Japanese or Filipino. But I am even troubled, I'm much more troubled by enfranchising somebody who cannot read in any language because in that particular case, it seems to me that you do have serious reasons for doubting whether or not you're going to have a voter who is going to be sufficiently informed on the issues and on the candidates where you're talking about a voter who cannot read in any language and this is what this proposal would permit.

I think that perhaps, a comparison might be made between enfranchising the illiterate and I'm talking again of the completely illiterate person—and enfranchising the 18-year-old. We've heard many arguments pro and con about the maturity and the judgment of the 18-year-old and there was certainly, although I voted for the enfranchising the 18-year-old, there were certainly many delegates who felt that the 18-year-old lacks sufficient judgment and maturity. Well, how about the person who is completely illiterate? Now, I am not saying—I'm not talking about the exceptional case, Mr. Chairman. I suppose you could take a—there may be a completely illiterate person who perhaps—although it would be difficult for me to conceive this because if he were—I was going to say there might be a completely illiterate person who was so smart he would be perhaps better informed than a substantial number of people, but I think that thought is wrong because if he were that smart he certainly would know how, I would think, to read at least some language. But the trouble with this proposal as I see it, is that it would enfranchise somebody who cannot read in any language whatsoever. And that means there is so much information that would not be available to this particular voter before he casts his vote. There is only one other point that I'd like to bring to the attention of the Committee, and that is this, that this same proposal, as I understand it, went before the electorate several years ago. It was rejected by the electorate at that time. Now I sense from having been a member of the Convention here for a month, that there are going to be a number of proposals that will eventually get to the electorate. There's going to be a selling job and an educational job that will have to be done. And it seems to me that if we include among the proposals that we present to the electorate a proposal that was fairly recently rejected by the electorate, I just wonder to what extent we weaken our position as a whole in trying to get those proposals that we presently adopted. Thank you.

CHAIRMAN: If there is no objection, the Chair would like to declare a five-minute recess to give our stenographer a break.

At 5:13 o'clock p.m., the Committee of the Whole stood in recess.

The Committee of the Whole reconvened at 5:20 o'clock p.m.

CHAIRMAN: Will the Committee please come to order?

I shall call on Delegate Saiki first, followed by Delegate Kawasaki. Delegate Saiki.

DELEGATE SAIKI: Mr. Chairman.

CHAIRMAN: Proceed, Delegate Saiki.

DELEGATE SAIKI: I would like to speak for the Committee Proposal. Delegate Sutton has mentioned several times in his talk—"discrimination." Delegate Dyer used the term "disenfranchisement." The question to me before us appears to be one of basic individual rights. Our Constitution is carefully constructed to preserve the rights of people and to restrict the power of government to suppress those rights.

One of the fundamental reasons why we are sitting here in convention today is the decision of the United States Supreme Court in June of 1964, on legislative apportionment. In that decision, the Supreme Court held that legislators represent people, not trees, not lands, not real estate, not cattle, and that decision did not specify what kind of people are to be represented. A citizen of this State who participates in the social, civic, political and economic life of our community is not required to take a literacy test when he pays his taxes. Neither should he be required to take such a test when he wants to vote for the very people who levy the taxes against him. I believe we are here to preserve the rights of our people rather than to erect barriers which make it difficult for them to exercise those rights.

Therefore, Mr. Chairman, I ask my fellow delegates to vote for the Committee Proposal.

CHAIRMAN: Before calling on Delegate Kawasaki, may I caution the delegates about turning off your speaker or microphone. We are having trouble with our tape recorder with feedbacks. We are not hearing it here but they are having trouble there at the tape machine. So please be careful, especially on roll call since the request has been for you to shout loud and clear your "ayes" and "nays." Please wait until one or two names before your name is called before you turn on your microphone. Your cooperation will be appreciated by the sound technicians. Thank you.

Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, I, too, would like to speak in favor of the deletion of what I

consider to be some very antiquated provisions in our Constitution today. And I am compelled to respond to some of the opinions expressed by the two previous speakers, Delegate Dyer and Delegate Sutton, in this respect.

Regarding Delegate Dyer's concern about allowing a complete illiterate to vote. Perhaps he has too dim a view on the power not of the written word but on the power of the spoken word, on the effectiveness of dialogue between people of ethnic groups just in common ordinary everyday conversation, discussing issues, discussing the qualifications of the candidates running for political office. And I am sure there are many people who have been elected to office, many people here who have been elected as delegates to this Convention, who received the vote of people who were completely illiterate, but who were able, in one way or the other, through the means of ordinary dialogue and conversation, to ascertain your qualifications to sit in this body to represent them in the Constitutional Convention.

Regarding the point made or the concern expressed by Delegate Sutton. I am sure that he is quite aware, as we all are, that for those people who do not either speak or read English or the Hawaiian language, there's a variety of ethnic language newspapers, radio programs, television programs that are very effectively and very well able to communicate to that audience and a respective ethnic group the qualifications and the issues involved in a campaign. Apparently, Delegate Sutton must agree to a certain degree, to a degree that he is willing to put out good money to advertise in some of these ethnic newspapers, because I see that he has taken out sizable ads in the language newspapers of several ethnic groups. Apparently he believes that this communication form is very effective and I think that negates some of his concern.

I would like to cut this short because others want to speak but I do believe that deletion of this particular provision is called for in this enlightened age.

DELEGATE HUNG WO CHING: Mr. Chairman.

CHAIRMAN: One moment please. It's not aimed at the last speaker because we had several speakers refer to delegates in their speeches on the floor by name. Will you please refrain from using delegates' names as much as possible and use some other designation. You may refer to the beautiful lady who spoke before me, or the tall white-haired gentleman, but please refrain from using names. Therefore, I believe we may thereby leave out personalities as much as possible. I ask for your cooperation.

Delegate Hung Wo Ching.

DELEGATE HUNG WO CHING: May I ask the handsome young gentleman from Stanford, a lawyer by training, and the one on vacation in perpetuity—

CHAIRMAN: Let us not be too luxurious with our compliments because in legislative halls the more

exuberant you are with your compliments, it is considered an insult. Proceed.

DELEGATE HUNG WO CHING: Yes, sir. This question: if you deny votes to those people who cannot speak or read the English or Hawaiian language, should you also not deny them the right to pay taxes?

CHAIRMAN: Would you care to answer that question?

DELEGATE SUTTON: Dr. Ching has asked a question. I am sure he does not recognize that the basic statistics—

CHAIRMAN: Delegate Sutton, you seem to have forgotten the words of caution expressed by the Chairman. Refrain from using names. You may say the last speaker.

DELEGATE SUTTON: The distinguished gentleman who has just asked me this question has not substantiated his question by any statistics as to how many illiterates are concerned with paying taxes and would be disenfranchised. It is very difficult for me to obtain that information because I have asked the Tax Office if they could give me that information. And I spoke to, can we use his name, Edward Burns.

CHAIRMAN: Thank you very much, Delegate Sutton. You have made your point.

DELEGATE HUNG WO CHING: Mr. Chairman.

CHAIRMAN: You have further questions?

DELEGATE HUNG WO CHING: No, I would like to speak in support of the motion.

CHAIRMAN: Proceed.

DELEGATE HUNG WO CHING: I think we have been using the word "illiterate" pretty loosely around here. We forget that people of other racial groups can also speak and write their own languages. And we forget, as the last speaker has mentioned, that we still have three principal aids of communication. Television, telephone and tell a woman. They can receive their communication in these fashions and I am sure they can evaluate the candidates as well as anyone who can read and write the English language. I see no reason why we should deny them the privilege of voting if we want them—as we have asked them to be integrated in our society, in our community, but then we say in this proposal that the vote was made to deny them the right to join us in good government. Thank you.

CHAIRMAN: May I call on Delegate Ueoka, he tried to seek the floor earlier. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, the Hawaii State Constitution provides no standard. Nor does the statutory provision—

CHAIRMAN: Are you speaking in favor of your

own motion, Delegate Ueoka? Will you please state—

DELEGATE UEOKA: As the movant, I am in favor of the motion.

CHAIRMAN: Proceed.

DELEGATE UEOKA: The statutory provision relating to the literacy requirement also provides no standard or test. And for that reason, it leaves to the judgment of the several County Clerks to determine whether or not a person is eligible to vote. Such standards may conflict with the United States Supreme Court decision which held that a literacy test should not be one which on its face vests in an election official the arbitrary power to deny the right to vote, denies equal protection. And so there is a serious question as to the validity of the present provision of the Constitution taken together with the present provision in our statute. I would also like to point out, Mr. Chairman, that we have many citizens within the community who are blind, physically blind and as such, they are not able to read. Should the blind people be denied the right to vote? We also have within our community people who are deaf, people who are not able to hear, and as a result are not able to speak. Should we deny these citizens the right to vote? I would like to urge the delegates here to support this provision or to support the deletion of this requirement as it has been stated. It has not been put into practice and it's merely surplusage in our Constitution.

DELEGATE FASI: Mr. Chairman, for a question of the previous speaker.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I would like to pose a question to the distinguished delegate from Maui who got the highest vote of any delegate here. Is it true, sir, that the federal court in granting citizenship to people who want to become American citizens requires that they have to read, write and speak English?

DELEGATE UEOKA: The only decision that I know of, is anyone who has completed the sixth grade and whether he can read, write, or speak after having completed the sixth grade is immaterial.

DELEGATE FASI: In other words there is no such federal requirement to become an American citizen?

DELEGATE UEOKA: Oh, to become an American citizen? The tests are given in English, except for those who were 52 back in 1953, and those citizens can take the examination in their native tongue. So we have had since then many people who are not able to speak English but who had passed their examinations given by the immigration office in their native tongue.

DELEGATE FASI: Thank you very much.

CHAIRMAN: Delegate Sutton, are you rising to ask a question?

DELEGATE SUTTON: Mine is a question of the distinguished gentleman from Maui.

CHAIRMAN: Proceed.

DELEGATE SUTTON: Would you be kind enough please, to read the Constitution where it says, "except for physical disability," that the various conditions that you have brought out are taken care of by that exception, and it reads, "No person shall be qualified to vote unless he is also able," and then comma, "except for physical disability"—end comma. Do you not feel that that takes care of the very conditions which you are concerned about?

CHAIRMAN: Delegate Ueoka, do you wish to answer the question? You may.

DELEGATE UEOKA: Insofar as the term "physical disability"—

CHAIRMAN: You do not have to answer the question if you so desire.

DELEGATE UEOKA: Yes, it's not defined, Mr. Chairman. And so it leaves the matter for the County Clerk to determine as to whether a person is physically disabled or not, and it becomes an arbitrary power on the part of the County Clerk. And he can deny a person even though a person may be physically disabled in a real sense, and because he is not able to speak, write and read the English language or Hawaiian language.

CHAIRMAN: Delegate Ando, followed by Delegate Frank Loo.

DELEGATE ANDO: Mr. Chairman, I rise to speak in favor of the proposal in Committee Proposal No. 1 to eliminate or delete the literacy requirement.

The inability to speak, read or write the English or Hawaiian language is construed as lack of literacy. But it is not identical with ignorance. As the delegate from the 15th District has pointed out we do have youngsters going through our schools who are willing to go through our school system with the impediment of not being able to read or write the English language. It doesn't mean that they are, however, unable to develop some valuable aspects of their talents or ability. In essence, Mr. Chairman, we must not assume that the inability to read and write or speak the language is ignorance. We believe that one can be a valuable and useful citizen of our State and anywhere without that capability.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FRANK LOO: Mr. Chairman, I speak in favor of the amendment.

It's unfortunate that the opponents of this measure classify this particular requirement as a literacy requirement. Actually, it is a restriction against non-English speaking residents and non-Hawaiian speaking residents. Not whether they're intelligent or

whether they know enough in another language. The problem here is that in our age, certainly in Hawaii, there are very few people who would not be able to pass the test of being able to speak or write or read English rather, and perhaps the one cited by the distinguished delegate from Manoa was an exception. I think that's a very, very rare exception. And even if we do have visitors from the mainland who come here as permanent residents, they, too, have a requirement to attend English schools, and that they would be able to pass this particular test. So, therefore, it would seem to me, Mr. Chairman, and delegates, that it is not a literacy test but a discrimination against naturalized citizens. In other words, people from different lands. I say this, Mr. Speaker, or Mr. Chairman, because the—in speaking to John F. O'Shea, District Director of the United States Department of Justice, Immigration and Naturalization Service, they do pass an exam, that is, these naturalized citizens do pass an exam. They have to know about the history of the government, and the history of the United States, plus they must know English. However, it is conceivable that they may become citizens of the United States but somehow not pass the English requirement of our own law. Therefore, those people are citizens of the United States but not citizens of Hawaii. Therefore they are discriminated against in that sense.

The other point is that there is a group of people who since 1952 were able to become citizens of the United States if they were at least 50 years old on December 24, 1952, and had lived in the United States at least 20 years. There is a point that we should make here at this time, when our own people, many of our own people are trying to tear down the United States. There are many people around the world that tear down the United States. Here we have a group of people, the naturalized citizens, who having lived in another area, another country, where they could make comparisons between that country and our own country, chose to become American citizens. Certainly we should not discriminate against those people. And it is not for us to say that they are illiterate, to say that this is a literacy test, that they cannot understand enough of the English language. Many of these people are scholars in their own right from the country they come from, and certainly they are not illiterate. It seems to me, Mr. Chairman, that we would be putting ourselves in the right direction if we vote in favor of this measure to eliminate this discrimination and to allow these naturalized citizens to vote and vote in favor of the candidate of their choice.

DELEGATE HITCH: Mr. Chairman.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: I rise to a point of information. While I favor the sentiments of the amendment of the proposal, I'm curious and since I am curious, I imagine some other delegates may be curious as to the mechanics by which an illiterate person who cannot read or write votes a ballot secretly that is printed in either English or Hawaiian. Could someone explain to me the mechanics by which this is done?

CHAIRMAN: Delegate Hitch. I believe you should raise a question to one of the proponents of the motion instead of rising on a point of inquiry.

DELEGATE HITCH: Could I address this question to the mover of the motion?

DELEGATE UEOKA: Mr. Chairman, there are a number of ways in which a voter who is not able to read, write and speak the English or Hawaiian language can learn as to who the candidates are, what the issues are. He would inquire from his immediate family members or he would inquire of his friends. He would also watch television and other means of communication and finally he would be able to know just exactly where the "x" may be placed.

DELEGATE HITCH: Mr. Chairman, I would not take exception to that at all. I have known some extremely intelligent illiterates and the fact that they are able on television, and radio and with some conversations—

CHAIRMAN: Mr. Hitch, you are making a statement. Do you wish to rise to speak against?

DELEGATE HITCH: No, sir.

CHAIRMAN: You are not asking a question?

DELEGATE HITCH: I am simply saying that I don't think my question was answered. If one cannot distinguish—

CHAIRMAN: It is a matter of opinion. We shall not be argumentative here. If you wish to rise to speak against the motion you are welcomed to do so, Delegate Hitch.

I believe Delegate Larson wanted to have the floor.

DELEGATE LARSON: I'd like to first of all ask a couple of questions of the delegate from the 14th District. The other delegate.

First of all, I would like to ask the delegate, if in his opinion, I think this is somewhat of yes or no question, if reading and writing in your opinion, is somewhat commensurate with intelligence or understanding of the issues or any of those judgment factors which are necessary for voting.

DELEGATE SUTTON: Most certainly, yes.

DELEGATE LARSON: Secondly then, I would ask you, would you not agree that reading and writing are skills?

DELEGATE SUTTON: Yes, they are.

DELEGATE LARSON: Then what does reading or writing have to do with intelligent consideration and understanding of the issues.

DELEGATE SUTTON: I think Delegate Hitch has

most amply pointed out—

CHAIRMAN: Delegate Sutton, will you please refrain from name-dropping, please.

DELEGATE SUTTON: —the distinguished delegate from Aina Haina.

DELEGATE LARSON: All right. Thank you.

I'd like to make a couple of comments but first of all, I think where it says, "except for physical disability" and the delegate from the 14th District's amendment, I would think that reading and writing certainly are skills—

CHAIRMAN: Are you raising a question?

DELEGATE LARSON: I am speaking in favor of the proposal.

CHAIRMAN: All right. You may proceed.

DELEGATE LARSON: I would think that reading and writing are skills and certainly do not reflect upon the person's ability to make decisions, his intelligence or his judgment, certainly as other delegates here have noted. I wish to say, however, that I think that discrimination in any form, whether by age, literacy, color, ancestry, political belief, is obnoxious and an anathema to our idea of American democracy and the American process of attempting to maximize the involvement of citizens in our electorate in decision-making. And on this basis, I also would like to state that I support strongly the Committee Proposal. Thank you.

CHAIRMAN: Delegate Bryan, followed by Delegate Ariyoshi.

DELEGATE BRYAN: Mr. Chairman, I'd like to try to answer the question raised by the Chairman of the Finance Committee. It is my understanding that the most recent election laws in Hawaii allow more than one person to enter the voting booth and therefore, a voter may take a member of his family with him who can do the reading and the writing, if necessary.

CHAIRMAN: Thank you for the information. Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, may I also attempt to answer the question posed by the delegate from the 17th District?

CHAIRMAN: Proceed.

DELEGATE ARIYOSHI: I personally happen to know of a good number of people who would not be able to pass an examination, to be able to speak, read or write the English or Hawaiian language, but I do know that they are able to write the A, B, C's and are able to distinguish names. And for these kinds of people that the amendment to the proposal would help them very much.

CHAIRMAN: Are there any other delegates who wish to speak for or against the motion before this Committee? Are you ready for the question? The motion before this Committee is to delete the second sentence of Section 1, Article II in our State Constitution. All those voting "aye" will remove in effect the literacy requirement, all those voting "nay" will in effect preserve the second sentence of Section 1, Article II.

Call the roll, Mr. Clerk.

(Roll call having been ordered, the Clerk called the roll which showed 72 ayes, 8 noes and 2 excused; with Delegates Andrade, Dyer, Kamaka, Kauhane, Lalakea, George Loo, Schulze and Sutton voting no, and Delegates Kunimura and Nakama being excused.)

CHAIRMAN: The motion is adopted.

The Chair calls a very short recess for consultation with the President of the Convention. Please remain in your seats. This will be a very short recess.

At 5:46 o'clock p.m., the Committee of the Whole stood in recess.

The Committee of the Whole reconvened at 5:48 o'clock p.m.

CHAIRMAN: The Committee will please come to order.

Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I move that we adopt Section 2 as contained in Committee Proposal No. 1.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

DELEGATE O'CONNOR: Mr. Chairman.

CHAIRMAN: May I state the motion first? It has been moved and seconded that the Committee adopt Section 2 as presented in Committee Proposal No. 1. Discussion? Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I move to amend the proposal and that amendment as contained for ready reference in Amendment 11 which is before the Chair and the delegates. The amendment reads as follows:

"Section 2 of Article II of the State Constitution on Committee Proposal No. 1 is amended to read as follows:

"No person shall be qualified to vote who is non compos mentis, or who has been convicted of a felony unless pardoned and restored to his civil rights or otherwise qualified by law."

CHAIRMAN: Is there a second to the motion?

Delegate Sutton?

DELEGATE SUTTON: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 2 of Article II of the State Constitution, Committee Proposal No. 1 be amended to read as follows:

"No person shall be qualified to vote who is non compos mentis or has been convicted of a felony unless pardoned and restored to his civil rights or otherwise qualified by law."

Delegate Ueoka.

DELEGATE UEOKA: I might want to explain to the members of the—or to the delegates—

DELEGATE YOSHINAGA: Mr. Chairman, before you—

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I rise to a point of order or information.

CHAIRMAN: State your point of order or information.

DELEGATE YOSHINAGA: Is this amendment the one printed and numbered 11 that's offered by Delegate Rhoda V. Lewis?

DELEGATE O'CONNOR: That's correct.

DELEGATE YOSHINAGA: Now, Mr. Chairman, we have a number of printed amendments. For example, the delegate who's offered this amendment, offered one No. 4, I'm trying to find out whether it's exactly the same or there's some change in there.

CHAIRMAN: Delegate O'Connor, are you moving?

DELEGATE YOSHINAGA: Mr. Chairman, let me finish up so I can put my point across to you now.

CHAIRMAN: All right, proceed.

DELEGATE YOSHINAGA: I went to a lot of trouble going through eleven or twelve sheets to see if I can get some order for myself in how these amendments are presented to this Committee. Now, maybe my numbering is wrong, but if 4 and 11 are not the same, it would seem to me like we should take this up in the numerical number that was given to these amendments or we should have some kind of order so that some of us like myself, maybe, will know what order we're following. Because I've got my amendments on this particular section, numbered 4, 6, 10 and 11, you know, assuming that the person who got 4 expects to be No. 4 of No. 1 in taking up the amendments, you know, and the person who got 11 is supposed to

expect to come after—or something like that. But besides that, I expected this, that you give me some opportunity to understand eleven amendments or so, you see.

CHAIRMAN: Your point is well taken, Delegate Yoshinaga. I notice that the Chair does not have a copy of Amendment No. 11.

DELEGATE YOSHINAGA: Mr. Chairman, why don't you take a short recess so that the Clerk can straighten this thing out and we can—

CHAIRMAN: May we have a short recess to see that we have the following amendments in the possession of all delegates, 4, 6, 7, 10 and 11?

At 5:50 o'clock p.m., the Committee of the Whole stood in recess.

The Committee of the Whole reconvened at 5:51 o'clock p.m.

DELEGATE FASI: Mr. Chairman, point of information.

CHAIRMAN: State your point of information, Delegate Fasi.

DELEGATE FASI: I'd like to advise the Chairman that I'm hungry.

CHAIRMAN: You are hungry?

DELEGATE FASI: I suppose you were not one of the delegates present at the luncheon at the First National Bank.

CHAIRMAN: I wasn't one either but I am not hungry. May we come back to order? Delegate O'Connor, the Chair questions you on which amendment you are now speaking on and what amendment you have made your motion on. Is it 11 or your own amendment?

DELEGATE O'CONNOR: I have moved No. 11, Mr. Chairman, in that my Amendment No. 4 was, I won't say criticized, but looked at with some degree of surveillance by that distinguished lady jurist from Diamond Head, and she suggested certain wording changes which I thought very appropriate, and I move No. 11 in that it is a more properly-worded version of No. 4.

CHAIRMAN: Thank you. Will the—

DELEGATE FERNANDES: Mr. Chairman, point of order, Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Mr. Chairman, unless we're going to set a precedent, we're going to get into a state of confusion from here on. Mr. Chairman, under the procedure, we have before us thirteen "x" number

of amendments. I would appreciate, and we all would want, that you instruct the Clerk, as being instructed by number. And if the delegate doesn't wish to have his or her amendment be considered that it be withdrawn and then we will get to the final number of actions. So if we are now talking about Delegate O'Connor's, and we should use the name also, Mr. Chairman, because the Archives had a lot of trouble last time in determining who was speaking, that the rest of the amendments be withdrawn, and then we are now on 11 and this is to me the proper procedure and I rise to a point of clarification on this area.

CHAIRMAN: Thank you. This point is well taken, Delegate Fernandes. Hereafter—

DELEGATE FERNANDES: Mr. Chairman, will you instruct and we will abide. If you will instruct us and if we don't agree, we will so inform you. Will you instruct that all other amendments before 11 have been withdrawn from the Clerk's desk and then we start, or not let us go back to what is the proper procedure on the Clerk's desk at this time.

DELEGATE O'CONNOR: Mr. Chairman, in order to help establish procedure, I will at this time, since I am the movant on all of these previous amendments, I will withdraw all amendments prior to 11.

CHAIRMAN: On Section 2, Article II, is that correct?

DELEGATE O'CONNOR: On Section 2, Article II.

CHAIRMAN: These are numbered 4, 6, 7 and 10.

DELEGATE O'CONNOR: That's correct, Mr. Chairman.

CHAIRMAN: Ten is not your amendment?

CLERK: It is Delegate Souza's.

CHAIRMAN: It is Delegate Souza's.

DELEGATE SOUZA: Mr. Chairman.

CHAIRMAN: Delegate Souza.

DELEGATE SOUZA: I move to adopt amendment to Committee Report No. 1—

CHAIRMAN: One moment, please, Delegate Souza. We have a motion on the floor. Please sit down, until—

DELEGATE SOUZA: I will not withdraw Amendment No. 10.

CHAIRMAN: No, we are not asking that your amendment be withdrawn. It's an unintentional error of Delegate O'Connor, I am sure, so the following-numbered amendments are being withdrawn by the introducer, Amendment Nos. 4, 6, and 7, is that correct, Delegate O'Connor?

DELEGATE O'CONNOR: That's correct, Mr. Chairman, but I would like during argument on No. 11, to have the ability to refer to those withdrawn amendments.

CHAIRMAN: Delegate O'Connor, that would be out of order. The other amendments will not be before this Committee and you can only argue on the motion of the amendment.

DELEGATE O'CONNOR: In which case, I do not withdraw them at this time. I still stand by my motion to amend as laid out in No. 11.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Yes, Mr. Chairman. What is before us, Amendment No. 10 or 11?

CHAIRMAN: The motion before us is consideration of Amendment No. 11.

DELEGATE FERNANDES: So, Mr. Chairman, I ask you to instruct, and procedure is the first amendment is No. 10.

CHAIRMAN: Correct.

DELEGATE FERNANDES: And if we take action and ask the delegates if they would just as soon follow some procedure we've got No. 10, and if the delegate would withdraw his motion to No. 11, we'll take No. 10 and do away with it, we'll get to 11, I think we'll all go home in due time if we follow some procedure.

CHAIRMAN: Your point is well taken. Delegate O'Connor, you'll be willing to withdraw your motion?

DELEGATE O'CONNOR: Mr. Chairman, in order to proceed properly then in accordance with Mr. Fernandes' desire, I withdraw my motion as to No. 11, and at this time—

CHAIRMAN: Do you wish to move either amendment 4, 6 or 7?

DELEGATE O'CONNOR: At this time, I move Amendment No. 4 which may not be as stylish as it could be, but which states:

"No person shall be qualified to vote who is non compos mentis or who has been convicted of a felony unless pardoned and restored to his civil rights unless he is otherwise qualified by law."

CHAIRMAN: Do you still insist on moving this amendment even though you have stated that you do not prefer the language of this motion? This would only take the time of this Committee and I as Chairman would prefer that you do not move on an amendment that you, yourself, feel is insufficient in language. You may move to other numbered amendments in the chronological order and when you come to your desired, preferred language amendment, you then move at that time.

DELEGATE FASI: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: In order to get what the delegate from Kauai calls direct procedure, I'd like to know when these amendments are numbered, they're numbered by the Clerk, as I understand it. But that doesn't mean that they have been introduced or should be introduced in the order in which they are numbered. I feel that the rules provide we have a proposal and if the delegate from the 17th District pulls out Amendment No. 50 as designated by the Clerk, it is in proper sequence. That if he likes the language of that particular amendment, I feel the Chair should rule that it is proper to accept that one and this way he can remove all the others that he doesn't like and still conform to our rules. The proper amendment at this time is the one that he moved, the Amendment No. 11.

CHAIRMAN: In answer to your question, Delegate Fasi, the Chair would readily agree with your suggestion if we did not have Amendment No. 10 which precedes Amendment No. 11.

DELEGATE FASI: I didn't understand it, sir.

CHAIRMAN: We have an amendment introduced by Delegate Souza and it is numbered No. 10. Now, Delegate O'Connor has tried to move on Amendment No. 11

DELEGATE FASI: That's exactly the point, Mr. Chairman. The first amendment that this body is considering—I don't care if you call it 10, 11 or 15, he happens to have his numbered 11, the only official amendment that has been moved and seconded is No. 11. And because the Clerk has designated a lower number on something that's been submitted to him as a technicality does not mean that this body has to consider the amendments that were submitted to him first. The only amendment that should be considered is the one first moved by a delegate and seconded by another, regardless of what the number is on the amendment placed thereon by the Clerk.

CHAIRMAN: That is correct, Delegate Fasi. However, since the Committee of the Whole does not have an agenda before it, in order to maintain some order and discipline, a reasonable method to follow, I would think, as suggested by Delegate Fernandes, is to follow the chronological order of these amendments, and I am sure the Clerk in numbering these, numbers them as they are placed on the Clerk's desk; is that correct, Mr. Clerk?

CLERK: That is correct, Mr. Chairman. As of this morning, when we came on the floor, we had seven proposed amendments and in anticipation of having other amendments offered on the floor and as an internal matter for purposes of identification only, we numbered the amendments.

DELEGATE FASI: I would like to defer to

Delegate Doi, Mr. Chairman.

DELEGATE DOI: Thank you very much.

CHAIRMAN: You yield to Mr. Doi?

DELEGATE DOI: Mr. Chairman, may I suggest an approach here? I don't think the numbers are important. I think the important thing here is an understanding of what the amendments propose. The Committee Proposal here tends, rather recommends to allow the convicted felon to vote when he is not physically in prison. The furthest removed idea is that expressed by the proposal for amendment proposed by Delegate O'Connor. The proposal recommended by Delegate Souza is closer to the proposal recommended by the Committee. Now, I think a logical sequence or logical approach in considering the several amendments would be, start from the furthest removed idea and then get back to the idea recommended by the Committee. The numbers I think are insignificant here.

CHAIRMAN: Well, the Chair is in a dilemma in this area.

DELEGATE DOI: Otherwise, Mr. Chairman, we're going to get into a problem of parliamentary rule here.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: That is the very reason I raised this question and secondly, that is the very reason I suggested that you take a recess.

CHAIRMAN: I think that's an excellent idea.

The Chair declares a short recess so we can resolve this problem.

The Committee of the Whole stood in recess at 6:08 o'clock p.m., subject to the call of the Chair.

The Committee of the Whole reconvened at 6:15 o'clock p.m.

CHAIRMAN: Committee of the Whole please come to order.

Ladies and gentlemen, agreement has been reached, and I will now call on Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I have a motion on the floor to amend as laid out in written Amendment No. 4, which I have already stated.

CHAIRMAN: There was a second, was there not?

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Thank you. Do you wish to speak in favor of your motion, Delegate O'Connor?

DELEGATE MIZUHA: Mr. Chairman, I rise to a point of information.

CHAIRMAN: Delegate Mizuha, state your point of information.

DELEGATE MIZUHA: I would like to request of the delegate, the proponent of this amendment, to clearly explain what he means "unless otherwise provided by law."

CHAIRMAN: Very good. Delegate O'Connor, please proceed.

DELEGATE O'CONNOR: I will clearly explain during the course of my conversation.

Mr. Chairman, the proposal of the committee in this particular area reads: "shall be qualified to vote if and only so long as he is committed under a sentence of imprisonment." I wish to point out initially to you, Mr. Chairman, to this Committee, that I accept the general concept that a person convicted of a felony who serves his prison sentence and is then placed on parole should be allowed to vote if he desires, as part of his rehabilitation process. I also accept the concept that a person who is convicted of a felony who is placed on probation and is not incarcerated should also for rehabilitation purposes be allowed to vote.

But I would like to point out some loopholes in the proposal of the Committee as it refers to sentence of imprisonment. And those loopholes are these: A person is convicted of a felony and appeals his case, and is allowed to remain out of jail during the course of that appeal, and this is a common situation in the State of Hawaii, would be allowed to vote while he is out on bail. And during this period, that felon is convicted and is presumed guilty despite the ultimate outcome of the appeal. There would also be an anachronism in this situation if we adopt the proposal of the Committee where a parole or probation violator charged with a second or subsequent crime could be unincarcerated pending his trial, the second trial. And he should not be allowed to vote simply because he is not committed.

To make a long story short, the wording of the Committee Proposal simply disenfranchises a convicted felon while he is in jail and it doesn't recognize these other situations that can exist under our law while a convicted felon is not in jail. I might also point out that this language ignores the cross-relationship to the controlling language for qualifications for the office of governor, lieutenant governor, senator and representative allowing a person convicted of a felony and still subject to the court's supervision go on parole or probation to be qualified for these offices. The amendment that I propose would allow in the State of Hawaii, in the future, the adoption of something like the Uniform Act on status of convicted persons. We have had a long history in Hawaii, Mr. Chairman, of adopting uniform acts; many of our acts are the uniform acts of the National Conference of Commissioners of Uniform State Laws. They have a very good uniform act on the status of convicted persons. I would draw the Chair's attention to the proposed Amendment No. 7 which contains the applicable provisions of the uniform act due to the provisions which could be enacted by the legislature, if

we change this Constitution to allow this. In the past, in Hawaii, it has been impossible to enact such legislation because of the complete and sole deprivation by the Constitution for such legislation. And I would suggest that a Constitution, and again I am back to one of the things I was saying this morning, a Constitution is the framework for which—on which legislation can be hung. And all the ifs, ands or buts that go with a situation where a convicted felon is again enfranchised and again given civil rights can only properly be handled through legislation. I would suggest, Mr. Chairman, that if we adopt the Committee Proposal, this will not be a gateway to legislation. This will be a one-shot deal and anyone who is not in jail despite his status could vote, could hold public office, and would in many ways have civil rights which he should not have. Rather than adopt a situation like this, I would suggest, Mr. Chairman, that we amend the Constitution to provide a method for the enactment of legislation.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I wish to speak against the amendment and for the original proposal.

We have spent over two and a half hours this morning, discussing whether we should give the legislature the right to determine who shall vote or who should not vote. What we do with this proposed amendment is simply do what some tried to do with the last—

CHAIRMAN: May I interrupt you, Delegate Burgess. Will delegates please check your microphones to see if they are off? We are getting feedback. Thank you. Proceed, Delegate Burgess.

DELEGATE BURGESS: —with what happened with the last proposal. I think the right to vote is so basic that we cannot give it to the legislature to decide. I think most of us have agreed with this proposition in this morning's vote. Mr. Chairman, I feel that any person who has the right to live in the same community that I live in should enjoy all the rights that I enjoy. If he's been in jail three times, four times, five times, and he is back in the community or if the parole board decides that he is fit to be back in the community then we shouldn't decide whether he should be allowed to vote or not. If the parole board decides that he should not be allowed to vote, then keep him in jail, don't let him come out. I think the whole argument is basic. Do we continue to play around with this right to vote of the ex-convict? Or do we just treat him as someone just as ordinary as anyone else once he is out of prison? Thank you.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane, you're recognized.

DELEGATE KAUHANE: Mr. Chairman, I'd like to speak in favor of the amendment offered.

CHAIRMAN: Proceed.

DELEGATE KAUHANE: Mr. Chairman, I'd like to first qualify my right to speak on this amendment. I'm just a plain layman but I've had some experience with the courts, having served as a bailiff for some 16 years. Mr. Chairman, when these proposals were submitted I discussed the matter with the President of this Convention. But it is my understanding the day I thought at the time was the statutory requirement that anyone who is convicted of a felony loses his civil rights, but as was pointed out by the President of the Convention that this is a constitutional prohibition, not a statutory prohibition. That any person convicted of a felony loses his rights, civil rights, unless he is pardoned by the Governor of the State of Hawaii. If that be so, Mr. Chairman, then I think this amendment is in order. Why should we begin to legislate even though some of the delegates may feel that we are wasting two and a half hours in debating this issue. To me, this is a very basic and important issue to be debated upon and to be submitted to the electorate for its ratification.

When we say here unless a man is imprisoned after being convicted of a felony and then gets out on parole, you and I know, Mr. Chairman, and I hope most of the attorneys here who are delegates know, that the minimum sentence is set by the parole board. And assuming that the minimum sentence is an indication of the case, the court has convicted the person for committing a felony to a term of ten years imprisonment, the parole board sets the minimum of three years. So then this individual when he goes to imprisonment, for good behavior, et cetera, in order to say to the prison officials that I want to rehabilitate myself and become a good citizen. He does all of this and then his minimum term is reduced that he be paroled maybe after serving a year and a half. Even after serving a year and a half he is free to roam around and meet and mingle with the rest of the community. This right of mingling in association is not being denied him; this right of participation on all the social activities is not being denied him. But the only thing that is being denied him is the right to exercise a civil right as a voter, has been denied him because of this constitutional provision which says that he is convicted and has not been restored his civil rights. By the right of a pardon by the Governor of the State of Hawaii, he still is considered a felon. Now, when you look on the opposite side of the street, we find a man facing probation for a period of five years. Then we talk about rehabilitation. He has already been rehabilitating by keeping him out of the walls of prison, by placing him on probation. So that he again can mingle, associate with his fellow members of the State of Hawaii. That again, Mr. Chairman, the fact that he is placed on probation, does not necessarily mean that he has restored his civil rights. He must prove his further need for rehabilitation. He must still continue to abide by the laws that are being laid out for him. And as he continues to live under the laws strictly, and even if he has expired the term of his probation of a period of five years, this does not necessarily mean that he has earned his right of citizenship because he has completed the five years probation. He again must go before the

parole board to file an application for a pardon by the Governor. That is only the time when he receives his civil rights back so that he becomes a freer citizen, free to participate. He has rehabilitated himself and again, may I say, Mr. Chairman, that we are guided by the provision in the Constitution.

I hope I have a Constitution here and call your attention to the provision in the Constitution that prohibits or bars any person who is convicted of a felony who has lost his civil rights, and his civil rights can only be restored to him by a pardon of the Governor. So I see no reason at all why this amendment should not be accepted. I see no reason at all why this amendment should not be accepted and some of the mechanics which you are so concerned about be taken care of by legislative action. If this is what you feel should be done, then let us send the legislature into this field not for us alone to write constitutional provisions and to say to the legislature, "We don't want you to participate." They should be brought into the area for setting up the mechanics after we have set the guidelines by which they should operate.

CHAIRMAN: The Chair recognizes Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, this is a comparatively recent development in the law.

CHAIRMAN: Delegate Lewis, are you speaking for or against the motion?

DELEGATE RHODA LEWIS: I rise in support of the amendment. This is a comparatively recent development in the law, in 1964. Only in 1964 did the National Commissioners of Uniform State Laws bring out the Uniform Act and status of convicted persons. There also is a model penal code of the American Law Institute which was proposed and is a proposed code only in 1962. Now these are very worthy projects. They have given studies of a status of convicted persons with a view to rehabilitation. But they are legislated, proposed legislation. I know of no state which freezes in its Constitution a provision that convicted felons may vote while they are on probation or parole or while their cases are on appeal. Matters such as this should remain under legislative control so that adjustments may be made if the program is not working as well as hoped or anticipated. It is indeed splendid that the matter has come to the attention of the Convention. It is a matter that should be opened up. Our Constitution is rigid now and does not permit consideration by the legislature of the Uniform Act or the proposed American Law Institute provision. But to attempt to legislate in the Constitution one narrow part out of the proposed legislative measures, to make no differentiation whatsoever between the type of plan, to make no attempt at technical perfection, and I happen to think that the Uniform State Law is a better drawn measure than that of the American Law Institute which was the motto for the proposal, I think these are mistakes and that we should not attempt to legislate in the Constitution. I therefore ask support of the amendment.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I, too, rise to support the amendment.

DELEGATE BURGESS: I rise to ask the speaker a question.

CHAIRMAN: Delegate, one moment please. Delegate Burgess, you were already given an opportunity to speak on this motion. May I call on Delegate Dyer, here. He has not spoken on the motion as yet.

DELEGATE BURGESS: I rise to question one of the previous speakers.

CHAIRMAN: Let Delegate Dyer speak. He may answer your question, and I will grant you the right to ask questions after he has—if he does not answer your question in his argument.

DELEGATE DYER: Mr. Chairman, one of the things that bothers me is that I think there is a statement in the committee report that is not so. And I'd like to call the attention of the Committee to page 7 of the committee report. It says at the top of page 7 as follows—this actually starts at the bottom of page 6—it says that if the felon is being sufficiently rehabilitated and fit to re-enter society as a citizen and exercise the advantage thereof, he should be afforded the citizen's privilege to vote. Now, the point that I want to make is this. A man is convicted and after his conviction he is given first of all, automatically the maximum term. A few months later the parole board fixes his minimum term. After he has served his minimum term, he then becomes eligible for parole. He appears before the parole board and the parole board makes the decision as to whether or not he should go on parole. Now, at that time, if the parole board decides to let him go on parole, there is actually no decision by the parole board that this man has been sufficiently rehabilitated or, in the language of the report, sufficiently rehabilitated and fit to re-enter society as a citizen and exercise the advantage thereof. Because actually all that the parole board is doing is giving this man an opportunity to go free on a trial basis; he goes free on a trial basis. I think that one thing, that one point I should bring out to you is that the mere fact that when he is out during this trial period, the mere fact that he is under supervision at that time, by his parole officer to whom he has to report at frequent intervals, I think from this fact alone it's pretty clear that there has been no decision by the parole board that he has been completely rehabilitated. Because otherwise such supervision would not be necessary. Now he goes out on parole and he stays on parole if he behaves himself until he reaches—until his maximum term has expired. At the expiration of his maximum term, he is discharged from parole. It is possible that there can be an administrative decision while he is on parole, and before his maximum term ends, that he has been completely rehabilitated. This is when the parole board discharges the man from parole before his maximum term has been actually served. But the point that I am trying to make is that the

committee's—the statement made in the committee report and also the statement made by one of the earlier speakers, is not correct. When he is let out on parole by the parole board, there has been no decision that he has been completely rehabilitated. He's still under supervision, as I point out. Now the question that this Committee really has to decide is whether a man who's set free under those circumstances, still not considered trustworthy enough to be free from supervision, is really the sort of person that should be enfranchised. Now there is another point that I would like to bring up and I think that the, I think that there is a technical defect in the proposal by the Committee.

The Committee Proposal, if you will look at it, deletes the language "unless pardoned and restored to his civil rights." As I understand the law, when a person is convicted of a felony, he loses his civil rights. Now what all these rights are I cannot say, except that I do believe that includes, over and beyond the right to vote, the right to hold public office. If we delete from the Constitution this provision, unless pardoned and restored to his civil rights, I don't know of any way at the moment in which the felon could at any time be fully restored to his civil rights. For I think that it's essential that there is something in the Constitution that provides that mechanism. And by deleting this language I think that the Committee has actually failed to take into account this contingency. And my point is, I think that here is a problem that has to be considered by the Committee and well, I've said my piece. Thank you.

CHAIRMAN: May I, since I promised Delegate Burgess if he wished to raise a question and the question that he had in mind was not answered by Delegate Dyer, that he could ask his question. Will you please state what question you wish to ask?

DELEGATE BURGESS: After listening to the delegate, I decided I have more questions to ask. The last speaker said that the parole board does not feel or they do not parole an ex-convict because they feel that he is sufficiently rehabilitated and fit to re-enter the society. Now, I'm not sure what the policy of the parole board is, but I think there are only three alternatives. Either you are sufficiently rehabilitated to re-enter the community; you are not sufficiently rehabilitated to enter the community but you will still re-enter the community; or that the parole board doesn't know what they're doing and so they're going to let him enter the community. I want to know why does the parole board let a person enter into the community if he is not sufficiently rehabilitated.

DELEGATE DYER: Mr. Chairman, is this directed to me?

CHAIRMAN: Delegate Fasi, state your objection.

DELEGATE FASI: I'm not objecting to anything. I would just like, Mr. Chairman, to move that we adjourn until Thursday, at 9:00 a.m.

DELEGATE KAWASAKI: Mr. Chairman, I second the motion.

DELEGATE BURGESS: Mr. Chairman, I rise to a point of information.

DELEGATE FERNANDES: Mr. Chairman, point of order.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Have you recognized that motion, Mr. Chairman? If not, then we want a short recess so we can get a time schedule announced. How about a short recess?

CHAIRMAN: The Chair does not recognize—

DELEGATE FERNANDES: Well, how about a short recess so you can get the delegates together as to what time we leave and what time we come back.

CHAIRMAN: I think in the light of the desire of some delegates to adjourn, the Chair will declare a short recess.

At 6:38 o'clock p.m. the Committee of the Whole stood in recess.

The Committee of the Whole reconvened at 6:45 o'clock p.m.

CHAIRMAN: Will the Committee please come to order.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: What are you rising for?

DELEGATE BEPPU: I rise on parliamentary inquiry.

CHAIRMAN: Proceed.

DELEGATE BEPPU: I wonder if the Chair would direct a voice vote instead of roll call unless otherwise directed by Rule 32. I think this would save time and we can proceed much faster.

CHAIRMAN: We shall consider that at the point of roll call if there are no objections.

Delegate Burgess, you had the floor, state your question. I am sorry we had to interrupt you.

DELEGATE BURGESS: Oh, no problem. If the delegate who I addressed the question to understands it, then we can just go right ahead.

DELEGATE DYER: Well, would you mind repeating your question, there has been an interval.

CHAIRMAN: Delegate Burgess, would you state the question without preface of statement.

DELEGATE BURGESS: What is the thinking of the parole board when they deal with someone who re-enters society? Is he sufficiently rehabilitated to enter society? If he's not sufficiently rehabilitated to enter society or the parole board just doesn't know what to do and they're going to let them go into society?

DELEGATE DYER: Well, I'm going to go into some history. I learned just a few years ago much to my surprise, that the parole board was automatically releasing felons when they had served their minimum term period. The parole board was doing this as a result of an oral opinion they had received from the deputy attorney general of the then Territory of Hawaii many years back. The only criterion that was being used by the parole board over a period of many years, according to the information that I received, was whether or not a man had served his minimum. That was all that was actually used. I learned of this information and went out and consulted with the parole board and with two of the other judges. We pointed out to the parole board that under the statute they were required, we pointed out that this opinion of the deputy attorney general was in error, and we pointed out to the parole board that under the statute they were required to consider the order granted the man on parole, not only his record in prison but also his complete record. In other words, the record before he entered prison too. Now, what they're actually doing today, I can't say. I'm not that close to the picture but I do know this, that the decision that they make when they let a man go out on parole cannot possibly be a decision that the man has been completely rehabilitated because otherwise there would be no reason for further supervision, yet there is.

DELEGATE BURGESS: Mr. Chairman. I'm not certain what the answer is. If we erase all his history from the answer, it seems to me that the answer is that the person is not completely rehabilitated and therefore he must remain under parole. The question is whether he is sufficiently rehabilitated to enter into the society but we could go on and not fight over this point. The delegate also said that he could not, or there are some problems for the restoration of the civil rights as read in the present article. I would like to know if there is any conflict with Article I, Section 6 which reads, "No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land." Does this mean that the State legislature cannot take away any citizen's rights?

DELEGATE DYER: Well, the point that I was trying to make is that when a man is convicted of a felony, he loses his civil rights. There has to be some mechanism somewhere to enable him to be fully restored to his civil rights. We do have such a mechanism in the Constitution now and also in the amendment and that mechanism is the mechanism of a pardon. But the Committee Proposal eliminates that mechanism so that if one were to approve the proposal as it came out of the Committee on Bill of Rights, it would mean that you would be approving a proposal that left us with no mechanism whatsoever for a felon to be restored to his civil rights. And I think that's wrong.

DELEGATE TAKAHASHI: Mr. Chairman.

CHAIRMAN: Delegate Takahashi, do you wish to participate in this discussion?

DELEGATE TAKAHASHI: May I contribute to this discussion?

CHAIRMAN: Proceed.

DELEGATE TAKAHASHI: If the delegate from the 15th District would read the second paragraph of Section 5 of Article IV, the matter of pardons and restoration of civil rights is adequately covered.

DELEGATE DYER: Which paragraph please?

DELEGATE TAKAHASHI: It's the second paragraph in Section 5, Article IV of our Constitution.

DELEGATE DYER: I'm sorry, I didn't get that reference. Second paragraph—

DELEGATE TAKAHASHI: Second paragraph of Section 5 of Article IV of the Constitution.

DELEGATE DYER: Second paragraph, Section 5 of Article IV. I will concede your point.

DELEGATE BURGESS: Mr. Chairman, the third question I'd like to ask is being directed to Delegate Kauhane.

CHAIRMAN: Proceed.

DELEGATE BURGESS: It was stated that the ex-convict, well the convict who is still on parole, is not sufficiently rehabilitated to enter into society. I would like to ask, is the process of voting a process of rehabilitation?

CHAIRMAN: Delegate Kauhane, do you wish to answer?

DELEGATE KAUHANE: Mr. Chairman, the question has been sufficiently answered by the delegate that posed the question.

CHAIRMAN: Thank you. Any other speakers for or against the motion? Delegate Hasegawa.

DELEGATE HASEGAWA: Mr. Chairman, I want to speak in favor of the amendment. I concur with the consent of the Committee Proposal in attempting to restore the voting rights of felons and I agree.

CHAIRMAN: Are you speaking in favor of the amendment?

DELEGATE HASEGAWA: Yes, I am. And I agree—

CHAIRMAN: The amendment introduced by Delegate O'Connor?

DELEGATE HASEGAWA: That's right.

CHAIRMAN: Proceed.

DELEGATE HASEGAWA: And I agree that—

DELEGATE FASI: Mr. Chairman, point of information. I believe that the Chairman has been advising us not to use names.

CHAIRMAN: The point is well taken. The Chair may use names. He has to use names for orderly process. However, in debate the Chair has requested of the delegates not to refer to personalities or names.

Proceed, Delegate Hasegawa.

DELEGATE HASEGAWA: And I agree that the automatic deprivation of a person's voting rights for life because of his conviction is apparently unconstitutional.

The revoking of one's voting right because of a conviction for an offense punishable for one year or more in prison covers many crimes which reveal nothing on which the prediction of conduct at the polls can be based and the conviction of a felony does not establish that a convict is forever unfit to exercise the right to vote. The nature and elements of a crime itself are more determining factors as to whether he who has committed may reasonably be deemed to constitute a great threat to the integrity of the elective process.

The courts, however, have generally viewed statutes imposing civil liberty as an attempt to preserve the "purity of the ballot box." A law, therefore, enacted to serve a legitimate state purpose by excluding the felon from the franchise serves a valid goal of safeguarding the integrity of the democratic process. The Supreme Court has never passed on the validity of these statutes.

The proposal submitted by the standing committee under consideration is intended, therefore, to correct this injustice and restore the voting rights to a person convicted of a felony when he is released from prison on the premise that he has paid for his crime. I do not agree with this contention. To illustrate:

A person convicted of burglary is sentenced to prison for 20 years.

CHAIRMAN: May I interrupt, Delegate. Will you speak directly into your microphone? You have a tendency to move it away from your mouth.

DELEGATE HASEGAWA: He goes to prison and the parole board reviews the case and sets a minimum, that is the period he is confined to the prison. After serving this period the person can apply for parole. If, after review of his record while in prison, the parole board feels that he should be paroled, he will be released from prison on condition that he behaves himself until his parole expires. This is a conditional release on good behavior under our parole system. His conduct and behavior are restricted, he must abide by the terms of his parole and is constantly under the supervision of his parole officer. He is not a free man until he serves out his parole as he has not paid for his

crime until discharged from parole.

It is also presumed that when a man is released from the penitentiary, he is fit once more to resume normal civil relationship. It is contended that if he is not fit he ought not to be released, but if he is fit he ought not be deprived of the franchise.

The presumption that a man is fit when he comes out of a penitentiary is erroneous. The man is only conditionally released to determine whether, by his conduct and behavior, he can prove that he can resume normal civic relationships.

The exclusion of persons convicted of certain crimes from the exercise of the franchise is therefore based on the premise that the criminal, by his conduct, has demonstrated irresponsibility and opposition to the basic social standards. The automatic restoration of the franchise upon a person's release from prison as provided by the Committee Proposal then implies that he is responsible and fit to resume normal civic relationships and exercise his voting right properly.

If this reasoning is correct, how can this rationale be applied to the recidivist whose voting right is revoked and restored at the same frequency he is in and out of prison. By this proposal are we not in essence saying that the recidivist when he is not in prison is a responsible citizen and when he is in prison, he is not? Does not, however, the recidivist, by committing crimes when he is not in prison, indicate he is irresponsible and has not been rehabilitated when released from prison?

I do not feel that the proposal as submitted by the Standing Committee has valid justification for submission to the voters for approval. I do feel, however, corrective action should be taken to eliminate permanent disfranchisement on all felony offenses and categories of offense such as disfranchisement should apply with an automatic restoration—

CHAIRMAN: Delegate Hasegawa, you have one more minute.

DELEGATE HASEGAWA: —of voting rights under specified conditions. This can be accomplished satisfactorily with the proposal submitted. And I concur and heartily recommend that the amendment be approved.

DELEGATE GOEMANS: Mr. Chairman, am I recognized?

CHAIRMAN: May we have a short recess to allow the steno to change the tape? And then I shall call on you.

At 6:58 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 7:05 o'clock p.m.

CHAIRMAN: Committee please come to order. Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, I'd like to say a few words against the motion and in favor of the committee report with the intention—

CHAIRMAN: Proceed.

DELEGATE GOEMANS: —with the intention of perhaps clarifying the issue presented here. We've been asked tonight as we were this morning to accept the proposition that this is more properly a legislative matter than a constitutional matter. Now, Mr. Chairman, I think we would be ill-served if we made a mistake in this area. This is purely a constitutional issue. All four of the issues in this section are purely constitutional issues and are decided, I think, by the same basic consideration and that basic consideration is whether we are in favor of extending the franchise or in favor of restricting the franchise.

Since the founding of this nation when we had Alexander Hamilton favoring the restriction of the franchise for the rich and the well-born, we have been faced with this same basic dichotomy. The history of the development of our Constitution I think shows that that dichotomy has been resolved in favor of the extension of the franchise. More amendments to the Constitution deal with the extension of the franchise than with any other issue. I mention only a few, the fourteenth and fifteenth amendments, having to do with legal franchise. The amendment concerning popular election of senators, the amendment extending the vote of the females. Therefore, Mr. Chairman, it seems to me that we are ill-served if we follow the proposition that has been raised that this should be considered by the legislature rather than by this body. I think we should look at it in its more basic terms. Are we in favor of extending the franchise or aren't we, and this to my mind is a reasonable extension of the franchise as were the previous two matters voted upon and as is the matter to be voted upon. Therefore, I wholeheartedly recommend to this body a vote in favor of the committee report and against this amendment.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, I rise to speak against the amendment and in favor of the committee report. I concur with those that favor the committee report and I do not concur with those that do not favor the committee report.

I favor it because I feel that we are not directing this power of franchise to the very hardened criminal. We are thinking of those individuals who have already served their terms and who are already outside and those that are on parole, on probation, and the like. We are living in a different society today where yesterday's misdemeanor is today's felony. For instance, take the users of marijuana. At one time it was a misdemeanor, today it is a felony. Many of these people who are found guilty of using marijuana are out on probation or suspended for five years and they are disenfranchised

because it is a felony. I think that the time has arrived for us to be lenient with these people because after all they're not hurting society, they are part of this society and they're not hardened criminals in a sense. They're there because the legislature has decided to make a misdemeanor a felony, making it more difficult by disenfranchising these individuals.

I would like to call your attention, Mr. Chairman, to Article II of the Legislative Reference Bureau on page 26. I think this is true today, the presumption should be that when a man comes out of the penitentiary he is once more fit to resume normal civic relationship. If he is not fit, he ought not to be released, if he is fit he ought not to be deprived of the franchise. I speak on this regard. Thank you.

CHAIRMAN: Thank you. Any other delegate wish to speak for or against the amendment? Delegate Bacon.

DELEGATE BACON: I'd like to speak against the amendment and I'd like to speak against the recommendation of the committee report.

CHAIRMAN: The amendment is on the floor now. Will you speak for or against the amendment. Confine your talk. You will have another opportunity later.

DELEGATE BACON: I'm against the amendment because I feel that the provision in the Constitution should remain exactly as it is now. Persons who are convicted of felonies are people who've gotten into difficulty and I think that the provisions as they stand now make it mandatory that they be evaluated and given a chance to prove themselves in the society. I do not feel that there is any change necessary in this area and I feel even more so, Mr. Chairman, that the State is not facing the real problem which is giving felons a real chance in this community. We have not taken a stand on a proper prison, have not taken a stand on a proper parole and probation system and these men, many of whom I know personally and with whom I have worked are not being given a real chance to rehabilitate themselves in our community. As such, I ask that every delegate vote against the amendment and to keep the provision in the Constitution exactly as it is. Thank you.

DELEGATE JAQUETTE: Mr. Chairman.

CHAIRMAN: Delegate Jaquette.

DELEGATE JAQUETTE: I would like to speak in favor of the amendment. One of the previous delegates, previous speakers, referred to marijuana as, the use of marijuana as a felony and indicated that a person who had done so should probably be entitled to vote. I go along with him and say that the punishment should fit the crime. But only by allowing the legislature to extend the franchise in the terms of the proposed amendment which I read, "unless he is otherwise qualified by law," only by doing this can we accomplish the objective we wish.

CHAIRMAN: Any other—

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I wish to speak briefly in favor of the Committee Proposal and against the amendment.

CHAIRMAN: Thank you for saying "briefly." Proceed.

DELEGATE LARSON: Basically I do feel that again this question as to who shall have the right to vote, who shall vote as relating to the illiteracy and so forth, that again you have a man who has committed a felony, a crime punishable by one year or more in prison. He goes into prison and he spends a miserable time there and perhaps he does deserve this time in prison but the point is he is released, just not completely rehabilitated but rehabilitated to the extent to return to society, he finds all sorts of barriers and obstacles in his way which need not be mentioned. One, which I will mention is the right for recognition again as a human being who can and as a citizen who can again have the privilege of voting. I feel that he should not have to wait five years or whatever length of time by the time his parole is over in order to have the right to vote again. Nor should he be made to go through such obstacles that are put in front of him such as applying for a pardon in order to have such a privilege. I support strongly the Committee Proposal and again am against the amendment. Thank you.

CHAIRMAN: Is there any other delegate who wishes to speak for or against the amendment? Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, I speak for the amendment and against the Committee Proposal. Mr. Chairman, I think the thrust of what we are concerned with here this evening is with starting a franchise to a convicted felon. Now it is my understanding based on the presentations of the delegate from the 17th District that the guidelines and the language which he proposes would be sufficient to achieve this. The legislature under a uniform act could set forth a proper machinery so that these people could be properly franchised. It's been brought out in the discussion there are exceptions which might give us parlance under the language which we have here.

Mr. Chairman, maybe I'm old-fashioned. When I went to law school and I took constitutional law, it is my understanding in most instances that a constitution is to lay down broad, general guidelines and leave generally to the people depending on the changing time, to the legislative process the right to enact laws. We call them statutes. And these change from time to time within the confines of the boundary set down by the constitution. Mr. Chairman, I submit this is the proper place for legislative action which can be amended in case a statute does not quite fit a given situation from year to year. Mr. Chairman, if we don't have enough faith in our legislature, our legislative process, to allow them to take care of this situation, we might as well rewrite the

entire revised laws. Thank you, Mr. Chairman.

CHAIRMAN: Anyone else? Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, the speakers so far generally have spoken either for the proposed Amendment No. 4 and against the committee report or vice versa. It seems to me that Amendment No. 10 which lies somewhere—

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Is this out of order?

CHAIRMAN: I appreciate your referral to Amendment No. 10. However, this is not before the committee. Are you ready for the question?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: May I ask any proponent of the proposed amendment to the Committee Proposal if they can further clarify me on the matter of "otherwise qualified by law."

CHAIRMAN: Delegate O'Connor, do you wish to answer the question?

DELEGATE O'CONNOR: Yes, Mr. Chairman. The present Constitution contains an absolute prohibition for any statute that may be passed by the legislature allowing a convicted felon rights including the right of suffrage. The "otherwise qualified by law" would change the present Constitution to allow such a bill to be passed, thereby granting the franchise.

DELEGATE YOSHINAGA: Is there a—may I ask just one more question? Is there in the present Constitution the language "otherwise qualified by law"?

DELEGATE O'CONNOR: There is a similar language.

DELEGATE YOSHINAGA: I'm asking you if there is exactly the same language.

DELEGATE O'CONNOR: No, I don't believe there's exactly the same language but there's language sufficiently similar so that there would be precedent so this language could be easily understood.

DELEGATE YOSHINAGA: Thank you very much.

CHAIRMAN: Delegate Yoshinaga, are you through with your questions?

DELEGATE YOSHINAGA: I'm through with my question.

CHAIRMAN: Do you wish to speak for or against the amendment?

DELEGATE YOSHINAGA: Mr. Chairman, I'm

somewhat confused. I think overall that the committee has done an outstanding job here in presenting to us, for our approval, a bundle of extension of voting rights but in this particular matter I'm somewhat of a coward and somehow I don't feel confident that the people of Hawaii will exactly accept this particular Committee Proposal. So although I'm for the proposal, I'm going to vote for the amendment offered because I feel that in general, people here are trying to accomplish the same thing to extend voting rights to another group of people except that the method is a little different. Thank you very much, Mr. Chairman.

CHAIRMAN: Thank you. Delegate Lum.

DELEGATE LUM: Mr. Chairman, I pose a question to the Chair and if someone could answer this I would appreciate it. I'd like to know why the words of another amendment that happened to fall on my desk, No. 10, has not been used in Amendment No. 4? Where it specifically says that civil rights will be restored after a completion of term of imprisonment and parole.

DELEGATE O'CONNOR: Mr. Chairman, may I answer that?

CHAIRMAN: Delegate Ueoka, do you yield to Delegate O'Connor?

DELEGATE UEOKA: I yield to Delegate O'Connor.

CHAIRMAN: Proceed, Delegate O'Connor.

DELEGATE O'CONNOR: The answer to that is plain. The Amendment No. 10 would again limit the legislature to two specific areas and it would not allow the legislature the scope to provide the ifs, ands or buts and I think if you will refer to my Amendment Nos. 6 and 7, you can see how detailed some of these ifs, ands or buts can become. You don't want to limit by the Constitution the action of the legislature so they cannot provide for a wide range of restoration of rights and the ability to provide the framework within these rights might be granted.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, we did consider the portion relating to voting rights restoration following the completion of the term of imprisonment and parole. However, this does not cover the situation where the judge of the Circuit Court in which—where the defendant had been convicted is placed on probation with the entitled right to vote. Now I would like to state that in this particular Amendment No. 10, it adds civil rights and it would consider merely the voting rights.

CHAIRMAN: Any other speakers for or against the amendment? Are you ready for the question? Is there any objection to having this vote accomplished by show of hands? If there's even a single objection we shall vote by roll call. Call the roll, Mr. Clerk, you are now voting on the amendment introduced by Delegate O'Connor, No. 4, on Section 2, Article II.

DELEGATE DEVEREUX: Point of information. Will the Style Committee perhaps delete one or two words on this when they get it?

CHAIRMAN: This is the duty and responsibility of the Style Committee as outlined in the Convention Rules, Delegate Devereux. Delegate Frank Loo. We are, as I understand, the motion was to amend Section 2, Article II, by Amendment No. 4. Am I correct, Delegate O'Connor?

DELEGATE O'CONNOR: That is correct to conform to the amendment as laid out in No. 4.

CHAIRMAN: Thank you. Mr. Clerk, please call the roll.

(Roll call having been ordered, the motion to adopt the amendment to Section 2, Article II failed to carry by a vote of 36 ayes, 41 noes and 5 excused; with Delegates Aduja, Akizaki, Alcon, Amaral, Ando, Andrade, Ansai, Bacon, Beppu, Burgess, Donald Ching, Doi, Goemans, Hara, Harper, Hidalgo, Kaapu, Kage, Kageyama, Kudo, Larson, Matsumoto, Menor, Minn, Mizuha, Nakama, Nakatani, Ozaki, Saiki, Schulze, Souza, Suwa, Taira, Takahashi, Takamine, Uechi, Ueoka, Ushijima, Yamamoto, Young and Mr. President, voting no; and Delegates Amano, Hung Wo Ching, Kawasaki, Kunimura and Shiigi being excused.)

CHAIRMAN: The motion to amend failed.

DELEGATE BRYAN: Mr. Chairman.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I move that the committee rise to report progress and beg leave to sit again.

CHAIRMAN: Any second on the motion?

DELEGATE BACON: I second the motion, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that the Committee of the Whole rise and report to the Convention. Ready for the question? All in favor say "aye." Opposed, "no." The motion is carried.

The Committee of the Whole adjourned at 7:27 o'clock p.m.

Thursday, August 15, 1968 • Morning Session

The Committee of the Whole was called to order at 11:10 o'clock a.m.

Delegate Miyake presided as Chairman.

CHAIRMAN: The Committee of the Whole please come to order. The Chair declares that there is a quorum present in accordance with Rule 25 and the committee is ready for business. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, insofar as further discussion or further action on Section 2 of Committee Proposal No. 1 is concerned, I would like to move that this matter be deferred.

CHAIRMAN: Is there a second?

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: It has been moved and seconded that we defer consideration of Section No. 2. Ready for the question? Discussion? All in favor of the motion say "aye." Opposed, "no." Motion is carried. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, Section 5 of Committee Proposal No. 1 provides that the legislature shall provide for a presidential preference primary each year in which a president of the United States is to be nominated. That's the only change, Mr. Chairman. I move for its adoption. Is there a second?

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that the Committee of the Whole consider adoption of Section 5 in Committee Proposal No. 1.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: I yield to Delegate Doi.

CHAIRMAN: Delegate Doi.

DELEGATE UEOKA: Delegate Takahashi.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: Mr. Chairman, I believe there's an amendment to that particular proposal. I would like to have the proposer of the amendment move for the adoption of the amendment and then we can get into the debate.

CHAIRMAN: The Chair will entertain—Delegate Ando.

DELEGATE ANDO: I have an amendment to offer for the proposal of the committee on Section 5, as follows:

"Amend Section 5 of Article II by striking out the proposed last sentence, which reads:

"The legislature shall provide for a presidential preference primary each year in which a President of the United States is to be nominated."

My motion, Mr. Chairman, and I do move to amend Section 5, Article II, by striking out the proposed last sentence that is in Committee Proposal No. 1. Essentially, Mr. Chairman, this motion is to remove this

provision for presidential primary from the Constitution.

CHAIRMAN: Any second to the motion to amend?

DELEGATE AMANO: Mr. Chairman, I'll second the motion.

CHAIRMAN: It has been moved and seconded—

PRESIDENT PORTEUS: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

PRESIDENT PORTEUS: Wasn't it the ruling of the Chair yesterday that if a committee proposed an addition, that we would vote on the addition and if you didn't, you'd vote it down and it didn't go into the Constitution? In effect, what you're doing is moving if you insert a sentence and a person moves if you do not insert a sentence. Now, under the rules of procedure, when you have a motion to insert, you don't then amend by having a motion to delete.

DELEGATE ANDO: May I respond, Mr. Chairman?

CHAIRMAN: Wait, we have a point of order on the floor.

DELEGATE ANDO: Point of order.

CHAIRMAN: You rise on a point of order?

DELEGATE ANDO: Yes, sir.

CHAIRMAN: Will you yield to Delegate Ando on the same point of order?

PRESIDENT PORTEUS: I do so yield.

DELEGATE ANDO: Mr. Chairman. One of the methods of amending proposals is to strike out or to delete. The effect of striking out a proposal which is presented to a body, if adopted, would make it impossible for the same idea to be presented on the floor of the Convention. And this is precisely, Mr. Chairman, the reason for the motion to strike out, so that no idea of a primary election be added to this section.

CHAIRMAN: President Porteus.

PRESIDENT PORTEUS: Mr. Chairman, I believe that the Chair should rule in accordance with the ruling of yesterday when the same point was brought up that if someone is opposed to an addition, the person should vote no and if the negative is carried it would not be written in the Constitution.

CHAIRMAN: The Chair will abide by the point of order raised by the President since the precedent was set yesterday in consideration of an amendment offered by Delegate Hansen. So the Chair will rule now that this amendment will not be allowed.

DELEGATE BRYAN: Mr. Chairman.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I have a question for the Committee Chairman.

CHAIRMAN: Proceed.

DELEGATE BRYAN: The question is whether in the committee discussion or in the language as they interpret it that the presidential preference primary might for example be conducted by mail using data processing systems.

CHAIRMAN: Sir, I couldn't hear the last portion of your statement.

DELEGATE BRYAN: Is it the opinion of the committee that the presidential preference primary might be conducted by mail using data processing systems?

CHAIRMAN: Would you withhold your question, Delegate Bryan, until we've had the proponents present the arguments? And you may ask questions of the movant of the motion. Delegate Takahashi.

DELEGATE TAKAHASHI: Mr. Chairman, I stand to support the Committee Proposal which provides that the legislature shall provide a presidential preference primary each year in which a president of the United States is nominated.

Mr. Chairman, I have always believed that in our democracy or if our democracy is to remain strong and viable, it is necessary that the greatest number of voters participate in the election process. Following this belief, I have supported the largest, encouraged the voters' participation. I would like to at this time call the attention of the delegates to a pamphlet entitled *Choosing a President*, put out by the League of Women Voters of the United States. This pamphlet in its first two paragraphs emphasizes the importance of the Office of the Presidency. And I'd like to just read these first two short paragraphs.

First, "Each four years the citizens of this country choose a president and vice-president and now more than midway through the twentieth century, the significance of these choices to each individual, to the nation and to the world is immeasurable. When President John F. Kennedy was assassinated, the whole world held its breath. But when in less than two hours, Vice-President Lyndon B. Johnson was sworn in as the new President and the process of orderly transition to a new administration was set in motion, the world began to breathe again. Such is the tremendous power of the office and the responsibilities both for the man who fills it and to the man who must be ready to fill it at a moment's notice." Because the Office of the Presidency is so important, the passage stresses the importance of the nominating process and considers this process just as important as the election of the president itself. This is so important that the greatest involvement by the

greatest number of our citizens in the nominating process is desired. But our system as it exists today does not make provisions for such greater involvement.

In Hawaii today because we do not have a presidential primary law, regard is made to a caucus convention method of selecting, whereby delegates are selected wholly to party machinery in which the ordinary citizens have little or no direct part. Let me illustrate how such a system operates at the level of my precinct. That's the 10th Precinct of the 12th District.

Sometime in April of this year, the State Chairman of the Democratic Party issued a call to all precinct clubs to meet for the purpose of the election of precinct officers and delegates to the State Democratic Convention. These delegates who were elected, in turn, would elect delegates to the national convention for the purpose of nominating a candidate for the important office of the President of the United States.

Now at this meeting of our 12th District, 10th Precinct, there were only six members present, the needed quorum who elected two delegates to our state convention which was held in May as I understand it, as I remember it. Only six citizens out of a total of nine hundred registered voters actually participated in the initial nominating process from our precinct. We have approximately nine hundred members in our precinct and considering and giving the Republican Party the benefit of the doubt, so to get 50% of the voters, mine is a rather silk stocking district, only 500 or 450 voters, registered voters in our precinct, participated in this nominating process.

I'm sure that this illustrates not the exception—and I've been in politics for many, many years down at the precinct level—but it's generally the pattern in other precincts throughout the State where the involvement in the nominating process is minimal. Furthermore, I believe that the present system in Hawaii actually discourages direct involvement and participation in this process. What this Convention could do is to lend an encouragement for greater involvement and participation and the one way to do that is to adopt the Committee Proposal. I therefore urge all of the delegates here to support this Proposal. Thank you.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo and Delegate Sutton, may I permit Delegate Ando to be the next speaker since he had an amendment?

DELEGATE GEORGE LOO: Mr. Chairman, I rise for the purpose to ask a few questions of the previous speaker, not to make any speech.

CHAIRMAN: All right. Delegate George Loo, please proceed, you're recognized.

DELEGATE GEORGE LOO: Will the Delegate from the 12th District yield to several questions? First question is, what would be the cost of a presidential primary?

DELEGATE TAKAHASHI: As I understand, it would cost about the same as the election for the Constitutional Convention which would be about \$100,000 or little better than that.

DELEGATE GEORGE LOO: Second question. Would the presidential primary be held separate from the regular primary?

DELEGATE TAKAHASHI: The legislature under this proposal can decide to have the presidential preference primary held at the same time as the regular primary election if it chooses so. But that will be, I think, out of the question because the nomination conventions are usually held before our state primary election.

DELEGATE GEORGE LOO: Third question. How many states have a presidential primary?

DELEGATE TAKAHASHI: I have the figures here, but I believe about 15 states.

CHAIRMAN: Before proceeding any further, the Chair asks your indulgence for a few remarks from the Chair in regards to the use of names. The Chair requested of the Committee of the Whole that you refrain from using names. However, attention has been brought to the Chair in regard to the Editor's Notes in Volume II of the *Proceedings of the Constitutional Convention of Hawaii* of 1950, where the Editor has mentioned in paragraph 2 of the Editor's Notes the difficulty in identifying the speakers. Therefore, during the question and answer periods, the Chair will allow you to use the names of delegates to assist in the preservation of historical record of great magnificence, so you may, as of now, in raising questions and answers and replying with answers, use delegate names. However, I request also that you refrain from, if possible, using delegate names in your speech for and against a motion. I now call—Delegate Sutton, are you rising to ask a question?

DELEGATE SUTTON: No, sir. I want to talk for the presidential primary.

CHAIRMAN: May I ask your indulgence in allowing Delegate Ando to speak next?

DELEGATE ANDO: Mr. Chairman, I rise to speak against the Committee Proposal proposing to incorporate in our Constitution a provision to hold a form of a primary election by constitutional mandate. I respect indeed, Mr. Chairman, the views expressed in terms of the need for participation by our citizens in such an important area of our political process. But I feel, Mr. Chairman, that a constitutional provision of any form or type for nominating for primary elections is plainly unnecessary. I feel this because the legislature has the basic power to all rightful subject of legislation that is not inconsistent with our Constitution or the Constitution of the United States. And I believe, Mr. Chairman, that the election laws pertaining to primary elections are clearly a rightful subject for our legislature to legislate. Therefore I agree with those persons who

have stated that we should not clutter up our Constitution with provisions of this nature which is indeed one of an undetermined significance in our national political process.

Mr. Chairman and fellow Delegates, I therefore urge this assembly to approve, rather to now, to defeat the motion to strike out, I'm sorry, to defeat the motion to include this provision for a preference primary in our Constitution.

As a postscript, Mr. Chairman, in your decision to rule out an amendment to strike out I will indicate that essentially in parliamentary practice, it is easier to vote for something to strike out than to defeat and say no to something proposed and this is one of the techniques that's generally employed in the ball game that we call "deliberative assembly." But I will go along, Mr. Chairman, hoping that people will say no to the proposal set forth in Committee Proposal No. 1 dealing with presidential primaries. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Ando, you may be surprised. I now call on Delegate Sutton, followed by Delegate Bryan.

DELEGATE SUTTON: I wish to talk in favor of the presidential primary every four years for the State of Hawaii. I feel that it should be held at the same time or maybe even sooner than the New Hampshire primary. We will then have a primary which would be looked upon throughout the whole nation as something signifying an original attempt of those Pacific states, and we are the center of the Pacific.

I want to express the basic proposition that was so well enunciated by my colleague from the same committee, Delegate Takahashi. Mainly he brought out the machinery of the Democratic party and I want to show you the inside of the Republican party. I am the president of the 1st Precinct of the 14th District which is the largest precinct in the State of Hawaii. This particular precinct therefore controls a Senatorial District. Under our Republican rules, the rule provides that not even the Republican Convention itself will handle the proposition of the delegates that go back to the national convention. This is all done in caucuses by Senatorial Districts and these caucus commitments are then the commitments of the convention and nominations are not even permitted, under these rules, from the floor. In violation of everything that Delegate Ando has told us about parliamentary rules. And incidentally, I was a parliamentarian.

Now, I would like to point out that the man who ran for governor, Randolph Crossley, who was defeated by a narrow margin, the man who was the National Committeeman of the Republican party and is automatically seated as part of two important committees of the national convention of the Republican party, was not even elected a delegate and remained on Diamond Head while all the rest were at Miami Beach. This is the type of non-representative delegate that we have sent back to the national convention. And as a consequence, I feel that we must

have a presidential primary here in Hawaii.

Lieutenant Governor Gill testified before our committee and I believe that his testimony was very significant. He pointed out that he did not think that a national aspirant who was maybe an announced candidate or as most of them are at this particular juncture in, say, early May they're not truly candidates, they're very reluctant to be candidates but at the same time they are spending vast amounts of money in states on the presidential primary. But these individuals who have the aspirations to be candidates of a particular party would not come out as far as Hawaii. I do not know whether Lieutenant Governor Gill is correct or not on that but I do feel that if we have a significant presidential primary here in the State of Hawaii we would certainly get the top representatives of that particular aspirant for nomination to the presidency of the United States.

Mr. Gill testified that in his opinion, the expenditure of once in every four years would not exceed a quarter of a million dollars and he did not feel that it would go nearly that high. He felt, however, that this was a type of expenditure which in his opinion was unnecessary. Mr. Gill did not favor the presidential primary but he gave us the basic facts. The next thing that Mr. Gill pointed out, and that is this, that we would have to have a special election. However, this would come only once every four years and if you take a quarter of a million dollars and spend it amongst our population of 800,000, you'd find that we're only talking about 25 cents per person. And I certainly think that for a quarter we would be getting our quarter's worth. Now, I feel that this Convention has a greater opportunity to incorporate in the Constitution something which our legislature has not done, is reluctant to do, and because of the party system might find themselves where those who have served in kuleanas would not want presidential primaries. People like to go back to that national convention and we have the most unrepresentative group go back there and as you saw we never had one vote cast for the man who today is the Republican national candidate and the man who was selected at Miami on the first ballot. None of our votes ever counted. And therefore, I feel that it is highly appropriate that this Constitutional Convention composed of those who ran on a nonpartisan basis permit the public who is denied representation, who is denied an opportunity to select his candidate for the President of the United States, the most important office in the entire world, and that we incorporate in our Constitution the basic language which will permit a presidential primary here in Hawaii in early May. Thank you very much.

CHAIRMAN: Delegate Bryan, you're recognized.

DELEGATE BRYAN: Thank you, Mr. Chairman. I wish to ask a question of the proponent of the Committee Proposal. The question is, in their discussion, was it revealed whether their provision would allow for a presidential primary to be conducted by mail using modern methods of electronic data processing?

CHAIRMAN: Are you directing your question to Delegate Takahashi?

DELEGATE BRYAN: Delegate Takahashi or Delegate Ueoka, either one.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka is recognized.

DELEGATE UEOKA: As far as the proposed provision is concerned, there is no limitation and it further gives the legislature the power to implement the law so the legislature can provide that the voting, notwithstanding the fact that there is this unscarred or electronic method of voting that can be done by mail.

DELEGATE BRYAN: Thank you very much. I wanted to be sure that it would be in the committee report in case it were challenged at a later date.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira is recognized, followed by Delegate Bacon.

DELEGATE TAIRA: Mr. Chairman, I rise to speak against this change that is proposed in Committee Proposal No. 1. I agree that we ought to get our citizens directly involved in presidential preference primaries. I think the objectives that the states throughout our country are seeking, are fine. But I do not think that we ought to do this as a separate state. We find the situation today wherein the fourteen or so states where presidential primaries are being held that they do not do this in a uniform way. They have different methods of conducting their presidential preference elections.

My feeling is, Mr. Chairman, that this is a problem that ought to be taken care of at the federal level. I think instead of this Convention acting on this matter, it would be much more in order for us to get our two senators in Washington, our two representatives, working in concert with the other state delegations to work out a federal statute which will call for the kind of a presidential primary throughout the individual states which will be uniform so that once and for all the idea of getting our people throughout our country directly involved in these presidential primaries will be something that we all do together in the same uniform manner. And it is for this reason that I hold the position of being against this particular item in Proposal No. 1. Thank you.

CHAIRMAN: Delegate Bacon, followed by Delegate Kato.

DELEGATE BACON: Mr. Chairman, I have only a comment to make relative to the vice-president's comment about having the presidential primary held by mail. I think this might establish a dangerous precedent. We could conduct all our elections by mail and I am not in favor of it.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Thank you, Mr. Chairman. Mention has been made by the Vice-Chairman of the Bill of Rights Committee that the presidential preference primary election would be held in conjunction with our regular primary elections. Now this, of course, would not be timely for the national conventions at the time that they nominate presidential candidates from their respective parties. So the only alternative or assumption is that the legislature will move up their primary elections so that the presidential preference primary can be accommodated.

Now, for the last two sessions of the legislature, attempts have been made to move up or move away from the general election, the primary election from a period of 15 to 45 days. It has always failed to pass. I hardly see any likelihood of it passing in the future. This would call for then, Mr. Chairman, a special election costing around \$250,000. Now, the sum of \$250,000 may not seem like a lot of money to some people, but if you think about the fact that they are going to be voting for about 15 to 25 delegates only, I think it costs quite a bit of money, so far as our state is concerned. Moreover, our delegates themselves comprise such a small part of the national convention that I again have to question the cost that will be involved.

Another facet of the special election besides the cost factor is the low voter turnout that we always have experienced at special elections. Is it worth \$250,000 to get only a third of the votes that are eligible to be cast, cast at these elections?

Now in closing, Mr. Chairman, I'd like to say that I had, or I have an amendment on the Clerk's desk. The amendment is being withdrawn because it was pointed out to me that what I had proposed in the amendment is already authorized or can be done without any changes in our Constitution. If I may go to the amendment, Mr. Chairman, by way of explanation?

CHAIRMAN: Please do so.

DELEGATE KATO: It just makes it permissive to give to the legislature the right to provide for a special election whereas the proposal here is a mandatory provision. If we vote down the proposal or the mandatory provision of that proposal, the Constitution need not be changed and the legislature can still provide for a preferential election. Thank you.

CHAIRMAN: Thank you, Delegate Kato.

The Chair at this time wishes to compliment the speeches today. They are very concise and succinct and I am sure the students and historians who will read the minutes of this Committee of the Whole will not ever think that we have questions. Egotistical rhetoricians inebriate by your own verbosity and I think we are making progress today. Thank you very much. The Chair appreciates this.

Who wishes to have the floor? Delegate Fernandes.

DELEGATE FERNANDES: I think we're ready for the question.

CHAIRMAN: Any other speakers who wish to speak for or against the motion to amend? Delegate Doi.

DELEGATE DOI: Yes, may I say a few words in favor of the Committee Proposal. I rise this morning to respond to some of the remarks made on this floor. Yes, Mr. Chairman, I think it's worth \$250,000 to influence the election of a President of the United States of America and a Vice-President of the United States of America. In fact I think it's worth a lot of money. You ask me the question, I don't know how much but certainly more than \$250,000. Certainly it means enough for us to concern ourselves in this very most important election. The arguments so far from those who oppose the proposition, have been leveled principally at the question of the cost.

It's been also rather with great unanimity expressed on this floor, that we like the idea. We like the idea of the voter participation in the primary, that we should have this law. But number one, it's opposed because this is a legislative matter and not a constitutional matter. Well, Mr. Chairman, we've waited for many, many years and the legislature has not acted. Certainly this is a very most important right, a basic matter. I think it's time the Constitutional Convention express itself. Further, I might say this, eventually it is my personal thought that I would like to see the national electorate college wiped out so that we would have direct involvement of the people in electing their president. Certainly, Mr. Chairman, I would like to see a uniform national primary law also. Unless I feel the Constitutional Convention acts to adopt a provision as has been recommended by the committee we would not be moving in that direction. We would not be bringing pressure on people who have some national influence to bring all this about. It was suggested here this morning on the floor that we might ask our two senators in Washington to assert their influence to perhaps adopt the uniform national legislation. You know, Mr. Chairman, I don't think they will assert their influence in that direction. These two fellows are part of the establishment. Wishful thinking.

And I think for this Convention who represent the people of Hawaii in a nonpartisan election to say that the people of Hawaii demand this right to participate in the selection all the way from the beginning to the end of the Vice-President and the President of the United States of America. Thank you very much.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I wish to concur wholeheartedly with all the remarks made by Delegate Doi and I want to leave one last thought where I should stand on this question. I favor this proposal. I think it's time that Hawaii and other states take the lead in forcing the Congress eventually to amend our laws so we have a national primary and the more states

that have this provided for in the Constitution, the sooner the American people will make the determination of the best qualified people to represent the two major parties in a general election and not the bosses in the respective states in the United States. Thank you.

CHAIRMAN: Delegate Lum, you're recognized, followed by Delegate Mizuha.

DELEGATE LUM: May I direct the question to the Chair and whoever can answer this would please answer it? During discussion in the committee, was there any discussion about the possibility of moving the primary election for the year that we nominate the president to maybe sixty or ninety days before the regular election, general election?

CHAIRMAN: Will either the chairman or vice-chairman or any member supporting the motion wish to answer the question? Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, there was some discussion. Of course it's a matter entirely up to the legislature to set as to when the presidential primary should be held if this particular proposal is adopted.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: I rise in support of the Committee Proposal to take care of some of the objections of those people who feel that this might be too costly a proposition. I have already sent to the printing presses an amendment to our election laws that will provide for a primary election on the third Saturday of July of even-numbered years.

CHAIRMAN: Any other speakers for or against the motion to amend?

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of information.

CHAIRMAN: State your point of information, Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, the amendment sought under the committee report "the legislature shall provide." Is it the intention of the committee to enter into the field of legislation by mandating the legislature to do something when we are supposedly to set guidelines only rather than mandating policies to be undertaken?

CHAIRMAN: The Chair directs the question to the chairman of the committee, Delegate Ueoka.

DELEGATE UEOKA: It was the intent of the committee to make it mandatory and as far as the details are concerned, the details shall be worked out by the legislature.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Proceed, Delegate Kauhane.

DELEGATE KAUHANE: There seem to be two kinds of thoughts here. The chairman of the committee has one opinion and I feel that my layman opinion is somewhat different than his. And we're beginning to enter into the legislative field rather than setting up guidelines. And because of this imposition, I'm forced to speak against the amendment and the proposal that's contained in the committee report.

Mr. Chairman, I would first like to make this observation. I would favor this, Mr. Chairman, that as a member of the Democratic party particularly as one of the founders who helped to rebuild the Democratic party back in 1941 when the party was down at its lowest ebb, today accept the expectance of condemnation made by a Democratic member and senator concerning the practice exercised by the Democratic party relative to the method of selecting individuals to be representatives of their own particular precinct to attend a convention with the right of participating at the local convention and then on to the national convention, in the selection of the candidates to represent the Democratic party as President and Vice-President of the United States. This is the very essence of the process that has been brought on and that has been accepted and this I'm sure, Mr. Chairman, the speaker who made reference to his particular precinct and this type of condemnation, I do not feel that the individual perhaps meant every word of it. I want to forgive him for his utterances.

Mr. Chairman, I notice supporting factors being made against the presidential primary election because of the cost factor. Why should we worry about spending \$250,000? It is important for us to be able to participate in this determination of the selection of the presidential and vice-presidential candidates. Mention has been made, Mr. Chairman, about the legislative failure to come up time after time to take care of this matter which is a part of the provisions out of the proposal by the committee. If this is a true statement, that the legislature's failure to come up with something that is reasonable, something that would be in the best interest of all the citizens of the State of Hawaii, Mr. Chairman, then I say because of this statement that the legislature's failure that any one of you in the legislature owe the best to the citizens of the State of Hawaii. Because of this failure, that you should resign from your office. I do not feel that because of human failure, that this should be a matter of concern as to why we should support the proposal of the committee. We do not at all times come up with the best answers that are acceptable to the citizenry of the State of Hawaii. You have been selected to exercise good common sense and judgment. I say that if you have allowed this good common sense and judgment, you have done a job within reasonable facilities of your own self being to try to produce a document which to all of us would be acceptable including myself. But to hear the continuous statement that the legislature has failed, because of this failure we must do this, to begin to legislate in the constitutional provisions, the procedure to correct the legislature's failure. This is one of the reasons why I'm voting against the Amendment as proposed in the Standing Committee Report No. 23.

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FRANK LOO: Mr. Chairman, I rise to speak for the amendment. This is consistent with the idea that we should get the people more involved in the government because government is the business of the people and they should participate more in it. And if we can get them to participate in this affair more, a lot of emotions, a lot of importances attached to it, perhaps we can get them to participate in the other affairs of government. And the other speakers for the measure have already indicated how important it is. As far as the cost is concerned, I think that if we do tie it in with a regular primary, in other words, moving up the regular primary to the point where a decision on the presidential election or nomination will make some effect, then we'll cut down the cost and would not increase the cost appreciably. In addition, Mr. Chairman, we spend millions of dollars advertising Hawaii. And it would seem to me that if we happen to be in the spotlight as far as the presidential election is concerned, we would be advertising—we would get tremendous advertising. The cost that would be going to the election could be written off as advertising for Hawaii Nei to bring more tourists to our area and thereby increasing our economy.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki is recognized.

DELEGATE KAWASAKI: Mr. Chairman, I am at a loss to—I speak in favor of the Proposal proposed by the Committee that is to, if I may use the word mandate, indeed mandate the legislature to provide for a presidential preference primary. The previous speaker, well the previous speakers, probably expressed a concern that perhaps we are legislating and this may not be within the realm of our purview here as a constitutional convention body. I think the proposal as it is written here, and as it is proposed, asking or mandating the legislature is the most basic kind of a guideline that we can give to the legislature. We do not turn to the specifics, we ask only that they provide for the presidential preference primary to be incorporated in our legislation guiding our State.

There has been much concern expressed about the so-called cost of a presidential preference primary and I heard speakers handy about two divergent figures, incidentally, a \$100,000 in one case and \$250,000 according to someone's interpretation of testimony provided in the committee that considered this Proposal. It appears to me that if we're concerned about the expenditure of anywhere from \$100,000 to \$250,000 on something as basic and as important as providing for the citizenry a need by which they can express their preference of a presidential candidate, to be concerned about those who are apparently on the other hand, we are going back to the old tradition which brought about the ruin of Rome years ago. And providing and not being too concerned of expenditures of between 30 and 20 million dollars for a stadium over in the Halawa area

somewhere I think shows some inconsistency. To me the expenditure that we're concerned about, of a \$100,000 or \$250,000 once in four years to provide a presidential preference primary, is a very logical expenditure, certainly one I think that we could rationalize and we could justify. I am going to cut my speech short because I believe the delegates are pretty anxious to get to lunch. I have a few other points that I want to touch upon but I do not want to say that the opponents of this proposal have not convinced me by their arguments as yet and I would like to speak very much in favor of this Proposal mandating, if you will, that the legislature provide for a presidential preference primary.

DELEGATE BURGESS: Mr. Chairman. I rise to a point of question.

CHAIRMAN: Delegate Burgess, you're recognized to ask a question.

DELEGATE BURGESS: I'd like to ask the last speaker a question.

CHAIRMAN: Delegate Burgess, you may mention the name of the delegate in questioning.

DELEGATE BURGESS: I think we all know who he is. Would the presidential primary mandate to the political parties who they are to vote for in the convention?

DELEGATE KAWASAKI: As I said, I understand this Proposal only to ask the legislature to provide a presidential preference primary. The specifics are entirely up to the legislative body.

DELEGATE HIDALGO: Mr. Chairman.

CHAIRMAN: Delegate Hidalgo, you're recognized.

DELEGATE HIDALGO: I am speaking in behalf of the committee's report. I don't want to repeat many of the words that have been said supporting the committee's report. If we have the presidential primary in this state it would mean a lot of dollars in terms of this publicity, more than what the Hawaii Visitors Bureau can possibly do during that period of time. Presidential primaries here in the State of Hawaii would mean publicity to read into the newspapers, magazines, not only in the state, not only the country but throughout the whole world. Certainly as the presidential candidates come around here, the party, the groups, there'll be lots of money coming in. We ought to spend all kinds of money in order to campaign. Also with a presidential primary, our people will become better informed and better acquainted with the very important national and international issues. And I do want to say, Mr. Chairman, it would also benefit all the people to become more acquainted with the candidates who would in the next four years become the people, or the president or vice-president of this state guiding our country and the destiny of the American people. Thank you.

CHAIRMAN: Are there any other speakers? If not, are you ready for the question? The motion is to adopt—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I too, like you, was impressed by the first few speakers who spoke so concisely, so simply and so intelligently.

CHAIRMAN: Delegate Yoshinaga, you wish to speak for or against the motion—

DELEGATE YOSHINAGA: Oh, I'm not sure which way I'll be speaking and that's the reason I'm standing up to speak. Now is there a rule that you have to be for or against something in order to speak in this assembly? You can't be neutral—

CHAIRMAN: Not necessarily because it's the Committee of the Whole and I wish to allow as much free discussion as possible. However, it would help clarify the listeners as to what position you are taking. Proceed.

DELEGATE YOSHINAGA: Mr. Chairman—and so I found the discussion very exciting both for and against the Proposal. I see by the trend of the speakers here this morning that the arithmetical strength of speakers seem to be for the Proposal. Somehow the reason is the Republican Party and the Democratic Party and the membership have been wholly irresponsible, have been a bunch of failures and somehow should be wiped out in the constitutional process. It's also the argument that we have two U.S. Senators who don't know about the feelings of the people of Hawaii; therefore, we should support the proposal. There is the argument further that we have a bunch of legislators who don't respond to the will of the people in spite of the fact that the people keep returning these same irresponsible legislators, including electing some thirty-seven of them, to this body. Then there is the other argument that really excites me—that this is a tremendous gimmick for economic development. Now I am fully impressed by that argument. However, on the other side of the argument there is some logic that this is purely a matter already provided for by law because the legislature is authorized to provide the very thing called for. But in a free society one is entitled to be asinine and therefore this morning my vote shall be asinine. Thank you.

CHAIRMAN: Are you ready for the question? The motion is to adopt Section 5 of Article II as proposed by the committee in Committee Proposal No. 1.

Call the roll, Mr. Clerk.

(Roll call having been ordered, the motion to adopt Section 5 of Article II as proposed in Committee Proposal No. 1 was carried by a vote of 58 ayes and 19 noes, with Delegates Ajifu, Ando, Ariyoshi, Burgess, Dodge, Kamaka, Kato, Kauhane, George Loo, Menor, Minn, Miyake, Nakama, Oda, Pyo, Saiki, Taira, Ushijima

and Yamamoto voting no; and 5 excused, with Delegates Hung Wo Ching, Kaapu, Kawakami, Kunimura and Schulze being excused.)

CHAIRMAN: The motion is carried.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I submitted an amendment to the desk. I wish to have this withdrawn at this time, if you please.

CHAIRMAN: Your wishes will be accepted. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I move that we take a recess until 4:00 o'clock p.m. this afternoon.

DELEGATE ARIYOSHI: Mr. Chairman, before the motion is seconded I wish to announce that the Legislative Apportionment Committee will meet this afternoon at 2:00 o'clock.

CHAIRMAN: I will grant chairmen and vice-chairmen the floor to make announcements after the motion is acted on, so may we have a second on the motion first? Delegate Beppu seconds. Any discussion? If not all those in favor of the motion say "aye." Opposed, "no." Motion is carried. Recess until 4:00 p.m.

At 12:07 o'clock p.m., the Committee of the Whole stood in recess until 4:00 o'clock p.m., this afternoon.

Afternoon Session

The Committee of the Whole reconvened at 4:09 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The business before this committee is the deferred matter, the motion to adopt Section 2, Article II in Proposal No. 1. Delegate Souza.

DELEGATE SOUZA: Mr. Chairman, if I am in order, I'd like to move to adopt proposed Amendment No. 10 as an amendment to Committee Proposal No. 1, Section 2 of Article II, as follows:

"Section 2 of Article II of the State Constitution in Committee Proposal No. 1 is amended to read as follows:

"Section 2. No person shall be qualified to vote who is non compos mentis, or who has been convicted of a felony, but upon completion of his term of imprisonment and parole, shall have his civil rights restored and be qualified to vote."

CHAIRMAN: Is there a second to the motion?

DELEGATE OZAKI: Mr. Chairman, I second the motion.

DELEGATE ADUJA: Mr. Chairman.

CHAIRMAN: May the Chair make the motion?

DELEGATE ADUJA: Point of order, please.

CHAIRMAN: State your point of order.

DELEGATE ADUJA: I'm confused. Is Proposal No. 10 an amendment to Section 2? May I ask the question please?

CHAIRMAN: I don't think he heard you.

DELEGATE ADUJA: It's my Proposal No. 10.

CHAIRMAN: It's Amendment No. 10.

DELEGATE ADUJA: Point of order then, Mr. Chairman. I feel that we have already voted on Section 2 with the—in fact I think the proper motion now if it's possible is to reconsider our—

CHAIRMAN: The Chair's recollection on your point of order, Delegate Aduja, is the only motion which was considered and defeated was the Amendment No. 4 introduced by Delegate O'Connor. The main motion is still on the floor. It has been moved and seconded that Section 2 of Article II, Committee Proposal No. 1 be amended to read as follows:

“Section 2. No person shall be qualified to vote who is non compos mentis, or who has been convicted of a felony, but upon completion of his term of imprisonment and parole, shall have his civil rights restored and be qualified to vote.”

This amendment is Amendment No. 10 on your desk.

DELEGATE ADUJA: Mr. Chairman.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: A point of information. That's the reason I asked this question because I think in this many sessions, we already passed in yesterday's session the very question that we acted upon. I think, to me, the proper motion is to reconsider our action of yesterday before this motion comes up because it was a vote upon, we all voted 41 to 36. Now, if I'm wrong, may I have the information properly correct so I know what my vote will indicate?

CHAIRMAN: Delegate Aduja, the Chair will call a short recess and check with the Clerk. Mr. Clerk.

At 4:12 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:13 o'clock p.m.

CHAIRMAN: Will the Committee please come to order. Delegate Souza.

DELEGATE SOUZA: Mr. Chairman, if I am in order, I would like to speak in favor of proposed Amendment No. 10.

CHAIRMAN: Please proceed, Delegate Souza.

DELEGATE SOUZA: Mr. Chairman, when a less fortunate individual is convicted of a felony and committed to prison, he loses all his citizen rights. After paying his debt to society he is paroled; upon completion of his full term he is given a pardon by the parole board. However, this does not entitle him to his civil rights and voting privileges.

If he wants his civil rights and privileges to vote, he has to go through legal red tape and request a pardon from the Governor. Unless the Governor gives him a pardon, he will not be able to enjoy his civil rights and the privilege to vote. There are many individuals, many such individuals today, some of whom may be neighbors within our communities who are not given this privilege to enjoy their civil rights and their privilege to vote. This amendment would automatically give these individuals their full civil rights and privilege to vote at such time when they are, when their paroles are completed and they are given a clear pardon by the parole board.

Within the past few years, 985 such individuals were given a parole by the parole board, a pardon by the parole board. And only 420 went through the red tape to apply for a pardon from the Governor; 565 remain in the community as good law-abiding citizens, paying their taxes, contributing to various community activities and yet they were not given their rights to—and yet they were not given their civil rights and the privilege to vote. Fellow Delegates, I urge you to consider this proposal very seriously. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I have a question and the question is, what happens in the case of someone who has a suspended sentence? Will this cover that case also?

CHAIRMAN: Delegate Souza, do you wish to answer that question?

DELEGATE SOUZA: Mr. Chairman, for anyone with a suspended sentence the prevailing law would rule. This amendment would not have any effect on those that would have a suspended sentence. The prevailing law would be in order.

CHAIRMAN: Any further discussion?

DELEGATE ADUJA: Mr. Chairman.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: I'd like to speak against the amendment.

CHAIRMAN: Proceed.

DELEGATE ADUJA: I know that this is a forward approach to the Article which we are now discussing in this particular section. However, I am not satisfied with the question asked by one of the delegates who says that the suspended sentence is already taken care of by law. I believe that this is the only media in our Constitution that defines a person's right to vote. And this is Section 2 which refers to the felon-convicted felon. I will go along with this if only something is mentioned here about those who go on probation or suspended sentence. And, therefore, because of this particular phrase of those who cannot take care of suspended sentence and those on probation, I cannot go along with this amendment.

CHAIRMAN: Any further discussion?

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: I think we might save some time for debate here if we invited the chairman of the Bill of Rights Committee to stand up and explain to this Convention here what has transpired since yesterday. This morning, as you recall, we had a recess at which time the President of this Convention called the committee members together and asked us to consider this question over again. We spent all that several hours today from morning to this afternoon to consider this and the committee acted again. And I think the chairman of the committee ought to get up and explain to this group what they considered—action of that committee was. Because that's the committee that hurriedly went into the question. You've heard the other debates yesterday in all phases—all aspects of this question and I think we could likely save a lot of time if we do that.

CHAIRMAN: Delegate Doi, I think it's a very worthy suggestion, and the Chair will declare a recess to allow Delegate Ueoka to explain what has transpired.

At 4:19 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:15 o'clock p.m.

CHAIRMAN: The Committee please come to order. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I would like to withdraw Amendment No. 14 which is on the table and as far as the committee is concerned we will stand the provisions as contained in Committee Proposal No. 1 on Section 2.

CHAIRMAN: You may do so under Rule 36. Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I'd like to withdraw proposed Amendment No. 15. That will be covered by No. 16 when moved.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Souza.

DELEGATE SOUZA: Mr. Chairman, if I may I would like to withdraw proposed Amendment No. 10.

CHAIRMAN: So granted. Delegate Souza proceed.

DELEGATE SOUZA: I would like to move to adopt Proposal—proposed Amendment No. 16 as an amendment to Committee Proposal No. 1, Section 2, Article II, as follows:

“Amend Section 2 of Article II as set forth in the Proposal by amending the last sentence to read as follows:

“No person convicted of felony shall be qualified to vote except upon his final discharge or earlier as provided by law.”

CHAIRMAN: Is there a second to the motion?

DELEGATE OZAKI: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that Section 2 of Article II as set forth in the Proposal be amended to read as follows: “No person convicted of felony shall be qualified to vote except upon his final discharge or earlier as provided by law.” Discussion.

DELEGATE SOUZA: Mr. Chairman.

CHAIRMAN: Proceed. Delegate Souza, unless your argument is any different from your previous argument in support of Amendment No. 10—

DELEGATE SOUZA: I just would like to state that my comments would be in support of Amendment No. 10.

CHAIRMAN: Amendment 16, you mean. Delegate Souza, this is in support of—you are using the same argument that you used in support of Amendment No. 10 to support Amendment No. 16, is that right?

DELEGATE SOUZA: That's correct.

CHAIRMAN: Thank you. Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I don't intend to argue but I do think that the issue should be clear. Under Proposal 16 “no person convicted of felony will be qualified to vote except upon his final discharge . . .” but then there's that provision in there that says “or earlier as provided by law.” This means that the legislature can advance the date to whatever point it sees fit. Under the original Committee Proposal what actually happens is that when a man becomes qualified to vote even though he's been convicted of a felony, so long as he is not in prison. It's a difference in philosophy as to when a person should be considered to be qualified to vote. I won't spend any time arguing but I did want to make sure that the issues are clear.

CHAIRMAN: Thank you, Delegate Dyer, for the clarification. Delegate Lum.

DELEGATE LUM: Mr. Chairman, for the record I would like to have the proponent for this particular amendment explain to me what "final discharge" means.

CHAIRMAN: Delegate Souza.

DELEGATE SOUZA: Mr. Chairman, final discharge means when an individual is convicted of a felony and committed to prison and later placed on parole. Upon such time the parole board gives him a final and full pardon, then he is finally discharged. This is a final discharge.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: May I ask a question?

CHAIRMAN: Proceed, Delegate George Loo.

DELEGATE GEORGE LOO: Does this term take into account a person that is placed on probation who does not go to prison?

DELEGATE SOUZA: The answer is yes. May I yield to Delegate Mizuha?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Souza uses the word "pardon." What he meant is final release from parole custody. May I explain some of the things that the delegate who originally asked the question is concerned with?

If a person is sentenced to prison for twenty years, the parole board will set a minimum term. It might be three years and then he is placed on parole. Being a good boy on parole for about five years or three years, the parole board feels that he should be given his final discharge. Under the terms of this proposed amendment, when the parole board gives him his final discharge, it may be after three years of parole making a total of six years under custody including custody in prison and the supervision of the parole board. He becomes automatically qualified to vote. For the person who is placed on probation, and it's so noted that he's being placed on probation by the judge who sentenced him, the person who is convicted of a felony—let us say he steals an automobile which is an offensive, malicious conviction—the judge says, "Jose, I will sentence you for five years but the execution of the sentence is suspended and I will place you on five years' probation." But if the person serves well under his probationary period and sometimes even within the period of one year, his lawyer may go to the judge and say, "Will you please give my client his final discharge and release him from probation," and maybe at the end of one year he is released from probation and he gets his final discharge. Under the terms of this amendment he will be eligible to vote after one year.

Then we have another type of sentence in which is charged and this is the kind of sentence the lawyer always speaks for a client who is employed by the government and commits a felony. He tells the judge, "Please do not sentence my client. Will you please suspend the imposition of sentence?" And if the judge suspends the imposition of sentence to someone who had stolen a big Cadillac then he could still work for a bartender in one of the bars in Waikiki, he can still continue because he has not been sentenced with a felony. But the judge says, "I will suspend imposition of sentence but I will place you under probation for five years," and if he says that the good bartender down Waikiki and takes care of the judge once in a while when the judge comes in, maybe after one year the judge will give him his release from probation and under the terms of this amendment he can vote.

CHAIRMAN: Thank you for the clarification. Are you ready for the question? The motion is to amend Section 2, Article II of Committee Proposal No. 1 with the language provided in Amendment No. 16. Mr. Clerk, call the roll.

(Roll call having been ordered, the motion to amend Section 2, Article II of Committee Proposal No. 1 was carried by a vote of 39 ayes and 35 noes, with Delegates Ajifu, Akizaki, Alcon, Ando, Andrade, Ariyoshi, Bacon, Beppu, Bryan, Burgess, Doi, Goemans, Hara, Harper, Hidalgo, Hitch, Kageyama, Kawakami, Kawasaki, Kudo, Larson, Medeiros, Mizuha, Nakatani, Schulze, Suwa, Taira, Takahashi, Takamine, Ueoka, Ushijima, Wright, Yim, Young and Mr. President voting no; and 8 excused, with Delegates Aduja, Ansai, Hung Wo Ching, Kaapu, Kauhane, Kunimura, Nakama and Shiigi being excused.)

CHAIRMAN: The motion to amend Section 2 of Article II of Committee Proposal No. 1 is carried.

PRESIDENT PORTEUS: Mr. Chairman, can I have that ruling again. As I understood it, an amendment to the main motion was just carried.

CHAIRMAN: That is correct.

PRESIDENT PORTEUS: Thank you.

DELEGATE LUM: Mr. Chairman, has it just carried?

CHAIRMAN: Delegate Lum, what is your question?

DELEGATE LUM: I asked if this particular amendment had been carried and you said yes.

CHAIRMAN: It has been carried, yes—on the section.

DELEGATE LUM: You have to have forty-two noes to have the defeat?

CHAIRMAN: The Committee of the Whole sits in a meeting with a quorum of 42. This is all that's required of the Committee of the Whole. Is that understood?

DELEGATE FERNANDES: Mr. Chairman, what's before the House now? Motion to approve as amended? If it is, I so move.

DELEGATE TAKAHASHI: Second the motion.

CHAIRMAN: It has been moved and seconded that Standing Committee Report No. 23 be adopted and Committee Proposal No. 1, as amended, be adopted. Any discussion?

DELEGATE BRYAN: Mr. Chairman, I rise to a point of order.

CHAIRMAN: Yes?

DELEGATE BRYAN: Don't we have to approve Section 2, as amended, before we take the whole committee report?

CHAIRMAN: The procedure was set yesterday in regard to Section 1. We did not adopt Section 1.

DELEGATE BRYAN: I stand corrected. Thank you.

DELEGATE UEOKA: Mr. Chairman, actually there was a motion before the floor yesterday to adopt Section 2 and then there was a motion to amend. So the amendment passed. So actually there should be a vote on the motion as amended.

CHAIRMAN: That is correct. The Chair stands corrected. The Chair requests of the movant, Delegate Fernandes, withdraw your motion.

DELEGATE FERNANDES: I'll withdraw it.

CHAIRMAN: Thank you. The proper motion before this body now is to move to have Section 2, as amended, be adopted. The Chair entertains a motion to that effect.

DELEGATE FERNANDES: So move.

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 2 of Committee Proposal No. 1, as amended, be adopted. Ready for the question?

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Is this only Section 2 of the Committee Proposal or the whole Committee Proposal?

CHAIRMAN: This is Section 2 of the Committee Proposal, as amended, to be adopted by the Committee of the Whole. Delegate Hara.

DELEGATE HARA: Point of information. I'd like to have Section 2, as amended, be read to this body, please, so I know what I'll be voting on. Section 2, as

amended. Can the motion be read out loud for the body?

CHAIRMAN: Section 2 as amended reads as follows, and the language if you want to follow the Chair is reflected in Amendment No. 16: "No person convicted of felony shall be qualified to vote except upon his final discharge or earlier as provided by law."

DELEGATE RHODA LEWIS: Mr. Chairman. A point of order.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: A point of order. Since Amendment 16 only changes the last sentence as set forth in the Committee Proposal, I submit that the first sentence of the Committee Proposal is still in the Section.

CHAIRMAN: That is correct. So Section 2, as amended, will read, "No person who is non compos mentis shall be qualified to vote. No person convicted of felony shall be qualified to vote except upon his final discharge or earlier as provided by law."

DELEGATE HARA: Thank you.

CHAIRMAN: Everybody understands the motion? Mr. Clerk, call the roll.

(Roll call having been ordered, the motion to adopt Section 2 of Article II of Committee Proposal No. 1, as amended, was carried by a vote of 74 ayes and 8 excused, with Delegates Aduja, Ansai, Hung Wo Ching, Kaapu, Kauhane, Kunimura, Morioka and Shiigi being excused.)

CHAIRMAN: Section 2 of Committee Proposal No. 1 is carried as amended.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Your Committee has recommended that there be no change in Section 3 of Article II. I move at this time that we retain Section 3 as contained in Article II of the Constitution.

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 3 of Article II of the Constitution be retained. Discussion?

DELEGATE MIZUHA: Mr. Chairman, I rise to a point of information.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Will this be the pattern with reference to deliberation on all Committee Proposals that where we must go through the motions with reference to any Section in an Article in which the

committee does not see fit to amend?

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, the reason why I thought that we should perhaps follow this procedure is because in the next Section, 3, there is also going to be a motion to retain—

CHAIRMAN: You mean Section 4?

DELEGATE UEOKA: Section 4. However, there is an amendment on the table and it is to give the person who has proposed an amendment a chance to make an amendment.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Some thirty days ago, Delegate Schulze, Jr. wisely inserted in the rules, Rule 23, and Rule 23 covers the situation to permit individual delegates like Delegate Burgess to submit an amendment to a section that is not covered in the Committee Proposal.

CHAIRMAN: Delegate Mizuha, Standing Committee Report No. 23 recommends on page 8, the retention of Sections 3 and 4 of Article II without amendment. And Rule 23 covers reports. The Chair rules that this motion is in order.

Delegate Burgess, I don't think there's any argument on this motion. We can dispense with the roll call. Shall we do it by voice vote? All those in favor of the motion say "aye." Opposed, "no." The motion is carried. Delegate Ueoka.

DELEGATE UEOKA: I move that we retain Section 4 of Article II of the Constitution as recommended by the Committee.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that Section 4 of Article II of the Constitution be retained.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I move to amend Committee Proposal No. 1 relating to Section 4 and if the Convention will refer to Amendment 8, no, 12, they will be able to follow along with this amendment. The amendment is as follows:

"Section 4 of Article II of the State Constitution is amended by amending the last sentence to read as follows:

"Secrecy of voting and political party affiliation shall be preserved.'"

DELEGATE WRIGHT: I second the motion.

CHAIRMAN: It has been moved and seconded that Section 4 be amended with the language provided in Amendment No. 12.

Do you wish to speak in support of the amendment, Delegate Burgess? Will you proceed?

DELEGATE BURGESS: Before I begin, I would like to read the amendment. The last sentence of Article II, Section 4 to read as follows: "Secrecy of voting and political party affiliation shall be preserved." Mr. Chairman, I wish to speak in favor of the amendment. At the present time every voter wanting to participate in our primary elections is required to state his political party preference. In a few years if this practice continues every voter's preference will be available for public scrutiny. I believe that what party ticket I vote on or anyone else votes on is none of the public or government officials' business. The right to associate, be it with the labor, religious or political organization, automatically implies the right to secretly associate. Just as a right to vote automatically implies the right to vote secretly.

We have been told and we will be told again today that the secrecy of political party affiliation will in effect hamper the two-party system we have here in Hawaii. I say that if the only way we can promote a two-party system is to force our voters to publicly declare a party affiliation, then the price is too high.

Secondly, the attempt to promote a stronger two-party system is really an attack upon the great number of independents we have in Hawaii today. What we are now doing is in effect saying that "if you are an independent, then you are not to participate in a government-sponsored primary election."

We have also heard arguments today that the primary election is merely a nominating process so each party could pick its best candidates to put before the people. Therefore the independents have no place in this nominating process. What we must ask ourselves is who is paying the bill to sponsor this nominating election? Is it only the political parties? Is it any private interest? Or is it all the people of the state including the independent voters? And if these independent voters are also paying for the support of these elections, should they not have the right to secret participation in this process? If the political parties do not want independents voting in their nominating procedures, then let them hold the procedures separate from government elections. Government money should not be squandered for any procedure which hampers participation of all interest groups be they Democrats, Republicans or independents.

You'll also be told of how the present system prevents raiding of one party by another. We should evaluate this argument very seriously. The present

system and any other system cannot possibly prevent raiding. Democrats may claim to be Republicans or vice versa. There are no methods of assuring that proclaimed Republicans are in truth Republicans. Nor is there any method which assures that a proclaimed Democrat is in truth a Democrat.

Mr. Chairman, I'm not advocating raiding of one party by another. I'm not advocating the elimination of the closed primary election. I am not advocating having voters cross over to any political party in our primary election. I am advocating simply preservation of the secrecy of political party affiliation. I believe that this secrecy is just as basic as the secrecy of the vote itself. If the legislature can find some means to prevent raiding or any other misuse of any election system, then they should go ahead and institute these means. But these corrected measures certainly should not do more damage than good. Thank you.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I have a question for the proponent. I wonder if he would accept the meaning represented by the words, "Secrecy of voting and political party affiliation shall not be violated by law," rather than "shall be preserved by law." I would hate to place in the Constitution a provision which would mandate the legislature or others to spend a lot of time and effort to preserve something which some individual might not care about having preserved.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I will say that any amendment which would stop government from asking a person what party he's going to vote in and which would stop government from publishing the person's political party.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I rise to speak against the amendment. The effect of this amendment would be to make impossible within the State a closed primary. Now, I just happen to be of the belief that in a primary election Democrats should vote for Democrats, Republicans for Republicans and that it's really not the business of the independent voters to vote in a closed primary. Neither do I think there should be any crossovers. Now, the effect of this amendment would be to prevent forever this State from having a closed primary law. I think this is wrong, I think I've said enough.

CHAIRMAN: Thank you. I recognize Delegate Lum, he wanted the floor.

DELEGATE LUM: Mr. Chairman, I have a question to ask. Does expressing one's party affiliation at the booth mean giving up one's secrecy of party affiliation?

CHAIRMAN: Delegate Burgess, do you care to answer the request of Delegate Lum?

DELEGATE BURGESS: I think there's no question about it. If somebody asks you what party you're going to vote for, you can tell him Democratic party. He's going to tell you're a Democrat after that and you're going to be registered as a Democrat according to the City Clerk's office.

DELEGATE LUM: I wanted to get at this point to find out. I understand that he is recommending not having our closed primary law done away with. How can we do it if the individual cannot ask for a party affiliation and ask for a particular ballot?

CHAIRMAN: Delegate Burgess, do you wish to answer?

DELEGATE BURGESS: I'll try to. The main reason for having the closed primary is to prevent one party from going into another party's nominating procedure. But this is not what is happening with the closed primary. If I'm a Republican and I claim to be a Democrat, I can still vote on the Democratic party ballot and vice versa. Now this—supposing we had a ballot which has a black line running down. This would in effect be the same thing as the closed primary. What you're doing is only taking both ballots and in secret you're choosing what side you want to vote on that ballot. But it would still limit you to only one side of the ballot.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I speak in opposition to the amendment on one point which I think the delegates here assembled should consider. We voted this morning to have the presidential primary. If this amendment were incorporated into the Constitution the presidential primary here in Hawaii electing delegates to the respective conventions of the political parties would be a complete farce.

CHAIRMAN: Delegate Beppu.

DELEGATE BEPPU: I speak against the amendment. The previous speaker mentioned the presidential primary which we adopted in Section 5 of Article II, and I think this amendment would defeat its purpose. Mr. Chairman, I think we are very fortunate to have in this body here people of both political faiths. I suspect there must be about 90% who are either identified with the Democratic party or the Republican party. And reading through the proceedings of the 1950 Convention, I find that the Convention itself wisely determined at that time that both political parties have a platform for a partisan primary. And we find this year's Convention report which adequately states that this should be left to legislative determination. I agree with the committee report, Mr. Chairman, and furthermore, Mr. Chairman, with this kind of amendment what we're trying to do, if enacted, is to perpetuate people in public office. People with no responsibility or identification with any party. And all of us here, including 90% of the delegates here, are identified with both parties. I find that there are about 15 officials of both Republican and Democratic parties

in this Convention assembled. I think this is a great compliment to this assembly that we have this kind of delegates represented. It seems to me, Mr. Chairman, that with this type of amendment we would be destroying the identification of both parties. And as I stated many times in the past, I'd be the first one to say that I do not want to be nominated or defeated by people who do not believe in my program or my political party's program. I ask a no vote on this amendment.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, this matter was thoroughly discussed in the Committee. An attempt was made to amend Section 4. However, the Committee felt that there are two parties here in Hawaii and, of course, there are also independents and independents can put up their own candidates if they wish to and that in the general election they can vote either way. But the main purpose of defeating this amendment was because the members felt that both parties should put up the best men and if there is no closed primary then members of one party may be able to commit a fraud by voting for a weaker candidate and thus the community will have not necessarily two strong candidates contending for a particular office. It was for this reason that the Committee strongly felt that insofar as secrecy of political parties is concerned in the primary that it should remain as it is.

CHAIRMAN: Delegate Ching, followed by Delegate Mizuha. Delegate Ching is recognized.

DELEGATE DONALD CHING: I rise to speak against the amendment. Just a couple of points that I want to make. First of all, I want to assure my colleague from the 10th District that about fifteen years ago it became rather safe to become a Democrat in this State. I don't think it is necessary now to keep secrecy of party affiliation. The other point I would like to make is that by asking for a particular type of ballot you are not saying that you are necessarily a member of that party. That your preference is to nominate candidates of that particular party in the primary election. And the other point I would like to make in answer to the charge or the point raised by the delegate from the 15th District is that the delegate, my colleague from the 10th Representative District, is being very consistent because I noted in his vote this morning, he voted against the presidential primary election.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I speak somewhat in explanation of brother Burgess' position. I, too, am a member of the Suffrage and Elections Committee and I believe brother Burgess' principal objection is to the present closed primary law which beginning this fall would require everyone who votes at the primary election to ask for either a Republican or Democratic ballot, and then have his request noted in the record which shall be kept in the office of the County Clerk and for the next two years if he chooses to ask for a Republican ballot, his name will be noted

as a Republican in the County Clerk's office and vice versa. And if that person decides to change next year or the following year, he must go through a time-consuming process before he can change his party affiliation.

It has been said that many of our citizenry object to this form of identification. Somehow or the other it compels them to declare, when they ask for a primary ballot, that they are a member of a political party and to have that record maintained in a public office. Delegate Burgess did not explain this very carefully. Contrary to what Delegate Fasi has said, it wouldn't ruin presidential primaries. If this same system can continue, if that provision in the election law can be eliminated whereby a person's request for a ballot will not be permanently recorded in the office of the County Clerk just as we have been doing in the last two primary elections. And somehow or the other, consideration must be given to this principle of secrecy which Delegate Burgess seems to ask of the members of this Convention.

It seems a travesty upon an election process to me as an individual when I study this closed primary law. At the present time, Delegate Dyer did say that independents are not supposed to vote in the primary election, but do you realize that if you are a candidate as an independent in this State of ours, an enlightened State, under this closed primary law, that was developed and written into one of our statutes by the architects of new Hawaii, that if you ran as an independent today and did not get 10% of the votes cast, your name cannot appear on the general election ballot. But if it were a Republican or a Democrat run in this primary election and even though he got only 2% of the primary vote, his name automatically goes on the general election ballot. And I will now predict for you all right now, and I hope you will record it in your minds very carefully, that in the County of Kauai in the primary election, the Republican candidates for office will not get 10% of the primary vote on October 5th and yet they will automatically go on the general election ballot. But if an independent runs for election for any office in the County of Kauai and cannot get 10% of that vote his name will not go on the general election ballot and to me that is the meanest form of discrimination against voters here in this State. I am not going to make any attempt to amend our suffrage and elections article at the present time, but I hope my statements will be carefully considered by people who return to the legislature this fall and seek to amend the closed primary law where equal protection—where fair protection, so to speak, will be reconsidered and independents will have a chance to appear on the general election ballot. Thank you.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: I have two questions. Will the distinguished jurist from Kauai yield to a couple of questions?

DELEGATE MIZUHA: I will yield if I can answer them. I don't promise that I can answer them all.

DELEGATE DONALD CHING: In your explanation of the closed primary law, you did not want to leave the impression with the delegates in the Convention that if there were four Republicans running for three seats in the primary and the fourth Republican were to get 2% of the vote that he would also be on the general election ballot.

DELEGATE MIZUHA: No, for those who are nominated, so to speak, even on the Island of Kauai and please watch it very carefully, those who are nominated for the eligible number of Representatives to the State Legislature or the County Council or even for the Mayor of Kauai, that the Republican nominee will not get 10% of the vote because in the last primary election out of a nearly 10,000 votes cast, the nominee for the Republican side had only 444 votes.

DELEGATE DONALD CHING: Mr. Chairman, I'm still waiting for an answer to or further clarification on my question to Delegate Mizuha.

DELEGATE MIZUHA: I just said so that those who are nominated, the three would be nominated of course, but he would still automatically appear on the ballot according to the closed primary law.

DELEGATE DONALD CHING: In the example you have cited, it's only when there was an insufficient number of candidates for a primary battle that they would all be automatically nominated and run for the general, is that not true?

DELEGATE MIZUHA: Even though he didn't get 10% of the vote.

DELEGATE DONALD CHING: But that is true?

DELEGATE MIZUHA: Even though they didn't get 10% of the vote, but if an independent ran for Representative from Kauai, as I contemplated at one time, I knew I couldn't get 10% of the vote and couldn't get on the general election ballot.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Are you raising a question, Delegate Beppu?

DELEGATE BEPPU: Yes, sir.

CHAIRMAN: Proceed. State your question.

DELEGATE BEPPU: I'd like to ask—will the soft-spoken jurist from Kauai yield to a question?

DELEGATE MIZUHA: I'll try to answer.

DELEGATE BEPPU: Mr. Delegate, you questioned the percentage figures on the primary ballot or the result of the primary election. Isn't it possible to have about a dozen so-called independents who cannot work together or who do not believe in each other so you must have some kind of an arbitrary figure so they can base the percentage on.

DELEGATE MIZUHA: I'm glad you brought that up. If you say that there might be too many independents on the ballot, they might be Republicans who are not desirous of being on the ballot in the general election so the 10% qualification should be applicable to Republicans and Democrats as well. Not only to the independents. There isn't a special place in Hawaiian politics or national politics for the members of the Republican or Democratic party. That's my position.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FRANK LOO: I was wondering whether the Chairman of the Committee would yield to a question. The question here is this: looking at this amendment I was wondering whether in the deliberation of your committee whether the fact secrecy of voting shall be preserved, whether the fact that a person has to announce that he wants a Democratic ballot rather than a Republican ballot and the procedure that we have to go through, whether that would be against the Constitution saying that the secrecy of voting shall be preserved. Was that gone over in your Committee?

DELEGATE UEOKA: During our discussion on the matter of "secrecy of voting shall be preserved," we discussed the matter that if it is directed to a voter who goes into the poll and votes for any particular candidate of the same party. In other words, he receives the ballot and as far as whom he is voting for should be preserved. In other words, let us assume that there are six seats in a particular race and there are ten candidates, that particular voter could vote for one, could vote for two, could vote for five and also six of the same political party but as far as whom he is voting for should remain secret.

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Proceed, Delegate Frank Loo.

DELEGATE FRANK LOO: Chairman of the Committee, in other words you're qualifying the word "secrecy" of voting to just merely the secrecy of who you vote for but not what party. Did your counsel check into that, whether the fact that he had to divulge part of how he's going to vote in terms of party without being contrary to the Constitution?

DELEGATE UEOKA: As I explained, Delegate Loo, we had discussed this matter, the proposition made by Delegate Burgess and we considered this and we felt that they should not be included in the provision. What I'm trying to say is that we did consider it but we felt that the only thing that should remain secret is where he would put the "x."

DELEGATE FRANK LOO: Mr. Chairman, may I continue? You didn't answer the question. Certainly you people decided that the restriction as far as you restricting or that putting a certain definition to "secrecy of voting." The question here is did you get a legal opinion, checking the laws whether secrecy of voting would be violated by having any part of the voting process revealed?

DELEGATE UEOKA: Well, as far as having a legal opinion is concerned we did not—our committee attorney was there, he did not offer, he knew exactly what we were looking for, and if he felt that it was ambiguous or otherwise, I'm sure he would have informed us. But our discussion was limited to and it was our intent that secrecy of voting should go only to the manner in which he votes. That is to which candidate he's voting for. Not necessarily party.

DELEGATE HARPER: Mr. Chairman.

CHAIRMAN: Delegate Larson, followed by Delegate Devereux. Oh, excuse me, Harper.

DELEGATE HARPER: Mr. Chairman, I rise to speak in favor of the motion. I don't think it has a chance to pass it.

DELEGATE DEVEREUX: I had a question for the Chairman of the Committee, please.

CHAIRMAN: Delegate Devereux, proceed.

DELEGATE DEVEREUX: May I ask the Chairman of the Committee or anybody else in this body if we know whether there has ever been an attorney general's opinion on whether the present wording of the Constitution has been violated by our existing election laws.

CHAIRMAN: Does anyone care to answer or does anyone have the information?

DELEGATE UEOKA: I'm sorry I don't have any information.

DELEGATE SAIKI: Mr. Chairman, a question.

CHAIRMAN: Proceed, Delegate Saiki.

DELEGATE SAIKI: If I can ask the very handsome justice from the Island of Kauai a question.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: This is the first time. This is a big surprise.

CHAIRMAN: Proceed with the question and the answer please.

DELEGATE SAIKI: Just for clarification purposes, Justice Mizuha. Do I gather correctly that you are in agreement with the concept of Delegate Burgess' amendment, the feeling however is that you feel it is a statutory matter that it should be left to the legislature, the wisdom of the legislature?

DELEGATE MIZUHA: That's absolutely correct, Madame Saiki. I believe this is for the legislature to determine and I know in their wisdom as to the awful showing of the electorate in the primary election, I think there would be about 30% less than a normal turnout in the primaries in this election because of this

closed primary provision which will forever ordain in the County Clerk's office the political affiliation. Republicans and Democrats who are a little shy won't vote and in their wisdom I know my brethren here, come next spring, will amend the primary law as they're hearing all of the words of wisdom of their fellow delegates here.

DELEGATE SAIKI: Then may I also, Mr. Chairman, take the same faith and trust in the wisdom of that legislature. Thank you.

CHAIRMAN: Thank you very much. Delegate Harper.

DELEGATE HARPER: Mr. Chairman, I rise to speak in support of the amendment. I would like to state, as they say, Mr. Chairman, I would like to tell it as it is, at least as it is in my mind. We talked a lot about rights in this Convention in a shirk deliberation. We've given the right to vote to former felons, we've given the right to vote to 18-year-olds, there was another one, I forget it right now. We talked a lot about rights though, Mr. Chairman. I would like to say that the election process is a two-fold process. It's one of selection and it's one of election. I speak for the independent voter, Mr. Chairman, of which 40 to 50 percent of our voters are in this category. They are independents.

I have constituents who are afraid to go to the primary election because they're afraid to—they do not want their, in my opinion and in their opinion, right denied them by having to tell what ballot, which party they want. I would like to say that the closed primary law discriminates against the independent voter because it denies him the right in the selection process. This disenfranchises this independent voter by denying him the same thing and it does something that I think we're all trying to do, to encourage that he participates in the election process. The closed primary discourages the independent voter. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Mr. Chairman, I rise to support Delegate Burgess' amendment and let us not kid ourselves because I, myself, and a group of us, tried for so many years to amend in legislative action these various programs concerning closed primary. I feel strongly that the right to go to vote, to choose your ballot, is yours. I feel strongly that the next coming election, when you pick up a Democrat ballot, you're going to be registered, covered on all documents as a Democrat.

As of today, I am not sure whether my wife is a Democrat or a Republican. At least I'll know upon this election. But as one of my colleagues spoke from Kauai, and what's going to come about in this primary election is that many of the people are just going to stay away from the election. They're not going to vote because they're not ready to determine to be registered with either one party or the other. So when we say that leave it up to the legislature, I say prior to what we

spoke a few hours ago the word was raised by Delegate Kauhane, the word "shall." So I support this amendment because I think that if it's defeated, it will register the votes of how many delegates were for it. If it's passed, it's registered to the legislature that that right of secrecy be kept regardless of whose party is in control today. Thank you very much.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FRANK LOO: I rise to a point of personal privilege. The personal privilege is this, Mr. Chairman: we're asked to vote on the measure here without the—on this amendment, and from the remarks of the Chairman that no legal counsel was asked on whether this particular point where the person—

DELEGATE FERNANDES: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE FERNANDES: I hate to raise a point of order. Mr. Chairman, the Committee Chairman answered the question and I don't see where the delegate has the right to rise on a point of personal privilege.

CHAIRMAN: Your point is well taken.

DELEGATE FRANK LOO: May I continue, Mr. Chairman?

CHAIRMAN: You are ruled out of order, Delegate Loo. Are you ready for the question? All those in favor of the motion to amend—

DELEGATE BURGESS: Mr. Chairman, I rise to ask a question.

CHAIRMAN: Delegate Burgess, speak.

DELEGATE BURGESS: I would like to ask the Secretary of this Convention a few questions if he will be kind enough to answer.

Delegate Beppu, did you say that when we go to vote, we not only vote for the man but we also vote for the political party and the platform that the party puts out?

DELEGATE BEPPU: What I said was that I have to be nominated or defeated by people who do not believe in my personal program or my political party's platform.

DELEGATE BURGESS: Is it true that when we do go to vote, we not only vote for the candidate but we also should vote for that political party and its platform.

DELEGATE BEPPU: That is correct.

DELEGATE BURGESS: By asking a person what party he is going to vote for, isn't this an infringement

upon his rights, secrecy of his voting?

DELEGATE BEPPU: No, I don't think so because what you are doing is having the members of both or more than two political parties vote in the primary to nominate candidates of the party who'll be the strongest candidates in the general election.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: The arguments presented here both for and against the proposed Amendment No. 12 seem to emphasize the matter of the so-called closed primary laws of Hawaii.

My concern here with the proposed amendment is the language of the proposed amendment and the implications of that language. Now, I'm not sure whether this language in effect outlaws political parties and therefore encourages underground secret political party activities or not. I'm not sure exactly whether this language will interfere with the right of people to get together to form new political parties as are being formed now here in Hawaii. I am afraid of the language that is presented because of lack of knowledge of all of the vast implications here. So my vote against this proposal will not be on a basis of a closed primary as exists now under our so-called closed primary law. Thank you.

CHAIRMAN: Delegate Lum followed by Delegate Frank Loo.

DELEGATE LUM: Will Delegate Yoshinaga yield to a question?

CHAIRMAN: Delegate Yoshinaga, will you yield to a question?

DELEGATE YOSHINAGA: Yes.

CHAIRMAN: Proceed, Delegate Lum.

DELEGATE LUM: Would you please, for the information of this Convention, tell us what you think would be the proper language of this particular amendment?

DELEGATE YOSHINAGA: The answer is very simple. I don't know.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Mr. Chairman, could we have someone come out with the particular language that would perhaps make this proper for the intent of the particular movant?

CHAIRMAN: Well, I do not know whether the movant desires to have any change in the language of his amendment.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I'll amend the language any way we can amend it as long as we achieve the purpose we are trying to achieve.

CHAIRMAN: Thank you, Delegate Burgess. Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I offered a suggestion, I can make it as a motion or perhaps Delegate Burgess would like to accept it that the amendment would read, "The secrecy of voting and political party affiliation shall not be violated by law."

CHAIRMAN: The motion dies for lack of a second.

Delegate Frank Loo.

DELEGATE FRANK LOO: I rise to speak in favor of the amendment. The reason why I'm speaking in favor of the amendment is that (1) as indicated by the delegate from Kauai, there are a great number of people who would not like to state their political party affiliation. That's one. However, the greater point here, it seems to me, Mr. Chairman, that's why I rose to a point of personal privilege, was that since there was no inquiry to the legal legality of the system that's being used now, that I was going to ask that this matter be deferred until we get an attorney general's opinion so that we can be on safe grounds and thereby perhaps avoid a lawsuit with some voters coming to court and challenging the voting process as being used now. I think the delegates here, since the question was brought forth and that the Chairman was kind enough to say that there was no legal opinion rendered, merely that it should not be covered at all I think it behooves us to look into the matter so that we could avoid possible lawsuit and thereby incur expense to the taxpayer. That's why—since I have been denied the right to ask for personal privilege so that we could ask for the opinion, I'm going to vote—

CHAIRMAN: Delegate Frank Loo, you have no right to ask a question of personal privilege in the Committee of the Whole. However, I granted you this privilege earlier, so don't raise the question of personal privilege again please. The Chair will rule you out of order.

DELEGATE FRANK LOO: I am—and therefore, Mr. Chairman, and I hope that the rest of the delegates will vote in favor of this amendment.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I'd like to ask a question of the previous delegate who spoke, Delegate Frank Loo. Delegate Loo, are you aware of the fact that before the Governor signs any bill that comes before his desk, that he normally asks the opinion of the Attorney General's staff as to the legality of any legislative proposition that comes before him for signature?

CHAIRMAN: Delegate Frank Loo, will you yield to

the question?

DELEGATE FRANK LOO: Yes. The delegate from Kalihi, the delegate from Manoa—

CHAIRMAN: You may state his name on the questions and answers, Delegate Loo.

DELEGATE FRANK LOO: Delegate Kawasaki, previously Delegate Devereux did ask whether there was an Attorney General's opinion regarding the present election process and I assumed that's what was done. If there had been an Attorney General's opinion, apparently it was not forthcoming or was not asked for by the Committee. Therefore, if there is one, that's all I'm asking for, we should check on that.

DELEGATE KAWASAKI: The point I wish to establish here, Delegate Loo, is that the Governor, before he signs any legislative proposition that comes before him for his signature, does informally ask the Attorney General's staff for a ruling or at least an opinion by the staff. This may be done on a very informal basis but to say that the Attorney General's opinion was not rendered, at least to the Governor the signing authority on any act, is erroneous.

CHAIRMAN: Delegate Medeiros.

DELEGATE MEDEIROS: I have a question for Delegate Burgess and all I want is a yes or no answer. Delegate Burgess, are you in favor of being compelled to vote one party or the other in the primary? Yes or no.

DELEGATE BURGESS: Mr. Chairman, I hate to answer yes or no. Delegate Medeiros, I don't tell you how to answer—

CHAIRMAN: Delegate Burgess, if you do not want to answer yes or no, you don't have to answer at all. You may sit down. Thank you. Are you ready for the question?

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I rise to speak in favor of the particular amendment. I sat here all this time listening to the arguments on both sides and this is one of the things that I think we should seriously consider. Although I'm not in the majority party now, I foresee the day when the majority will become the minority and I hate to have the government employees who are working for the majority party be afraid to go out in the primary and vote because their particular party affiliation will be recorded and then possibly be persecuted throughout the rest of the year.

I think that this would further clarify, though I do not agree with the wording of this, as Delegate Yoshinaga doesn't, I think it would still make it possible to have a closed primary but instead of a closed primary we have a secret closed primary. As

Delegate Burgess has suggested here, it need not be two separate ballots but there can be just one ballot. One can be of a different color, the other can be of a different shade or what have you, so that the person will have the right to choose secretly in the particular booth which party affiliation he belongs to.

I do not agree that elections are made only for parties. I agree with Delegate Mizuha, and I oppose the particular bill coming to the legislature which would restrict the other party other than the two major parties because I could see this was aimed at the Board of Education who had a lot of nonpartisans running. But if he couldn't get 10% of the vote, guess what happened? He was eliminated automatically.

So I feel that something like this perhaps will make it possible for a closed primary and not make an individual be compelled to express his party affiliation and have it recorded by the City Clerk's office. So I urge you to seriously consider that matter and vote for the amendment.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Will Delegate Burgess yield to a question? Delegate Burgess, did you understand the proposal which Delegate Bryan suggested earlier? That the words "shall be preserved" would better be "shall not be violated by law," and did you understand his reasons for making such a proposal?

DELEGATE BURGESS: I presume the reason is to not to outlaw political parties, I'm not sure. My point is this, that I believe the Style Committee is aware of the intent of the Proposal and I don't want to fight about what word we're going to use on the Convention floor and I don't think we should use the excuse that certain words would do something else, which the intent is not the reason. I think we can agree and we all understand what the intent is. Let the Style Committee figure out the wording.

DELEGATE DEVEREUX: One other question, Mr. Chairman, to Delegate Bryan.

CHAIRMAN: Proceed, Delegate Devereux.

DELEGATE DEVEREUX: Delegate Bryan, did you put your statement a few moments ago in the form of a motion or a suggestion when the Chair said it died for lack of a second.

CHAIRMAN: The Chair will answer that question, Delegate Devereux. He put in a motion, it died for lack of a second.

DELEGATE DEVEREUX: Thank you.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise on a point of information. If this Committee of the Whole should accept this amendment, knowing full well that the meaning of the words and phrases used here are not

exactly in line with some of the desires of the people who are for this proposed amendment, is it possible for the Committee on Style, for example, to reword or rephrase this in any way?

CHAIRMAN: Delegate Taira, as far as the Chair's understanding is, the Style Committee cannot change the substance, the language of this amendment.

DELEGATE TAIRA: Thank you, Mr. Chairman. In that case, I'm so confused with this particular proposed amendment, I am in complete sympathy with the idea of giving our independent voters a chance to keep their political party affiliations to themselves but I cannot accept this proposed amendment.

CHAIRMAN: Delegate Burgess, do you wish to summarize?

DELEGATE BURGESS: Is it proper to recess and let's figure out this language thing so that there will be no excuses why I'm not voting for it or I am voting for it.

CHAIRMAN: Delegate Burgess, I would like to grant you the privilege; however, the hour is getting late and I believe the votes will indicate whether they are in favor of the amendment or not.

DELEGATE AJIFU: Mr. Chairman.

CHAIRMAN: Delegate Ajifu.

DELEGATE AJIFU: I rise to raise a question. I'd like to direct this question to the Chairman of the Committee. Do you say from the voting process you have dissolved your vote this would be unconstitutional?

DELEGATE UEOKA: Will you please repeat the question again?

DELEGATE AJIFU: Would you say from the voting process you have dissolved your votes, this would be unconstitutional?

DELEGATE UEOKA: Well, my opinion is that it is not. I don't know how far it would stand, but I feel that as far as secrecy of voting is concerned it's after you get into the poll as to what action you are going to take.

DELEGATE AJIFU: If your answer is so, then what is the rationale back of the last statement "secrecy of voting shall be preserved."

DELEGATE UEOKA: "Secrecy of voting shall be preserved" goes to a situation where a person—it could be one of the clerks at the polls who would go into the voting booth and try to discover where the voter had placed his "x," and as to whom he had voted for. In other words, once he gets his ballot and goes into the poll, in the voting booth, his action there in the voting booth shall be kept secret.

DELEGATE AJIFU: Let me just give you another

example here. Now, if there is only one candidate in a particular race and under the present closed primary law you ask for a particular ballot, would you not at this stage be divulging the vote?

DELEGATE UEOKA: Well, I suppose so. But in any event he will be elected.

DELEGATE AJIFU: This is true but there's a point that I raise—the individual, the voter, is not being given the privilege of retaining or preserving the secrecy of his vote.

CHAIRMAN: Delegate Ueoka, you're finished here?

DELEGATE UEOKA: Well, as far as whoever goes into the booth is concerned, he may pull out a Democratic ballot. It doesn't mean that he has voted for the person. It could be that he had placed an "x." But at the same time, if he just submits a blank ballot, still it doesn't mean that he had voted for the person and it's revealed as to what action he had taken.

CHAIRMAN: The Chair would like to declare a short recess to allow the stenographer to rest her tired fingers.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Yes.

DELEGATE ARIYOSHI: Before the recess is taken, I would like to make a statement here. Mr. Chairman, I'm a little bit disturbed at the request made by Mr. Burgess here. Some of the things that have come up here could not have been anticipated by him with respect to the amendment proposed, and I'm a little bit disturbed if he is not going to be given an opportunity, in view of the questions and problems raised here before this Committee of the Whole, if he is denied the opportunity to provide the proper language for his amendment. And I just want to make this statement to the Chair leaving this matter with the—

CHAIRMAN: Mr. Burgess may have his opportunity during this recess period.

DELEGATE YIM: Mr. Chairman, as a member of the committee, may I participate in explaining the word "secrecy" as I understand it, before we recess?

CHAIRMAN: Proceed, Delegate Yim.

DELEGATE YIM: Mr. Chairman, if I can recall my political history of America, primary elections and political parties have no status in our constitutions. Secrecy has one reference throughout history. It pertains only to balloting. There were periods in our history where voting was open and even conducted privately by political parties. Only in recent years the Supreme Court of the United States has included the concept of the Constitution to be applicable to primary elections only when it pertains to civil rights and discrimination. The nomination of the President of both political parties is done by only members of the respective parties. In

many state primaries, only members of that particular political party participate, so obviously secrecy does not apply to primary elections.

CHAIRMAN: Thank you, Delegate Yim. The Chair declares a recess and Delegate Burgess, will you use that recess period to formulate some language? Recess is declared.

At 6:32 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 6:55 o'clock p.m.

CHAIRMAN: The Committee please come to order. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I request permission to withdraw my original motion for the purpose of proposing a substitute to that motion.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: Is it necessary to second his motion?

CHAIRMAN: It is not necessary.

DELEGATE BRYAN: Thank you.

DELEGATE BURGESS: Mr. Chairman, may I withdraw my main motion?

CHAIRMAN: Under Rule 36 you may withdraw your motion. Delegate Kageyama.

DELEGATE KAGEYAMA: As a co-signer, I join with Delegate Burgess to have my name stricken from that proposal also.

CHAIRMAN: Thank you very much, Delegate Kageyama. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I move that Committee Proposal No. 1 be amended by amending Section 4 of Article II of the State Constitution by adding a new sentence to read as follows: "There shall be no public record of political party affiliation of any individual."

CHAIRMAN: Is there a second to that motion? Delegate Yamamoto.

DELEGATE YAMAMOTO: I second that motion.

CHAIRMAN: It was moved and seconded that Section 4 of Article II of the State Constitution be amended by adding a new sentence to read as follows: "There shall be no public record of political party affiliation of any individual." This is Amendment No. 17 on your desks.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I would like to ask a question of the movant.

CHAIRMAN: Will you yield to a question, Delegate Burgess?

DELEGATE BURGESS: If I can answer it, yes.

DELEGATE DONALD CHING: Delegate Burgess, or anyone else who may have an answer to this, the way I read this proposed addition to the State Constitution, this would also outlaw the keeping of the record of both political parties by the County Clerk as is now found in our state statutes to expedite the Lieutenant Governor in checking the signatures on our candidates' nomination papers. Now is this the intent of this amendment here?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I shall attempt to answer for Delegate Burgess. The suggestion I made to Delegate Burgess came back in a different form. As it is now a person who wants his nomination papers to be filed with the Lieutenant Governor when he runs for office cannot have his political party affiliation on same. All I asked for is that there shall be no record of political party affiliation on the voting register of the County Clerk or the records of individual voters are kept. Even at the present time when the Lieutenant Governor ascertains whether a person is a voter in a particular precinct or district, he does not have any record of that person's political party affiliation and I wish to amend Mr. Burgess' amendment to read as follows: "There shall be no record of political party affiliation on the voting register of any county." The Style Committee can improve on that afterward but like I said—could I have a second.

DELEGATE FERNANDES: I second the motion if I am recognized, Mr. Chairman.

CHAIRMAN: So recognized.

DELEGATE MIZUHA: I offer this amendment to facilitate the vote and a vote on this matter, and as I said previously, I shall vote "no" because this is a legislative matter and in the wisdom of our legislators I know they will amend the closed primary law.

CHAIRMAN: It has been moved and seconded that the language in Amendment No. 17 be amended to read as follows: "There shall be no public record of political party affiliation on the voting register of any county." Is that correct, Delegate Mizuha?

DELEGATE BURGESS: Mr. Chairman, as the mover of the first motion I will accept that as a main motion, if you want. I agree with the Judge.

CHAIRMAN: Thank you very much. Delegate Fasi.

DELEGATE FASI: Mr. Chairman, this is in the form

of a good-natured complaint. I have trouble listening to the wisdom of the delegate from Kauai. He speaks too fast and too loud, while the movant speaks too softly.

CHAIRMAN: Thank you. Will both delegates try to adjust your microphones.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, as I understand the particular amendment as presented now, it will not outlaw the closed partisan primary. You may still have that. The previous amendment withdrawn by Delegate Burgess did outlaw the closed partisan primary but did not outlaw the closed primary.

Now, I give you an explanation. It is a closed primary when you go to a voting booth and you are handed a ballot but pursuant to law you can vote for the members of candidates of only one party. In the experience in Hawaii, you received a ballot with a double line or a big line down the center of the ballot. You stayed on one side or the other. That is the closed primary. Without identification of the person as a Republican, independent, or Democrat when he goes in to vote.

That's as opposed to the open primary where a person could vote both for Democrats and Republicans in the primary. Now a closed partisan primary is interpreted as being a primary where it is necessary for a voter, in order to get a ballot, to identify himself as a Republican and get a Republican ballot, as a Democrat and get a Democrat ballot or as an independent and get an independent ballot.

This last amendment does not prevent or does not outlaw in our present law the requirement that a voter, in going to the booth, identify his party and ask for that party's ballot. The amendment as being presented, so far as I can see, would only prevent the registration of that person in the Clerk's office, that year, stating that he had asked for a ballot of a certain party and preventing him the following election from asking for any different ballot unless several months ahead of time he had gone to the Clerk's office and registered the change in party affiliation. I think it should be well understood by the delegates, at least this is the way that I interpret it, that this will not prevent the present law of having a separate ballot where it is necessary to identify yourself by party in order to get that party's ballot. It does not eliminate the closed partisan primary. It only limits the registration and the requirement that you vote that way the following year.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I would like to point out, however, that under the language of this amendment it would be possible for an independent voter at the primary election to come in and declare himself as either a

Republican or a Democrat although in truth he was neither and participate therefore in a party primary. It would also allow a crossover. It would allow Republicans to, in the primary election, to declare themselves as Democrats for the purpose of that primary only, vote Democratic in that primary, and then in the general election to go back and vote Republican.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, I've had the pleasure of running with the last speaker in politics and I am sure that he and I are experienced for that many years. May I point out to you that today you may do exactly the same. The only thing is that if you are an independent and you go in and ask for a Democratic ballot, or Republican and ask for one, you'll be given that but next year you will be required to take the same ballot. You can do anything you want in any election provided that next year you can go if you want and change back from a Democrat to a Republican or a Republican to Democrat so that in any one year if you want to play that kind of a game, under either system, it's open to you.

DELEGATE DYER: May I answer that.

CHAIRMAN: Yes.

DELEGATE DYER: It is also a form of partisan primary where before you can vote, as I understand it, you have to be either a registered Republican or a registered Democrat and this is a possible form of partisan primary as I understand it and I do believe that this language would prohibit that type of a partisan primary.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Point of information, Mr. Chairman. As I understood Delegate Mizuha's amendment, the word "public" in the top line of this Amendment 17 was stricken, leaving it so there would be absolutely no record of political party affiliation kept. Is that not correct, Delegate Mizuha?

DELEGATE MIZUHA: The form of the amendment was changed. Under Amendment 17, when they say, "There shall be no public record of political party affiliation of an individual," how can one file nomination papers as a Republican candidate for Senator in the Lieutenant Governor's office if you cannot have the party affiliation on same.

CHAIRMAN: Delegate Mizuha, I don't think that was the question put to you. Will you please restate your question, Delegate O'Connor.

DELEGATE O'CONNOR: Did you not in the oral motion you made to amend this No. 17, strike the word "public" in the top line?

DELEGATE MIZUHA: Well, I'm not too clear because I didn't draft 17. It's entirely different from what I suggested. My amendment is as follows: "There shall be no public record of political party affiliation on the voting register of any county."

CHAIRMAN: Delegate O'Connor, the word "public" remains in his amended motion.

DELEGATE O'CONNOR: I understand, Mr. Chairman.

CHAIRMAN: Delegate Ando, do you wish to have the floor?

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: You're recognized.

DELEGATE ANDO: The amendment and the deliberation on the amendment seem to be of a very vital nature. The hour is getting late so may I be privileged to move the highly privileged motion to rise and report and beg leave of this Convention to meet again.

CHAIRMAN: Is there a second to the motion?

DELEGATE AMANO: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that this Committee rise to report back to the Convention. Any discussion?

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President.

DELEGATE ANDO: Mr. Chairman, point of order. There's no discussion on this motion.

PRESIDENT PORTEUS: There is a one—I hate to teach the good delegate some procedure but I am entitled to take the floor to demand a roll call vote and I am sure the delegates will understand what I mean when I ask for that.

CHAIRMAN: Roll call has been requested on the motion.

DELEGATE FERNANDES: Mr. Chairman, is a recess in order?

CHAIRMAN: A recess is in order.

DELEGATE FERNANDES: May I ask a recess, please?

CHAIRMAN: No objections, we shall recess. So declared.

At 7:10 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 7:17 o'clock p.m.

CHAIRMAN: This Committee will come to order. Delegate Ando.

DELEGATE ANDO: I withdraw my motion.

CHAIRMAN: Thank you very much, Delegate Ando.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I wish to rephrase my amendment in order to facilitate matters here.

CHAIRMAN: Delegate Mizuha, the Chair, in stating the motion, included the word "public" because I had mental telepathy and included the word and you unintentionally deleted—

DELEGATE MIZUHA: At the present time I want to withdraw the word "public."

CHAIRMAN: Oh, now you wish to withdraw the word "public"?

DELEGATE MIZUHA: And it shall read as follows: "There shall be no record of political party affiliation on any voting register."

CHAIRMAN: Shall we ask for a second on that or shall we—

DELEGATE O'CONNOR: Second.

CHAIRMAN: It has been moved and seconded that we delete the word "public." It was a second by Delegate O'Connor, right? Amend further the language provided in Amendment No. 17 by deleting the word "public" from the sentence.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I would like to simply say that I fully support this amendment.

CHAIRMAN: Thank you. All in favor of the motion to—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: This is going to be a real simple question so I hope I get a simple answer for a simple mind. Now what is legally "voting register"?

CHAIRMAN: Delegate Mizuha, do you care to yield to the question?

DELEGATE MIZUHA: I don't know. But I can

guess what it is. It is a record that they are going to keep in the County Clerk's office, I don't know what they will call them after they have a new charter on the outside neighbor island counties but on that register on which they will keep the names of all the persons who vote in the primary election this fall, the register that will record whether they are Democrats or Republicans. And I think if that is clearly brought out in the proceedings of this Convention the Supreme Court of the State will take cognizance that that is the voting register and we have done so in other cases where constitutional interpretations have been involved but I will no longer be there to say so.

CHAIRMAN: Any further discussion? If not—Delegate Loo.

DELEGATE FRANK LOO: I just want to ask a question of Delegate Mizuha, are you leaving out the words "of any individual," is that it?

CHAIRMAN: Delegate Loo, that is correct. His motion left out the words "of any individual."

No further discussion, all those in favor of the motion to delete the word "public" from the sentence as presented in, as amended, of the language in Amendment No. 17 say "aye."

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: We're in the process of calling a vote. All those opposed say "nay." The motion is carried. The motion before this floor is—Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, we have had a considerable amount of discussion on this amendment and the time is late. As chairman of the Bill of Rights Committee, I would like to state that we should take a vote and I would like to recommend that we vote this amendment down.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, I'm not as intelligent as the great justice from Kauai and therefore I approached the bar here to my left and asked our moderately paid attorneys as to what they thought about this language and they are very unsure about the consequences. Mr. Chairman, were we to vote on this question when the language is unclear, and we're not sure of the consequences, this would work against those proponents who favor no public record of party affiliation. It would be unfair to them. Therefore, I would like to see this matter deferred for further study.

CHAIRMAN: Delegate Ajifu.

DELEGATE AJIFU: I rise to a point of information. Is this vote already taken?

DELEGATE YOSHINAGA: Mr. Chairman, may I try to answer that question?

CHAIRMAN: Yes, go ahead, Delegate Yoshinaga.

DELEGATE YOSHINAGA: May I ask the Chairman to put a motion to rise and report progress and beg leave to sit again so we can sit on some words that were tossed around kind of loosely around here?

CHAIRMAN: It has been moved and seconded that this Chair rise to report back to the Convention the progress of the Committee of the Whole. Are you ready for the question? All those in favor of the motion say "aye." Opposed, "no." The motion is carried.

The Committee of the Whole adjourned at 7:22 o'clock p.m.

Friday, August 16, 1968 • Afternoon Session

The Committee of the Whole was called to order at 1:35 o'clock p.m.

Delegate Miyake presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I wonder if this would be the right time for me to introduce an amendment.

CHAIRMAN: Right time for what? Can you speak louder so everyone can hear you, and speak right into the microphone.

DELEGATE BURGESS: Yes, sir. I have been working with the Convention staff and we have come up with an amendment which I feel gives light to the idea of what we are trying to do in this Convention.

I move to amend the immediately pending question to read as follows:

"Secrecy of voting shall be preserved and no record or list of the party ballot selected by each voter shall be maintained."

CHAIRMAN: Do all delegates have this Amendment No. 18 on your desks?

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes is recognized.

DELEGATE FERNANDES: I rise for the purpose of seconding the motion.

CHAIRMAN: It was moved and seconded that Section 4 of Article II of the State Constitution be amended by amending last sentence to read as follows, as provided in Amendment No. 18:

"Secrecy of voting shall be preserved and no record or list of the party ballot selected by each

voter shall be maintained."

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: You wish to speak in favor of your motion?

DELEGATE BURGESS: Yes, first I'd like to point out some significant points in this amendment. It reads, "... the party ballot selected by each voter." This amendment is not intended to mandate to the legislature that they do have two-party ballots separately. This is leaving the decision of whether the ballot should be separate up to the legislature. And I think this should be included in the committee report if this Amendment prevails.

Mr. Chairman, fellow Delegates, we have all had our night to sleep on this idea and we have had in fact all morning to consider the present proposal. Within this Convention, we have heard claims that this proposal is not constitutional, that it is legislative. That although certain delegates favor the idea of this proposal, they will vote against it because it is legislative. To those who hide behind such arguments I ask—is the right for the ex-convict to vote also legislative? I also ask—is the amendment calling for a presidential primary not also legislative? Or is the question of judiciary, the terms of office, the system of retirement, they're not also legislative? I believe that the freedom to secretly associate, whether it be with a political organization, religious or labor organization, is just as important as the freedom to secretly vote and I believe that this should be contained in the Constitution, not left up to the legislature.

But why do we hide, why do we skirt the issue? Why not stand up and be counted? Thank you.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka, you're recognized.

DELEGATE UEOKA: Mr. Chairman, as chairman of the Committee on Bill of Rights I would like to re-emphasize that this is a legislative matter and as contained in the committee report, I would like to recommend that this amendment be voted down.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FRANK LOO: Mr. Chairman, I rise to speak on behalf of the proposed amendment. Last night after the long meeting we had, one of the respected members of this delegation was talking with me and he said, "You know, I feel a little bad because some of the delegates are giving the youngster the run-around." And I thought about it, whether it's true or not, I did do more thinking about this proposition than I intended to and the more I thought about it, the more it has merit. That in the first place, I think we should encourage the youngster who was brave enough to bring up this particular proposal and to let us see the forest instead of just looking at the trees. Sometimes we forget those things.

Now, I base my support of this amendment on three propositions: First, preserving the people's right to vote as indicated by the distinguished delegate from Kauai the other day. There are many people who are against the fact that they have to declare themselves and get a ballot and thereafter be stuck to that particular party for the next election which will happen in 1970. I found—and he said that many of them will stay home and not vote in the primary. I, myself, found this out as I went around in my district and in town and the feeling is very strong that not only are they going to resent it but they will not vote in the primary and perhaps take action in the general election against those who did vote for it.

It seems to me, Mr. Chairman, that when we are talking about party politics, although this is a nonpartisan Convention, there was a question of the two-party system. Incidentally, the second proposition is that we would promote the two-party system if we support this. And the third is that we will preserve the merit system in government and private industry.

Back to the first point of the protecting of people's rights to vote. It seems to me, Mr. Chairman, that there are many people who are Democrats at heart or Republicans at heart who are not card-carrying Democrats or Republicans. And these people will be leaning towards the Democrats or Republicans at election time. And yet these very same people for their own purposes, for their own reasons, may not want to be shown on public lists or even a private list that they are leaning towards that particular party. However, because of the candidates involved and because of the platform, they lean toward that particular party. So therefore, these people who are leaning toward a particular party will be going into the ballot box and asking for that ballot. This is not changed at all by this particular amendment. They will ask for a Democratic ballot or a Republican ballot. These people should have a chance to go ahead and vote not because—and not be afraid thereafter they'll be listed as a Democrat or Republican. Just because at that particular election they're asking for a Democratic ballot or Republican ballot. Then they want to change the next time.

Now, to the second proposition of protecting and promoting the two-party system, there will be two types of ballots printed—let's assume that there are a thousand ballots, Democratic ballots and a thousand—I mean ten thousand Democratic ballots and ten thousand—

DELEGATE FERNANDES: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Fernandes. State your point of information.

DELEGATE FERNANDES: Can I place a point to Delegate Loo that he seems to be going outside of the intent of the amendment. The amendment is whether we're going to have the names of those who pick up a ballot registered and it seems that he was straying a little bit. I was wondering whether he could confine himself to this area of the amendment and we could go

on. That's the information I seek.

DELEGATE FRANK LOO: Mr. Chairman, I do know, having participated in the discussion in the legislature that this has something to do with the two-party system, and Mr. Chairman very well knows that. And it was brought out that one of the reasons for this particular system, of the way it's being held closed primary is to protect the two-party system. So therefore I'm trying to show that it does promote the two-party system.

CHAIRMAN: The Chair will rule in your favor, continue with your example illustration in substantiating your argument.

DELEGATE FRANK LOO: In a particular election, let's assume that there'll be a hundred thousand ballots for Democrats printed and a hundred thousand ballots for Republicans printed. Then the voters come in and they ask for a particular ballot. Assume and I hope they will select a hundred thousand Democratic ballots and there is only fifty thousand ballots of the Republicans are selected at that particular election. Right away it seems to me it would give the party that has the left-over, in this case the Republicans, a clue that their candidate and their platform are not attractive to the people and therefore it behooves them to sit down for the next two years and work for their candidate, get more and better candidates and write a platform. So that in this way we will build up the two party system. Not the other way, to force people to be locked into a particular party because they have selected a ballot and you force them three months in advance of an election if they want to change their party, to go down to City Hall and change it.

Now, even at this point, this is only about a month and a half before election, there are not too many candidates who have declared themselves and how can the voters know which party they are going to support? Three months is too long. And we should not make it inconvenient for the people that they must go down to City Hall to change their party affiliation or for the ballot anyway. I think that the people—the party who has the least or less number of ballots selected could then go ahead and improve their candidates—get more attractive candidates and a more attractive platform. So therefore, I think this will build up the two-party system. So that the next time perhaps the weight wouldn't be so great, that maybe it will be close to half and half.

To the third proposition, and the reason, preserving the merit system. Either the people will stay home and not vote or they'll be some courageous souls that they will go out and vote. If we do have their name listed as a Democrat or Republican, even though we have a merit system the one who promotes has five names. He will know in those five names who is the Democrat or Republican. He did not even state why he is not selecting one of them and you're introducing another factor, politics, into the selection of the merit system. And this could happen in the private sector that because he's listed in the public record that this

promotion may be overlooked so therefore he will have less of a merit system.

Because of three reasons, one to preserve the people's right to vote; second, to promote the two-party system; and third, to preserve the merit system, I urge the people here to vote for this measure. Another point I just introduced—

CHAIRMAN: You have extended yourself beyond the ten minutes. Will you please sit down.

DELEGATE UEOKA: Mr. Chairman, I rise to a point of order as far as the last statement is concerned. Was there any introduction of an amendment, I would like to state—

CHAIRMAN: Delegate Ueoka, state your point of order.

DELEGATE UEOKA: I would like to state that Section 5 was passed by this Committee of the Whole yesterday. I want to know where Delegate Loo was yesterday. I don't think it's the proper time to introduce this amendment or talk about it.

DELEGATE FRANK LOO: May I answer that, Mr. Chairman?

CHAIRMAN: Yes, confine yourself to the question, and the point of order.

DELEGATE FRANK LOO: All right. I think I was much in existence. I did speak; however, it's my understanding from the ruling of the Chair that the particular section was not voted upon, only the—as far as Section 5—was merely on presidential election. We didn't vote for the whole section thereafter. And Mr. Chairman had already made a ruling that he will go over the whole thing, then take a vote on each section. Therefore we have not finished Section 5 yet. And another reason why this was introduced is to help this section here or this amendment. I was going to come to that point why this would prevent switch-voting or cross-over voting which some of the members or delegates are afraid of. This would prevent cross-over voting, it's my hope.

DELEGATE O'CONNOR: Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: I rise to point of order. I thought we were here discussing Section 4 and suddenly we're sprung into Section 5. May I ask the Chair if we can confine ourselves to Section 4.

CHAIRMAN: You are correct, the point is well taken. Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I wish to speak on the proposed amendment to Section 4. I would like to say first that the Constitution that we are here to amend if necessary, has been declared by experts across the land as being a good Constitution. It

is my understanding that one reason it is considered a good Constitution is because it has left in the large part legislative matters to the State legislature. Yesterday, we had a long debate on several rather complex matters all of which probably should have been left to the legislature. I believe that the previous speakers have indicated primarily their displeasure with a certain piece of legislation which is now on the books. They have not made a case, in my opinion, for a change in our Constitution. I therefore oppose this amendment. I believe that the people of Hawaii are adequately represented. The feeling of this Convention, I'm sure, is that we are not going to reduce the size of the legislature in the future or in the immediate future and they will be adequately represented and they can ask their representatives to pass election laws that will solve the problems that our voters have. I will therefore request that on this matter and on other matters that come before the Convention, we keep uppermost in our minds that this is a Constitution that we are working on and that the legislature every two years, or annually, as the case may be, will work on legislation.

One more item. There's been some thought that we could pass this because my colleague from the 10th District is by his age at least, the junior member of this delegation. I find that he is a very competent member, I don't think that he would like to have anything included in the Constitution on the basis of the time of day that we considered it or on the basis of the age of the proponent. Thank you very much.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: One moment, Delegate Dyer. The Chair would like to request the cooperation of the delegates on the amendment before you now. Since the arguments which were raised yesterday for and against the language as was provided in Amendment No. 17, and the language expressed as provided in Amendment 18, are same as to intent, the Chair does not at this time feel that we need too many more arguments for and against the proposed amendment. The intent of both of these amendments is the same although the language is slightly different. Therefore, I would request, if you do wish to speak, limit your arguments and do not take advantage of the full ten minutes. I ask this of you delegates.

Delegate Dyer.

DELEGATE DYER: Mr. Chairman, I'm going to be very short. I do understand that the purpose of a primary is to narrow down the field of candidates who belong to any particular party to the number that are going to run in the general election. Since this is the purpose of a primary, I don't think that independents have any business voting in the primary that is for who are going to be the Democratic candidates in the general election or who are going to be the Republican candidates in the general election. I wish to point out that the latest proposal would permit independents to so vote and would permit cross-overs. I also wish to point out that this latest draft would make unconstitutional, in my judgment, the type of primary

that we will be moving into and that is already on the statutes book.

And finally, I only wish to say that I think that I agree with one of the previous speakers that this whole matter of the type of primary that we should have I think belongs to the legislature and I think it would be a mistake to put into the Constitution any provision that would restrict in any way the legislative discretion in this area.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: I rise to take issue with the prior delegate's statement. I think that he has attempted to infer that independent voters and those that are not affiliated with any party have no right in this primary election. I would think that if the purpose of that is so, then the independent voters as well as the nonpartisan must have some right as much as those who are spending government money. I do not think that government should pay for the primary election that would involve only Republicans and Democrats. If that's so we might as well go back to the old Convention methods. Thank you.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Mr. Chairman, I talked on this issue yesterday so I just want to add one summary to what I had to say yesterday. I think this particular issue, in my opinion, makes it possible for us to leave part of the restriction that we're placing upon our citizens in voting. For the past two days, we have sat here as a Committee of the Whole to discuss issues which would make it possible for others to vote. We eliminated the ban on 18-year-olds, we eliminated the ban on people who cannot read, write, or speak the English language or Hawaiian. Here is another restriction that the legislature has put upon individuals and we all have agreed here that perhaps we're going to lose a large percentage of those voting because they're going to be committed to a particular party and it's going to be recorded. So might I suggest that to be consistent, with the votes in the past couple of days we would also amend this part of the Constitution to take off the restrictions of the citizens. Thank you.

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: I would like to ask a couple of questions of the proponent of this amendment. One question is, how a presidential preference primary might be conducted under this amendment. That question came up on a previous day but under this present draft it has not been discussed. My second question is, could the legislature still require that a person shall not vote in the primary unless he is a registered member of a particular political party whose ballot he receives?

CHAIRMAN: Delegate Burgess, will you yield to these two questions?

DELEGATE BURGESS: I doubt if I can answer the

second question. I'll try to answer the first question though.

CHAIRMAN: Proceed.

DELEGATE BURGESS: The effect this amendment will have on the presidential primary is that the ballot that the voter votes on will not be noted in any official record, in any type of record on voter registration. This does not stop the legislature from drawing a dark black line down the ballot or handing one ballot or the other ballot to the voter. It will prevent though listing the voters according to what party they did vote on.

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: I didn't hear what the delegate from the 10th District said about the second question. I'm sorry. The second question was could the legislature still require that a person, in order to vote in the primary, must be a registered member of a particular political party whose ballot he has received?

DELEGATE LUM: Mr. Chairman, might I try to answer that question?

CHAIRMAN: Proceed, Delegate Lum.

DELEGATE LUM: Delegate Lewis, I think that we are really now getting into the area of legislation. I'm sure the legislature in their wisdom would set up a procedure in registration and define the word "registration." If registration means that it is to be recorded in the City Clerk's office, then this is one thing. If registration is to mean that it is going to be at the Democratic, Republican or other party headquarters, that's another thing. I think in the wisdom of the legislature, they will be able to work these mechanics out. Now as to whether it can or not, maybe some legal attorney here with the background of constitutional language can answer that question.

DELEGATE BEPPU: Mr. Chairman, I rise on a point of clarification.

CHAIRMAN: Delegate Beppu, you're recognized.

DELEGATE BEPPU: May I clarify one point here. The question here is not registration. The statute today does not require registration, it just notes the selection of a ballot. It's not a registration like some other states like California where you have to be registered a Republican or registered a Democrat to pick up a ballot. Thank you.

CHAIRMAN: Ready for the question? All those in favor of the motion to amend Section 4, Article II, with the language as provided in Amendment No. 18 will vote "aye." All those opposed will vote "nay." Mr. Clerk, call the roll. By voting on this the understanding is that Delegate Burgess has withdrawn the language as was proposed in Amendment No. 17. Call the roll, Mr. Clerk.

(Roll call having been ordered, the motion to adopt

Amendment No. 18 failed to carry by a vote of 34 ayes and 38 noes, with Delegates Akizaki, Alcon, Ando, Beppu, Bryan, Donald Ching, Hung Wo Ching, Dodge, Dyer, Fasi, Hara, Hasegawa, Hidalgo, Hitch, Ho, Kaapu, Kamaka, Kato, Kawakami, Kawasaki, Larson, Rhoda Lewis, George Loo, Matsumoto, Menor, Minn, Morioka, Nakama, Noguchi, Oda, Steiner, Takahashi, Uechi, Ueoka, Yim, Yoshinaga, Young and Chairman Miyake voting no; and 10 excused, with Delegates Amano, Amaral, Doi, Goemans, Kauhane, Kunitura, Lalakea, Mizuha, Shiigi and Ushijima being excused.)

CHAIRMAN: The question failed.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: I move that Article II, as submitted by the Committee be adopted as amended and that a copy of a committee report be prepared reflecting the actions of the Committee of the Whole.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: I second the motion.

CHAIRMAN: It has been moved and seconded that Article II—the Committee please come to order.

DELEGATE UEOKA: Mr. Chairman, I withdraw my last motion.

DELEGATE TAKAHASHI: Mr. Chairman, I withdraw my second.

DELEGATE UEOKA: Mr. Chairman, I move that we rise and report to the Convention that the business of the Committee has been completed.

CHAIRMAN: Is there a second to the motion?

DELEGATE TAKAHASHI: Second the motion.

CHAIRMAN: It has been moved and seconded that the Committee of the Whole rise and report to the Convention that the Committee of the Whole has completed its work.

DELEGATE FRANK LOO: Mr. Chairman, point of clarification.

CHAIRMAN: Delegate Frank Loo.

DELEGATE FRANK LOO: If we do vote for this motion, would that mean that all the bills that have been filed will be filed and that's included in the motion and nothing else on this particular Article can be introduced at all? Or any amendment?

CHAIRMAN: The understanding the Chair has is you have another crack at it on Second Reading. Is that correct, Mr. President?

PRESIDENT PORTEUS: Mr. Chairman, at this time

if anybody had any other amendments they should be presented. But the Chair, not being faced with the request for any other amendment, I believe the Chair was correct in recognizing Delegate Ueoka as chairman of the committee to report that this body has completed its deliberations. If it has not completed its deliberations then other amendments should be presented.

DELEGATE DONALD CHING: Mr. President, a point of order.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Is there not another pending motion on the floor that was to preserve Article II, Section 4, the way it was? The main motion on which Delegate Burgess moved to amend?

CHAIRMAN: That is correct. We still have a motion on the floor.

DELEGATE UEOKA: Mr. Chairman, I withdraw my last motion.

CHAIRMAN: We have a motion to retain Section 4, Article II of the Hawaii Constitution so—

DELEGATE TAKAHASHI: Mr. Chairman, I withdraw my second to the motion.

CHAIRMAN: The motion before the Committee of the Whole is to retain Section 4, Article II of the Hawaii Constitution.

DELEGATE DONALD CHING: Mr. Chairman, could we not dispense this with a voice vote?

CHAIRMAN: Yes, we could.

DELEGATE FRANK LOO: Mr. Chairman, I ask for a roll call vote because the vote was so close.

CHAIRMAN: According to the Convention rules, request of roll call as far as ten members—

DELEGATE YOSHINAGA: Okay, let's make everybody happy, roll call, let's go.

CHAIRMAN: Since there's only one request for roll call, we shall vote by voice vote "aye" and "no."

DELEGATE BURGESS: I rise to a question of privilege. Supposing vote—

CHAIRMAN: Rise to what, state your—I can't hear you, Delegate Burgess.

DELEGATE BURGESS: Question of parliamentary inquiry. Supposing we do vote down the pending motion, what happens?

CHAIRMAN: Which pending motion is that? The motion to retain Section 4, Article II?

DELEGATE BURGESS: Right.

CHAIRMAN: Then we will not be retaining the Constitution.

DELEGATE BURGESS: I see no reason why we should not have a roll call vote.

CHAIRMAN: According to the Convention rules there must be a request of ten members to have a roll call vote. There are only two requests so far for a roll call vote.

All those in favor of the motion to retain Section 4, Article II of the Hawaii Constitution shall so indicate by voting "aye" and voting "no" by voice vote. All those in favor of the motion say "aye." Opposed. Ayes have it. The motion's carried.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I move that we rise and report to the Convention that we have completed our work.

DELEGATE TAKAHASHI: Mr. Chairman, I second the motion.

CHAIRMAN: Moved and seconded that the Committee of the Whole rise and report to the Convention that the Committee of the Whole has completed its work. All those in favor of the motion say "aye." Opposed. Motion is carried.

The Committee of the Whole adjourned at 2:14 o'clock p.m.

Debates in Committee of the Whole on **THE LEGISLATURE— Powers and Functions**

(Article III)

Chairman: DELEGATE TADAO BEPPU

Saturday, August 10, 1968 • Morning Session

The Committee of the Whole was called to order at 9:12 o'clock a.m.

Delegate Beppu presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. We have before this committee, Standing Committee Report No. 24 relative to Resolution No. 34 with regard to a bicameral system of the legislature.

Before we go into any discussion, the Chair suggests that the messengers find a chair as this may be a long morning.

Any discussion on Standing Committee Report No. 24?

DELEGATE AMARAL: Mr. Chairman.

CHAIRMAN: Delegate Amaral.

DELEGATE AMARAL: I speak in favor of Standing Committee Report No. 24 and Resolution No. 34.

I favor the bicameral or two-house system presently used in Hawaii. We have a good system. A system which is familiar to our people and understood by most. It also ties in directly with our federal system of government. I am not saying that our system is perfect. A system is as good as the people who make it work. We as human beings do have our own weaknesses but basically the people who have served, who are now serving, and I am sure, who will be serving the people of Hawaii, are good and intelligent people.

There are those who favor another legislative system, the unicameral system. I do respect their opinion and right of expression but let me quote a statement submitted by Dr. Harold S. Roberts, an advocate of the unicameral—of unicameralism, to the house of representatives hearing on August 7, 1964, in regard to House Bills Nos. 5 and 6. He said, and I quote: "I am not certain nor can anyone be certain that a unicameral legislature will resolve all or most of the difficulties and problems which exist in a bicameral legislature. The criticism of the bicameral legislature by political scientists has been widespread, but the support for the

unicameral system unfortunately has not been based on sufficient experience within the United States because we have had only relatively short experience of unicameral legislatures prior to 1800. And only one state, the State of Nebraska, that has used it for close to thirty years."

Yes, there has been not enough experience in the unicameral system to warrant such a radical change at this time. This, I believe, is an important reason why we should maintain our present form of bicameral legislative structure. The facts will show that once upon a time, the States of Georgia, Pennsylvania and Vermont did have the unicameral system, but they saw fit to change to a bicameral system.

Today, as stated previously, only the State of Nebraska legislates under the unicameral system. No other state has followed Nebraska in adopting the unicameral experiment, even though all bicameral legislatures have been compelled to reconsider their legislative structure in conforming to the United States Supreme Court decision on apportionment. The failure of unicameralism to spread or to be attempted in any other state speaks for itself.

Professor Malcolm E. Javelle from the University of Kentucky said, and I quote from the Legislative Reference Bureau's report of July '68, Vol. 1, page 25, said, "The Nebraska experiment," let me use the word again, "experiment is of worthless value as an example for other states because Nebraska is a state with a small population that has largely escaped the problems of metropolitan growth and ethnic diversities that are familiar to the more industrial states."

Over the years, the two-house system has worked well. It probably has—it probably is more expensive and may be less efficient, but the cost and efficiency are not the most important considerations in selecting the best method of enacting laws which affect the lives and welfare of all the citizens here in Hawaii. Again, I repeat, the bicameral system is a proven system and should be retained. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Amaral. Delegate Loo.

DELEGATE GEORGE LOO: Mr. Chairman, I rise to speak in opposition to the resolution.

The previous speaker had said that we shouldn't change our system for the sake of change and that while it is not perfect, it is a good system.

I have been a legislator for four sessions. At the beginning of my tenure, I was of this belief but after four sessions, I have changed my mind. Now as to why I am in favor of unicameralism, there are six reasons.

One, since the Supreme Court has ruled that both houses in a bicameral legislature must be based on population, there is no point in having two houses in the state legislature.

Two, Hawaii cannot afford the luxury of a bicameral legislature.

Three, a unicameral legislature would help achieve more efficiency and economy in legislative activity.

Four, a unicameral legislature has checks and balances so that a second house is not needed as a check.

Five, a unicameral legislature would improve the competitive position of the legislature with respect to the other branches of government; and,

Six, unicameral legislature would encourage many more qualified candidates to run for office and would make legislators more responsive to their constituents.

As to the first point, under the one-man, one-rule of the Supreme Court, there is no point in having two houses in state legislature. The Supreme Court in its apportionment decision requiring each chamber of the legislature be apportioned on the basis of population has made bicameralism obsolete.

The Court, in *Reynolds v. Sims*, 377 U.S. 567, stated that, "The weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, a starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies."

Thus, under the one-man, one-vote rule of the Supreme Court, there is no point in having two houses in the state legislature since each house must be based on population.

As to the second point, the use of a bicameral legislative structure places heavy financial burden on the people of Hawaii. Hawaii ranks fortieth in population. Yet, it is fourth in per capita expenditure in legislative compensation. In 1967, \$2,600,000 was spent on legislative expenditure. As a contrast, Nebraska, which ranks thirty-fifth in population, was forty-second in per capita expenditure in legislative compensation. In 1967, Nebraska spent \$712,000 on legislative expenditure.

Hawaii is now the second-highest taxed state in the United States. Can we afford the luxury of an antiquated bicameral legislature? How can we justify the continued existence of a bicameral legislature when the public can best be served by unicameral legislature at a

considerable reduction in cost?

As to the third point, the unicameral legislature would eliminate buck-passing from one house to another, avoid duplicate staffs, duplicate committees, duplicate bills and duplicate hearings; eliminate the infamous conference committee, alleviate logjams which generally occur near the end of a bicameral session and on the whole, help achieve more efficiency and economy in legislative activity.

There is a lot of buck-passing in the bicameral legislature. One house may vote for a bill in the expectation that the other house will kill it. Each house may blame the other house for the failure of a bill to pass. Legislators can hide in the complicated machinery of bicameralism. But in a one-house legislature, responsibility can be fixed and the practice of buck-passing eliminated. With a unicameral legislature, there would be no necessity of duplicate staffs, duplicate committees, duplicate bills and duplicate hearings which is quite evident.

A unicameral legislature automatically eliminates the infamous conference committee made up of members of both houses. The villain of bicameralism is the conference committee. At the present time, the conference committee operates away from the public view, provides no opportunity for citizens to testify, keeps no records of its votes and offers its results during the last days or hours of a session. No real voice is provided the legislator on the final vote of a conference committee version of a bill and he has to take the conference committee bill version or not. Moreover, a conference committee can write a new—a brand new bill if it desires to do so.

A unicameral legislature will alleviate the logjam which generally occurs near the end of a session of a bicameral legislature because there is no second house to alter bills and thus require additional action by the other house; and because there is no holding of bills until the last possible moment to improve their chances of passage in the other house.

With unicameralism, the legislature acts more expeditiously. Jealousy, friction and rivalry between two houses are eliminated. Legislative business is conducted more orderly because leadership is concentrated in one house. Fewer bills are introduced, thus reducing the size of the legislative work load. For example, in the last year of Nebraska's bicameral legislature, which was in 1935, 1,956 bills were introduced. In 1963, only 815 bills were introduced. Legislation passes faster and a greater percentage of total bills offered is enacted. In Hawaii, we enact an average of 10% of the total bills offered. Whereas in Nebraska, an average of 60% of the total bills offered is enacted.

As to the fourth point, a unicameral legislature has checks and balances so that a second house is not needed to serve as a check. Checks and balances are available through the State Constitution, through legislative internal rules and procedures, through the governor's veto, and through the powers of the courts

to hold legislation unconstitutional. Moreover, the National Municipal League has said that there are no data to support the claim that a second house is a constructive check against hasty action.

Procedural safeguards can be devised in a single-house structure to assure careful deliberation and ample time for debate before a vote is taken. Several definite waiting periods between the decision to hold committee hearings and final action on any bill can be provided in the State Constitution or in the rules of the house.

In Nebraska, the following rules for bill passage apply:

1. No senator is allowed to introduce a bill he can't personally support and defend.

2. A committee must hold a public hearing on each bill before taking final action on it;—

DELEGATE YOSHINAGA: Mr. Chairman—

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I rise on a point of order.

CHAIRMAN: State your point of order.

DELEGATE YOSHINAGA: Under Rule 41, are we now considering what is known as a question?

CHAIRMAN: Yes, we are.

DELEGATE YOSHINAGA: We are. Is there a ten-minute rule that is applicable in Rule 41?

CHAIRMAN: Yes, we have.

DELEGATE YOSHINAGA: Are you timing the speakers here?

CHAIRMAN: Yes, the clerks are timing the speakers.

DELEGATE YOSHINAGA: Thank you very much.

DELEGATE GEORGE LOO: Mr. Chairman, I hope you don't credit me with this delay.

CHAIRMAN: Proceed.

DELEGATE GEORGE LOO: A committee must hold a public hearing on each bill before taking final action on it and must publish the date and time of this hearing in the legislative journal at least five days in advance.

3. Rules require a committee to act on each bill without unnecessary delay and allow a majority of the legislators to request a report on a bill after twenty days. They also require a committee to report its disposition on the bill to the legislature within eight days after taking action and give the legislature the

power by majority vote to call the bill out of a committee which has been indefinitely proposed.

4. Committees are required to keep a record of their proceedings, and any member of a committee can demand roll call on major actions and this will be recorded in the legislative journal. A single member can get a recorded vote of the full legislature when it is in session.

After a bill is returned from a committee, it goes through three floor reviews and can be killed at any one of these. The first of these reviews is devoted to a general discussion. The second is a perfecting of amendments proposed at the first. Before final reading, the bill is read aloud throughout and this procedure is not shortcut even though the bill is book length. Beyond this, the bill faces possible veto by the governor and review by the courts.

It should be noted that in Nebraska, unicameral legislature functioned satisfactorily for thirty years with the systematic approval of its people. In addition, it should be noted that all the provincial legislatures of Canada, with the exception of Quebec, have unicameral legislatures and that nearly all American cities and towns are governed by unicameral councils. Moreover, it should be noted that the major counties in the State of Hawaii have unicameral councils. Finally, it should be noted that this body has a unicameral structure. Would you say that a second house is needed to provide a check?

CHAIRMAN: Delegate Loo, you have thirty seconds.

DELEGATE GEORGE LOO: A unicameral legislature would improve the competitive position of the legislature. An example was the governor's veto of the out-of-state tuition bill.

As far as the last point, unicameralism would encourage many more qualified persons to run because you would have a smaller number and because responsibilities can be fixed in short visibility.

In summary, I am in favor of the unicameral legislature for the six reasons I cited which were: the Supreme Court decision, one-man, one-vote; the fact that Hawaii cannot afford the luxury of a bicameral legislature; unicameral legislature is more efficient and economical; unicameral legislature's checks and balances; unicameral legislature would improve the competitive position of the legislature.

CHAIRMAN: Delegate Loo, would you cut it short please. Your time limit is up.

DELEGATE CHANG: Mr. Chairman.

CHAIRMAN: Thank you. Delegate Chang.

DELEGATE CHANG: Mr. Chairman, I wish to speak in support of Committee Report No. 24 and Resolution No. 34.

CHAIRMAN: Proceed.

DELEGATE CHANG: As a delegate in seeking an objective determination and weighing the merits and demerits of the bicameral and unicameral systems, I find that at the present time in the life of our state that it would be best to retain the bicameral system of the legislature. I would like to first refute one point that the honorable Delegate Loo made in regard to the fact that the U.S. Supreme Court decision on the apportionment basis in *Reynolds v. Sims*, that the bicameral system is not needed.

I believe that the U.S. Supreme Court explicitly rejected the suggestion that was taken making bicameralism obsolete.

The Court said and I quote: "We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same, that of population. Simply because the controlling criteria for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition of complexion of the two bodies. Different constituencies can be represented in the two houses."

And further, in *Burns v. Richardson*, in a State Supreme Court case, and I quote: "Where the requirements of *Reynolds v. Sims* are met, apportionment schemes including multi-member districts will constitute an invidious discrimination only if it can be shown that designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case would operate to cancel out the voting strength of racial, of political elements of the voting population."

I believe that the main purpose of the legislative body is to enact legislation which will be for the good and for the welfare of the needs of the people of Hawaii. I believe that the bicameral system affords this opportunity for the legislators.

Perhaps the infrequent use of the governor's veto may be a point of contention that good legislation has been passed by the legislative bodies in Hawaii's history. I think this system affords a better opportunity for legislators and the public to scrutinize bills before their enactment and that if there is any legislation that may not be conducive for the good of Hawaii, that an opportunity is presented to oppose a particular bill in one given house.

Perhaps in the Nebraska experience, which has unicameralism, and the only one to which we can allude, and Delegate Loo referred to the number of bills that have passed, in 1935 the last year of the bicameral system in Nebraska, eighteen percent of the bills introduced were passed. And I might mention as a further detail that 1,956 bills were introduced making a total of 350 bills that have passed.

In 1963, under the unicameralism system, Nebraska

passed a total of 67% of the bills introduced. Of the 818 introduced, 542 bills were enacted into law.

In Hawaii last year, a total of 2,162 bills were introduced and 14% passed: 307 bills. I contend that this makes it possible to keep down the number of bills that are passed so that we will have better legislation.

Also, I believe that the bicameral system affords a better scheme of representation for our State, particularly in the sparsely populated areas of our State with two houses; the lower house being larger in number than the upper house, the members thereof represent a larger constituency.

I also believe that the unicameral system enables an individual of powerful stature or a pressure group to control that particular body much more easily and I think in the final analysis, as Delegate Loo has indicated, the procedures that are adopted by a body are important and the bicameral legislature could adopt the same. But above all, the men and women we elect to the legislature determine the destinies of the bills that are enacted. These are the most important criterion to consider. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Chang. Any further discussion? Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I think earlier I indicated my position on this question, that I am for bicameral legislative session. As I stated earlier in my attempt to suppress the debate of this question, that I do not feel that the consideration of this resolution at this time is a proper one to ascertain the views or the position of each delegate. I take this position according to the committee report of the number of proposals the committee has—

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: —and to me to report out the proposal—

CHAIRMAN: Delegate Kauhane, will you state your position? Are you for the resolution or against the resolution?

DELEGATE KAUHANE: I'm for a bicameral legislative session.

CHAIRMAN: Are you for the bicameral session?

DELEGATE KAUHANE: I am stating my position that the resolution calls for a determination to be made by each individual in support of bicameral legislature.

CHAIRMAN: Delegate Kauhane, so I presume you are for the resolution.

DELEGATE KAUHANE: I am for the resolution as far as the resolution speaks for a bicameral legislature—not a unicameral. Mr. Chairman, I mean I feel, Mr. Chairman, that due to the attempt that was being made to probably extend or accept a motion to

suppress the speaker himself

CHAIRMAN: Delegate Kauhane, will you restrict your remarks to Standing Committee Report No. 24 and Resolution No. 34.

DELEGATE KAUHANE: Mr. Chairman, much has been said about the record of Nebraska's thirty years of unicameral legislative sessions. I'm proud of the record of Hawaii and the conduct of the bicameral legislative sessions. We have had a total of about 70 years of a bicameral legislative system and as a citizen of Hawaii, I'm very proud of this record of Hawaii as against the record of Nebraska of thirty years.

Another point that was raised here, Mr. Chairman, and you well know of the point with respect to the introduction and duplication of bills. I feel that every elected representative, be he a member of the senate or the house, has a duty or a solemn right to introduce legislation which is demanded upon him by his constituents. It may be duplication in effect but the ultimate is the attainment of a goal for which is demanded of him by his constituents. And yet the final action of the bill is dependent upon the committee that has to do with appropriations, when monies are available for any improvements, where monies are needed, it becomes the problem of the Finance or the Ways and Means Committee to give to these type of legislation the monies needed for such improvements within the budget hearing of the voters of the state so there is no great fear about duplication of bills.

We take the same position here at the Constitutional Convention and I am sure, you, as well as the president, indicated that this duplication of introduction should be given great weight. But as we follow this sort of directive, we find on our desks a number of duplications of bills even after the leadership has given us a directive that we should pay some attention to the introduction and duplication of bills, but this went unheeded.

How then can you begin to control the use—the introduction of and duplication of bills as a means by which you will measure the importance of the unicameral against the bicameral means of legislative session. They talk about a cost factor. I say the money spent for a bicameral legislature as we have had for a period of seventy years—fifty-two under what is called the GOP bicameral session, eighteen years under a Democratic bicameral session, as long as the means, the end means of the product that comes out of the legislature is acceptable by the citizens of the State of Hawaii, the cost factor is immaterial. The cost factor begins to become an issue if when money is appropriated for the operation of the legislature and the legislature fails to carry out the duties and responsibilities for which they have been asked to convene. And as an illustration, Mr. Chairman, when you were called into session to consider the matter of reapportionment, you wasted \$125,000.00 of taxpayers' money, that's when the taxpayers of the State of Hawaii made ridicule of the position with the legislature in their failure to come up with a product acceptable to the citizens and the taxpayers who pay the bill.

It has been said here that the conference committee is a waste of time. I'm sure also mention was made that in a unicameral system we can afford to provide conference committees. But the biggest error that I find in the use of conference committees supporting one system against another, when it was stated here on this floor by a member of the house of representatives that conference committees can write new bills if they want to. You and I know from your past experiences in the house of representatives, and many of you who have served in the house as well as the senate, that the conference committee cannot write out new bills. They only take up disputed matters under discussion.

The conference committee of the legislature is not similar to the committees that we have here operating in our Constitutional Convention where the committee can also come out and write out a bill after full and public hearing is held. In the conference committee this is prohibited.

Mr. Chairman, I cannot see any one of you who have served in the house of representatives whether your position be one to be guided by emotions, public emotions, and you who have experienced bicameral legislature operation should begin to feel that now is the time for Hawaii to make a change from a bicameral to a unicameral. When you have before you the 70 years of Hawaii's experience in a bicameral system as against Nebraska's 30 years, I respect the rights and opinions of those who feel that unicameral legislature should be instituted in the State of Hawaii.

At the same time I beg of you, particularly those who served in the house of representatives and the senate, to stop for a moment and to think back on Hawaii's record of 70 years in the bicameral system and I hope that after they have expressed their views that in the ultimate end they will support unanimously a bicameral system for Hawaii. Thank you.

CHAIRMAN: Thank you, Delegate Kauhane. Before I recognize any other delegate, may I suggest that the speakers look at both clocks in the hall which are used for basketball games so I think they will suffice. The Chair hesitates to pound the gavel to warn you when it is thirty seconds or one minute.

DELEGATE LARSON: Mr. Chairman.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I rise to a point of information.

CHAIRMAN: State your point of information.

DELEGATE YOSHINAGA: Are we going to be permitted to ask questions in the Committee of the Whole?

CHAIRMAN: Yes, you may.

DELEGATE YOSHINAGA: And when may we ask questions?

CHAIRMAN: The Chair suggests that towards the end when most of the delegates have had a chance to participate and debate.

DELEGATE YOSHINAGA: May I have clarification on that matter now? Questions will be permitted after all the delegates have had an opportunity to—

CHAIRMAN: I don't think all of the delegates will participate but most of the delegates will participate and at that time towards the end, maybe you can ask questions of the Chair or the participants.

DELEGATE YOSHINAGA: Mr. Chairman, I did not say all the delegates would participate. I asked whether after they had the opportunity to participate.

CHAIRMAN: Well, the Chair suggests that you ask questions after most of the debate has been finished.

DELEGATE YOSHINAGA: Mr. Chairman, what does most of the debate mean, anyway?

CHAIRMAN: Well, I would think that towards the end when we have maybe ten or fifteen members participating in a debate, then I think it is in order to ask questions.

DELEGATE YOSHINAGA: I think we better have this clarified so we know at what point we're permitted to do certain things in the Committee of the Whole.

CHAIRMAN: Well, the Chair would suggest after the first six speakers we have three at least lined up for the resolution, three against then I think at that time it would be the proper time to ask questions.

DELEGATE YOSHINAGA: Okay, for my purpose anyway after six speakers have spoken, questions will be allowed.

CHAIRMAN: Yes, the Chair will so rule. Delegate Larson.

DELEGATE LARSON: Mr. Chairman, members of this committee, I beg your indulgence in order to speak against this resolution and to the point of unicameralism. The most observant man in history, it is said, was the one who noticed that Lady Godiva was riding a horse.

If I may be permitted to make an observation pertaining to bicameralism it would be that we are marching forward, moving forward into the future, looking backwards, retaining a remnant from the past, an anachronism from the time in which government was small, in which government was localized, in which legislators and legislatures were looked up with suspicion and distrust.

Now then, I feel in response to the delegate from the 11th District that there is a value in such a

discussion on the unicameralism and bicameralism issue in this committee. First of all, in order to arrive at a decision of any nature, I feel it necessary to have some means of comparing our present structure of government, bicameralism with an alternate form. In other words we need to have alternatives to compare our present structure with in order to see the merits and deficiencies of a present structure better. In other words, to see the forest in spite of the trees, perhaps. Secondly, I do feel that there is an educated purpose in such a discussion, both voter and delegate, and I feel that—

DELEGATE KAUHANE: I rise to a point of order, Mr. Chairman.

CHAIRMAN: State your point of order, Delegate Kauhane.

DELEGATE KAUHANE: Nowhere in my statement have I attempted to prohibit a free and open discussion by those who believe in a unicameral system. I also remember in my statement I said that I respected their expression and support of unicameralism. I also noted in my statement, I beg of them, if after and when they have finished expressing their views that they take a hard look at this question and I hope they will consider unanimously—we will vote unanimously for the acceptance of a bicameral system. I did not at any time make reference that they should not be given their full right of expression and I hope the record stands clear on this.

CHAIRMAN: The point is well taken. Continue, Delegate Larson.

DELEGATE LARSON: Pardon me, my point was that it's difficult to objectively analyze the bicameral or unicameral structure of government until we discuss—

CHAIRMAN: Delegate Larson, will you address the Chair, please.

DELEGATE LARSON: All right. Thirdly, I feel that in discussing this question, this particular resolution, I'd like to say that I do feel strongly that the unicameralism structure is a better structure. That rather than making so many necessary repairs to our present bicameral machine it might be better to trade it in for a new model.

Getting in to the so-called merits of bicameralism, I certainly would agree with the idea of checks and balances. This is a historic function of our legislature that was put into all three branches of government—this idea of checks and balances—supposedly to insure deliberate and careful consideration of every matter that would come to this particular branch, whether executive, judicial or legislative. However, in the legislative branch, besides putting the checks and balances within the branch of government, we've added on a second house. Certainly if we were to do this in the case of an executive branch we might have two chief executives. But in this case there would be no need for a conference committee to mediate the differences

between the two. What types of checks and balances have we found desirable and have we incorporated within our present structure of government? We have differing terms, we have differing sizes of districts from which come differing numbers of representatives.

Certainly a proponent of unicameralism does not suggest that we do not have such differing composition and complexions within our legislative branch of government. Nobody wants to be so overly efficient and effective as to not encourage the value of open and free discussion, presenting of all points of view on any particular subject within the legislative branch. Perhaps the major pillar of bicameralism or such, depending on your point of view, might be termed the idea of apparent inequalities or inequities within a state. This is the idea of giving representation to particular areas of the state on the basis of geography.

Certainly I would concur with the delegate from the 13th District that the Supreme Court decision of *Reynolds v. Sims* has basically removed such a pillar of bicameralism. But I think that by all means we can continue to have the so-called merits of bicameralism within a one-house structure.

Let me suggest to you, for example, that when we speak of unicameralism, I'd like to refer my comments too to the delegate from the 7th District, when we speak of unicameralism, the one-house legislature, we don't necessarily have to think of the Nebraska example. We don't necessarily have to think of that. There's been two hundred constitutional conventions, state constitutional conventions, in the history of our country and every single one of them has been unicameral in structure. We don't need to think of the Nebraska example when we think of experience in terms of only one state.

I think that in essence, and I would agree with several other speakers who have mentioned this, that in essence the quality of our legislation, the effectiveness of our state legislature is going to depend on the type of men we are going to be able to attract into the legislature. Whether—I think we've been most fortunate in our bicameral structure of government within our State to have earned this, and I think certainly it has served us well. But I do think that reasons such as, we've always had bicameralism, therefore we've got to retain it, that unicameralism is going to corrupt our government, I think that such reasons are without basis. I think in essence it does depend on the quality of legislators that you do have in the system.

But more importantly, getting to unicameralism in particular, I think that the structure of legislature can influence the type, quality of legislation that comes out of it and I think that in such, the unicameral structure would be advantageous. We can incorporate, for example, the checks and balances within the unicameral structure. We could have varying lengths of terms. Different sizes and districts. We could have all sorts of these same, essential, what are called merits of bicameralism and incorporate them within the unicameral structure of government. I don't think it's

necessary to retain in the unicameral structure, though, some of the agreed upon or argued deficiencies of bicameralism, such as the duplicate committee system. Certainly we could have one single committee system and if you wish have a review committee of the size of our present senate if you wish within this unicameral body in order to better examine the legislation coming from the various committees. And then, on top of it, if you wish, you could have a Committee of the Whole.

There are countless possibilities and variations open to us when we're considering structures of government, and we certainly don't need to refer to the Nebraska example. Let us refer to structure that can be and is unique to our state just as bicameralism is unique to our state at present. I implore this committee to at least examine and remedy some of the inadequacies of bicameralism. And I think that we can do this by as against it, by suggesting various alternatives to bicameralism—different forms. At least examine the possibility of combining similar house and senate housekeeping and staffing operations. Examine the possibility of joint committee meetings between the house and senate. Eliminate some of these agreed upon deficiencies. And I don't think we can eliminate such deficiencies within our bicameral structure of government by merely voting on this resolution and therefore voting unicameralism out of existence.

I think it is wrong if we merely act in this body as a rubber stamp for the status quo. I think we need to consider that government has changed in the two hundred years in our country and certainly in the years in our state and that certainly other possibilities, unicameralism for one, ought to be explored and discussed thoroughly. We cannot help but improve our present system by doing that. I'd like to draw your attention to the—

CHAIRMAN: Thirty seconds, Delegate Larson.

DELEGATE LARSON: All right, I'd like to point out to you that there is a cost study, a comparative cost study on the cost of the bicameral legislature versus the unicameral legislature based upon actual figures of the 1966-67 legislative session on your desks. I think you will notice that there is in a sixty or seventy-five day session almost one million dollars difference and I have also made this study as a comparative length of sessions. Sixty days, seventy-five days and a ninety-day session. And I think the—if we put the savings into providing better staffing for our present bicameral legislature even, but in a modified form, I think that we could not help but have an improvement in our state government. Thank you.

CHAIRMAN: Thank you. Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, I rise to speak in favor of the bicameral system. I rise, Mr. Chairman, to speak in favor of it not because I want to maintain the status quo but because I feel that the bicameral system is the best system that we have, not for the situation as it existed some two hundred years ago, but for the present situation.

Perhaps, Mr. Chairman, the difference between those who advocate a bicameral legislature and a unicameral legislature depends on the philosophy that one has. I happen to share the philosophy, and I believe in the philosophy, that a bill ought to be put through the wringer and it ought to have all of the obstacles thrown in its way and it ought to be scrutinized and examined very carefully. And only after a bill can stand the test of this kind of scrutiny and examination should a bill be passed in the legislature.

It's been said that there's been a tremendous duplication in the bicameral system. Both houses holding hearings and both in different committees, on the same bill, listened to the same witnesses. And this has been called to be an indictment of the bicameral system. But if one believes as I do in the philosophy that a bill should be tested and scrutinized before it becomes law then I submit, Mr. Chairman, that this should not be an indictment but we should support the system of bicameralism. I feel that when you have a committee in both the senate and the house examining a bill, it's very likely as it has been in many, many instances, for the committees separately to arrive at different conclusions even though they listen to the same evidence, the same witnesses coming before both houses of the legislature. And I submit, Mr. Chairman, that this is a good system because by having this kind of examination, by coming to different conclusions, you can provide for a meaningful kind of conference between the two committees that have disagreed on a particular measure.

Now those who propose a unicameral system say that under a unicameral setup you can have the same kind of examination, or you can have a more careful examination under a unicameral system. In a sense, Mr. Chairman, I get the inference that the present committees in both houses of the legislature are not doing the best job particularly the first house that passes the bill because they are going to rely on the other house to do a better job. I am not willing, Mr. Chairman, to accept this as a conclusion. I feel that every committee, and I believe this to be the rule, that every committee attempts to get out the best kind of bill they can get out from that committee. But because we are not infallible and also because we sometimes see things through different sets of lenses, depending on our background and experience, we tend to come out with different conclusions on a given matter.

It has been said also that the bicameral system, because of the conference committee that we have, is a very evil system. My personal feeling is that the conference committee has rendered the kind of check that I feel is good in our bicameral system. And I can remember right offhand, Mr. Chairman, specifically some bills which have come out and have become better bills, laws which are better laws today because we have the conference committees.

And I refer specifically to two examples, the codification of our state land laws which was worked up in conference and which is a better law today because of the conference committee. I refer also to the

anti-trust law which was worked out in the conference committees with differences ironed out, compromises achieved and as a result we have a much better law than we would have had had it been left to one house of the legislature. I also feel, Mr. Chairman, that looking back, I can see the difference in the kind of bills that we have had. For example, the bill that was considered in the 1963 session of the legislature, and I refer to the Maryland Land Law, would have become law during that session of the legislature if we had a unicameral legislature based on the number of people who had voted for the bill. But because we did not have a unicameral but had a bicameral system, a check on the part of one house against the other, we were able during the last two years to come out with a bill that in my very humble opinion, Mr. Chairman, is an improvement over that bill, the 1963 bill.

It is very easy to adopt a system that we have now and to attribute certain evils to it and to assume that a new system is going to be the cure-all. It's been said too that we've had a tremendous logjam during the latter part of the session. Part of the logjam, Mr. Chairman, is because we had a constitutional provision that no bill making appropriations can be passed until the operating budget has first been passed and sent to the governor. I submit that it's because of this that we have much of the logjams within the latter part of the session. Under a unicameral system, you can have the bills passed on first and second readings during the very early part of the session and on the very last day you can have a tremendous logjam also. But the unicameral system really does not tend to eliminate the logjams that appear during the latter part of the session.

Now, I would like to make a few observations if I might with regard to some of the things that have been said here. It's been said that a unicameral system can provide for more qualified candidates and I just don't see how this is going to be possible. It's been said that we could eliminate a tremendous amount of buck-passing between houses. Those of us who campaign for office, Mr. Chairman, campaign on our individual record, on our own voting record. And the vote in the bicameral system is recorded on final reading and it's no different from the unicameral system. Even on a bill that comes out of the conference committee, the report must bear the signatures of those who are for or against the report coming out.

There's been criticism also about the secrecy of the conference committee. I want to say that, Mr. Chairman, that the secrecy in the conference committee is no different from the secrecy that exists in any given committee, in most of the given committees today when we have a public hearing. Bills are taken under advisement and decisions are made later on.

With respect to the question of whether or not, the argument that under a conference committee report you only have the opportunity to accept or reject, I want to say, Mr. Chairman, that in the past the legislature has rejected and has sent back the conferees to conference to come back with a bill, a report that would be more profitable to the rest of the members of the body.

I submit, Mr. Chairman, that the bicameral system has worked. I feel that there is no necessity for a change to a unicameral system. I feel that certain reforms, maybe, are called for but these are reforms that have to be considered even if we have a unicameral system. A bicameral system is one that I feel I can wholeheartedly urge upon the members of this Constitutional Convention. Thank you.

CHAIRMAN: Thank you, Delegate Ariyoshi. We've been at it about 45 minutes now and the Chair would like to call a short recess so that the stenographer can have a little rest. Recess subject to the call of the Chair.

At 10:05 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:18 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Before we go into further discussion, the Chair would like to know how many of you would like to speak, by a show of hands. Thank you very much. Any further discussion?

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I shall vote against the resolution. The concept of checks and balances has meaning only when it is related—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I rise to a point of order now.

CHAIRMAN: State your point of order.

DELEGATE YOSHINAGA: Isn't it proper at this time, according to your ruling, to start asking questions? And may I ask the delegate across the floor if that's what he is going to do now because I have a few questions to ask.

CHAIRMAN: You're in order, Delegate Yoshinaga. Delegate Dodge, can we have some questions now and then come back to you?

DELEGATE DODGE: That's fine.

CHAIRMAN: Thank you. Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: Mr. Chairman, I'd like to ask you a question first.

CHAIRMAN: Proceed.

DELEGATE YOSHINAGA: Am I under the

misapprehension that the Committee of the Whole will have the same chairman throughout the Convention?

CHAIRMAN: No sir.

DELEGATE YOSHINAGA: So that, Mr. Chairman, any rule you propound here will be applicable only when you preside in the Committee of the Whole.

CHAIRMAN: You're correct.

DELEGATE YOSHINAGA: Next, Mr. Chairman, the questions that we ask, are we going to be limited to ten minutes of questions per delegate?

CHAIRMAN: Delegate Yoshinaga, you can ask as many questions as you want. I don't think that one question or two questions will be ten minutes. Is that right?

DELEGATE YOSHINAGA: I don't know.

CHAIRMAN: Well, we'll try. Do you have any questions now?

DELEGATE YOSHINAGA: So you have no rule now as to the time limitation on a delegate as to the questions he asks. Is that correct?

CHAIRMAN: The Chair will rule that there is no time limit as far as questions are concerned except the Chair will interrupt if the questions become too long.

DELEGATE YOSHINAGA: After ten minutes?

CHAIRMAN: Perhaps prior to that.

DELEGATE YOSHINAGA: How about a limitation on time for the person answering the questions?

CHAIRMAN: The Chairman will see that the answers will be short and to the point.

DELEGATE YOSHINAGA: That's still after ten minutes then, huh? Mr. Chairman, may I address a few, short questions to Delegate Kauhane.

CHAIRMAN: Proceed.

DELEGATE YOSHINAGA: If the good delegate will yield to a few, short questions.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: If I can answer, I'd be glad to.

DELEGATE YOSHINAGA: These are very short, simple questions in which the delegate is very knowledgeable so I don't think we'll have any problem. It is not my intention to embarrass the delegate or anybody else. I think the questions that I ask will be proper and helpful to the Convention and the people as a whole in this case. Delegate Kauhane, in the Convention this morning you attempted to define your

position if not the position of the Convention in regard to the process we are now engaged in and unfortunately that, to me anyway, I was unable to understand what your position was because of the minor interruption made by the presiding officer. But as far as I'm concerned, I think the question as far as the procedure is very important, at least to me, because depending on what you say it might influence my vote on the matter, the proposition before this committee this morning. Now could you very briefly explain your position?

DELEGATE KAUHANE: I'll try to explain it to the best of my ability. This morning, I raised a question that's contained in Robert's *Rules of Order*. I believe it's contained in maybe Rule No. 59 to suppress the question, objecting to the consideration of the question which was to be undertaken this morning as to consideration of this resolution and the committee report. I felt that in my attempt to suppress the consideration to the question, and we are being called upon merely to express a guideline—may I divert a few minutes, Mr. Chairman? I'd like to direct my attention to you and particularly to the man that's controlling this mike. You see, when I started to talk this morning, I was cut off, then I was brought back into focus again. In my attempt to answer Yoshinaga, the same thing happened. I was cut off again. This is why during the recess I asked if this is going to happen, I would like to bring my own P.A. system here so that I would never be cut off. Is this intentionally done, Mr. Chairman?

CHAIRMAN: Delegate Kauhane, as far as the Chair can ascertain, there is no deliberate cutting off of your speech.

DELEGATE KAUHANE: I'll accept your statement, Mr. Chairman.

—So that, Mr. Yoshinaga, if we are merely being called upon to express this guideline, I feel that this guideline expressed can well be made by the committee chairman and the committee members who have already taken their position and indicated their position clearly on the question before us this morning. That a mere report from the chairman advising the other Standing Committee chairmen to me would suffice.

I say this because we are in the same situation with respect to the Hawaiian Homes Land. As far as the executive powers are concerned or the committee that has to do with the setting up of such departmental heads, we took the position and we merely informed them that this is the position we have taken, rather than come to all of you and ask you to express a guideline decision. To me this is a back-door approach to ascertain from each of us this morning our direct position on a question. I have never deviated from my position as I have stated earlier that I'm for bicameralism. I hope my answer is okay with you.

CHAIRMAN: Thank you. Delegate Yoshinaga.

DELEGATE YOSHINAGA: I have another question to ask Delegate Kauhane.

CHAIRMAN: Proceed.

DELEGATE YOSHINAGA: This morning you spoke in support of retaining the bicameral system in the state legislature and apparently because of misunderstanding, your statement was misinterpreted by another speaker who followed. Now, you stood up to correct the misunderstanding as you understood it to be. Could you repeat your explanation of your position?

DELEGATE KAUHANE: I stated this morning that I respect the opinions expressed by those who are in support of unicameral system. That in the ultimate end after they have had an opportunity to fully express their feelings, that they will take a second look at their position. And I address myself particularly to those who have served the legislature, that they come around and vote unanimously for the acceptance of the bicameral system.

DELEGATE YOSHINAGA: So, Mr. Kauhane, if I understand correctly on this matter of unicameralism versus bicameralism, you have no ill feeling against any of the proponents of the unicameral system. That you only ask, very politely, that in the event the decision is made in favor of a bicameral system that all the delegates join in unanimity. Is that correct?

DELEGATE KAUHANE: That's right. Because, Delegate Yoshinaga, you and I know through experiences, the minority has always, toward the end of the roll call vote, come up and said, "Let's make this unanimous." That's all I'm saying.

DELEGATE YOSHINAGA: If I understand correctly, in spite of your position regarding the procedure we are taking this morning, you are going to vote in favor of the resolution?

DELEGATE KAUHANE: I have no alternative but to support the resolution requesting for these guidelines so that the other committee members may have the expression, not only of the members of the committee itself, but of all these delegates sitting here this morning. We've been asked to come in and to express our position. In view of that I will support and vote for the resolution.

DELEGATE YOSHINAGA: Mr. Kauhane, in other words, you don't feel as strongly as I do that I am for bicameral legislature but because of my opposition to this procedure I am going to vote against the resolution.

DELEGATE KAUHANE: Well, you are free and twenty-one so, Delegate Yoshinaga, you're guided by your own conscience. But if I can reach you, your free and independent mind, I will certainly try to prevail upon you to vote along with this resolution calling for a guideline expression.

DELEGATE YOSHINAGA: Thank you, Mr. Kauhane. At least from you, only one minor person like you, I received more of a contribution this morning than from anything else that has happened so far. Thank you very much.

CHAIRMAN: Any further discussions? Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I am speaking against the resolution. The concept of checks and balances is needed only when it is related to the concept of separation of powers, the division of authority and responsibility among the three branches of government, legislative, executive and judicial. Checks and balances have no meaning when applied to only one of those branches. There is no more reason to have two houses in the legislative body than there is to have two governors or two supreme courts. I do not know of a single bicameral board of directors, a single bicameral city council or county legislative body and to my knowledge, there has never been a bicameral constitutional convention.

It is incongruous to me that an apparent majority of this Constitutional Convention accept this unicameral body as appropriate to draft our basic document-setting policies that will endure for years and at the same time demand a two-house body to establish policies for day-to-day happenings.

The real check and the true balance on this unicameral Constitutional Convention is the voter who may accept or reject what we do. A unicameral legislature with a similar right of the voter to approve or reject legislative action through a referendum would provide an identical check and an identical balance. A senate may be necessary in our federal system to preserve and protect the sovereignty of each of the several states, but we have no sovereign county, and within a state sovereignty is only in the people.

I'm not persuaded by arguments in favor of unicameralism that are based upon economy and saving money. But I do not believe a democratic government can be evaluated in terms of dollars and cents. I implicated that over twenty years of experience with legislatures and with the knowledge that no major policy is ever established outside of the conference committee and a small minority of legislators, if you will, a unicameral group, operating substantially in secret whose product is seldom, if ever, rejected by both houses.

Since *Reynolds v. Sims* the last tenurial basis for a bicameral body has disappeared. We have a way to avoid the consequences of that decision and to have a two-house legislature with one representing islands and the other people, if we are willing to be imaginative and plan for our future without being tied to the past. Such a plan is embodied in Proposal No. 225. In a recent letter to me, William Boyd, who is associate of the National Municipal League, said of that proposal:

"This idea has quite an appeal to me personally particularly for a state like Hawaii. It appears to me to be a beautiful way for representatives of vastly populated areas to vote for opinions in an official and highly versatile position and yet in such manner that it can do no damage to the one-man, one-vote decision. As you noted in your letter, there probably isn't that

much interest in it but it seems a shame that there isn't."

I'm afraid we have lost much of our venturesome spirit. At one time, the states were very willing to experiment with new forms and new structures. Right at this time, I think that experimentation would be particularly beneficial since there is such an obvious alienation on the part of the general public. With all its trials and travails I think our democratic system is going through a tense period with admirable flexibility. It could certainly be improved however, and I agree Hawaii is not unaccustomed to breaking new trails. We have had many firsts in statutory concepts. I think we should not be fearful of charting new courses in constitutional areas. I stated I shall vote against the resolution and I shall hope that others will join me with the willingness to think new thoughts for the good of and for the future of Hawaii.

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: Mr. Chairman, I would like to speak on Resolution No. 34 to retain the bicameral legislature.

Our great State of Hawaii consists of six major islands, mainly Hawaii, Maui, Lanai, Molokai, Oahu and Kauai. There is no state in the union identical in its physical features to Hawaii with the islands divided by a body of water. This kind of situation is unique for Hawaii because it is not contiguous. If our memory is not short, in the fight for statehood because of the basic reason that Hawaii was not contiguous to the mainland United States, we were denied statehood for many, many years. This thinking prevailed in the halls of Congress at that time.

What I'm trying to say is that by reasons that the islands are not contiguous it is only natural that we as human beings are a little more zealous of trying to be district and county conscious. Therefore, if under the unicameral system which means by virtue of Supreme Court decision, one-man, one-vote, there is a chance that legislators control the legislative body by virtue of having two bodies in our state legislature, the minority citizenry especially will have two chances to appeal to our legislative branch of our government when they are in session and when they chart the destiny of our State. It is essential that the minority group be given the fullest measure of appealing to the majority. Therefore, I appeal to the delegates to vote in favor of the resolution.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, much has been said this morning on the question before us. It is not my intention to repeat. It is my intention here to enlarge, perhaps, or to state it a little differently and then to add.

In 1964, when the United States Supreme Court

decision was handed down, they spoke about reapportionment. They did not refer to the term "reapportionment" in the old traditional sense as we know it. And how did we know it? We thought of reapportionment as an accommodation in the shifts of population. Supreme Court decision implications go further and deeper and to the basic structure for example, of the legislature for the State of Hawaii.

When we structured our state legislature, once, the house of representatives was on the basis of population, the senate on the compilation of geography, history and population. And we expected there to be an interaction between the two houses. We expected a certain kind of chemistry. But after the Supreme Court decision, our senate was no more based upon the compilation of population, history and geography. Therefore, it behooves us to ask the question and to explore the question, "How do we structure a new legislative body for the State of Hawaii?"

The point I want to make, Mr. Chairman, is that we are not spending enough time on this question, we're not studying it enough, we're not exploring it enough. I resent very much the consensus vote taken the other day in committee because it dampened and shut out further considerations. It is my feeling, Mr. Chairman, a unicameral system of legislation is not an experiment. I would like to call the attention to the delegates here, that the National Government of England practically has a unicameral system of government. France, Guam, Canada, all the provinces except for one. After the Second World War, Bulgaria, the two Chinas, Czechoslovakia, Denmark, Finland, Greece, Hungary, New Zealand, Israel, Spain, Turkey, several of the Latin American countries, and then the merging African nations. And why did they pick this? They were starting a new country largely because the unicameral idea had merit. And of course you know the story about the county governments throughout the nation. There's a definite swing in favor of a unicameral legislative body.

I want to, Mr. Chairman, next get to another point here. We are presently, I am informed, faced with a problem in this Convention where if we follow the formula for registered vote basis, some of our representative districts would have to be wiped out. Therefore, there has been some concern that perhaps we ought to increase the number of representatives in the house of representatives. Mr. Chairman, when are we going to stop increasing it if we are increasing it. But the point I want to make is that under a unicameral system, adequate number of representatives or assemblymen or senators from a particular district can be practically assured and therefore this problem would not arise. The problem of wiping out a district, for example, has less likelihood of arising and I think it well for us to consider this point if we look ahead into the future.

I agree with the delegate here who spoke earlier, the cost and the savings in the unicameral system is not all important. But I do want to point out one factor here, and I lay my experience in the legislature on the line

when I speak of this. Definitely I think we all agree there will be some savings. My point is, with the savings, Mr. Chairman, we can implement a better legislature. What am I talking about? Better staff for the committees, better staff for the individual legislator. It is hard for those of you who have not served in the legislature to appreciate this point because I am sure the opposite position will be stated just as effectively. But so that you can see it in operation when people get together in this assembly, I'd like to call your attention to some of the things in this Convention.

Whenever men get together and whenever there's difficulty of getting funds, some of the very essentials are left out and I'm not stating this as a complaint, but I do know as a fact that after you ask yourself this question, in your own offices, you don't have enough files to organize your materials efficiently so that at the proper time you can clearly and effectively refer to it. It's my personal feeling also that we don't have enough attorneys at the Con-Con so that we can do a better job. But I point that out not so much to complain but to point out that all these claims made by the bicameralists, "Don't worry, what you do under the unicameral system we can do it there." But it is never done. And this type of thing would never be done because the bicameral system of legislature will cost so much money that this type of innovation cannot be implemented.

I want to bring up another point. You know the Supreme Court decision essentially is not one-man, one-vote. Essentially it is equal effectiveness of a vote. And you know how the equal effectiveness of a vote of the voters can be frustrated in the legislature. By not giving equal staffing to every legislator. I don't mean committee staffing. It has been frustrated and it can and it will continue to be. But the chance of improving on that, I think, might come from a unicameral system.

There's no way I can add to what has been said about the checks within the legislative branch. I agree with Mr. Dodge the important check we talked about is the check between the several branches of government. Theoretically, rationally, there is no real check anymore between the two houses. There is none, Mr. Chairman. If there are, they're purely accidental checks, checks that we hope will come about, differences that we hope will come about. There is no real chance for a check, Mr. Chairman. And if this is the kind of accidental check we are talking about, why don't we ask for a three-house legislature. The first one-ten. The second-fifteen, and the third-twenty-five. It makes more sense, Mr. Chairman.

I want to say one more thing. You don't find two governors in the State of Hawaii or in any state in the union. You don't find two supreme courts in the State of Hawaii, nor in any state in the union. When you ask for a two-legislative body basically, we legislators—and I speak as a legislator now—are not trusted by the people who vote us into office. And because of that, perhaps, maybe the best legislators are not elected into office. And maybe because of that climate, Mr. Chairman, perhaps the performance is not as good as it should be.

All kinds of checks have been talked about. None has been clearly defined. But if the proponents of bicameralism are talking about technical checks, that is, whether there's a proper comma here, a period there, or the words are properly spelled, proper attorneys, proper staff members can do this. There's no problem. In fact it would be easier to do it in a unicameral system because of the money that possibly might be available for that type of thing.

And what about the conference committee? Proponents of bicameralism speak about the conference committee as a necessary body and it is necessary under a bicameral system. Many resolutions have been introduced to relieve some of the criticism made against the conference committee, Mr. Chairman. But, Mr. Chairman, the point is this, those corrective measures have not yet been taken. If the bicameral system operates today in the State of Hawaii, we are not assured that that correction or those several innovations will be adopted. And even if they were, Mr. Chairman, I doubt very much you can effect a visible, accountable arrangement which would be equal to that of a unicameral system.

Mr. Chairman, one of the evils of the conference committee is that when the report comes out in both houses, the members of the senate and the house must accept in toto or reject in toto. It's very hard to accept in those instances. You accept the weaknesses, the evils and the good. If this were in a unicameral system, up to the very last point, amendments can be considered, they can be rejected, they can be given the chance to express themselves, for the chances of formulating a bill more acceptable to all in the unicameral is better. Under a unicameral system, Mr. Chairman, and in—

CHAIRMAN: Senator Doi, you have 20 seconds.

DELEGATE DOI: Thank you very much. One more point. Under a unicameral system and I think in this Constitutional Convention, shouldn't we set up a meaningful county government? Unicameralism makes better sense. And I think we are on the road to set up a meaningful county system government. If we do that there is much that the state legislature can confine itself to, state matters, state politics, state programs and forget about interfering with the county operations. My time is up, Mr. Chairman, I want to say thank you very much.

CHAIRMAN: Thank you. Delegate Sutton.

DELEGATE SUTTON: I would like to address some questions. I am not decided on this resolution. I've heard from both fine arguments but—

CHAIRMAN: Will you ask the question, please, if you have a question.

DELEGATE SUTTON: May I ask some questions, please, of Mr. Amaral who spoke first for a bicameral.

CHAIRMAN: Delegate Amaral.

DELEGATE SUTTON: Delegate Amaral, I just wonder, supposing we have a malaria situation here, and we went to your bicameral legislature and asked for some immediate legislation. How do you think your bicameral legislature would deal with this emergency?

DELEGATE AMARAL: I'm sure you want a real direct answer. And since the question is very, very important, I'm sure, and since neither you nor I do sit in the legislature, I wonder if you'd permit me to refer this question to a fellow like, say, Senator Ariyoshi who does sit on the legislature, if he could answer this question for your benefit.

CHAIRMAN: Senator Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman. If I may read an inference to the question, I suppose that the question is being asked because the delegate wants to know whether or not the bicameral legislature can act with speed to take care of the problem.

And I can only refer you to some of the things that have been done in the past; Hurricane Dot: there was a need, the legislature under the bicameral legislature acted promptly. The tidal wave disaster of the neighbor islands, Hawaii particularly, was acted upon and given prompt and adequate consideration.

DELEGATE SUTTON: My next question of Delegate Amaral. Is the ability of the legislature to successfully compete with the executive as a key policy-maker and to scrutinize the operations of the state governor.

CHAIRMAN: Delegate Amaral.

DELEGATE AMARAL: Well, you mentioned competing with the executive. I believe under one body, the unicameral basis, the executive could be in more competition than under the bicameral system. Because if, let's say, if the governor would be able to control one house, then he could control the unicameral house. But I think he would have a very difficult time to control both houses of the bicameral system. More so, you take this, our present makeup of the legislature, you have the house, which is dominated by one party, and the next house, although it is dominated by the same party, does not have the complete majority because in many cases you do have minorities within majorities. So I do not see where the executive could really control the bicameral system like I believe he could the unicameral.

CHAIRMAN: Thank you.

DELEGATE SUTTON: Mr. Chairman, I have one more question of Mr. Amaral.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: As we look around this room, we see a unicameral body. We see a bank president here and right next to him a plantation worker.

CHAIRMAN: Delegate Sutton, do you have a question?

DELEGATE SUTTON: My point is this.

CHAIRMAN: Will you state the question please?

DELEGATE SUTTON: Delegate Amaral, tell me how in a bicameral body we can be assured of the type of magnificent representation that exists in this body right in front of us, people from all income levels, people from all classes of society and truly representative of the areas from which they come and in full conformance with the Supreme Court decisions on one-man, one-vote.

DELEGATE AMARAL: Let me answer your question with a question, Delegate Sutton. Have you ever been denied the right to run for office?

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: Evidently not.

CHAIRMAN: Is there any other discussion? Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I do not intend to compete against our distinguished colleague, Delegate Nelson Doi. I think he has made some very excellent remarks in favor of unicameralism. But I want to assure the committee here that our Legislative Powers and Functions Committee has considered this issue and has signified its decision by a substantial margin.

The delegates here can also be assured that I am not known as a spendthrift businessman. I too am for efficiency and economy particularly in the area of government expenditures.

Of paramount importance to us today is our discussion of a philosophy or a principle of our government structure which can best serve our community. The cost we must bear to adopt such a system is of secondary importance. And by the way, the information submitted by another delegate concerning a digest of unicameralism has to be very carefully reviewed with the notations on the last page that the budgeted amount not necessarily reflects the amount actually expended. Now, the price we must pay for a bicameral legislature is not too burdensome for the benefit and advantages that we want to achieve. However, I assume that constant efficiency effort will always be explored. A check and balance system inherent with bicameralism is worth the price though it is not perfect. I feel that a fair reapportionment scheme can be attained within the framework of a bicameral system that we would like to adopt.

Our Legislative Powers and Functions Committee will shortly recommend adoption of a sixty-working-day regular annual session. This is intended to provide more adequate time for deliberations. We also have under consideration proposals to minimize and wherever

possible to eliminate unnecessary legislature duplication through joint or parallel efforts by our two-house legislature. We have other proposals which we hope to bring before the body to streamline its operation wherever it can be found to be logical.

Now to summarize, in spite of our present inadequacies and shortcomings, I sincerely believe that a bicameral legislature will best serve the interests of Hawaii Nei. Thank you.

CHAIRMAN: Delegate Bacon.

DELEGATE BACON: Mr. Chairman, I would like to rise in support of the resolution but before I do, may I have a ruling from the Chair?

CHAIRMAN: Proceed.

DELEGATE BACON: I would like to ask you if I might ask questions of a delegate who has not made a presentation but who has only asked questions.

CHAIRMAN: I would suggest that you confine your questions to people who have spoken or to the chairman of the committee.

DELEGATE BACON: I'm not sure I understand. I want to ask a delegate a question.

CHAIRMAN: The Chair would suggest that you ask questions of speakers and the chairman of the committee.

DELEGATE BACON: This man only asked questions so I may not ask him a question?

CHAIRMAN: I would suggest you ask—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I suggest that that's a very undemocratic procedure. If the gentleman wishes to ask any questions of anybody in this Convention or the Committee of the Whole I think he is entitled to do so.

CHAIRMAN: Well, the Chair suggested that to expedite matters and to save time. But if there's no objection, proceed.

DELEGATE BACON: Thank you. Mr. Chairman, I have a question that has been nagging me and I would like an answer. I would like to ask Delegate Yoshinaga a question.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Well, I'd like to suggest that the answer is going to be somewhat confusing but if you wish to ask, go right ahead.

DELEGATE BACON: I'm confused so I'll try. Delegate Yoshinaga, you have indicated that you have

an objection to the procedure being used here in relation to this matter which we are discussing. I'm not sure I understood Delegate Kauhane. Would you try to explain what is your objection to this procedure?

DELEGATE YOSHINAGA: Well, I don't know whether I'm confused because of the procedure we are following here or whether the procedure is confused. In fact I am so confused I am not sure that I can answer your question very properly. But my own position would be that a matter like this should be determined for final action by the Convention rather than as a sense of policy statement so that determinations can be made by the committees dependent upon this decision.

CHAIRMAN: Delegate Bacon.

DELEGATE BACON: Thank you. I'm a little more clear now on what he said so I will not take up any further time, Mr. Chairman, other than to say that I do support the resolution and will vote for it.

CHAIRMAN: Thank you, is there any further discussion? Delegate Kageyama.

DELEGATE KAGEYAMA: Mr. Chairman, I rise to address a question to the honorable Delegate Doi.

CHAIRMAN: Proceed.

DELEGATE KAGEYAMA: My question to you, Delegate Doi, is that will you cover more information as to the type of reapportionment under your proposal of a unicameral system and what would you call the elected officials in the unicameral body?

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Were there two parts to this question? The last part I understood. You can call him a senator, you can call him an assemblyman, you can call him a representative, you can call him a lord if you want. Was there another part to this question, Mr. Chairman? I didn't understand—

DELEGATE KAGEYAMA: The representation of the reapportionment, how do you go about in the number of the so-called representatives in the unicameral system? Can you enlighten me in such a way as to have so many representation from the different islands and what's the total of that representation in numbers?

DELEGATE DOI: Mr. Chairman, in response to the question, I think it can be done the same way that Chairman Schulze is working on in the bicameral system. But I do have figures here, for example, from the LRB saying that if you have a body of fifty-seven members, it will break down this way: Hawaii, seven; Kauai, three; Maui, four; Oahu, forty-three; just to give you an indication. It would be on the same basis as you are working the bicameral apportionment problem.

CHAIRMAN: Delegate Medeiros.

DELEGATE MEDEIROS: Mr. Chairman, I'd like to

direct this question to Delegate Doi. As of this morning, the subject of the minority, the subject of the majority has not been discussed. The subject of unicameralism versus bicameralism, whether it's going to be nonpartisan or partisan has not been discussed. And I was just wondering, here in our bicameral system today we have both houses, one house may have the minority, and the same minority may have the majority in the other house where it speaks for the check and balance.

This is my question, Delegate Doi. What would happen to the minority in a unicameral system?

DELEGATE DOI: Well, I don't really understand the question but let me say this. Under a bicameral system the identity of the legislators are less clear and therefore, the two-party system is less pronounced. Under a unicameral system contrary to Nebraska's experience, the two-party system will become more pronounced and will become more effective. This is what the experts say. The usual chemistry that will operate in a body where you have a majority and a minority will operate.

Let me say one more thing here. If in this, the year 1968, in the State of Hawaii, the labor group has a strong lobbying influence or strong influence in the legislature or on the government, I think it is safe to assume that their influence will be equally strong in the house as well as in the senate. And therefore it would not make a difference whether you have one house or two houses. And if there is a difference it would be only accidental because of personality or some accident of the election. And for us to gamble on an accident to retain the two-house system I think is unwise.

CHAIRMAN: Thank you.

DELEGATE MEDEIROS: May I state a question in regards to bipartisan? In the event that the unicameral system is adopted here, would it be bipartisan? I mean would it be nonpartisan or bipartisan?

DELEGATE DOI: My personal opinion is that it should be bipartisan, or three parties, five or whatever it is. The party system should operate as a good check.

CHAIRMAN: Thank you. Delegate Mizuha is recognized.

DELEGATE MIZUHA: Mr. Chairman, I rise to a point of information.

CHAIRMAN: State your point of information.

DELEGATE MIZUHA: If the Committee of the Whole adopts this resolution and reports to the Convention that it is adopted, will it foreclose any further debate on the question of bicameralism versus unicameralism later on when the Legislative Powers and Functions Committee reports to the floor of this Convention?

CHAIRMAN: As far as the Chair can ascertain, looking over the committee report, it will merely serve

as a guideline for future activities or actions.

DELEGATE MIZUHA: But what does it mean? That's the information I want at this time. May I further clarify my position? If we adopt this resolution it will be giving not only the Legislative Powers and Functions Committee blanket authority to determine certain matters but it will give the Legislative Apportionment Committee blanket authority to determine any size of a bicameral legislature it wants.

And if they come in with an unusually large senate and house of representatives and if we are foreclosed from debating the problem that you have come with such a large senate and house that probably we should want to vote for unicameralism now, we're out of the window. And if it does foreclose any further debate on the question of unicameralism versus bicameralism, then I believe this resolution must be amended to clearly indicate that in the event the membership of this Convention feels that the apportionment schedule as presented by the Apportionment Committee is too large, then we can take up this matter again. Have I made myself clear?

CHAIRMAN: Yes, I think the point is well taken. The Chair is just working through the committee report as to the intention of the resolution and as far as the Chair can ascertain, it serves as a guideline to the various committees involved.

DELEGATE MIZUHA: Will you make a ruling?

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Maybe I can help. In arriving at this procedure of first passing a resolution to get a sense of this body on this question of a bicameral legislature or a unicameral legislature, and I speak as one in favor of unicameralism and as one who is likely going to lose on the vote this morning, that we have indicated or I have indicated that this will foreclose further consideration of the unicameral question if it is voted down. Of course, if there's an emergency or rather a situation where the body feels urgent enough, you always have the suspension of the rule procedure and that should release us probably, I would think. Thank you, Mr. Chairman.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Then may I speak in support of the resolution?

CHAIRMAN: Proceed.

DELEGATE MIZUHA: We represent in the far corner over here, poor little Kauai. Delegate Doi has interpreted the *Reynolds v. Sims* case. It has been kicked around here so often and he has interpreted it as meaning not one-man, one-vote but equal

effectiveness of the vote. And this is directed to the chairman of the Legislative Apportionment Committee who will now have a guideline with reference to bicameral representation.

If equal effectiveness of the vote, as I understand it, is carried forward, consideration must be given to geographical conditions. And in adoption of a bicameral legislature and representation to a bicameral legislature effectiveness of our senate or house vote must be considered. And *Reynolds v. Sims* isn't the bible for all times. There's every indication that the United States Supreme Court will consider these geographical considerations of various states, especially Hawaii's unique position composed of several islands. And I am certain that as Delegate Doi says they will give approval to the theory that he has proposed, equal effectiveness of a vote, that Kauai get two senators. Thank you.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: He sat down, I was going to raise a point of order.

CHAIRMAN: If there are no objections, for the benefit of the stenographer, we'll take a short recess subject to the call of the Chair.

At 11:05 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:15 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: This morning I came here a bit confused. Delegate Kauhane was kind enough to unconfuse me. And now, through Delegate Mizuha and Delegate Doi jointly, I am somewhat confused again. May I ask now, my understanding from the statement made by Delegate Doi to the question posed by Delegate Mizuha was to the effect that the action taken this morning on the resolution was so binding, that it was final action on the matter contained in the resolution. Is that correct?

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: May I respond?

CHAIRMAN: You may.

DELEGATE DOI: When I stood up and responded, I was speaking for myself. Because I was one of those called in front here as a member of the Legislative

Powers and Functions Committee and I wanted it clear, I didn't want to renege on my word. Thank you.

DELEGATE YOSHINAGA: Thank you very much, Delegate Doi.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Therefore, my question was directed at the chairman.

CHAIRMAN: Chairman Hung Wo Ching.

DELEGATE HUNG WO CHING: Mr. Chairman, we've had two hours of wonderful and fruitful discussion and I now move that—

CHAIRMAN: Chairman Ching, I think Delegate Yoshinaga has a question.

DELEGATE YOSHINAGA: Yes, I'd like to have that question answered. I think it's a fundamental question.

CHAIRMAN: I think the Chair stated earlier—

DELEGATE YOSHINAGA: —position I have taken already this morning which I publicly declared.

CHAIRMAN: I don't think our action here will preclude any further action here later on as to reconsideration of the action taken today or on the full Convention floor.

DELEGATE YOSHINAGA: Mr. Chairman, if I understand it correctly, assuming that a majority vote in favor of the adoption of the committee report, thereby adopting the resolution, then later on in this Convention it is possible that the matter of a unicameral legislature may come up. It is possible that said matter may be referred to a Committee of the Whole. It may be possible that that matter may be favorably reported to the floor of this Convention and it may be possible thereafter that it becomes the action of the Convention?

CHAIRMAN: You're correct.

DELEGATE YOSHINAGA: And, if I understand correctly from your earlier reply to my statement regarding your jurisdiction as chairman of the Committee of the Whole this morning, that that is the ruling of you as chairman of this Committee of the Whole.

CHAIRMAN: This is my ruling as far as the action of the Committee of the Whole today is concerned.

DELEGATE YOSHINAGA: Thank you very much.

CHAIRMAN: Any further discussion?

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, to perhaps clarify this question very clearly, I wonder if the President of the Convention, Delegate Porteus, perhaps could give us some background and then perhaps the gist of the committee deliberation and discussion that took place to handle this particular question that may come out of this one proposal, and to me this is the only proposal that could justify this point that the delegate from Kauai brought up. I wonder if President Porteus could give us some clarification as to the determination made at that meeting of committee chairmen.

CHAIRMAN: President Porteus.

PRESIDENT PORTEUS: Mr. Chairman, I'll be very delighted to yield to the question and to answer it. During the process of the introduction of the various proposals a number of the chairmen were very concerned about the matter of unicameral and bicameralism as they felt that it cut across the lines of many of the committees. That while it was specifically within the province of the Committee on Legislative Powers and Functions, it would very intimately affect the work of the Reapportionment Committee. In other words, if you started to draw the lines for the senate and the house that is one proposition. If, however, you're going to draw the lines for one body only, you enter into an entirely different proposition and entirely different lines and perhaps entirely different numbers of registered voters or population would have to be considered. And some of the other committees were concerned as well.

In view of the concern of the various chairmen the President asked that each committee chairman and the officers meet with me. They did so meet and I don't mind telling you that the President was of the opinion that it would be better to bring each article out by itself. But when the chairmen pointed out to me that this cut across so many lines and this might mean that in a particular committee a delegate would say, "Until we have had an indication of where the delegates to this Convention stand, we're uncertain as to how we should proceed because if we proceed on the assumption of two bodies and if the body does not go that way we've wasted a lot of time and effort." We discussed the matter of whether this was a precedent and thereby permit other resolutions to come to the floor and it was agreed with the officers and with the chairmen of the committees that this would be the sole exception insofar as the Chair was concerned in order to ascertain the will of this body as a guideline to the other committee chairmen.

Now, technically, having—and I support the Chair's position on this—having approved this as a guideline, I am not concerned that we'll have any real difficulty with it later. I appreciate the statement by one of the leading proponents of this plan that once he has had an opportunity to speak on the matter and once it has been determined, he is satisfied.

But let me point out to the delegates, that if for any reason and under any assumption that the whole body

should decide and forty-two delegates wish to do something different later on, I don't care what the Chair rules, the forty-two have it within their power to get a different decision. And I believe that the method that we've operated on has been with the understanding of the chairmen, and is a fair request. It is with their assent and it is to give the opportunity to every delegate to express himself so that later on someone doesn't then stand up and say, "We never had a chance to debate the issue. Legislative reapportionment is now brought out, based on the house and the senate so that if we try to obtain unicameralism we'll throw all work away, we'll delay the work of the Convention by several weeks and we now feel that we are locked in." And what we're trying to do is give the delegates the opportunity so that they will feel that they have not been locked in on this matter. And I believe, Mr. Chairman, your ruling to be entirely appropriate and I appreciate the opportunity that was afforded me to explain the background of this particular matter.

DELEGATE MIZUHA: Mr. Chairman, I rise to a point of information.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Your ruling seems to differ from President Porteus' ruling. President Porteus' ruling says that you must get thirty-two votes or forty-two votes before you can reconsider this matter when we debate the proposal of the Legislative Powers and Functions Committee. Under the rules of this Convention, anybody can amend it—a proposal, and you don't need forty-two votes.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: President Porteus.

PRESIDENT PORTEUS: Mr. Chairman, I'd be very delighted to see the delegate later and explain to him why my position is entirely in accordance with the Chair's position at this time.

My only statement was that on any issue and not just this, in whatever you do, whether you've voted even on third reading, if forty-two people of this Convention want a change, there are means under the rules where they may go back and get a change, whether it's by way of suspension of the rules or in some other fashion.

DELEGATE MIZUHA: Mr. Porteus, what I want to know is when there is a report by the Legislative Powers and Functions Committee to the floor of this Convention, that any member of this Convention can amend that proposal without the necessity of forty-two votes on this question of bicameralism versus unicameralism.

PRESIDENT PORTEUS: On the floor or in Committee of the Whole, if there are eighty-two people present, it will take forty-two votes to carry any amendment.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: That only adds to my confusion. Under Rule 34, to change the rules of this Convention doesn't just require forty-two votes. We have a procedure outlined here. It requires that an amendment offered shall lie on the table one day before being voted on. As a fact, if a matter comes here on the floor it doesn't necessarily mean that forty-two people can change the rules unless we've abandoned the rights of the minority.

On the other hand, people like me who are confused and vote today, if we do vote for this proposition and it passes, gets on the floor, it passes, couple of days pass by and we try to bring this matter up, under the rules we're barred from bringing this subject matter up or any interpretation presented here somehow, by somebody, somehow. I wish something would be straightened out.

CHAIRMAN: Thank you. Any further discussion? I think we've had full discussion on this. Chairman Ching.

DELEGATE HUNG WO CHING: Mr. Chairman, I move that this Committee of the Whole rise and recommend to the Convention the adoption of Legislative Powers and Functions Standing Committee Report No. 24 thereby adopting Resolution No. 34.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Second the motion.

CHAIRMAN: You've heard the motion duly made and seconded. Chairman Ching.

DELEGATE HUNG WO CHING: Roll call, Mr. Chairman, if there's no objection.

CHAIRMAN: I don't think there's any objection to a roll call. Mr. Clerk, call the roll.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Call the roll, Mr. Clerk.

DELEGATE YOSHINAGA: Mr. Chairman, you gonna shut me out?

CHAIRMAN: No sir.

DELEGATE YOSHINAGA: I'm addressing you properly as required by the rules.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I just rise to a point of information on the matter of—

CHAIRMAN: Will you use another mike, we can't pick it up.

DELEGATE YOSHINAGA: I just rise to another matter of information and order now.

CHAIRMAN: State your point of information.

DELEGATE YOSHINAGA: Is the motion to adopt the rules? I mean the committee report thereby adopting the resolution?

CHAIRMAN: Recommending the adoption to the assembly. Yes.

DELEGATE YOSHINAGA: Of the committee report and the resolution, that is my question.

CHAIRMAN: That's correct.

DELEGATE YOSHINAGA: Thank you.

CHAIRMAN: Mr. Clerk, call the roll.

(Roll call having been ordered, the motion to recommend the adoption of Standing Committee Report No. 24 and Resolution No. 34 to the Convention was carried by a vote of 65 ayes and 11 noes, with Delegates Dodge, Doi, Fasi, Hansen, Kawasaki, Kudo, Larson, Frank Loo, George Loo, Steiner and Yoshinaga voting no; and Delegates Aduja, Andrade, Fernandes, Goemans, Saiki and Suwa being excused.)

CHAIRMAN: Motion carried.

The Committee of the Whole adjourned at 11:32 o'clock a.m.

Debates in Committee of the Whole on **THE LEGISLATURE— Powers and Functions**

(Articles III and XVI, Sec. 17)

Chairman: DELEGATE PETER C. LEWIS

Friday, September 6, 1968 • Morning Session

The Committee of the Whole was called to order at 9:20 o'clock a.m.

Delegate Peter C. Lewis presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order.

This committee is convened to consider Standing Committee Report No. 46 and Committee Proposal No. 7 dealing with Article III and Section 17 of Article XVI as submitted by the Committee on Legislative Powers and Functions. The Chair wishes to remind the delegates that the rules of the Convention will prevail in this committee's deliberations.

At this time, I will outline the specific procedures which will be followed in our deliberations on Article III and Section 17 of Article XVI. These procedures have been discussed with the chairman and vice-chairman of the Committee on Legislative Powers and Functions. With the indulgence of the committee members we will first take up each section of Committee Proposal No. 7 dealing with Sections 10, 11 and 16 of Article III, and Section 17 of Article XVI, and any amendments to the three sections only.

Secondly, with the exception of Sections 2, 3 and 4 which have been assigned to the Committee on Legislative Apportionment and Districting, we will take up the other sections of Article III which the majority of the members of the Committee on Legislative Powers and Functions have recommended be retained without amendment.

Finally, we will take up any amendments which would propose to add a new section to Article III. In order to avoid any confusion, and if no objections are raised, the Chair will in starting with Committee Proposal No. 7, bypass Section 10 and take up Section 11 first, followed by Section 16. The reason for bypassing Section 10 is because of the close interrelationship between Section 10 of Article III and Section 17 of Article XVI. Both sections deal with legislative salaries. Section 10 will therefore be deferred until after we have taken up Section 17 of Article XVI.

At this point, Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I move for the adoption of Section 11.

CHAIRMAN: Delegate Ching, as amended in Amendment "A"?

DELEGATE HUNG WO CHING: Yes, as amended with Amendment "A." Excuse me. May I first move for the adoption of Amendment "A" which is before you this morning to clarify the language? It reads as follows:

"Section 11 of Article III of the State Constitution in Committee Proposal No. 7 is amended to read as follows:

"Section 11. The legislature shall convene annually in regular session at 10:00 o'clock a.m. on the third Wednesday in January and shall be convened at other times in special session, at the written request of a two-thirds majority of the number of members to which each house is entitled, by the presiding officers of both houses. The governor may convene both houses or the senate alone in special session. Regular sessions shall be limited to a period of sixty days, and special sessions shall be limited to a period of thirty days. Any session shall be extended not more than fifteen days by the presiding officers of both houses at the written request of a two-thirds majority of the number of members to which each house is entitled or by the governor. Any session shall be recessed by the presiding officers of both houses at the written request of a majority of the number of members to which each house is entitled. Sundays, Saturdays, holidays and any days in recess shall be excluded in computing the number of days of any session. All sessions shall be held at the capital of the State. In case the capital shall be unsafe, the governor may direct that any session be held at some other place.'"

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: I second the motion.

DELEGATE DYER: Point of information. May we have the language of that amendment again?

CHAIRMAN: That amendment, the present Proposal 7 which appeared as part of the Committee Report No. 46 referred to the members in each house only. This amendment provides for the number of members to which each house is entitled. The members to which each house is entitled is provided by law. In the case of the house of representatives it is 51 members as provided in the original Pro-

posal No. 7 in the event of the death of one, or two, or three members, you could have a situation where you would have 48 members instead of 51 and your majority could fluctuate. This way it is always set at 51 members and this is to conform with other sections in the Constitution which use the language "number of members to which each house is entitled."

Are you ready for the question?

DELEGATE ANDO: Mr. Chairman, may I have a brief recess?

At 9:20 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:23 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order?

The last vote that was taken was to put before you an amended Section 11 as part of Committee Proposal No. 7.

Delegate Hung Wo Ching is now recognized for the purpose of explaining Section 11. And we will also take a vote on the merit of Section 11 as amended in Amendment "A."

DELEGATE HUNG WO CHING: Yes, I so move, Mr. Chairman.

CHAIRMAN: Delegate Miyake?

DELEGATE MIYAKE: I second the motion, Mr. Chairman.

DELEGATE DODGE: Point of information, Mr. Chairman.

If we adopt Amendment "A," that will not preclude further amendments to Section 11, will it?

CHAIRMAN: That is affirmative.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I would assume that in Amendment "A," that the proper corrections were made as proposed by Delegate Dodge in III (3); is that right?

CHAIRMAN: I did not hear you. Could you state that again please?

DELEGATE BEPPU: If you will look at Delegate Dodge's amendment, No. III (3) relative to Amendment "A," the use of the word "capitol."

CHAIRMAN: That is affirmative.

Delegate, it states by substituting the word "capital"

for the word "capitol" spelled with an "o," for the word "capital" spelled with an "a."

DELEGATE BEPPU: Mr. Chairman, I will assume that on Amendment "A" it was a typographical error?

DELEGATE HUNG WO CHING: I believe it is so.

CHAIRMAN: Delegate Beppu, it is my understanding from a previous discussion with Delegate Dodge that it is his opinion that this is more than a typographical error and that he feels this is a matter of substance.

DELEGATE BEPPU: Well, Mr. Chairman, if it's an error I think we could correct it in Amendment "A" instead of trying to go through another formality of having an amendment pushed through. I am trying to save time here.

CHAIRMAN: It is the Chair's intention that we would proceed with Amendment "A" and that at such time as Delegate Dodge wishes to bring up his amendment that he will do so.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Point of information. Am I to understand that the change in this particular amendment as to the original proposed amendment, is that after the words, "two-thirds majority" then we have inserted in here, "of the number of members to which each house is entitled," and dropping down further where it says, "written request of a majority," then again it says, "of the number of members to which each house is entitled"; are these the two amendments and the only two amendments to this particular section?

CHAIRMAN: Negative. There is one more amendment. If you drop down to the next sentence, "Any session shall be recessed by the presiding officers of both houses at the written request of a majority of the number of members to which each house is entitled." This appears three times in Section 11.

Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Yes. I move for the approval of this amendment.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Second the motion.

CHAIRMAN: Any discussion? All those in favor of adopting Section 11, Committee Proposal No. 7 will signify their approval by saying "aye." And all those who object signify by saying "no." The motion is carried.

DELEGATE DODGE: Mr. Chairman, I would like at this time to offer Amendment III (3) which changes the spelling of the word "capital" to use the "o," and

which reads as follows:

"Section 11 of Article III of the State Constitution in Committee Proposal No. 7 is amended by substituting the word 'capitol' for the word 'capital' in the last two sentences thereof."

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux is recognized.

DELEGATE DEVEREUX: I second the motion.

CHAIRMAN: Delegate Dodge—

DELEGATE LUM: Mr. Chairman, point of information.

Isn't this something the Style Committee can take care of?

CHAIRMAN: Delegate Dodge, would you wish to—

DELEGATE DODGE: Mr. Chairman, I think this is more than a matter of style. The 1950 Convention used the word "capital" with an "a" which provided that the legislature could meet anywhere in Honolulu unless Oahu was unsafe. This means that the legislature would be required to meet in a new capitol building unless the capitol building were unsafe. And I think that one of the reasons that the delegates in 1950 did not use the word with the letter "o" was because we did not at that time have a permanent capitol. Everybody knew that eventually we would have one. Now we have and I think we should dignify it by recognizing it.

CHAIRMAN: Is there any further discussion?

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: Would the movant yield to a question?

CHAIRMAN: Delegate Dodge?

DELEGATE DODGE: I will.

CHAIRMAN: State your question to the Chair, please.

DELEGATE BEPPU: Mr. Movant, if you make this change, we will be restricted to one building, is that correct?

DELEGATE DODGE: That's correct, unless that building becomes unsafe, and then the governor could call it any other place.

DELEGATE BEPPU: Thank you.

CHAIRMAN: Any further discussion?

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis is recognized.

DELEGATE RHODA LEWIS: I rise in opposition to the amendment. I feel there is no need of it and that it is unduly restrictive. There might be occasions when the capitol building was safe and yet where there was reason to convene the legislature elsewhere. I don't think our power to look into the future is as great as would be required for us to pin this down to one building.

CHAIRMAN: Is there any further discussion?

DELEGATE LARSON: Mr. Chairman.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Larson is recognized.

DELEGATE LARSON: I have a question of the movant. Delegate Dodge, does—in the case the capitol is unsafe or what have you reason of, according to the section here, it says that the governor may direct that the session be held at some other place. So would the use of the term "capitol" spelled with an "ol" restrict us necessarily to meeting only in one place as Delegate Lewis mentioned?

DELEGATE DODGE: No, it would not. In the event that the new capitol building became unsafe, the governor could then call the legislature into session at any other place.

DELEGATE LARSON: So the term would not be restrictive.

DELEGATE DODGE: No, it would not.

DELEGATE LARSON: Thank you.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha, do you wish to be recognized? You were the next one up.

DELEGATE MIZUHA: Mr. Chairman, I am a bit confused yet but Delegate Rhoda Lewis rose to speak against the amendment. I believe her statement was to the effect that when we place wording into our State Constitution, that the only time the legislature can meet elsewhere is when the capitol is unsafe will unduly restrict the legislature and the governor in holding, perhaps, legislative sessions elsewhere than here in the State Capitol. And I believe her point is well taken. I don't know whether we are discussing this matter because the manner in which we are proceeding is a little bit different from how we proceeded with reference to the Judiciary Committee proposal.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka is recognized.

DELEGATE UEOKA: I also agree that Delegate Lewis' statement is well taken. Oahu which is the

capital of Hawaii has many military installations, and with the nuclear weapons that we have today, Oahu may become unsafe and for that reason we could go back to the original capital, Maui, if Oahu is unsafe.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes is recognized.

DELEGATE FERNANDES: Mr. Chairman, I am not confused. I heard clearly Delegate Dodge speak about the words "capitol" and "capital." Is that what's before us now, his amendment? Or are we talking about the amendment put out by Delegate Hung Wo Ching. Could you clarify this because I know that I am not confused.

CHAIRMAN: The Chair will state that the body has already approved Delegate Hung Wo Ching's amendment to Section 11 and we are now specifically talking about Amendment No. 4, which is Delegate Dodge's amendment.

DELEGATE FERNANDES: And that's the word "capital" to "capitol"?

CHAIRMAN: Number III (3). Rather, excuse me, Delegate, No. 3.

DELEGATE FERNANDES: Number 3. So would you kindly rule that everyone else who got up to speak was out of order because they were talking about safe and unsafe, and just that I'm in order and so that we can get this word cleared up whether we want it spelled with an "o" or with an "a" because I think this is very important. And I'd like to speak against the amendment.

I think the present Constitution fifty years ago made by people with knowledge who knew exactly what they were doing unless the new modern techniques of the computer that began to eliminate delegates and so forth, is changing the words of spelling. So I support the words that are in our present Constitution.

CHAIRMAN: Does anybody else wish to speak on the question? Are you ready for the question? All those in favor of Delegate Dodge's motion which would be to amend Section 11 as amended already by No. "A" to read:

"Any session may be recessed by concurrent resolution adopted by a majority of the members of each house. Saturdays, Sundays, holidays"—

Oh, I beg your indulgence, the Chair picked up the wrong piece of paper—Delegate Dodge's proposal which would amend Section 11, numbered "A," Committee Proposal No. 7, by substituting the word "capitol" spelled with an "o" for the word "capital" spelled with an "a" in the last two sentences thereof.

All those in favor of Delegate Dodge's motion signify by saying "aye." All those against, signify by saying "no." The noes have it. Delegate Dodge's amendment fails.

DELEGATE DODGE: Mr. Chairman, with some—

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: —with some timidity, I rise to offer another amendment to Section 11 and I am referring to Article III, Section—I mean, Amendment No. 4 of Article III, which has been distributed. This is as follows:

"Amend Section 11 of Article III in Committee Proposal No. 7 by amending the fourth and fifth sentences thereof to read as follows:

"Any session may be recessed by concurrent resolution adopted by a majority of the members of each house. Saturdays, Sundays, holidays and any days in recess pursuant to concurrent resolution shall be excluded in computing the number of days of any session."

CHAIRMAN: Delegate Dodge, we do not have a second to your motion.

Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: I second the motion for the purpose of discussion.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, this is more of a technical amendment than really a change in substance. And it is offered for the purpose of clearing up a possible inconsistency or point of confusion between Section 11 and Section 12.

Section 12 of Article III says that neither house may adjourn for longer than three days without the consent of the other nor adjourn sine die without the consent of the other.

Section 11 refers to the houses recessing or the session recessing and those days in recess not being counted as days of the session itself.

The adjournment referred to in Section 12 is actually a recess and either house may recess for three days without the consent of the other.

I am suggesting that the language be changed so that any session may be recessed by concurrent resolution adopted by a majority and again the amendment of "A," majority of a number of members to which each house is entitled, and then in the next sentence referring to days in recess pursuant to that concurrent resolution. This avoids any possible misunderstanding or conflict between Section 11 and Section 12, and avoids the possibility of the days in recess that either house is permitted without the consent of the other to be not counted as a day of a legislative session.

DELEGATE DOI: Mr. Chairman, may we have a short recess please? I'd like to have something clarified.

CHAIRMAN: A short recess is declared.

At 9:39 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:45 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order.

Delegate Dodge is recognized.

DELEGATE DODGE: Mr. Chairman, I move that the amendment III (4) which is before the body be amended to conform with the language of Amendment III (A) namely, "majority of the number of members to which each house is entitled."

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: Just for the amendment I will second the motion.

CHAIRMAN: Are you ready for the question?

Delegate Ching is recognized.

DELEGATE HUNG WO CHING: Yes, Mr. Chairman.

CHAIRMAN: Delegate Ching is recognized.

DELEGATE HUNG WO CHING: I move for the adoption of Section 11 "A" as amended by Delegate Dodge.

CHAIRMAN: Delegate Ching, I think we first have an amendment to Section 11 "A" by Delegate Dodge.

Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I wish to speak on this amendment and Section 10 for the information of the delegates. As it now stands—

CHAIRMAN: Delegate Mizuha, you are referring to Section 11 or Section 10?

DELEGATE MIZUHA: Section 11.

CHAIRMAN: Proceed.

DELEGATE MIZUHA: As Section 11 is written and as this amendment reads, it will permit our state legislature, despite the limitations of a 75-day session to recess at any time it wishes and we can have a recess for—

DELEGATE DONALD CHING: Mr. Chairman, point of order.

DELEGATE DOI: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, I believe the issue before the house right now is an amendment to the amendment, all Delegate Dodge wants to do is conform the language of the proposed amendment to the proposed language which we have already adopted in the prior section. And that's the only thing before the house right now.

DELEGATE MIZUHA: Mr. Chairman, I wish to direct your attention to the amendment proposed by Delegate Dodge which says that "... any days in recess pursuant to concurrent resolution shall be excluded in computing the number of days of any session." And that is the point I wish to speak on. I am not in opposition—

DELEGATE DONALD CHING: Mr. Chairman, point of order, Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: May I ask what is before the house at the present time?

CHAIRMAN: Delegate Dodge's amendment. Delegate Mizuha—we will come back to a motion on Section 11 (A) as amended by Delegate Dodge at which time it will be open for discussion on Section 11. At that point, it would be proper for you to discuss the question of whether you feel there should be a recess or not.

DELEGATE LUM: Short recess, Mr. Chairman.

CHAIRMAN: Recess declared.

At 9:48 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:51 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order.

Delegate Dodge is recognized.

DELEGATE DODGE: Mr. Chairman, I have been informed that the chairman of the Legislative Powers and Functions Committee and his committee have no objection to the amendment to the amendment I have offered nor to the amendment, and I suggest it would be appropriate to have a vote on the conforming language amendment at this time.

CHAIRMAN: Any second to that motion?

DELEGATE DODGE: It has been moved and seconded. I am just suggesting that we take a vote.

CHAIRMAN: Fine, fine. Are you ready for the question?

The question before you is to accept Amendment No. 4 in its conformed status which would read:

"Any session may be recessed by concurrent resolution adopted by a majority of the number of members to which each house is entitled. Saturdays, Sundays, holidays and any days in recess pursuant to concurrent resolution shall be excluded in computing the number of days of any session."

We will take a voice vote. All those in favor signify by saying "aye." All those opposed, by saying "no." The motion is carried.

CHAIRMAN: Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Yes. Mr. Chairman, I move for the adoption of the motion on Section 11 (A) as amended.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, I second the motion.

CHAIRMAN: Is there any discussion?

DELEGATE LUM: Sir, may I ask a question, please?

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Does this mean that the session may recess for a period of, let's say, 15 days and then come back again if there's a joint agreement between both houses, and this would not affect the total present limitation of 60 days?

CHAIRMAN: It is my understanding that during a recess this does not affect the 60-day period. In other words, if you were to go for thirty days and take a 30-day recess, this would not count against your sixty days. You would come back after the 30-day period and still have thirty days to go.

Is there any other discussion?

DELEGATE LUM: So in actuality, from the day we start, let's say sometime in February, we can end the session some time in, maybe, November under this particular method.

CHAIRMAN: That is correct.

Is there any further discussion? Are you ready for the question? A vote in favor of the motion will be to adopt Section 11 of Committee Proposal 7 as amended by Delegate Dodge's Amendment No. 4 in its conformed status. We will use a voice vote. All those in favor signify by saying "aye." All those opposed, by "nay." The motion is carried.

Delegate Ching is recognized.

DELEGATE HUNG WO CHING: Yes. Mr. Chairman, under the present Constitution, regular sessions of the legislature are held annually commencing

on the third—

CHAIRMAN: Delegate Ching, we have already taken a vote on this matter so it will not be necessary to have any further discussion on Section 11.

DELEGATE HUNG WO CHING: The whole section?

CHAIRMAN: That's correct.

At this point, we will be coming to Section 16 with the indulgence of the members, we would request that we break Section 16 into two categories which cover two different subject matters, and take them up separately, first paragraph and then second paragraph.

DELEGATE HUNG WO CHING: Mr. Chairman, I move for the adoption of Section 16 of this proposal.

CHAIRMAN: Section 16, the first paragraph?

DELEGATE HUNG WO CHING: Yes.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: I second the motion.

CHAIRMAN: Is there any discussion of Section 16? This involves the 24-hour rule—adds one additional sentence to the present Constitution which provides for 24 hours before any bill—all those in favor—

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Could we have the chairman of the committee explain this proposed amendment?

CHAIRMAN: Delegate Hung Wo Ching.

DELEGATE HUNG WO CHING: Mr. Chairman, this section relates to the passage of bills and carry-over bills. The present Constitution provides that no bill shall become law unless it shall pass three readings in each house on separate days. There is no provision for the carry-over of bills. Under the existing system, logjam of bills at the end of a session can be purposely created as a strategic political maneuver. The original intent of a bill having passed one house—

DELEGATE MIYAKE: Mr. Chairman.

DELEGATE HUNG WO CHING: —can be substantially changed—

CHAIRMAN: Delegate Miyake is recognized. To what point do you rise?

DELEGATE MIYAKE: To a point of inquiry.

Is Delegate Kauhane's question put to the first paragraph or is it referring to the second paragraph?

CHAIRMAN: Delegate Kauhane, would you like to answer the question?

DELEGATE KAUHANE: My question involves the entire section, but I would take it piecemeal.

CHAIRMAN: Delegate Ching, the question addressed to you refers to paragraph one as clarified by Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, will we get back to the proper section we're dealing on, Section 16?

CHAIRMAN: The question before you is Section 16 of Committee Proposal No. 7, the first paragraph dealing with the 24-hour rule only.

DELEGATE HUNG WO CHING: Yes, I'm coming to that, Mr. Chairman.

May I read the rest of my statement because it refers to—

CHAIRMAN: Delegate Ching, proceed.

DELEGATE HUNG WO CHING: All right. The original intent of a bill having passed one house can be substantially changed in legislative conferences. A bill in final form can then pass third reading in both houses without a reasonable opportunity for members of the legislature and the public for review in its final form. To correct this situation, our proposal will require that a bill be printed in its final form and be made available to the legislators and to the public for at least 24 hours before final passage. It is the committee's considered judgment that the substantial contribution which can be made by this rule through increasing awareness and understanding of the proposed legislation decisively overrides the possible problems in its adoption, might create.

CHAIRMAN: Is there any discussion?

DELEGATE KAUHANE: Mr. Chairman, my question is—

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: My question is directed to the chairman of the committee.

I understand that the bill must pass three readings before the bill can actually become law, or have the semblance of becoming law with the signature of the governor. My concern here on the passage of the bill on three readings—one, is this, Mr. Chairman, does the reading of the bill by title on the third day constitute the bill having been read completely throughout?

DELEGATE HUNG WO CHING: May I yield to Delegate Miyake?

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: The constitutional provision as proposed by the committee on Section 16 does not state that the bill has to be read throughout. Therefore, it would be permissive for the legislative bodies provide the requirements as to how final reading will be interpreted in its own house or senate rules.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo is recognized.

DELEGATE GEORGE LOO: Will the chairman of the Legislative Powers Committee yield to a question?

DELEGATE HUNG WO CHING: I will.

CHAIRMAN: Delegate Ching. State your question to the Chair.

DELEGATE GEORGE LOO: Does this mean that there can be no amendment of the final bill? For example, let's—assuming there is a 24-hour delay for printing and that it's on the floor of the house or senate, that there can be no amendment of that bill?

DELEGATE HUNG WO CHING: If an amendment is made, it still has to go back to the original house for final passage, which is equivalent to a fourth reading.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: May I attempt to answer the question? In relation to the last question, the committee did discuss this procedure at length and what would happen if the passage of this amendment to the Constitution would mean to legislative processes would be that the bulk of the amendments would come at the time of the second reading. In fact, all of the amendments should come at the time of the second reading on the bill. Then after the bill has been fully discussed on second reading by either house, it shall then be printed up in the final amended form; be printed, be distributed to the members of that house and to the public, and then 24 hours shall elapse before final reading shall be taken. However, if the house or any member thereof should propose another amendment, it can be done on third reading. But upon the adoption of that amendment it will mean that the bill will lay over for another 24 hours before it can be acted upon on third and final reading. Now, if it comes back from conference we have no problem there. This is only on third reading in either house.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: I just heard the statement when we go to conference, well, we'll have no problem there. This is where the problem exists, when we go to conference.

My next question, Mr. Chairman, where a bill has

been substituted for the original bill, the original bill having been read once, have passed first and second reading, and possibly third reading, and the bill is referred to conference because of a disagreement, it becomes a conference-substituted bill for the original bill in some instances; will the substituted bill be required to pass three readings because of a complete change of the substance of the bill?

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, the chairman of the committee will yield the question to me.

This proposed amendment will not change the present procedure as far as conference committees are concerned.

DELEGATE KAUHANE: I rise to a point of order, Mr. Chairman. This does not give a true answer to the question I raised.

DELEGATE DONALD CHING: Mr. Chairman, if the questioner will allow me to finish my answer perhaps he will get his full answer.

CHAIRMAN: Proceed.

DELEGATE DONALD CHING: I think the proponent of the question knows the answer to this without my having to answer. But since the question has been raised, I will answer it this way. The proposed amendment will not change the manner in which a bill is handled as under the present Constitution and the present legislative procedures as far as the conference committee draft is concerned. What it will mean is that the only change that will be brought about is—that after the conference committee has deliberated and come up with its conference draft, that draft will have to be printed and lay on the table for 24 hours or be made available to the members and the public for 24 hours before either house can act on it. That's the only change. As to what is substituted or what will happen in there, there will be no change as from the present procedure.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: Will the delegate from the 10th District yield to a question?

CHAIRMAN: State your question to the Chair.

DELEGATE BEPPU: Mr. Delegate, what if in the first paragraph, second sentence, if he had deleted, "in the form to be passed."

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, this

is a matter of style. The committee spent many minutes, perhaps hours, on the language we finally arrived at. Now, if the Committee on Style decides to change the language, I don't think the committee or the body should have any objections to it just as long as we carry the intent of the committee. Now, we've had about at least half a dozen proposals as to how the intent of the committee should be worded. It's a difficult passage. I realize that the language itself is very cumbersome, but this is in the consensus of all of the "experts" who worked on this language. This is the consensus that was arrived at finally.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I request a short recess.

CHAIRMAN: A short recess is granted.

At 10:10 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:30 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come back to order.

Delegate Kauhane, did you wish to have the floor?

DELEGATE KAUHANE: Yes, Mr. Chairman.

Mr. Chairman, I respectfully recommend and move that action on the consideration of Section 16 be temporarily suspended until the amendments are prepared and distributed by the sergeant-at-arms and prepared by the attorneys.

CHAIRMAN: Delegate Kauhane, would you be willing to amend that to say the first paragraph of Section 16?

DELEGATE KAUHANE: I will do that, sir.

I will accept the instructions of the Chairman. The amendment will refer to the section of the paragraph that was mentioned by the Chairman.

CHAIRMAN: Without the necessity of going to vote, I think if there are no objections, we will permit the amendment to be drafted up and we will proceed to the second paragraph—

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: Your suggestion is welcomed but I think we should continue this discussion and before you go to part two of that Section 16, I would like to come back to part one of that Section 16.

CHAIRMAN: The Chair feels that the two are separate issues and that in order not to delay the procedure—

DELEGATE KAGEYAMA: No, I would like to stick to the first issue, part of the first issue before you continue to the second phase.

CHAIRMAN: Delegate Kageyama, we will come back to the first paragraph and we will have a full discussion on a proposed amendment by Delegate Kauhane as well as Committee Proposal No. 7 so there will be no debate precluded on paragraph one. I would like to expedite matters and go to paragraph two of Section 16 which the Chair feels is a debatable matter.

DELEGATE KAGEYAMA: I don't like to cross discussion, but a suggestion in part one might be something that may necessarily be made into amendments to be printed; so before we go to section two, I'd like to take care of section one of the part one, you might say, to further discuss—in the meantime when the proposal is returned. Whatever the Chairman decides.

DELEGATE KAUHANE: Mr. Chairman, I rise on a point of information.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: If it is the will of the delegate who seeks recognition and approval from the Chairman in the decision, if it is to satisfy him, Mr. Chairman, for this direction from the Chair which will then permit the continued submission of questions which I have attempted to do and I am attempting to reduce the number of questions by asking you, which you have consented to suspend the action taken on the first paragraph so that the amendments can be printed and circulated. But if this does not meet with the approval of the delegate, I am very happy to sit here and fight this thing out to the bitter end whether I win or lose. It may, perhaps, Mr. Chairman, become an educational matter for the delegate if he happens to be elected to serve in the house of representatives.

CHAIRMAN: Delegate Kauhane, in order to accommodate both parties, the Chair will now proceed to Section 17 of Article XVI. We will then come back and take up Section 16, both paragraphs in the order in which it was originally presented. So we will proceed to Section 17 of Article XVI and Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I move for the adoption of Section 17.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Donald Ching, would you like to be recognized?

DELEGATE DONALD CHING: Mr. Chairman, I wish to withdraw the amendment as proposed numbered III (2).

CHAIRMAN: Your request is granted.

You have before you now Section 17 of Article XVI as it appears on page 3 of Committee Proposal No. 7. Is there any discussion?

Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, this is why I am in favor of the procedure whereby we consider the entire committee report as an entity rather than voting on it as a divided question because I have an amendment to Section 10 which makes a change in Section 17. If we enact Section 17 at this time, it will be impossible to make the changes that I request in Section 17, and would make nugatory my amendments to Section 10. What do you advise?

CHAIRMAN: The Chair does not have any amendments on his desk and therefore is unable to know the nature of your amendment and would therefore proceed on Section 17. If the will of the body, after hearing your amendment on Section 10, is that they wish to change Section 17, we will be able to accomplish that.

DELEGATE GOEMANS: Well, my amendment is to Section 10 which is not before the body at this time.

CHAIRMAN: The Chair would rule that we will proceed with Section 17.

DELEGATE GOEMANS: To vote on it, and therefore that any amendment that I have which would affect a change in Section 17 is precluded?

CHAIRMAN: We'll take up Section 17. After we have taken that up, we go to Section 10. If your amendment passes and it will have an effect on Section 17, and since I do not have your amendment before me, I do not know the nature of it. If it will have an effect on Section 17, it will be appropriate to come back and reconsider the action on Section 17.

DELEGATE GOEMANS: Do we need a vote on reconsideration?

CHAIRMAN: That will be affirmative.

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: May I address a question to the chairman of the committee?

This amendment of the schedule, Article XVI, Section 17, when would it take effect? In other words, if it were approved in the fall election of this year, would it take effect before the beginning of the next year? Would there be a pro rata for this? A year,

perhaps?

CHAIRMAN: Delegate Ching, do you wish to answer the question?

DELEGATE HUNG WO CHING: Yes. If it is approved by the voters, it should take effect after this election and whether or not the lump sum would be paid, it will depend upon the legislature itself to set the rules for payment; either by month, quarter, semi-annual or annual. Thank you.

CHAIRMAN: Is there any discussion on Section 17? Are you ready for the question?

DELEGATE O'CONNOR: Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: I have a question if the chairman of the committee will yield to it.

DELEGATE HUNG WO CHING: I will.

CHAIRMAN: State your question.

DELEGATE O'CONNOR: I read the committee report, Mr. Chairman, and I understand that you've arrived at \$12,000 as a salary. I wonder if you could explain exactly how that figure was picked.

DELEGATE HUNG WO CHING: Yes. Mr. Chairman, after due deliberations there were several suggestions made. First, for \$7,500; second, \$10,000; third, \$12,000; and fourth, \$15,000. By a substantial majority, the vote was for \$12,000, and it is based on these reasons. First, that legislators do spend at least six months of a year on legislative-related matters, and it also goes into Dr. Tom Hamilton's report and the recommendation of the Committee on Economic Development. Dr. Hamilton's report, as an advisory committee to the senate, recommends a starting salary of \$12,000 with an accrual every two years of \$1,000 until a total of \$20,000 has been reached, at which time there should be another review. This is, shall I say, a good figure, a reasonable figure that would merit serious consideration by the voters.

A figure of \$7,500 was rejected solely on the premise that it is inadequate and anything less than \$12,000 appears to be inadequate in the light of our present-day cost of living as well as the inflationary pressure that it compensates. So we feel that the \$12,000 is a fair and reasonable amount as compensation for the legislature. Now, in addition to this, as a tie-in, Mr. Chairman, I'm sorry, it involves Section 10 on allowances; that the legislature would, by itself, regulate allowances on a per diem basis more in line and reasonable with actual expenses.

DELEGATE O'CONNOR: Mr. Chairman.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton is recognized.

DELEGATE SUTTON: Would the chairman yield to another question?

CHAIRMAN: State your question to the Chair and he will address it to the chairman of the committee.

DELEGATE SUTTON: How does this salary of \$12,000 a year compare with other states of the same size as Hawaii?

CHAIRMAN: Delegate Ching.

DELEGATE HUNG WO CHING: Mr. Chairman, let me read you a very brief summarized report by the Committee of Economic Development; the title is "Modernizing State Government," which you have. On compensation and expenses most legislators receive wholly inadequate salaries, and they have the appendix to show an annual compensation of \$5,000 or less in 35 states and under \$2,000 in 18 of the states. And some members are paid less than legislators, doorkeepers or capitol janitors. But each state has its own, shall we say, schedule of payment depending on the amount of time that is involved and the size of the state. Thank you.

DELEGATE SUTTON: Mr. Chairman, may I ask another question of the chairman of the committee?

CHAIRMAN: Proceed, delegate.

DELEGATE SUTTON: In comparing this particular figure of \$12,000, what additional figure do you feel is appropriate to consider as the per diem additional allowances that might occur?

DELEGATE HUNG WO CHING: Would you please repeat the question.

DELEGATE SUTTON: This \$12,000 is the base figure, then on top of that there will be additional per diem.

DELEGATE HUNG WO CHING: Yes, the present per diem now amounts to \$32.50 for Oahu legislators, and \$45.00 for neighbor island legislators. These will be revised according to the rules of the legislature. We will let them handle the details themselves but we do anticipate that there will be reasonable expenses involved and they should be guided accordingly; according to the year, the time, inflation and so forth.

DELEGATE SUTTON: Then in addition, we have after ten years, retirement?

DELEGATE HUNG WO CHING: Yes. First of all, the due features of the retirement will be eliminated that since this is an annual salary of "x" dollars or \$12,000. This will be the basis of the retirement pay which measures up to or calculated on the basis of 3.5% a year, and after ten years, of course you have a 35% retirement pay. During the course of the year there is a new extra compensation for special sessions or extended sessions.

DELEGATE SUTTON: One further question.

CHAIRMAN: State your question.

DELEGATE SUTTON: What, approximately considering all of the various costs, the indirect cost of retirement added, would the lower house cost the taxpayer per year?

DELEGATE HUNG WO CHING: I am sorry, I don't have the answer to the question. I will yield to Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, may I have the question repeated, please?

CHAIRMAN: Delegate Sutton, would you—

DELEGATE SUTTON: I just want what the total cost to a taxpayer will be for the salaries and the indirect remuneration that go to the members of just the lower house; just the cost of the lower house per annum, please.

DELEGATE KAMAKA: I imagine that if the amendment is adopted, that you take \$12,000 and multiply that by 51, that will give you the cost of the lower house; and if you want to include the cost of the operations of the house other than salary and per diem, I think that the best indication that one can get as to what the actual cost has been over the years is to check with the Comptrollers Office. Because, Mr. Chairman, I do not believe that the amounts appropriated for the operation of the respective houses is a true indication as to the cost; it's merely the appropriation.

It has been the custom that at the end of each session that funds are returned to the General Fund or lapsed. In other words, what is appropriated is not normally always spent.

DELEGATE SUTTON: Mr. Chairman, may I ask one more question, please, of the chairman of the committee?

CHAIRMAN: Proceed, Delegate Sutton.

DELEGATE SUTTON: In your answer to a previous delegate's question, you indicated that your committee had given thought to three other figures. Two lower than the figure of \$12,000 and one higher, namely, \$15,000. Did you arrive at this particular figure by considering what another individual in the community doing similar type of work would be getting?

Were any figures given to you by personnel classification?

CHAIRMAN: Delegate Hung Wo Ching.

DELEGATE HUNG WO CHING: I think this is a very difficult question to answer at best, because there's no comparable job, inasmuch as this is a job not only of attending regular sessions but you have a heck of a lot of work before, during, or after a legislative session,

and to meet the constituents and to serve them more adequately. The legislators must find time to confer and to be with their constituents to find out what are their problems that can be brought to the legislature. So, it's very difficult to compare with, shall we say, a junior executive in the federal, state or city government because they work eight or ten hours a day, and I presume that for a legislator they work as many as 16 hours a day. And it's a year-going job.

And by the way, also, as an answer to your question about the lower compensation consideration, there was only one vote for \$7,500, and I want to assure you delegates that the substantial voting for \$12,000 compensation was the recommendation of a majority of the members who are not legislators on the committee.

DELEGATE SUTTON: Mr. Chairman, one more question and I am through.

CHAIRMAN: Just one more question; proceed, Delegate Sutton.

DELEGATE SUTTON: Did your committee ever consider tying in the salary of a legislator in the State of Hawaii with the percentage of the salary given a congressman?

DELEGATE HUNG WO CHING: Yes, we had. Because on the Committee on Economic Development report, let me read to you one paragraph. We believe that a state legislator's annual salary should be at least half of that of the governor, which is about \$33,000 today, and in no case, less than \$15,000 supplemented with suitable allowances. Additional sums should be paid to key legislative leaders. We also recommended that adequate legislative facilities be provided including private office space for members and a meeting room suited for committee meetings. Now, we had also considered a proposal tying in the salary with that of a U.S. Congressman, but we were reliably informed that the congressional pay may be substantially increased this year, within the \$40,000 to \$50,000 bracket. Now, if we do that and tie in the proposal of 30 or 40%, it may create a feeling in the public that they would deny this proposal. So we feel that \$12,000 is a reasonable amount that can be sold to the public especially with the support by Dr. Hamilton's committee.

DELEGATE SUTTON: Mr. Chairman, I would like the answers that I have received to serve as my argument to vote against this particular proposal. Thank you.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, I rise to speak in favor of the proposal. There are some things that ought to be said not only to the delegates here who must vote for it but also for the record.

One of the things that I think ought to be made

clear very quickly is that in committee the people pushing very hard for a substantial salary increase were not the legislators themselves but were myself and several others who have never been and are not now in the legislature and are not affected at all.

Mr. Chairman, a committee was appointed by the senate to look into the entire matter of the legislature preceding this Constitutional Convention. With the permission of the delegates I would like to read the names of the members of this committee: Thomas H. Hamilton, Edward DeMello, Harold Eichelberger, Robert Knight, Norman Meller, Adam Smyser, George Chaplin, Tom Dinell, Russ Hassler, Kenneth Lau and Marguerite Simpson. Mr. Chairman, if you could imagine an impartial, receptive, blue-ribbon committee consisting of the most qualified and intelligent people in Hawaii, I doubt that you could construct a better one than this committee. And I would now like to read their conclusion with respect to legislators' salaries.

"The committee is of the opinion that higher salaries are needed, particularly when legislators, even with the present narrowly-limited session length, commonly perform legislature-related work at least six months out of the year."

I ask the delegates to remember that statement for just a minute. I'm going to come back to it.

"Furthermore the committee advocates closer contact between the legislator and his constituents and more intensive study by the legislator of bills and reports before the legislature."

I go on, Mr. Chairman: "The committee further believes that: (1) Increased salaries will increase the legislators' financial independence; (2) Greater opportunities to seek legislative office are afforded to candidates from broader occupational and financial backgrounds; (3) Legislators should not be precluded from retaining private occupations because this would unduly limit the availability of qualified candidates; and (4) Larger annual salaries will raise the prestige of legislative office."

Mr. Chairman, I'd like to go back for just a moment, if I may, to the committee's statement. Incidentally, that committee recommended an annual salary of \$12,000. Their statement was that even with the present narrowly-limited session lengths, legislators commonly perform legislature-related work at least six months out of the year.

Mr. Chairman, we have just voted to amend the Constitution or to propose to the people an amendment to the Constitution which would change that very considerably. We have provided that sessions will now be sixty working days in length. Not calendar days—working days. And they may be extended for fifteen additional working days. By working days, I mean that by definition Saturdays, Sundays, and holidays are excluded, even though the legislators may well be working.

In addition, we've provided for special sessions of thirty days with a fifteen-day extension. The total, Mr. Chairman, if these days are used, and it's likely that they will be with the increasingly complex load of work that the legislature in our State has to do, that we're now talking about a legislative session throughout the year of at least 120 working days.

Mr. Chairman, I don't know if that figure means much to most people here but that's 24 weeks, six months and that's just session time, Mr. Chairman. I'm not even talking now about the time the legislators have to spend in pre-session work, which I hope will be reduced at this point. I'm certainly not talking about the additional problems that they will have because we have now provided for carry-over of legislation between one session and the next which means that along with the interim committee work which is going on between the sessions all the time, you will now have, very likely, in Hawaii, an almost continuous legislative process throughout the year.

Now, I'm not saying that we have a full-time legislature. We don't, but we surely have a full-time legislative process now. Legislative leaders in the past I am sure have spent a very, very large portion of their working and living and sleeping days with the legislature. Now that's going to be compounded very considerably. I didn't add, though I should have, but we've also approved an amendment which will exclude recess days from the session time and this is likely to extend session length even further.

There are, and I'm going to be the first to admit it, some misguided people in the community who feel that any attempt to increase legislators' salaries is a boondoggle. That's one of the reasons I have stood up here and I want to take a very, very firm position on believing in this because I don't think anybody can accuse me of being involved in that boondoggle. But, Mr. Chairman, in some cases these people are motivated merely by ignorance. It's not their fault, it's ours.

The legislature has gone many years without increasing its own salary and in addition to that very, very little have the people been told how much work a legislator must do to do his job well. Certainly we haven't told the people yet what our new legislative rules—our new legislative provisions in the Constitution would entail in terms of increasing this workload so substantially.

I'm not terribly concerned, I'm not concerned at all about the people who object to this, Mr. Chairman. We should expect objections. After all, we are making a very, very substantial increase in terms of percentages over what the present salary is. But you've got to remember that the present salary can only be described as ridiculous. It has nothing to do with salary at all. It doesn't remunerate anybody for anything. In very nice parlance which I don't like to engage in too much, it's called nominal.

Now, any realistic, any meaningful salary is going to mean a very substantial increase over what it is

presently. We simply cannot avoid that. Mr. Chairman, our job is to go out and educate the people as to the reasons for what we've done. And that job is part of this Convention's job anyway. I think it will be easy to do. I do not share the fears that some people have that this will cause a furor among the voters. And I certainly believe that even those who are initially troubled by it will be completely relieved once they have been told why it should be this way.

I would like to point out, Mr. Chairman, there was a question a moment ago from the delegate to my left asking about this and I think that it's worthwhile to suppose some sort of comparison with private industry. I wonder if private industry could ever obtain qualified people who would commonly handle the sums of money that are handled by our legislature and commonly engage in the kinds of responsible activities that these people are called upon to perform every day and that concern all of us so closely for anything like this kind of salary and I suggest to you that they could not at all. That indeed private industry would have to pay many, many, many and does pay, many times this amount just to get people who occupy jobs with far less responsibility.

No, Mr. Chairman, I know it's a big change but it's desperately needed and it should be done. And I think that this delegation, this Convention has as its prime purpose of doing that which it feels should be done. And this I think is one of those things.

Thank you.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate George Loo.

DELEGATE GEORGE LOO: Will the chairman of the Legislative Powers Committee yield to a question?

CHAIRMAN: Delegate Loo, will you direct your question to the Chair?

DELEGATE GEORGE LOO: Yes, Mr. Chairman. If the public should approve this \$12,000 per annum salary for legislators, is it the intent of the committee that the legislature will reduce the per diem allowance that is presently in effect?

CHAIRMAN: Delegate Ching? Hung Wo Ching.

DELEGATE HUNG WO CHING: Yes, Mr. Chairman. We will leave it up to the conscience of the legislators themselves because if we set a sum which is rather restrictive it wouldn't solve the problem. Secondly, we have to look ahead in the years whether or not the cost of living will continue to rise, and even the \$45.00 pay today, I mean the \$45.00 allowance today may be inadequate in another two or three years hence. You can just look at the rate for hotels and that alone will tell you quite a story.

DELEGATE GEORGE LOO: Will the committee chairman yield to another question?

CHAIRMAN: State your question.

DELEGATE GEORGE LOO: If Section 10 of the committee proposal is rejected, would your answer be the same?

DELEGATE HUNG WO CHING: If Section 10 of this is rejected, that is allowances?

DELEGATE GEORGE LOO: Yes, the members of the legislature shall receive allowances reasonably related to expenses and salaries prescribed by law. Would your answer still be the same?

CHAIRMAN: Delegate Loo, Section 10 is comprised of two sections. Are you referring to the first section, or the second, or both?

DELEGATE GEORGE LOO: The first section.

CHAIRMAN: Proceed, Delegate Ching, if you wish to answer the question.

DELEGATE HUNG WO CHING: May I yield to Delegate Miyake?

CHAIRMAN: Delegate Miyake, do you wish to answer the question?

DELEGATE MIYAKE: Mr. Chairman, may I have the question restated?

CHAIRMAN: Delegate George Loo, would you like to restate the question?

DELEGATE GEORGE LOO: Yes, Mr. Chairman. If the first paragraph of Section 10 of the committee proposal is rejected by this Convention, would the legislature still be under a duty to retain the present per diem allowance?

DELEGATE MIYAKE: Correct. Delegate George Loo, you are a legislator yourself. How would you feel? Would you feel obligated to—

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka, on which point do you wish to rise?

DELEGATE MIYAKE: I think you as a fellow legislator should—

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: —consider your conscience and—

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: —answer that question yourself.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: I request a recess.

CHAIRMAN: A recess is granted.

At 11:02 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:10 o'clock a.m.

CHAIRMAN: The Committee of the Whole will come to order. Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I would like to speak against the provision of Section 17.

Like Delegate Schulze, I do not disagree that the members of the legislature are, in fact, deserving of a salary increase, possibly more than \$12,000. Certainly as one who has served in a legislative session in 1959, an 89-day session, one who has also served in the City and County Council these past three years and nine months, I can say without qualification that a senator, a member of the house of representatives, puts in at least twice as many hours in the course of a legislative session for a period of one year than a city councilman does in regularly called and constituted meetings. If the City Council in its members can be paid \$10,500, you can reasonably say a legislative member should get \$21,000 a year. I argue not against the proposition as to how much work a legislator puts in the legislature. He is, in fact, underpaid. What I am arguing about is the whole Constitution when it is presented to the people to vote on or against, section by section. I do not want to see one more section proposed by this Convention to the people which in effect would be a red flag. I do not believe that in the time allotted to us up to the election in November that we can educate all of the voters that \$12,000 is a proper salary for the legislative members of our legislature.

The average person is going to say, "Sixty-day session? Six thousand dollars a month? Who are they kidding?" Without taking into consideration what Delegate Schulze ably pointed out, six months is more proper; the number of hours that they put in. This is a more proper look-see at exactly what a legislative member does. This appears to me, Mr. Chairman, to be a one-shot referendum. This appears to be an action by the Constitution to refer to the voter a salary increase which the members of the legislature should have taken upon themselves to enact into law. The argument that they are self-conscious about raising their salary has no meaning as far as I'm concerned. Certainly it didn't have any meaning at all with the City and County Council of Honolulu which not only increased its salary unconscionably but also made it take effect within their term of office.

I would suggest to the Chair, to the members of this Constitutional Convention, that let's take out the figure \$12,000 per annum and leave it as it is \$2,500 with the idea that Section 10, the commission, the blue-ribbon

commission that would be picked, that would set a salary increase then to be enacted by the legislature. And there is no doubt in my mind, Mr. Chairman, delegates, that any commission that meets would have to give you, the legislative members of our state legislature, at least \$12,000, possibly even more. But we can make an exception. We can make an exception in this one year of 1969, should it be passed by the people, the committee form, that is, that they would make a recommendation to the legislature to take effect in 1969; the one single exception, and thereafter any increases that were enacted would take effect not in the term of office enacted. I say that if we do this, Mr. Chairman, we have eliminated one more possible red flag that we wave before the public and at the same time still accomplish what we intend to accomplish—to give legislative members of our state legislature adequate compensation for their services. And because of those reasons, Mr. Chairman, I submit that the members here should reconsider and think very carefully. I have the interest of the legislators and their pay increases and what the just compensation should be at heart, and I know all of you do. But I think we've got to do it the right way and for these reasons I must vote against the provision of \$12,000 salary in Section 17. Thank you.

CHAIRMAN: Delegate Kaapu is recognized.

DELEGATE KAAPU: Mr. Chairman, I'd like to speak in favor of the proposal. I agree with Delegate Schulze and the arguments he put forth and the recommendations of the blue-ribbon committee which we have already had. But I'd like to add, some more perhaps, from my own experience.

I think that we'll see in the next few years a new breed of public servant emerging, not replacing the part-time people who work in addition to their own jobs in public service and in the legislature. But we will see people coming into public service who wish to give their full-time effort to the affairs of the legislature and to the other legislative body in the county. For these people we must have a salary adequate so that they can pay their bills, pay their mortgages, and support their families.

From my own personal experience, I have worked for three years and nine months in the City Council, most of that time for a pay of \$10,500 a year. And I have given full time because I eat, sleep, drink, dream city problems. And I would not have it otherwise. I would not like to have the distractions of having to earn a living enter into my work and interfere with it. I would like to have the independence which Delegate Schulze cited to make up my own mind without reference to other people and what they might think, and what pressures they may bring to bear. And I think that this situation should pertain for those legislators who choose to make that their career. Now, I know in my own case it would be impossible for me to do the work that I have been doing on the basis that I have done it if it were not for the fact that my wife worked and was able to support me in this particular undertaking. But I would like to see the legislators in the future be given a chance, those who wish to, to

select legislative service as their career. It is not a very secure career. It's one that may not last more than two years or may last longer depending on their accomplishments and their performance; but I think that they should be given a chance. And we would like to draw upon the widest possible field of candidates or field of persons to serve in the legislature. And for some in the teaching professions and the unions and others, the salary of \$12,000 a year may be, in fact, a promotion. And for them it would be all right but there are a great number of other people who perhaps work for a living in various other professions who would choose to give up their professions to work full time in the legislature. And that should be made possible and put within the reach of them. And for those who must give their valuable time which is worth a great deal and who earn far larger salaries I think they should be compensated sufficiently for their work in the legislature, that they are not unduly penalized.

I know from my own experience, Mr. Chairman, that if a person wants to work on legislative matters that it is a hard and very, very thankless job. In many cases it has its satisfactions and these satisfactions are not monetary. But I do not think that we should hesitate to put before the voters a chance to approve at least what I would consider a minimum salary which is adequate for legislators. And if this is to be a red-flag issue, it is only because there are those in our community who have made it a red-flag issue and who have waved this before the public and have said that legislators should not be paid much.

I don't believe there is any virtue to be had in suffering. Certainly, a legislator will not grow rich on \$12,000 a year, but perhaps he can make his costs and I think that we should give them a chance and we should give the citizens of this state a chance to have full-time legislators; and I think if we take this step today, and if we take this step in this Convention we will see emerging a new breed of legislator who will not replace the old but, in fact, will supplement them in a very productive way.

DELEGATE STEINER: Mr. Chairman.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Steiner is recognized.

DELEGATE STEINER: Mr. Chairman, first of all, I speak for the amendment.

First, I think that the delegate from Kalihi has a good point that we may have a problem of a selling job here. However, I answer that argument by saying we were called into this Convention to make meaningful changes in our Constitution. I think the problem or a worry of any selling job is secondary to that.

Second point, Mr. Chairman, I'd like to point out that we adequately, fairly and reasonably pay our governor; we also adequately, reasonably pay our judges and justices. However, when it comes to the people who make the law, the governor signs, the law is then

administered by the governor and interpreted by the court. When it comes to salaries of these people, should we say, "We'll pay you only an honorarium, a token"? I say not, Mr. Chairman.

In conclusion, Mr. Chairman, I noticed in the paper last night, I believe also this morning, names of people running for public office. I know, I believe, it's at least eleven races. There were no contenders by one party or the other for certain positions. So I asked myself, Mr. Chairman, why is this? And I believe the reason that qualified people are not drawn in to try for these positions is because of the woefully inadequate salary and the financial sacrifice which they must make. I have seen the long hours of dedication of the legislators who are members of this Convention, and I am impressed. I think the people of Hawaii will be well served by this amendment.

Thank you.

DELEGATE SHIIGI: Mr. Chairman.

DELEGATE FASI: Question, Mr. Chairman.

CHAIRMAN: You wish to state a question—

DELEGATE FASI: I'd like to ask a question.

CHAIRMAN: —of the previous speaker? Delegate Fasi is recognized.

DELEGATE FASI: I'd like to ask a question of Delegate Steiner through the Chair.

Isn't it true that under the present setup of the Constitution, the members of the legislature can raise their own salaries to any figure they desire without the necessity of referring this matter in referendum to the voters of the State of Hawaii?

CHAIRMAN: Delegate Steiner, do you wish to answer the question?

DELEGATE STEINER: My answer is, I believe, yes. But, Mr. Chairman, let's be realistic. The members of the legislature obviously are somewhat reluctant to be exposed to the criticism, ill-founded perhaps, which will come if they indulge in increasing their own salary.

I say we owe an obligation to them here in this Convention to set a proper minimum. I hope that answers your question.

DELEGATE FASI: One other question, Mr. Chairman. Does Mr. Steiner believe in the proposition that we should have initiative and referendum in this Constitution, which this amounts to?

DELEGATE LUM: Point of order, Mr. Chairman. That has no relevancy—

CHAIRMAN: State your point of order.

DELEGATE LUM: That has nothing to do with

what we are talking about on the floor.

DELEGATE FASI: Mr. Chairman, I beg to disagree with Delegate Lum. This is, in effect, the whole Constitution is a referendum. The point is well taken that this section also is a referendum.

CHAIRMAN: Delegate, I would rule that your point is not in order, and that I think we are dealing with a question of a salary and I think Delegate Steiner attempted to answer your question adequately.

DELEGATE FASI: Thank you very much, Mr. Chairman.

CHAIRMAN: Delegate Shiigi.

DELEGATE SHIIGI: Mr. Chairman and fellow delegates, I did not prepare any speech for this morning, but I strongly feel that I must speak for this committee amendment. I had the privilege of serving under Dr. Hung Wo Ching and in this committee we had long deliberations on this matter. We had many arguments on the salary of \$12,000. But I must at this time, as a non-legislator, not running for office, I must agree with what Delegate Schulze had said. With the increase, volume and complexity of legislative business the legislator is less able to devote time to his private occupation and therefore becomes more dependent upon his legislative salary. Legislators' salaries compare poorly to those paid other public officials and professional occupations.

I, myself, have a position. I don't work half as hard as a legislator and yet, I do get paid the amount that is requested of this amendment.

In 1961, the National Legislative Conference stated, "The levels of legislative compensation should not be such as to preclude able people who lack private means from serving in the legislature because of financial sacrifice, or to force such people to find supplemental income from private interest groups or individuals. It is the public well-being which suffers most under such circumstances. In light of the cost of running for and then serving in the legislature, some financial sacrifice is inevitable for most people. The goal should be to reduce this sacrifice in order to assure ample numbers of qualified candidates and to assure their independence from undesirable interest."

The raising of legislator compensation is a highly sensitive political issue. Hawaii legislators are being paid under the provisions made eight years ago even though the cost of living has increased since that time.

In closing, if we want quality legislation in this state, then we must attract qualified legislators who can be assured of some adequate means of subsistence. Therefore, fellow delegates, I strongly urge you to back us in adopting this amendment. Thank you.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I would be somewhat remiss to express the manner in which I will vote but to say that I will be voting *kanalua*. I am somewhat confused in the proposal submitted by the committee because I, too, feel, Mr. Chairman, that the legislature should set the salaries of our elected officials as well as some of our salaried governmental employees. If we are to adopt the recommendation of the standing committee report and its proposal, will we set salaries for our so-called sacred citizens, the legislators? Why doesn't the Convention consider the matter of setting up salaries for the 157 shortage of school teachers? Provide the funds so that the educational department will not have to look around in the opening of the school year to find 157 replacements.

Let us be in the same being realistic when it comes to having people make the laws to live by and under, let us also consider those who are charged with the responsibility of furnishing the education for these so-called highly qualified or best qualified individuals as full-time legislators, that we protect them, too, by Constitutional Convention action to see that their salaries will be sufficiently high enough to attract our local people who are pursuing the educational system to remain in Hawaii rather than run away from Hawaii to other jurisdictions.

I have served, Mr. Chairman, as a member of the house of representatives for some past sixteen years or eight terms. I ran for the house of representatives not because of the money that was involved. I ran because I felt it was my citizenry duty to run and to help frame up laws for the people for the then Territory of Hawaii. I will continue to run under this concept. Whether I will be paid \$12,000 to seek political office is immaterial as far as I am concerned. The material factor for my seeking public office is my dedication of purpose to do what I can to help those who cannot appear before the legislature either as an elective official or as a lobbyist to support or reject any legislation that may be helpful or detrimental to their well-being. But if the salary is available, I'll accept it; and I would like the legislature to provide a salary schedule.

I find here, Mr. Chairman, statements made with respect to—we need independent thinking of people, if devotion is dependent wholly upon individual legislators then its salary is the attraction for the best and highly qualified individuals to seek public office as full-time professional legislators. Then I feel, Mr. Chairman, that this responsibility of the setting of salaries should be placed solely in the realm of the legislature. It should not be covered in the Constitution because I feel that those who have appeared before the committee holding the consideration of this action, were limited in number but it was held in the legislative halls, and the legislators were given this responsibility of the setting of salary where we had more people appearing before public committee hearings than we ever had in the constitutional hearing.

Mr. Chairman, when I spoke about the amendment that I was attempting to offer, sometimes during the recess I heard comments, leaves me to feel that perhaps,

Mr. Chairman, in the absence of complete knowledge to those who are unfamiliar with legislative proceedings, and in the interest to satisfy all of the delegates who sit here who want to get away from this convention hall, because the other interests are more important to them. Perhaps I should take the position to withdraw my amendment although I feel reluctant to do this because I know that at the ultimate end, Mr. Chairman, and to the disinterested delegates, that the time will come when the shoe fits, you will hope that the full consideration of the amendment that I offer had had its opportunity to be presented to you. It's rather difficult as an elected delegate to this Constitutional Convention to come in and sit and to try and attempt to arrive at a conclusive answer, not only for my self-being but for the people of the State of Hawaii. And more particularly, Mr. Chairman, in our desire to sell the amended Constitution for its ratification by the electorate, sometimes it's best to sit by and say nothing. Let those who are more intelligent and more highly qualified to submit all the amendments they want to in this Constitution regardless of our individual opinion and leave it to the electorate for I am sure as I stand here speaking before this Convention, that the Constitution as written without consideration for the people will never be ratified. Because there are many matters in here that gravely affect the general well-being of the citizens of the State of Hawaii and as a member of this Committee on Submission and Information, I will strongly support the submission of the package rather than on individual sections of the articles of the Constitution.

DELEGATE DYER: Mr. Chairman.

DELEGATE JAQUETTE: Mr. Chairman.

CHAIRMAN: Delegate Young is recognized.

DELEGATE YOUNG: Mr. Chairman, I wish to speak in favor of the committee's report and proposal.

Government is everybody's business. Government is reflected by the people that represent them. Many who are interested in serving the people are held back because of the existent conditions. I believe that sum recommended by the committee is not absurd. The legislators are sincere and hard-working bodies. I concur with the committee's report that increased salary will attract and produce the kind of legislator who will spend more time in educating and informing his community and constituents of the legislative process and issues.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I rise in support of the committee report and proposal. I thoroughly agree with the statements made by the delegates in support of the committee report, and in order not to be repetitious I would like to review some of the provisions in this legislative article which to many delegates may appear improper at this time,

particularly the provisions for legislative salaries; for the annual session and the budget session, at \$2,500 and \$1,500 per year. I was a member of the 1950 Constitutional Convention. This matter was discussed thoroughly in committee and debated, and I was with the minority. It is proper at this time to tell the delegates in 1950, just five years after the war, Hawaii was a little bit from what it is today. Those who represented the people from Kauai, Maui, Hawaii and Oahu were supposed to belong to a separate group or class. They were supposed to be the affluent people of Hawaii. Those who owned property, those who had rich estates, those who held high salaried positions in industry. They were supposed to be the representatives and senators of the Hawaiian legislature. And as a result, they set the pay at \$2,500 a session, and \$1,500 a session. I was just only two years out of law school when I sat in the 1950 Convention, and I had thought and I had high hopes at that time, that perhaps the Constitution may write something into the salary provisions of legislators to enable the young people of this State to offer themselves for elective office. Unfortunately, this provision was written into the Constitution and the legislators since 1950-1959, when we became a state said that we can't very well raise the salaries which we have had from 1950-1959, I am told right by my friend on the right that it was \$1,000. And because of this low legislative salary, I hibernated on Kauai and practiced law. There were able legislators on Kauai; there was the father of the distinguished delegate and vice-president on the left, who has owned a public electric utility; there was another legislator from the other side of the island who owned another electric utility; then there was that distinguished senator who owned the entire transportation business on the island; and there was the other representative, and then senator, who owned nearly all of Kapaa. What can a young man do if he doesn't have the money to run for elective office that pays only \$1,000 a session? And as I am reminded from the side, up until 1955, there was no per diem. But came the revolution in Hawaii in 1954, the architects of the New Hawaii came into power in the state legislature and they wrote into the statutes the per diem law. First, a measly \$15.00 and \$20.00 and later \$45.00 and \$32.50 per day which still remains on the statutes book.

But fortunately for us here in Hawaii, we became a state in 1959. The Constitution went into effect, but the legislature was confronted with this rather measly provision for salaries in the legislative article. It took us nine years before we could have a Constitutional Convention and today we are confronted with a question whether or not we have a right, finally, in the building of a New Hawaii to recognize that legislators are just as important in the scheme of government as other people: those in the executive branch; those in the judiciary branch; and whether or not our legislators should receive a salary commensurate with industry. As you look amongst your colleagues who are members of the Convention and as you look at others who are at present members of the state legislature, you will see the finest and ablest public servants in Hawaii. And so we say honestly to ourselves as citizens of this great State, that legislators should receive \$2,500 for a regular

session, and \$1,500 for a budget session? It's asinine.

That distinguished delegate from Oahu who said that he is now a candidate I understand for the City Council, may feel that perhaps the legislature should establish their own salaries. But that is begging the question. If we are going to write an amended Constitution for the people of this State, now is the time to stand up and be counted. Whether or not we want the kind of legislators that will be efficiently and effectively performing their services in the state legislature in behalf of all the people, and because we will pay them a salary fitting for their position, they will not be looking for handouts throughout the community.

I think the greatest and most important step that this Convention will take is bringing up the legislative branch of government to the standards that they have built up as legislators for the judiciary branch and for the executive branch. And Hawaii can then be proud of the kind of state government it has effectively produced for itself since we became a State of the Union. Thank you.

DELEGATE DYER: Mr. Chairman.

DELEGATE FASI: Question, Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I would like to direct a question to the delegate from Kauai, former Justice Mizuha, who appears to be an authority on the subject.

CHAIRMAN: Will you address your request to the Chair?

DELEGATE MIZUHA: I am not an authority. I just expressed my opinions.

DELEGATE FASI: Well, he mentions the fact that a great revolution came about in 1954, changes were made, revolutionary changes, and he also mentions the fact that the legislative sessions not only made these great changes but also increased the per diem which could have been increased to \$50.00 or \$60.00 a day. And he refers to the fact—

DELEGATE UEOKA: Mr. Chairman, point of order.

CHAIRMAN: Delegate Ueoka, state your point.

DELEGATE UEOKA: I am wondering if the delegate is making a statement or whether or not he is asking a question.

CHAIRMAN: Your point is well taken. Would you properly rephrase that in the form of a question?

DELEGATE FASI: The point is well taken, Mr. Chairman. I apologize.

The question is this, Justice Mizuha declares that if this is not passed, it's asinine. If it is asinine, I'd like to

ask the delegate, who is responsible for this fact being asinine? The legislature which has the power, has had the power to raise its salary or the people in this Constitutional Convention who may vote against it?

CHAIRMAN: The delegate does not have to answer that question.

DELEGATE MIZUHA: Thank you very much, Mr. Lewis. I can say something about the delegate who is asking the question but inasmuch as he is a candidate for public office at this time, I shall refrain from doing so and extend to him the legislative courtesy that he is entitled to.

DELEGATE FASI: Personal privilege, Mr. Chairman.

CHAIRMAN: Please state your point.

DELEGATE FASI: I will remind the delegate that I am not a candidate for the City Council. I am a candidate for mayor.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer is recognized.

DELEGATE DYER: Mr. Chairman, I'll be very brief.

I consider the office of a legislator to be one of the most important positions in this State. The legislators after all do make the ground rules by which we have to live. Now, when you consider the responsibilities that they have and the importance of their position in the scheme of things and the time that they are actually required to spend on the job, I believe that \$12,000 is not out of line, and it seems to me to be an eminently fair figure. As Senator Doi often says, period.

DELEGATE JAQUETTE: Mr. Chairman.

CHAIRMAN: Delegate Jaquette is recognized.

DELEGATE JAQUETTE: I rise to speak in favor of the committee proposal and I wish to add only one point which has not yet been brought out, and that is that legislators undergo considerable expense in their campaigns for office. Additionally, they are subject to having to buy tickets to every benefit that comes along. All of these expenses are non-tax deductible whereas the income is taxable. I believe that we here in the Constitutional Convention see what is right and we should do it now.

DELEGATE HANSEN: Mr. Chairman.

CHAIRMAN: Delegate Hansen is recognized.

DELEGATE HANSEN: I wish to say 118 unrehearsed words on the subject of legislative pay raise.

I sat down and figured out exactly how many hours as a non-legislator I spent away from my other job in pre-election and pre-Convention research, and

campaigning, and all the work and worry I've gone through in this Convention; and I sat down and figured out the hours and the pay I have received; and I have checked with the salaries at Dole Company and I found that if I spent all that time picking pineapples I could have made more money. I have nothing against pineapples, but it's a sad comment when the job of a field hand is more lucrative and attractive than the job of the governors of our democracy.

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Sutton is recognized.

DELEGATE SUTTON: Mr. Chairman, I started this debate and I just wanted to make one brief summary. I am opposed to this body raising legislators'—

DELEGATE BEPPU: Point of order, Mr. Chairman.

CHAIRMAN: State your point.

DELEGATE BEPPU: Will the Chair please recognize the other speaker before he picks on the first speaker?

CHAIRMAN: I believe the speaker here is not a movant so in this case, the rules provide that the movant has the last word.

DELEGATE BEPPU: But is the speaker talking for the second time?

CHAIRMAN: What? Oh, your point is well taken.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Would you let Delegate Bacon take the floor first?

DELEGATE BACON: Mr. Chairman, I feel obligated to rise to support the committee proposal and to support the salary as set out in the Committee Proposal No. 7.

I base my support for this, Mr. Chairman, not as a legislator but for the six years in which I served in the Chief Clerk's office at the state senate. This being the key office and the brains in the legislature, I had a unique opportunity to observe the legislators at work. They put in a great deal of time; they shoulder great responsibilities, and I feel that this proposal is a recognition of the work and effort which they go through. In regards to this matter, I was in Kaneohe a couple of days ago and I asked a man there that I know what would his reaction be to a legislators' pay raise of this kind. And this man said to me, he said, "I see a legislator needing to be as wise as an owl; stubborn as a mule; courageous as a lion; swift as a gazelle; comical as a monkey; sly as a mongoose; and most of all, with the skin of a rhinoceros." If this be true. Mr. Chairman, this proposal is deserving of our support.

CHAIRMAN: Before recognizing anybody else, in light of the closeness to the lunch hour, the Chair

would like to determine how many other people would like to speak on this matter inasmuch as most of the arguments have already been made.

DELEGATE PORTEUS: Mr. Chairman.

CHAIRMAN: President Porteus is recognized.

DELEGATE PORTEUS: Mr. Chairman, there appear to be a number of delegates who still wish to speak on this matter, and therefore I suggest that the Chair declare a recess until 1:45 this afternoon.

CHAIRMAN: The Chair will therefore declare a recess. This Committee of the Whole will reconvene at 1:45 p.m.

At 11:50 o'clock a.m., the Committee of the Whole stood in recess until 1:45 o'clock p.m.

Afternoon Session

The Committee of the Whole reconvened at 1:45 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

The matter before this committee at this time is the motion to adopt Section 17 of Article XVI as set forth in Committee Proposal No. 7. Delegate Bryan is recognized.

DELEGATE BRYAN: Mr. Chairman, I just want to comment and I think it may clarify the item before us if we note that the amendment to Section 17 in effect provides for a salary for the legislature perhaps only for one session; that because of other provisions, the salary can be adjusted thereafter on the recommendation of the commission that is set forth. So we are not setting a floor or a minimum; we are not necessarily setting a legislative salary for a long period of time, but we are setting a specified amount for a transitional period and I think that this may make it a little bit more understandable not only to the delegates but to the public. And I would urge the approval of the committee proposal.

CHAIRMAN: Are you ready for the question?

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE MIYAKE: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order.

DELEGATE MIYAKE: This is the second time Delegate Sutton is rising to speak. May we have others who wish to speak who haven't had a chance to speak to be heard first.

CHAIRMAN: Delegate Kamaka has just started to

rise.

DELEGATE KAMAKA: Thank you, Mr. Chairman. I rise to support the committee's proposal, not believing necessarily that I am the only legislator who can speak without feeling even remotely or however slightly accused of a conflict of interest. I wish that my observations and my feelings, some of them innermost, may be shared with you on the matter before us. I would hope that we are unanimous in our agreement that the present salaries for legislators are inadequate. It appears that some among us believe that failure of the legislature in light of constitutional authority to raise salaries for future legislators is their own fault. Perhaps so. Since 1950, legislators' salaries have had no increase.

In the past four years, as chairman of the House Committee on Appropriations, I took it upon myself, rightly or wrongly, to kill all bills calling for increases in legislators' salaries. More recently with the probability and then with the assurance of the convening of this Constitutional Convention, I felt my actions were in the best interest of this State. Foremost among my reasons was the fear that I had, however unfounded, that any increase could spell defeat of many incumbents whom I believe to be excellent legislators. It seemed to me to be shortsighted to this with Con-Con so near in the future. Perhaps also, we lack some of the intestinal fortitude if not craftiness of our brother legislators at the county levels. With the possibility of a taxpayer's suit a reality in the case of the City Council, I believe my action was the best at the time. But today, we who are allegedly an objective body, convened to resolve those matters requiring this kind of treatment, I believe the proposal is proper.

Our community is steaming with qualified future legislators in spite of the absence of candidates in the coming election. Among some of the reasons for the scarcity of candidates is, I feel, financial ability. Some of us have been very fortunate that through our own hard work we have attained economic status which permits us to run for elective office.

President Porteus is an example of that. So is Senator Takahashi and many others here today. Some of us, but unfortunately not enough of us, here or in the community find ourselves quite often by accident of birth, sometimes through marriage, in a similarly fortunate position. Thousands do not. There has been, I suspect, some little discussion here as on the outside about my decision not to seek elective office this fall. Not the least important among my reasons is the financial one. I am one of the thousands who was not born to wealth; obviously not wedded to it, and whose hard work has yet to place me among the more comfortable. With six months of the year given to legislative work, with an expected increase in the legislative work load, an expected increase and demand for more constant contact and communication with constituents, I would hardly be able to live on \$12,000.

There are seventy-six of us legislators who handle nearly three-quarters of a billion dollars of your money. This amount will soon increase to one billion dollars

and then more. These same seventy-six deal with, live with, 24 hours a day, the lives and future, the hopes and dreams of 800,000 people, soon to be a million. AMFAC, Hawaiian Electric, GASCO, Lewers & Cooke, all of our banks pay their executives more than \$12,000 a year, with only a fraction of the responsibilities of our legislators who, I believe, are more important to Hawaii's future than these top executives.

Our legislature, not only our Constitution, has been praised as an outstanding model. I think that some of our sister states don't pay their legislators more because they may not deserve it. If they paid more, maybe they'd get more. You get only what you pay for. However good or bad a legislator I may have been, you will not get me, not even for \$12,000. This can't begin to start to pay for the headaches, the heartaches, the very life that you must give that goes with it all. We are all dedicated people here today, and that's why we are here. However, some of us dedicated people can financially afford to serve only for love. I envy and admire them but they are the exceptions rather than the rule.

Mr. Chairman, perhaps I have said too much, perhaps I have not said enough. I hope that I have said what counts. I love my State and I want it to have the best, and this includes legislators. You cannot afford to lose those who are there, and more important, you cannot afford to lose those who will some day come. Thank you.

CHAIRMAN: Does anybody wish to discuss the question except Delegate Sutton?

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: I rather differ with the delegate from the 10th District in the assumption that the public will be reassured if this \$12,000 salary provision is a very short duration. For surely no one in the public will expect that the commission set up will effect a decrease. It was rather my interpretation and I would like to confirm it, that if this increase is approved at the general election of 1968, which is the start of a new legislature, that it would go on for two legislatures in the following manner; that is, the commission would be appointed in June, 1971, the legislature would not act on this matter until the 1972 session unless it convened itself in special session which would not be likely. The change would not affect the legislature which enacted it, and therefore it would be the legislature that came into office at the general election of 1972 which would first get the new salary recommended by the commission if enacted by the legislature. Therefore, it seemed to me that the intention was to have the four-year cycle right from the start. I would like to confirm that, if that's correct.

DELEGATE HUNG WO CHING: Mr. Chairman, may I answer that?

CHAIRMAN: Delegate Ching.

DELEGATE HUNG WO CHING: I don't completely agree because the words here say in Section 10: "There shall be a commission on legislative salaries, the members of which shall be appointed by the governor on or before June 1, 1971." They can be appointed next year or the following year.

DELEGATE RHODA LEWIS: Thank you. I did overlook the "or before." I see that it can be done.

CHAIRMAN: Delegate Sutton is recognized.

DELEGATE SUTTON: I have heard these various arguments propounded by those who would adopt the committee report which would give a raise from \$2,500 to \$12,000 to legislators plus additional compensation that comes in Section 10, plus retirement after ten years. I have heard their arguments and I wondered why none of them ever mentioned the taxpayer, the public, that forgotten man who is not in this room, that forgotten man who doesn't have his lobbyists out here in the seats, that forgotten man who doesn't take us to lunches, that taxpayer who doesn't have the time because he's working now, that taxpayer who will have to bear the burden of the largest wage increase I have ever seen in my life, from \$2,500 to \$12,000 is 6,000%. You can almost take it to the "nth" power, those of you that are mathematicians, almost to the "nth" power of 1.68 can you take the \$2,500 because you're going up a \$10,000 increase, and on top of that you do not know what the per diem will be but certainly there will be a per diem. Now I say that we have passed an ethics part to our Constitution. Is it ethical, is it moral for us in this body, where half of us are legislators to raise our salaries—

DELEGATE LARSON: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE LARSON: I don't think we are discussing the ethics provision presently or mathematical tables. I think we're discussing whether or not this section in Section 17 pursuant to salaries should be approved or not. I don't think his comments are germane to the subject.

CHAIRMAN: I believe that Delegate Sutton is trying to lead up to something. Delegate, would you address yourself to the specific section.

DELEGATE SUTTON: Yes, if the gentleman from the University of Hawaii will listen, I believe that we will find that statements were made that a blue-ribbon committee, a blue-ribbon committee headed by Dr. Hamilton, somehow rather magically came out with this figure. I have read that report and I do not see anything in that report that states that the salaries should go up from \$2,500 to \$12,000. Rather, in Section 10, if you will all look at paragraph 2, the basic concept there expressed takes care of the entire need here and that is to have a commission on salary and put that commission to work right away instead of 1971. All we do is amend that and make that effective

upon the ratification of this Constitution. And that would mean that it would go into effect in 1968, and then we would have a salary commission which will take care of all wage increases and there were quite a few personnel men in the room—what they always do is they find what the job analysis is, what the intangible factors are, how many hours of work, what education, what requirements are required through initiative and creation, what factors are involved also, and their own campaign expenses. I think that is a legitimate inquiry because they have to get re-elected. However, we are not here involved in a proposition where any of us have the basic factors. I asked Dr. Ching; he said, "I put \$7,500 on the board, then I put a higher figure, and then I put a figure of \$12,000 and I got a consensus." And this was his committee report. Why, nowhere have I seen a job evaluation, nowhere have I seen a job analysis, nowhere have I seen a comparison to like work, nowhere have I seen any analysis presented by any of the delegates. I hear of a blue-ribbon committee, but I have read the blue-ribbon committee's report and nowhere do they come up with the magic figure of \$12,000 and nowhere do they come up with an analysis.

DELEGATE SCHULZE: Mr. Chairman, a point of personal privilege.

CHAIRMAN: State your point, delegate.

DELEGATE SCHULZE: Mr. Chairman, in my speech on this matter, I submitted that the blue-ribbon committee had recommended a salary of \$12,000. I am prepared at this time to quote the words verbatim from that committee report. May I? Mr. Chairman, page 12 of the committee report—

CHAIRMAN: Proceed.

DELEGATE SCHULZE: "... for the year in which this plan becomes operative all legislators would begin at a base salary of \$12,000."

Mr. Chairman, another sentence on the same page, "The salary may range between \$12,000 and \$20,000." I am quoting verbatim from the blue-ribbon committee report, Mr. Chairman. If Mr. Sutton still can't see it, I will be happy to point it out to him.

CHAIRMAN: Thank you. Will you proceed, delegate, with the intent to wind up your remarks?

DELEGATE SUTTON: Maybe the learned delegate can—

DELEGATE FERNANDES: Mr. Chairman, point of order.

CHAIRMAN: State your point, delegate.

DELEGATE FERNANDES: I am a little confused right now. With the quote by Delegate Sutton for TV consumption, that he read the report and the report did not say anything about \$12,000. Our honorable Delegate Schulze read the report and it says \$12,000.

Could I ask for just a one-minute recess so Delegate Sutton can go over and Delegate Schulze can show him the report? He might be reading a blank page.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: Before the recess is taken, may I suggest also that the delegate who is speaking and on his feet also check his mathematical calculation of a 6,000% increase.

CHAIRMAN: A 30-second recess is declared. The delegates are requested to remain in their seats except for Delegate Sutton.

At 2:10 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:13 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come back to order.

Delegate Medeiros, you were recognized to state a point because Delegate Sutton was still speaking.

DELEGATE MEDEIROS: I thought you already got rid of Delegate Sutton.

CHAIRMAN: Delegate Sutton, you have less than one minute to go.

DELEGATE SUTTON: I would like to point out that the morality is what is really involved here. Here is a group of 82 people, elected by the public to make a Constitutional Convention primarily because the Supreme Court asked for reapportionment. Should we then desecrate the high duty that we have and raise our own salaries? I say "no," and I say it is an unfavor to the public that put us here.

DELEGATE MEDEIROS: Mr. Chairman.

CHAIRMAN: Delegate Medeiros.

DELEGATE MEDEIROS: Mr. Chairman, at this time, I would like to speak on behalf of this proposal. I think Delegate Sutton hit the nail on the head when he referred to the taxpayers. I am a taxpayer. I am not a legislator. This is my first experience serving our government which I am very privileged to do and believe me you, it is costing me. However, I asked for it and I am very happy that I have the opportunity and I am very glad to continue on this. What I am saying here now is that I would like to have our present representation continue in our government as a taxpayer. I am speaking as a taxpayer. And should legislators not be compensated justfully, I don't think we will continue to have the representation that we have now. And if you were to put the months that go into a session and two months prior to the session campaigning, and money that is involved to get elected,

I think \$12,000 is not enough to begin with. I think this commission will probably do something about that also. I am talking now as a taxpayer. Thank you.

CHAIRMAN: Are you ready for the question?

The motion before us is to adopt Section 17 of Article XVI, Committee Proposal No. 7.

DELEGATE SUTTON: Roll call, please.

CHAIRMAN: The Chair would like to have a standing vote. All those in favor—

DELEGATE LARSON: Mr. Chairman, may we have a—

DELEGATE SUTTON: Roll call.

DELEGATE LARSON: —roll call, please.

DELEGATE SUTTON: Roll call, roll call.

CHAIRMAN: I only see two. All those in favor please rise.

DELEGATE SUTTON: Roll call. Roll call. There is enough. I have ten.

DELEGATE MIYAKE: Point of order, Mr. Chairman. Are you asking for the people to rise for a roll call vote or are you asking them to vote "aye" on the motion?

CHAIRMAN: The Chair did not recognize ten people asking for a roll call and therefore we are proceeding to—

DELEGATE LUM: Mr. Chairman, short recess.

DELEGATE GOEMANS: We are in the process of voting now. Mr. Chairman, I don't think we can go into recess.

CHAIRMAN: That is correct.

DELEGATE WRIGHT: Mr. Chairman.

CHAIRMAN: Delegate Wright.

DELEGATE WRIGHT: Before you move for the motion, will you please repeat the motion that we are voting on?

CHAIRMAN: The motion is to amend Section 17 of Article XVI which will read: "Until otherwise provided by law in accordance with Section 10 of Article III, the salary of each member of the legislature shall be \$12,000 per annum."

The Chair will call for a standing vote. All those in favor of the amendment will please rise. Thank you. All those that oppose will stand. The amendment is carried. Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I move that this committee adopt Section 10 of our proposal.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: I second the motion.

DELEGATE HUNG WO CHING: Mr. Chairman. The main amendments to Section 10 are first "... to provide for allowances reasonably related to expenses"; and second "... to provide for a commission on legislative salaries to be appointed by the governor." I won't dwell on the first issue because it has been thoroughly discussed in relation to Section 17 of Article XVI.

Now, on this commission, members shall be appointed to review salaries every four years and then dissolve. Their recommendations are thereupon transmitted to the legislature for final action. Legislators, like other public servants, are no less deserving of periodic review and adjustments in their salaries. Thank you.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: Have you asked for amendment to this committee proposal at this time?

CHAIRMAN: An amendment would be appropriate at this time, delegate.

DELEGATE GOEMANS: I have an amendment to offer. It is labeled Amendment III (9), which reads:

"Section 10 of Article III as it appears in Committee Proposal No. 7 is hereby amended by amending the second sentence to read as follows:

"Any change in salary shall not apply to the legislature which enacted the same, provided that the first determination of salary subsequent to the effective date of this Constitution shall be effective upon enactment."

"Section 10 of Article III as it appears in Committee Proposal No. 7 is hereby amended by deleting the date 'June 1, 1971' in paragraph 2 and substituting 'December 1, 1968' therefor."

I move for its adoption.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: I second the motion.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, I would like to say at the outset, although my vote was in the

negative in our consideration of Section 17, that I favor a salary raise for all the reasons as stated heretofore. Not only am I in favor of a salary raise, but I am in favor of a salary raise applicable to the next session of the legislature. I think it's a matter long overdue. I would not consider \$12,000 unreasonable. I think it is a reasonable figure. I also don't think that any particular legislature should be able to raise its own salary. I favor the commission approach, but I think we should be consistent here. If we are going to ask the voters to approve the commission approach to salary increases, then I think it is only consistent to have that approach, the commission approach, be effective immediately. By not having it effective immediately, by going along with the proposal submitted by the committee, we are asking the voters to determine two propositions, to make a judgment as to whether the commission approach is deemed acceptable and to make a determination as to whether our judgment, the \$12,000 as a proper level for an interim salary, is advisable. I think this confuses the issue. I think what we should be thinking in terms of is an approach as outlined in my amendment which would have the possible effect of raising legislative salaries effective as of the next session of the legislature without the attendant confusion that would result from asking the voters to make two judgments in this area.

DELEGATE RHODA LEWIS: Point of order, Mr. Chairman.

CHAIRMAN: State your point of order, delegate.

DELEGATE RHODA LEWIS: The delegate seems to be asking for a reconsideration of the vote we just took but he was not on the side which can ask for reconsideration.

CHAIRMAN: I believe the delegate is speaking on his amendment to Section 10 and is merely trying to tie in and explain what would happen in the event that this is approved. I agree we may be going a little far afield, but we want to give him this latitude because of what went on before.

DELEGATE GOEMANS: Thank you, Mr. Chairman. Then what I am saying is that the two changes that we are proposing to present to the voters: (a) the concept of a commission system as the recommending body relative to legislative salary; and (b) the proposal that the interim salary be \$12,000 rather than the present \$2,500, I find somewhat contradictory. If we do, in fact, feel that the commission approach is the most application way of accomplishing legislative salary increases on a regular basis, then I think it is contradictory for us to interpose our judgment as to what the proper level of a legislator's salary should be prior to any action by a commission. The commission is proposed for the specific purpose of doing what we have just done in Section 17.

Therefore, my amendment, the effect of which is to provide that the legislature may determine, based on the recommendations of a commission formed immediately upon the effective date of the Constitution, a new level of salaries which will be effective as to that legislature

will be effective immediately upon enactment. This is an exception to the ordinary rule—the rule stated in the existing Constitution and in the committee proposal that changes in salary shall not apply to the enacting legislature. The effect, I think, is the same. I think we then can move on, reconsider our action in Section 17 and replace our recommendation—our recommendations and derogation of the commission's function with what has been the salary level heretofore. Thank you, Mr. Chairman.

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, would the movant yield to a question or two?

DELEGATE GOEMANS: Yes, Mr. Chairman.

CHAIRMAN: Would you state your question to the Chair and I will ask the movant if he will answer.

DELEGATE SCHULZE: Mr. Chairman, as I read this proposed amendment, the proviso is that the first determination of salary would be an exceptional one. That is, it would apply immediately to the legislature that did enact it. I take it that this would be true even if our Section 17 remained in effect. Is that so?

CHAIRMAN: Delegate Goemans, would you like to answer the question?

DELEGATE GOEMANS: That would be the effect.

DELEGATE SCHULZE: So that this—it would follow then that the first legislature that increased its own salary, if that happened in 1971, or 1975, or 1978, they'd get it but after that nobody else would get it, is that correct?

DELEGATE GOEMANS: That would be the effect, although as I stated prior to our consideration of Section 17, it was my preference that this proposal as with all proposals be considered in the entirety so that amendments that have to do with separate sections could be properly arranged. The effect would be in this case that if we voted favorably to my amendment, that the legislature—my amendment alone, that the legislature could raise its salary if the commission recommended a raise over \$12,000. That's why I stated that my course of action shall be that if this amendment were to pass, I would ask for a reconsideration of Section 17 and introduce an amendment which is on the desks of all the delegates calling for the deletion of \$12,000 in that section, and the insertion of "the sum of \$2,500," the present salary level.

DELEGATE SCHULZE: The final question will be then—

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: Thank you, Mr. Chairman. My final question would be then that your amendment

is structured in such a way that it does hold together and make sense only if we do reconsider Section 17 and change the vote on it.

DELEGATE GOEMANS: No.

DELEGATE SCHULZE: Is that not correct?

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: No, Mr. Chairman. No, it isn't. The concept as I stated in my initial statement—the principle behind my amendment is consistency, that we remain consistent for the concept of a commission form of salary increases and by consistency I mean that we let the commission establish the salary level. Now, then, if we have in fact raised the salary in Section 17 and we do not reconsider that, we are still being consistent in that the commission is able to begin its functioning immediately rather than being dependent upon the determination of this body as to what the salary level shall be for up to four to six years hence. In other words, if we stuck with the \$12,000 in the Constitution at this time, and my amendment passed, it would be possible thereby for the commission to meet and recommend the reduction of salaries or the increase of salaries, but consistently speaking we should leave it up to the commission to determine what the salary shall be as of the 1969 session of the legislature. That is my point.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak against the amendment. I think that Mr. Goemans' position has much merit. However, since we have attacked the problem the way that we did and have already adopted \$12,000 as the salary for legislators, I feel that the adoption of this amendment at this time would only serve to defeat the statement of this body made by its last vote.

I did not speak on the \$12,000 pay increase but I did vote in favor of it. And from the vote taken on that particular amendment I would suggest this body feels strongly that that provision should be in the Constitution as indicated. I would therefore suggest that we follow the committee proposal as laid out in Section 10 without the amendment, despite the obvious merit of the amendment in order to continue in the attitude that the Convention has adopted to this point.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I'd like to speak in favor of the amendment. I, too, agree with just about everybody here that \$12,000 is a fair salary figure if not lower than what it should be for the members of the legislature considering the work involved and the positions involved. However, in order to insure, definitely insure, that the legislative members in 1969 and 1970 will get a pay increase, I think the amendment is the best insurance we've got because as Section 10 is written, if Section 17 is voted down by the people of this State and Section 10 is voted in,

your commission will make the recommendation but it cannot take effect, it cannot take effect during the term of office in which enacted, which means there will be at least a two-year delay.

We have heard Delegate Schulze point out very ably that this blue-ribbon panel had recommended a minimum of \$12,000 up to a maximum of a sum of \$20,000. There is no question in my mind, Mr. Chairman, that the governor of this State will pick as good or better a panel that made this study. There is no question in my mind that this panel will recommend at least a minimum of \$12,000 per year for legislative members. Knowing that, all of us I think were all agreed on that, wouldn't it be good common sense, (1) not to put something in the Constitution which may cause a certain number of people in the referendum to vote against it; (2) that if Section 10 is indeed passed, and I think it would be as it is written, with 17 out we have to wait two years. Now, the amendment that Delegate Goemans has introduced, I think, gives insurance to the members of the 1969 legislative body that their pay raise will probably be at least \$12,000. And for those reasons, Mr. Chairman, I support the amendment.

DELEGATE LARSON: Mr. Chairman.

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze, do you rise to ask a question?

DELEGATE SCHULZE: I do not. I rise to speak, Mr. Chairman.

CHAIRMAN: Delegate Larson is recognized.

DELEGATE LARSON: Mr. Chairman, I was just going to call for a short recess but I will be happy to yield to the delegate from the 8th District.

CHAIRMAN: Delegate Schulze, before we go into recess, would you care to make a statement?

DELEGATE SCHULZE: Mr. Chairman, I rise to speak in very brief opposition to this amendment.

Delegate Fasi quite properly addressed himself to the argument he should have when he talked against the committee proposal. The argument was that we should not increase the salary, rather we should wait for a commission to do so. That position was taken and it was soundly defeated. Mr. Chairman, this amendment does nothing more than raise precisely that same issue all over again and Mr. Fasi quite properly repeated his words again, talking in favor of this issue. I think that the proposal should be flatly defeated. It's already been defeated once.

DELEGATE GOEMANS: Point of privilege, Mr. Chairman.

CHAIRMAN: State your point of privilege, delegate.

DELEGATE GOEMANS: We are not voting on concepts here. We are voting on amendments to proposals and this is an amendment to a specific proposal, Section 10 which is not an amendment to Section 17.

CHAIRMAN: That is correct.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: I just want to make a small point, Mr. Chairman. In regards to the delegate from the 15th District's mathematics or the lack of a pay raise for the next two years of the legislature, I think his fear is unfounded because if the proposal is submitted to the people and Section 17 is defeated by the people and Section 10 is still left intact, even though and I am hoping that the rest of the article will be accepted by the people because I think that they are all good amendments to the Constitution, I think that the per diem aspect which is now in our statutes would still be in effect. And under the calendar basis that—as propounded by a previous speaker on one of the earlier sections pointed out, the legislature will be in active session almost six months out of the year. So when you add just about \$1,000 that the Oahu legislators will be getting in per diem per month while they are in session in addition to the \$2,500, you will find that in effect that \$12,000 is not such a big pay raise anyway. So I see no fear in the point that was raised by the delegate from the 15th District, that this would be such a drastic change that the intent of the Convention would be subverted.

CHAIRMAN: Thank you. Are you ready—

DELEGATE DYER: Mr. Chairman, I think—

CHAIRMAN: Delegate Dyer is recognized.

DELEGATE DYER: —the last speaker, if I read this correctly, was not quite right because if 17 fails and 10 is adopted, 10 provides for allowances reasonably related to expenses, so that your per diem's going to drop automatically. So that I think the conclusion that you reached was not correct.

CHAIRMAN: Delegate O'Connor, do you wish to speak?

DELEGATE O'CONNOR: Mr. Chairman, in brief rebuttal to the last two points raised, I would point out that if 10 is adopted in its present wording, the governor can, before June 1, 1971, if this Section 10 is passed, namely he can at the beginning of next year appoint a commission, and that commission can report to the next legislature and that next legislature may do exactly as Delegate Fasi suggests and follow mayhap the intent expressed in the committee report and in the Committee of the Whole report of this body. So I would suggest that even if 17 does fail, 10 still in its present wording carries out the intent of this body and can be utilized in the next session of our legislature.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: Just for the record, since I voted against Section 17, the only way I can get in the record without a roll call vote—Section 17 provides for a \$12,000 raise.

Do I understand correctly that Committee Proposal No. 7 if adopted as presented by the committee would go on the ballot as a single item or is there a possibility that Committee Proposal No. 7, if adopted, as proposed by the committee would still be broken up into separate parts?

CHAIRMAN: It is the Chair's understanding that the Committee on Submission and Information can break any of these provisions up.

DELEGATE YOSHINAGA: Because it may be possible in our ignorance, which is quite prevalent here, including myself specifically, that we may submit this as a single item and it may go down and all the arguments that we are given here about this legislative salary commission, and so forth, may have been of no avail; and all that great vote on \$12,000 on Section 17 may have been a useless act that we committed here. So then your understanding is that the Committee on Submission has the right to break up anything that comes to it.

CHAIRMAN: It would probably be inappropriate for the Chair to make a decision by himself on this. I think it would be up to the body as a whole to make a final determination as to whether a section can be broken up or not, so I'd have to leave it to the delegate's good judgment as to whether he felt this would be appropriate.

DELEGATE YOSHINAGA: Well, I just want to raise that point so that after the session when we find out we did something for nothing we'll all be very happy.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: I choose to rise and propose that we end further debate after saying a few words, unless anybody else—

CHAIRMAN: Delegate, I did not hear what you just said. Could you speak into the mike?

DELEGATE GOEMANS: I propose to close debate on this matter after the conclusion of a few words unless anybody chooses to speak before me.

CHAIRMAN: Nobody—Delegate O'Connor has risen.

DELEGATE O'CONNOR: Just to point out one other flaw in the amendment, Mr. Chairman. If December 1, 1968 were substituted in the proposed

Section 10, it would be almost impossible from the timing of the election to December 1, 1968 for such a commission to be appointed because you are dealing in a period of about three weeks, and I would suggest that since the wording in Section 10 is "on or before" that such a date, December 1, 1968 would be unduly restrictive.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: I will answer that. First of all, although we've made a determination regarding proper salary level in considerably less than a month, I don't think there's too much difficulty in forming a body—

CHAIRMAN: Delegate, some of the other delegates are having trouble hearing you.

DELEGATE GOEMANS: All right. I don't think there will be particular difficulties in that area of forming a committee that can make a determination within a short period of time. There is no requirement that that committee make its recommendation to the legislature before the beginning and the opening of the legislature but merely that it make recommendation to the legislature would be a hope that they do it sooner rather than later. But in any case, any action taken by the legislature on the recommendations of the committee would be effective as to that year and that session of the legislature.

Now, then, in speaking to the point raised by Delegate Yoshinaga, which I think is a very germane point, I said that I felt that it was a mistake to introduce two issues for determination by the voters because of the confusion that could result. Now the effect of—depending on how the Committee on Submission and Information determines that this section should be handled, this article of the Constitution should be handled, in case they determine that Section 10 and Section 17 be presented together, and because of confusion or for whatever reason they are voted down, we go back of course, no commission, no salary increase. If they are handled separately and the \$12,000 is voted down and the commission is voted up we have a salary level of \$2,500 for up to six years, which I think is not an altogether worthwhile approach, or effect. If on the other hand, the commission proposal is voted down, and the \$12,000 is voted up, we are stuck with the \$12,000. In any case, I think this is highly unlikely. I think that's the end of my remarks for this issue.

CHAIRMAN: Are you ready for the question? The motion before us appears on your yellow sheet numbered 9, is that Section 10 of Article III as it appears in Committee Proposal No. 7 is hereby amended by amending the second sentence to read as follows: "Any change in salary shall not apply to the legislature which enacted the same provided that the first determination of salary subsequent to the effective date of this Constitution shall be effective upon enactment."

Section 10 of Article III as it appears in Committee

Proposal 7 is hereby amended by deleting the date "June 1, 1971" in paragraph 2 and substituting "December 1, 1968" therefor. All those in favor of the amendment will signify by saying "aye." All those opposed signify by saying "nay." The amendment is lost.

We now have before us the main motion which would be to adopt Section 10 as it appears in Committee Proposal No. 7.

DELEGATE SCHULZE: Mr. Chairman.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: For the purpose of having it in the record I would like to have defined the words "legislature which enacted" in regard to the holdover senator who may be in two legislative sessions and to determine whether the four-year senator who is held over would have the salary go into effect immediately upon the next legislative session or not.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, may I be allowed to answer that question? The word "legislature" is properly defined in the Constitution; a holdover senator does not make a legislature.

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE DONALD CHING: If the delegate who made the inquiry would read the first complete paragraph on page 8, the last sentence thereof touches on this point completely.

CHAIRMAN: Page 8 of the committee proposal?

DELEGATE DONALD CHING: Right.

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, I am rising to close debate for the committee and if anyone else wants to speak, I would yield.

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: I would like to ask the chairman of the committee on legislation, Mr. Hung Wo Ching, whether paragraphs 1 and 2 are related under Section 10. What relation are they in separate concept?

CHAIRMAN: Delegate Hung Wo Ching.

DELEGATE HUNG WO CHING: Are you talking about Section 10?

DELEGATE KAGEYAMA: Yes.

DELEGATE HUNG WO CHING: They are two separate concepts. One is for allowances and the other, a commission.

DELEGATE KAGEYAMA: Are they related?

DELEGATE HUNG WO CHING: Well, this is under the same section, but—

DELEGATE KAGEYAMA: If not related, Mr. Chairman, we might agree on paragraph 1 and disagree on paragraph 2 as far as a commission to be established. I think that whether this subject matter is related under Section 10 is one of inquiry.

DELEGATE HUNG WO CHING: May I answer it this way? These were supposedly divided into two sections, and we're going to vote on one on allowances and then vote on the commission if you so wish.

DELEGATE KAGEYAMA: Beg your pardon?

CHAIRMAN: The Chair has no objection—

DELEGATE HUNG WO CHING: But usually it is for the whole thing.

DELEGATE KAGEYAMA: We vote on it separately?

DELEGATE HUNG WO CHING: No, for the whole of Section 10.

DELEGATE KAGEYAMA: That is the point I raise, Mr. Chairman. Because as far as paragraph 2, when it comes to creation of a commission, I disagree most heartily in creating this body of experts that sit in the government and advise the so-called elected officials of their responsibility and duty, and I think if the elected officials don't have the gumption to make a decision this relation of commission to advise this so-called expert commission to the elected official is one that I cannot agree on. I might agree with paragraph 1 of Section 10 and disagree on paragraph 2 of Section 10.

CHAIRMAN: Are you making a motion to divide the question, delegate?

DELEGATE KAGEYAMA: No, that is the position of the chairman. Whatever he recommends I'll accept, and on the basis of his recommendation I will make my individual decision.

CHAIRMAN: Thank you, delegate.

DELEGATE HUNG WO CHING: I have no objection to separating it.

CHAIRMAN: Delegate O'Connor was in the process of speaking.

DELEGATE O'CONNOR: Thank you, Mr. Chairman. I rise to speak in favor of Section 10 and I

did not speak, as I said before, when the debate ensued concerning the increase in the salary, but my vote in favor of that was tied into this Section 10 as proposed. I favor increases in salary for the legislature but I am concerned as a taxpayer of the evidence which has been adduced before this Convention concerning the very high cost per capita of our legislature, one of the highest costing legislatures in the country on a per capita basis. And I therefore rise to speak in favor of Section 10 and also would like to have in the record of this Convention a statement to the effect that we trust that the legislature will first of all take a good, hard look at per diem expenditures with this raise in salary as is indicated in the first section of Section 10. And that the cost of the legislature shall be such that the members of the legislature shall only receive such allowances as reasonably relate to expenses. I think that there has been a tendency in our legislature in the past to utilize operating funds to offset the low salary paid to the members. There have been many trips, many paid-for expenditures of the operating fund which I think were made to offset that low salary; and with the increase in salary, I would trust, Mr. Chairman and fellow delegates, that our legislature will in its wisdom in the future decrease expenditures to individual legislators as is the intent of Section 10 as I take it so as to justify our action earlier in raising salaries. Thank you.

CHAIRMAN: Are you ready for the question? Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, I rise to close the debate for the committee, and speak in favor of the proposal.

The commission program that we have devised is a part of a full program which the committee worked out. The committee's job is to review the Constitution and try to determine in what ways the legislative process can be improved. There are some, Mr. Chairman, even the members of the public and some here, who have the idea that the action in increasing the salaries payable to legislators is an act designed to benefit legislators. But they are quite mistaken in this. The basis of the committee's action was not that at all. The basis of the committee's action was to improve the legislative process.

Mr. Chairman, we have provided small amendments here and there that will affect the procedure of the legislature. We have tried to work out schemes that will improve the flow of work there, but the most important single thing in a legislature anywhere, particularly here, is the people. And that's what this provision is aimed at, Mr. Chairman. The present salary levels of the legislature are, as we all know, hopelessly out of date. They are hopelessly out of date because the legislature is the only body in this State which has the duty of establishing its own salary. The reason for that is obvious—it's just a problem in our design of government. Everybody else in the government has somebody above them, but when you get to the legislature you're at the top. You can't go any higher and there is nobody to set the salaries for the

legislature except us. The legislature has been quite reluctant to change salaries. One can look at this two ways. On the one hand, one can say that it's a very noble thing, that they are much more concerned with retaining an excellent public image than they are with lining their own pockets, and I think this is in large measure true. There's another way to look at it, Mr. Chairman, and that is that by their inaction they have created a situation in which only those people who are willing to make a very substantial, financial sacrifice will run for the legislature. Now, Mr. Chairman, the increase in salary that we've given is not for the legislator, it's for the taxpayer. And anyone who runs for the legislature when the salary is \$2,500 by definition is willing to work for \$2,500 before he starts. He has his own reasons. Perhaps he has an outside income, perhaps he is willing to starve. Whatever it is, he was willing to do that in the first place. And this, of course, is one of the other reasons why that salary level has never been increased. But the problem for the taxpayer, the problem for the citizen, the problem for the legislative process, Mr. Chairman, is that when this happens, when this sort of thing begins to take place as it has, then we begin to limit severely the number of people from whom we can choose to become legislators. Only that small segment of the population that's willing to starve or is able because of outside income to support himself, to support themselves, are able to run. And the vast proportion of the population full of able and competent people never even enter the primary and the people never even have a chance to vote for them.

My point is simply this, Mr. Chairman. The whole purpose of the commission is to make sure that legislative salaries never fall again to the ridiculous level at which they presently rest. And the purpose of that is to maintain a realistic and attractive salary level which will attract plenty of candidates, plenty of able people and some not so able, too, I suppose, from all walks of life. Because, Mr. Chairman, the only way that you can really improve the legislative process is to constantly improve the people in it; and the only way you can do that is to have plenty of good people to choose from. That's what this program is all about and I strongly urge its acceptance by all of us here.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I speak in favor of Section 10. It's very hot. I think all of the arguments have been heard on this section debating the previous amendment, I urge all of us to close the debate and let's get on with the vote.

CHAIRMAN: Thank you. Are you ready for the question?

DELEGATE GOEMANS: Can we compel the attendance of all the members that are in the hall?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: While we are doing that or not doing it, what is the question before the body now?

CHAIRMAN: The question before the body is the main motion to adopt Section 10 in its entirety as it appears in Committee Proposal No. 7.

DELEGATE YOSHINAGA: After we take Section 10, if it's adopted which I assume it's going to—

CHAIRMAN: After we've taken Section 10, we will return to Section 16 of Committee Proposal No. 7.

DELEGATE YOSHINAGA: And then Section 17 is finished, as I understand it.

CHAIRMAN: That is correct. You ready for the question?

DELEGATE YOSHINAGA: Mr. Chairman. Did Delegate Goemans get everybody here that's in the hall?

CHAIRMAN: The Chair has looked around and does not see anybody—

DELEGATE YOSHINAGA: I don't want anybody to miss anybody—

DELEGATE GOEMANS: As long as Delegate Fernandes is here I think we do have, Mr. Chairman.

CHAIRMAN: The Chair will hold up the vote while the remaining delegate returns to his seat.

DELEGATE FERNANDES: I was always here.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I don't want Delegate Fernandes to miss my lack of eloquence.

Now, if I understand correctly, the overwhelming sentiment of this body here is that \$12,000 per year salary for a legislator is reasonable. If I understand correctly here also, it is the intention of this body by their action on Section 17, and by the arguments on Section 10, that this should be effective upon the ratification of the constitutional amendment in 1968. If I understand correctly, Delegate Goemans had in effect, intended the same thing. His argument was not against the \$12,000 salary for legislators, but as to how it would be accomplished by this Constitutional Convention. And if I understood his amendment, Roman numeral III (9), which I voted for, which was soundly defeated, that provides for an amendment in Section 10. So that in the event that somehow Section 17 is defeated then the Goemans amendment would somehow make it possible to have the intention of the overwhelming majority of this body become effective. Now, if I understand correctly, if we adopt Section 10 as presented by the committee and somehow the proposal is defeated by the people of the State of Hawaii, then in effect we have accomplished nothing. I am a little confused and I do hope that something here,

that somehow if something passed the people and this Convention, that the intent of the overwhelming majority here will be accomplished. But because of the defeat of the Goemans amendment and because I think I understand the majority's intention better than they do, I intend to vote against Section 10.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: May I answer Delegate Yoshinaga?

CHAIRMAN: I am not sure it's a question, but you may answer him anyway.

DELEGATE O'CONNOR: Mr. Chairman, if Section 17 is defeated and Section 10 passes, the governor, between the passage of Section 10 by the people and the meeting of the legislature, may convene this commission and the commission may suggest to the legislature a salary which can be acted upon during the next legislative session. If Sections 10 and 17 are both defeated, the Constitution remains as it is presently, and I would suggest that the legislature then may act in its next session.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: Delegate O'Connor, number one, you by your vote wanted \$12,000 a year effective 1969. You cannot stand here—

CHAIRMAN: Delegate Yoshinaga, could you address your question to the Chair? Is this a statement or a question?

DELEGATE YOSHINAGA: This is a reply to his reply. You cannot argue that the governor "may" and encourage people to believe that he will in fact do what you say he will do. He may not appoint anybody until May 31, 1971.

Secondly, even if he does appoint a commission, and even if the commission takes action, the result won't be effective until after the next general session which is not consistent with your vote here.

If you want to repeat your reply, second reply and third reply which I forgot, I'd be glad to enlighten you on the whole procedure.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: I am concerned with this interchange of opinions. If Section 17 is defeated by the electorate and Section 10 is approved, there is nothing stopping the legislature from adopting a new salary schedule even without a commission. That is my interpretation of this section. In other words, they do not have to wait for the honorable governor to appoint the salary commission. They can start the first day of the next legislative session of 1969 and introduce a bill to raise their salaries. So I don't think anything would

be lost by the defeat of Section 17.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: I regret that Delegate Mizuha has not had some more time to review the history of the salary increases by the legislature of the State of Hawaii, or the Territory of Hawaii. If he can point out to me one instance where raises were granted, I shall shut up for the rest of the Convention.

Now, it's great to think what fine people there are down at the legislature, but there are people who are opposed to pay raises who are legislators and somehow people seem to assume that all people, all legislators are for pay raises. But it is my very frank opinion that there are legislators who are vigorously and violently opposed to pay raises so that the pay will remain low as it has been all through history. And so that the best talent available in Hawaii, who don't run merely because they cannot become financially secure or at least financially provide for their families, are prevented from seeking public office, especially the legislature.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: In response to the statement of the robust delegate from Kauai, I must say that the effect of the defeat of Section 17 by the voters would not be to allow the legislature to set salary levels for the 1969 session or for the 1970 session, because we would then have as applicable Section 17 of the original Constitution which reads, "Until otherwise provided by law in accordance with Section 10 of Article III..."; so that Section 10 of Article III as amended here, which would be in the new Constitution, the commission procedures would be followed and would become effective as the commission was appointed, and as the commission recommended, and as the legislature acted, in no case earlier than the session of 1971.

CHAIRMAN: Ready for the question? We are voting on the main motion for Section 10, Committee Proposal No. 7.

All those in favor, signify by saying "aye." All those opposed, "nay." The motion is carried.

The Chair will declare about a five-minute recess and then we will proceed to Section 16.

At 3:03 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:15 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

The Chair will now ask the committee to return to paragraph 1 of Section 16 of Committee Proposal No. 7 which we were discussing this morning when an amendment was being printed by Delegate Kauhane.

Delegate Kauhane, do you wish to make a motion? Delegate Kauhane is recognized.

DELEGATE KAUHANE: I was looking around first, Mr. Chairman, if all members are here because I need someone to second this. Mr. Chairman, the Amendment III (8) which reads:

"Section 16 of Article III as it appears in Committee Proposal No. 7 is hereby amended by deleting the words 'twenty-four' from the second sentence and substituting 'forty-eight' therefor"

has been printed and distributed and I am certain all members have a copy. I therefore move for the adoption of the amendment.

CHAIRMAN: Delegate Shiigi is recognized.

DELEGATE SHIIGI: Mr. Chairman, for the purpose of discussion I second the motion.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I'm happy to have someone in my class get up and second the motion for the purpose of discussion. Mr. Chairman, and member delegates, in offering the amendment, I am not trying to waste a lot of your time. But I feel that the amendment has some merit and should be given serious consideration by all of you. I'm talking about bills that require three readings. I'm for the principle of a bill having been reported out of the committee on third reading lay on the table for 24 hours. I am in full agreement of that, but beyond that agreement to lay it on the table for 24 hours, I am concerned with this factor—and those of you who have not served in the legislature should—I do hope you can lend me your ears and pay some strict attention to this procedure that I am about to illustrate for the reasons why I am offering this amendment.

As a compromise to all the objections that I would raise on the matter of third reading of bills, what I am about to say is familiar to all members that served in the legislature. In the first instance, a bill having been introduced by a sponsor, it is the practice on first reading that the bill be read by title, be ordered to print so it conforms with the first act of passing on first reading. Later, after the bill having been printed, lay before all of the legislators. Next, on second reading it would be referred to committee. The bill is still in its original form as when introduced. It has been the practice in the past and my experience in having served with the predominant legislature of one political party and then by another political party—it has been the practice that the chairman of a committee would report out the bill in its original form on the floor, requesting that the bill be voted upon with the recommendation that the bill pass second reading when no committee

meetings have been held, no amendments made to the bill and that the same bill be recommitted back to the same committee. The committee handling the action having been approved to pass the bill on second reading goes to the committee for its consideration and any amendments that they can make to the particular bill.

Now in the first instance, the bill complies with the rule that the bill having had to be read on three separate days, first and second reading. The most important thing comes to third reading of the bill. When the bill comes out of the committee, we send an elephant into the committee in the first instance. The committee reports the bill entirely new in concept, not the changing of one figure when appropriation of dollars are needed, but a whole complete change with the contents in which the bill was originally introduced may contain one page. That bill comes out either 14 or 10 pages, different than the original. The committee recommends that the bill pass third reading in its amended form. You may have intended to request consideration of the matter of the caring of elephants. This bill comes out with the caring of the elephants, dogs, pigeons and what not and then we are voting on third reading for the passage of a completely new bill. I dare ask whether this has passed the required procedures of the bill having passed three readings on three separate days.

In past practices where the committee has recommended that the bill, as amended, pass third reading in the amended form, I have experienced the practice where in voting for the adoption of the committee report with its recommendations, no one has the opportunity to amend the bill. Some of the legislators who have served in those sessions say to me, "Well, we had an opportunity." But once the recommendation to the committee has been adopted you had no opportunity. I am trying to prevent this type of thing from happening. I am trying to prevent any citizen from going into court to test the constitutionality of the legality of the passage of this bill on third reading in this disguised form.

I know that the learned representatives or senators, whatever the case may be, may come out with the famous terminology "notwithstanding"—"notwithstanding" the bill shall pass third reading. But then did the bill really pass third reading? Did the bill really pass and meet the criteria that the bill has been read in three different days? And because of this consultation that I had during—early in the recess amongst those that I have the highest esteem for on the knowledge of legislative proceedings, we entered into an agreement that extended—extended the 24-hour waiting period to 48 hours. There has been before the committee other jurisdiction which carries over to 72 hours. So they came up with a happy compromise of all to extend to 24. I asked one of the attorneys of the Constitutional Convention during the lunch hour recess whether or not this legally constituted passing the bill on three separate readings. There is a question, he says, that this legal question has never been raised yet. I am concerned about the future attempt of the possibility of the legal question being raised. Not necessarily by any

citizen, but it may be by one of the legislators, that in order to plug that loophole and to make sure that all of these actions undertaken by the legislature are legal and beyond any question of doubt have met the conditions under which those are to be considered, first, second and third reading.

Mr. Chairman, because of that reason and for your indulgence I thank you very much for permitting me the opportunity to seek out a compromise. As I said to you I have other areas to question the bill on the three readings from other jurisdictions. I have not as yet completed but I am willing to end the pursuit of further questioning on the procedure and ask that this delegation after I had consulted with the chairman of the committee on the agreement of the extension from 24 to 48-hour layover. This will take care of some of the problems that I am very much concerned with and I do hope as expressed by some of the legislators of their concern of this matter. Again, thank you very much for your kind courtesy, Mr. Chairman. I ask the members of this Convention to vote for the approval of this amendment.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I speak against the amendment. I think our experience in this session here in the Constitutional Convention of 1968 proves that some of the provisions that we have in the rules are archaic, are not workable. About the middle of the session we found some concern about the delaying tactics employed during the floor action here. In fact, it went so far as to change the rules to drop four days to two days. I think this kind of provision of 24 hours is adequate to any legislative operation. To increase this to 48 hours is going to be a little hindrance to legislative operations and to have something in the Constitution which is very inflexible is going to work at a disadvantage to the legislators. For these reasons, Mr. Chairman, I ask for a "no" vote.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, I, too, rise to speak against the amendment. First of all, I would like to point out that the practice that the proponent of this amendment speaks of has not prevailed in the legislature—well, I can safely say since the coming of statehood. And secondly, that—

DELEGATE KAUHANE: Mr. Chairman, I rise on a point of order.

CHAIRMAN: State your point of order, delegate.

DELEGATE KAUHANE: —and I know that in some area, unwillingly and unintentionally, this continued practice is still going on.

DELEGATE DONALD CHING: May I have a ruling on the point of order so I might continue with my discussion of the subject. If he wants to rebut he can

rebut.

CHAIRMAN: You may proceed.

DELEGATE DONALD CHING: Mr. Chairman, I would like to reiterate again that in my experience, I would like to state that the practice that has been mentioned here has not prevailed in the legislature since the advent of Statehood. And secondly, that this amendment, even if this practice were prevailing in the legislature at the present time, the amendment that is suggested here would not cure that practice.

CHAIRMAN: Are you ready for the question?

The motion before us appears on the yellow sheet of paper designated Number III (8). The motion is to amend Section 16 of Article III of Committee Proposal No. 7, the first paragraph by deleting the word "twenty-four" from the second sentence and substituting "forty-eight" therefor.

DELEGATE KAGEYAMA: Mr. Chairman, I would like to raise one question before you put the question to a vote.

CHAIRMAN: State your question.

DELEGATE KAGEYAMA: The question before the house is to amend the "twenty-four" to "forty-eight." What the point of question here is at what stage this twenty-four hours take place or forty-eight hours, as amended, before the bill becomes law whether it's—let's say the bill originates in the house, passes three readings, goes to the senate and passes as you might say, the fifth reading of the total of the six. At that stage, would that "twenty-four" hours apply, or before the house acts on the final reading and go before the senate or vice versa?

CHAIRMAN: Delegate Donald Ching.

DELEGATE DONALD CHING: Mr. Chairman, if I might try to clarify the point. And I think in the discussion earlier this morning, it was already pointed out that the 24-hour provision or the 48-hour provision would take place before the final reading in either of the two houses, whatever the final reading is. This might be on third reading in the case of a bill which in the house in which it originates or if it comes back amended, this would be on the final reading after it's come back from the second house amended. So I think this was already discussed in the discussion this morning and it is also very well discussed in the committee report. I think the examples are very clear and very self-explanatory.

DELEGATE KAGEYAMA: If that's what it is, Mr. Chairman, I couldn't understand the committee report probably in my study of that wording by the committee is far beyond my education.

CHAIRMAN: Are you ready for the question? All those in favor signify by saying "aye"; all those who are opposed, signify by saying "nay." The noes have it.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: On the section before the body, Mr. Chairman, I pose a question and you can direct the question to the chairman, that the reading of a bill by title conforms with the bill having been read on third reading.

CHAIRMAN: Delegate, are you referring to the first or second paragraph of Section 16?

DELEGATE KAUHANE: On the section before the body, Mr. Chairman, I pose a question and you can direct the question to the chairman, that the reading of a bill by title conforms with the bill having been read on third reading.

CHAIRMAN: Delegate, are you referring to the first or second paragraph of Section 16?

DELEGATE KAUHANE: I started out this morning on the first, on the matter on which the bills to be reported out. Then in the interim, during the recess, Mr. Chairman, through your direction and my meeting with you personally, I arrived at the media in which no further questions can be submitted by me that I asked if we can get into some agreement and which agreement was entered into so that the chairman of the committee asked that I go into—that he was willing to accept the change from "twenty-four" to "forty-eight." I went along with this agreement. Now that the agreement has been voted down, I'm back to the first paragraph of Section 16 where we originally started from.

CHAIRMAN: At this point, that is correct. At this point, we have a motion before us to vote for Section 16, the first paragraph as presented in Committee Proposal No. 7. Are you ready for the question? All those—

DELEGATE KAUHANE: Is this the time, Mr. Chairman, that I can ask a question?

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, my question to you which will be directed to the chairman of the committee or any expert that the committee chairman may have to answer—does the reading of a bill by title after it has come out from the committee recommending passage on third reading, does this constitute that the bill has had three readings?

DELEGATE HUNG WO CHING: Mr. Chairman, I yield to Delegate Miyake.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, it has been the procedure in the legislature that the motion for the passage on third reading includes the words "bill having been read throughout pass third reading." Now the words, or the phrase "having been read throughout" is

used since we have now the modern technique of photostating our bills unlike in the past when we did not have the time to have the bills retyped and copies made for every member of the house or the senate. Because of modern technical machinery, each bill on final reading, on third reading is on the desk of each legislator. Therefore, we go through the form of using the words "the bill having been read throughout pass third reading" or "pass final reading." And according to the interpretation by the Attorney General in the past, the inclusion of these words, "having been read throughout" is sufficient to meet the requirement of having the bill read.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, this is what I started to say in the support of the amendment that I offered. The famous terminology "notwithstanding" or the famous usage of the words "the bill having been read throughout"; it's documented. The bill having been read throughout passes third reading and yet the bill having been read throughout at the command, having been read throughout pass third reading is not the bill that was originally introduced and then came back on the floor on second reading, on second reading and asked that it be recommitted to the committee having been voted upon on passage on second reading. These are the type of bills that I am trying to prevent so that these bills will be legal when it's amended, whether it is in its entirety. I am concerned about the bills so that the words—

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka is recognized.

DELEGATE UEOKA: Point of order.

CHAIRMAN: State your point of order.

DELEGATE UEOKA: I believe that the committee has reported our stating that there shall be three readings, and I don't believe that it's for this body at this time to determine as to how the legislature will comply with the mandates of the Constitution, assuming that it's adopted. I think it's clear that it calls for three readings. And I don't think we should at this point argue about what the legislature will do.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane, are you speaking for or against the amendment or merely raising questions?

DELEGATE KAUHANE: I am raising questions. I recognize the practice. I recognize that the practice is an erroneous one. I recognize that because it is erroneous, it is illegal to begin with—

CHAIRMAN: Delegate, would you—

DELEGATE KAUHANE: —that should we continue to have an illegal practice or should we have a

constitutional provision to protect this.

CHAIRMAN: Would you phrase this in a question if you wish to raise a question to one of the committee members?

DELEGATE KAUHANE: I have already raised the question.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: May I attempt to add to the answer given to Delegate Kauhane here?

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: In actuality, from my experience, whenever even a very small minority demands a reading of a bill on third reading throughout, it is read word for word, comma, every period in the bill. And therefore, there is an actual and real protection and a safeguard.

DELEGATE KAUHANE: That still doesn't answer—

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: —the way the bill has gone through the procedure, Mr. Chairman. After the bill has come out in a disguised form from the original intent and purposes that this bill has met the requirements of the amended bill in the disguised form has passed three readings from three separate days. There is a legal question, I think, involved in here, but I am willing to accept the practices today that have been continuing as the format. Lo and behold, that in the event this is questioned later, I can safely say that I had an opportunity to provide the loophole through a constitutional provision as provided before by other jurisdiction that face the same kind of problem that I am raising. But if the learned members of this delegation—

CHAIRMAN: Delegate—

DELEGATE KAUHANE: —those who have served are willing to accept the practices, I am willing to go along.

CHAIRMAN: Are you ready for the question? The motion before us is the adoption of the first paragraph of Section 16, Committee Proposal No. 7; and all those in favor signify by saying "aye." All those that oppose by saying "nay." The motion is carried.

Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I move for the adoption of the second paragraph of Section 16 relating to the carry-over of bills.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, just a very brief remark on this issue. The carry-over of bills would permit those measures introduced in regular session held in odd-numbered years but neither rejected nor adopted at such session to have life through the following regular session until finally acted upon. Such bills can only be carried over one year in the same biannual legislature. This provision is intended to improve the legislature's efficiency process. Under present procedures a large portion of bills introduced which fail to become law are re-introduced during the following session. The unnecessary duplication in expenses in terms of time, effort and the printing both to the legislators and to the public, are incalculable. This provision would also minimize buck-passing between the two houses. It would discourage one house from passing the bill for political expediency with the hope that the second house will kill the measure. To prevent any of these when measures are carried over, adequate safeguard is made through the proviso that a carry-over bill shall receive at least one reading in the house in which the bill originated.

DELEGATE KAUHANE: Mr. Chairman, can I ask a question?

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: I would like to ask the chairman of the committee a question.

CHAIRMAN: Would you state your question to the Chair.

DELEGATE KAUHANE: When he talks about carry-over bills, will he give me some illustrations as to what he means by carry-over bills? And I want to divide my question in two parts. Whether he has reference to all bills that have not been acted upon by both houses, or whether he has reference to bills that have been acted upon by either house and are still in the position of either house and no action has been taken.

DELEGATE HUNG WO CHING: I yield to Delegate Doi.

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, may I attempt to answer the question by speaking broadly on what the carry-over provision does.

I think if we turn to page 8 of the committee report wherein that it defines the term "legislature" to mean the state legislature which exists from the date of one general election to the date of the next general election, I think that's a good point to start.

A general election, Mr. Chairman, occurs in even-numbered years as in 1968. Normally, those elected at that election will begin to serve in the first session—

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of order.

CHAIRMAN: State your point of order.

DELEGATE KAUHANE: My question was, what is meant by carry-over bills.

DELEGATE DOI: Mr. Chairman.

DELEGATE KAUHANE: Whether I divided my question in two parts. Everybody understands the division of my question in two parts. I need an answer on the two parts of the question rather than a Gettysburg Address of what has happened earlier.

DELEGATE KAMAKA: Mr. Chairman.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, may I have the benefit of listening to the delegate from Hawaii? I am very much interested in his answer.

CHAIRMAN: The Chair was about to rule that the delegate was in order and that he was proceeding to answer the question.

DELEGATE DOI: You see, Mr. Chairman, I am a politician and I am long-winded, and it takes me a little while to get to the point, Delegate Kauhane.

Normally, the first session in which the elected representative serves would be in the odd-numbered year, and that would be, if applied to this year, 1969. The member elected to the house of representatives serves for a two-year period and that would describe the length and the extent of his term. He would therefore serve in the odd-numbered year in one regular session and in the next even-numbered year in another regular session. Now, the carry-over provision applies to only those two sessions and it begins in the odd-numbered year. All those, and we are only talking about bills, we are not talking about business or resolutions, all bills introduced in the odd-numbered year and not finally passed will be carried over in the regular even-numbered year session. At that time, in the even regular session, the bills would retain the same status that we found them at the end of the odd-numbered regular session just completed the year before.

Allow me now to talk about examples. You have two examples in the committee report. Allow me to give you one, a very simple one to begin with. Suppose Bill No. 1 had passed two readings in the odd-numbered year in the senate and no readings in the house, when we get into the next session, the even-numbered regular session, the bill would find itself ready to be considered for third reading in the senate. Now, should the senate act and pass the bill on third reading in the even-numbered regular session, then the bill moves over

to the house and has to pass three more readings before it can become law, assuming there are no amendments.

Let's take another example. Suppose a bill introduced in the senate passes in the odd-numbered year, three readings in the senate and then moves over to the house and then passes two more readings in the house, and then the odd-numbered regular session ends. When the even-numbered regular session begins, that bill has already—will be given the status of having had passage of three readings in the senate and two readings in the house. Therefore, to pass the bill on final reading, it would require one more passage on third reading in the house, and then as a safeguard, if you read this particular paragraph, it requires that that bill, although it has already passed three readings in the senate, would have to move back to the senate and would require another passage, another reading before it can be considered as having passed finally in both houses. We think this would provide the safeguard.

I want to, Mr. Chairman, further comment on this particular provision, by saying that today in the nation, we find six states: Georgia, Michigan, Kansas, Alaska, Rhode Island, South Carolina, and, of course, the federal government, practicing the carry-over provision concept. I want to say also here that "the Council of State Governments recommends this type of provision especially where annual sessions . . ." and I am reading from their publication, "... are held unrestricted as the subject matter." It goes on to say, "Consideration should be given to a system of carrying over bills on calendar from the first to subsequent sessions of the same legislature." You have heard of the benefits. Many states today are about to adopt this particular provision, but I do want to also read from the blue-ribbon committee headed by Mr. Hamilton, on page 11, Mr. Chairman, I would like to read a paragraph from the report which recommends the carry-over provision for our legislature.

CHAIRMAN: Proceed.

DELEGATE DOI: It says here, "Provision for a carry-over of legislative business reduces the constraining effects created by limited sessions and out to decrease the number of bills introduced each session. The legislative progress made on a measure in one session can thus be conserved. Finally, the money and time spent in reprinting and acting upon the same bills over and over again may be largely eliminated."

Additionally, I want to add, Mr. Chairman, that I believe that this gives greater visibility to the public. Further, the legislature on controversial measures on bills that are very bulky and include many, many pages, could program the passage of this bill over a period of perhaps two sessions so that the public would have a chance to look at what might be at the end of the odd-numbered regular session close to final, don't you see. And then the public could come in and express themselves on the bill. I think overall it makes for a better legislative process. I think I have said everything I want to. I urge the adoption of the paragraph and I hope we have answered Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman.

DELEGATE USHIJIMA: Mr. Chairman.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE MIYAKE: Mr. Chairman, may I be allowed to answer the question raised by Delegate Kauhane and add—

DELEGATE KAUHANE: I am satisfied with the answers given so far and I'd like to pursue with a question to—

CHAIRMAN: Delegate Kauhane, if Delegate Miyake is offering to give you a further answer—

DELEGATE MIYAKE: There may be some question in the minds of other delegates of what is a holdover bill.

CHAIRMAN: Delegate Miyake, proceed.

DELEGATE MIYAKE: A holdover bill; and I would like to go back a little and reiterate some of the remarks that Delegate Doi has made regarding legislature.

Since statehood, we have completed four legislatures. In 1969 and 1970, we will be involved in the Fifth State Legislature. So in the year 1969, when a bill is introduced in either house, and that bill regardless of the way it is located—whether it is located in the house of origin or it's in the second house—if the bill is not filed in the year 1969 session by a committee report voted upon by that respective house by majority vote, then that bill is still dormant and alive and lays over to the next year in 1970. So that any bill as long as it is not filed by either house by a vote of the majority is alive and dormant and lays over to the next session.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I think the learned and more experienced legislator from the house has brought up the answer to the question that I was about to pose.

CHAIRMAN: Thank you.

DELEGATE PORTEUS: Mr. Chairman.

DELEGATE USHIJIMA: Mr. Chairman.

DELEGATE PORTEUS: Mr. Chairman.

CHAIRMAN: Delegate Ushijima is recognized.

DELEGATE USHIJIMA: I would like to have a point clarified. It is my understanding then that at the end of the odd-numbered year, in a legislative session, at the end of the session, the committee chairman would have the discretion to file bills. Is that correct?

My understanding is, talking to the delegate from the Island of Hawaii, that all bills that have been introduced in an odd-numbered year would stay alive and be filed at the end of the even-numbered year. Now, what is the correct interpretation of the committee?

CHAIRMAN: Delegate Miyake is recognized. Delegate Doi?

DELEGATE DOI: Mr. Chairman, I'd like to answer that. I say Delegate Miyake is wrong. To begin with, it's stupid to do that. Why should the session in the odd-numbered year—

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of order—

DELEGATE DOI: Mr. Chairman—

DELEGATE KAUHANE: I believe the remarks calling another delegate of this body—

CHAIRMAN: Delegate—

DELEGATE KAUHANE: —the name that was given is out of—

CHAIRMAN: The Chair will request that we not become personal in this discussion.

DELEGATE DOI: Mr. Chairman, I apologize for the word but the remark was directed to the thought expressed. There was nothing personal in my statement. To begin with, the older bills introduced in the odd-numbered regular session will be moving over to the even-numbered regular session and there will be a lot of wasted effort if one legislator out of the seventy-six in the even-numbered year should decide to reintroduce a bill because it was filed by some chairman in the odd-numbered year just before, in the preceding session. And therefore, I think it would be grossly unwise, and let me use the word "unwise" instead of the other term, to file the bill. There is nothing to be gained by that, Mr. Chairman. It is my position that all bills retain the same status in the even-numbered second regular session that they held in the prior odd-numbered regular session.

CHAIRMAN: The Chair will declare a three-minute recess.

At 3:52 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:02 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, I will attempt to answer the question of what happens to a bill that is filed in the first odd-numbered regular session.

That bill will move over to the even-numbered

regular session as a filed bill. In other words, it would retain the same status it had in the early odd-numbered regular session.

DELEGATE LUM: Mr. Chairman.—

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Then a bill that has been defeated would move over to the next session as a defeated bill also. Am I correct?

CHAIRMAN: Delegate Doi?

DELEGATE DOI: Yes, Mr. Chairman, and I trust and place confidence in the good judgment of the legislators that if upon review they find that it has merit, they would resort to some parliamentary procedure to revive it.

DELEGATE LUM: Mr. Chairman, one more question.

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Then all bills that have been deferred to the end of the calendar on the last day would then be deferred to the first day of the following session?

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, I believe so.

CHAIRMAN: Delegate Kamaka is recognized.

DELEGATE KAMAKA: Mr. Chairman, I would like to have this point clarified. It is my observation that a bill that has been defeated would no longer fall in the classification of a bill pending. Therefore, if the—

DELEGATE YOSHINAGA: Mr. Chairman, I cannot hear—

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: —the delegate. Delegate Mizuha is talking too loud around here.

CHAIRMAN: Proceed, Delegate Kamaka.

DELEGATE KAMAKA: Therefore, it seems to me if the concept engendered in the bill which has been defeated is to be reintroduced in the subsequent session, that it can be done but it doesn't necessarily carry over having been defeated. If once having been defeated, that's it.

CHAIRMAN: Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: I have a question, please, Mr. Chairman. Suppose that a bill did pass three readings in one house and was pending in the second house at the time that the regular session adjourned. Then at the next session, as I understand it, it could

pass in that house but would have to go back to the originating house and would have to pass one reading in that house.

Now, my question is, suppose that it was brought up to vote in that house but was voted down, would that be similar to a disagreement so that it went into conference or would that bill simply die then and there?

DELEGATE DOI: The bill, Mr. Chairman—

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: The bill, Mr. Chairman, dies unless it's reconsidered. The situation is the same as it will be under the provisions of the Constitution as we find it today. They can be answered the same way.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I am somewhat confused by this definition, and I think that the present wording of the proposal if this definition is adopted will lead to chaos, and will lead to every bill which has been filed in the first session to being reintroduced or reopened by its proponent for a reading in the house in which the bill originated in the second session. Because the final portion of this paragraph says, "... at the latter session, shall pass at least one reading in the house in which the bill originated." And I would suggest that for the purposes of the Committee of the Whole we not adopt this interpretation of these words.

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, all this means is that in a situation which is normal, a bill would be required to pass three readings in one house and then another three readings in the other house. But just in case under this carry-over provision, a bill already passed three readings and gone over to the second house in the next session, for purposes of allowing the house where the bill first passed three readings to recheck the bill again, we require another reading in the house in which it originated. So this one reading requirement is actually imposing a four-reading requirement in the house in which it originally passed. This is a safeguard.

DELEGATE DONALD CHING: Mr. Chairman, point of information.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, I'd like to pose a question to the delegate from Hawaii.

CHAIRMAN: State your question to the Chair.

DELEGATE DONALD CHING: Is not the effect of the second paragraph of the proposed Section 16 to make the two sessions of the legislature in the—first in the odd-numbered year and the even-numbered year in effect one continuous session with a recheck in between of one day, six months as the case may be, except in

the case of a bill which is already gone over to the second house, in that case when it passed in the second house in the second session it must come back to the original house.

CHAIRMAN: Delegate Ushijima is recognized.

DELEGATE USHIJIMA: I have one more question. Now, as I understand it, in an odd-numbered year, assuming that in the senate the senate should pass a bill on three readings and it goes over to the house and the session adjourns in the odd-numbered year. As I understand it, as we come back to the even-numbered year, the house is able to pass upon three readings the bill that already had passed the senate the prior year on three readings. Is that correct?

Now, assuming that the house does make an amendment to the senate bill, as I understand it, it has to come back to the senate again for passage. Now the senate will either reject the amendment or not. Now, if we do reject the amendment, then for all practical purposes, do I understand it that the bill is dead, or do we have a recourse into conference because in our concept right now, whenever there is a senate bill that goes over to the house, comes back in an amended form, then, of course, we decide as to whether we will ask for a conference in this matter. Now, where do we stand in this matter of conference? Can we ask for a conference?

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: So the bill comes back from the house after three readings to the senate which is the house of origin and these provisions require that the senate pass it one more time, which is the fourth time. So the senate instead of passing it in the form in which the house last passed it and turned it over to the senate, amends it; now if this is what we mean by rejection, if it amends it and passed it, then we have the same situation as we have today. It goes back to the house and they would disagree or agree with it and then we get into conference. But if the senate, instead of passing it, kills the bill, then you have no way of reviving it. It's dead in one house.

DELEGATE MIZUHA: Mr. Chairman.

DELEGATE USHIJIMA: In other words, the only way back to a conference would be to amend it in the senate and send it back, is that it?

DELEGATE DOI: As it is today, yes.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: I'd like, if I may, to ask a question of Brother Doi here, since he is doing all the explaining.

CHAIRMAN: Address your question to the Chair.

DELEGATE MIZUHA: Isn't it the practice of the Congress of the United States to have a set of rules and regulations on this matter?

CHAIRMAN: Delegate Doi, would you care to answer the question?

DELEGATE DOI: Mr. Chairman, to begin with, number one, the practice in the Congress might be a little different because they are in session all year. But I think analogy can be drawn, I think the question is a fair one. I tried to get my staff to do some research to find what might be the procedural practices in the Congress and I have not been able to do so beginning the other day. Now, I am not sure whether the chairman of the committee, Mr. Ching, is aware of these special rules in this particular area.

DELEGATE MIZUHA: The reason for my question is this—

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: Mr. Chairman, if the Congress has adopted a set of rules and the other jurisdictions have incorporated this system into their legislatures, perhaps this might be a purely legislative matter for the legislature to adopt rules on same. On the other hand, it seems to me that if it isn't purely a legislative matter for the legislature to adopt rules regarding the status of bills that are carried over to the following year, of this legislative session, and if we are going into a discussion of every possible predicament that the bill that is introduced in the even-numbered or odd-numbered year, I think we can stay here for a long, long time, and perhaps the delegate from Hawaii may say as a matter for the guidance to the legislature and to the courts which may have to interpret some of these matters, that it is the sense of this Committee of the Whole that as far as practicable, the rules adopted or the practices adopted by the Congress of the United States would be applicable with our state legislature in case this section is adopted.

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, it would be grossly wrong for me to say that without knowing what the Congressional rules are, and so I would not say it, but I do want to buy half of the recommendation of the delegate from Kauai and say that much of the details here can be implemented by the senate and house rules, and maybe even by legislation.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: First, to the committee chairman, my apology. The reason why I am apologizing is that I am going to ask the Convention delegates to vote this section down. When we worked this in the committee, I thought clearly I understood what the intent was. After listening to all the delegates' views, I am really not in a manner of confusion but feel that

this section, the way it is written today as proposed before us will not carry out the intent which we thought it would. I repeat, any bill pending at final adjournment, questions have been raised here, what bills are pending: ones that pass the house and fail to pass the senate; ones that were not filed by any committee. It leaves a cloud of dust in this area.

The legislature has its rules which state that all bills that are left in the committee are supposed to have a committee report to file. For the last few years, I haven't filed any bills because at adjournment I didn't have any time to work on it so therefore, everything that was left in my committee room was filed. All the appropriation bills are left in the Ways and Means and Finance Committee by action is filed. Now, the question comes, what if the chairman does not bring a committee report up and does not file all these bills, then are these bills still pending? But I think the intent that was really wanted was that bills that were brought up and considered and had merit but passed one house and were referred to the other house and for some reason or other these bills could not be passed, that these bills would be carried on to the next session. But the language here does not, in my mind, clear this up. So, Mr. Chairman, and chairman of the committee, as one of your members, I am going to vote "no."

DELEGATE KAWASAKI: Mr. Chairman.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge had requested the floor first.

DELEGATE DODGE: I am speaking in favor of the proposal and I think everybody might be getting a little mixed up on the reference from one session to another session. If you would think of it as going home on Friday and coming back on Monday, then you haven't got any problem. All this does is say go home one year and come back the next year.

I would like to clarify a point raised by Delegate Ushijima a moment ago and responded to by Delegate Doi. I am not aware of any process by which a bill that has been amended in the other house is "rejected" by the originating house. The procedure is for the house having amended the other house's bill to return it to the originating house, the motion in the originating house is then that we, the senate, agree or disagree with the amendments made to so-and-so by the house. If the motion is to agree and it carries, that has the effect of passing the bill on final reading. If the motion is to disagree and it carries, the senate then informs the house that it has disagreed with the amendments made to bill so-and-so by the house, and requests normally a conference committee. The conference committee may or may not be appointed by either house. The conference committee may or may not agree on a conference committee report. The houses, if the conference committee does agree and recommends a conference committee draft to either house, either house may reject, may fail to accept the conference committee report. So that is the only way, really, the failure of a

conference committee to agree, the failure of a conference committee to be appointed, or the failure to accept the conference committee report are the three ways in which a bill is rejected.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki is recognized.

DELEGATE KAWASAKI: Mr. Chairman, contrary to the opinion expressed by the delegate from Kauai, I rise to speak in favor of this body adopting this recommendation and proposal.

Some of the questions asked by the members of this body regarding the finer points and the finer interpretation of the intent of the bill, I think, are perfectly understandable and I think some of the explanations given are very rational, very reasonable. I think this is one of the major pieces of reform that has come out of any committee in this Convention. I think it helps to bring about the much needed reform and economy in our legislative processes. I think if the legislature either, before they convene in adopting the rules of each respective house, wants to get into the dialogue that took place here at this Convention today, they can always make available to themselves a transcript of today's discussion and I think they can arrive at some reasonable consensus as to what was intended and what would be reasonable for a very efficient means of going through the legislative process. I think the discussion that took place is very valuable but I'd hate to have wasted the committee's efforts and the discussion that took place today to kill what I consider to be one of the major recommendations for improvement in our legislative processes.

I urge very strongly that this body adopt this proposal.

CHAIRMAN: Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, after listening to the debate I feel that possibly it would be better if this paragraph stated that pursuant to the rules of the senate and the house, a bill introduced at a regular session in an odd-numbered year may carry over and then a requirement that the rule shall require that at the latter session there be at least one reading in the originating house.

I'd like to ask for a short recess to attempt to perfect such an amendment or to ascertain, on the other hand, that it's not acceptable.

CHAIRMAN: We'll take a short recess.

At 4:20 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:31 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

Delegate Rhoda Lewis, do you wish to be recognized?

DELEGATE RHODA LEWIS: Mr. Chairman, the result of my conference from the recess is that apparently this suggestion would not produce fruit and I am not pursuing it at this time.

CHAIRMAN: Are you ready for the question?

DELEGATE LUM: Mr. Chairman, I rise to speak—

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: I rise to speak against this particular amendment.

I am very, very afraid of what the wording in here has to say. I can envision all kinds of confusion in the second year as to what is pending and what isn't pending. I can see where we'll be calling in the Attorney General to give us an interpretation as to which bill is pending and which one isn't pending. I can foresee the possibility that perhaps one house passing the bill into the other house, bring it up to final reading, and defer it for a day and not knowing where this particular bill stands as far as pending. If it is deferred to the end of the calendar, for example, does that mean when the session ends that the bill dies with that particular session or is it still pending? And let's say that this particular bill passes three readings but it does not have enough time to be considered on the other side. What happens? Does it go to the floor of the other house and stay there or can it be moved out? In that second session, if there is a bill that has passed one house, gone to the other house and was amended, and therefore passed back to the other house, does this also mean that this bill would stay in that house and not be considered or can I again turn in a bill in the other house and start the whole function again? I was under the impression that this particular thing would make it possible for a person to introduce a particular bill one session and have it carried over to the next session of the legislature. Mr. Chairman, if this particular bill should be filed, when the next session comes back again, you can be sure I'm going to turn in another bill. So the original intention of having the bill carried over is really not there. If a bill should be caught in this status of being transferred back for one reading and it doesn't come out because some senators or representatives want to tie it up, the same bill would be pending only and I would again turn in a bill. So the original intention that I think we want to get out of this section is really not going to be done.

I ask whether we should at this Convention try to tie the hands of the legislature in telling them how to run procedure because we would like to see something done. I question this particular section as to whether it really does what we want it to do.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: Mr. Chairman, I rise to speak in support of the committee proposal. I don't see the proposal here as a restriction in any way on the powers of the legislature. Sure it's going to be possible for a legislator, if a bill is filed in a given year in the odd-numbered year, to reintroduce a similar bill during the next even-numbered year session. There is no prohibition to doing that. But at least what this does, Mr. Chairman, is to make it possible for some bills which are not given consideration which are introduced in the odd-numbered year to carry over so that they are in a position where they can be considered without the necessity of being reintroduced, and of the going through the expense of being reprinted. There are a great number of bills which are introduced session after session; and I can refer to very generally as those bills which call for appropriations for individual capital improvement projects; this classroom building here, a park here and so forth, which bills are really never passed in any one given session. They are all compiled into one CIP bill, and these bills at least would not have to be reintroduced during the next session of the legislature.

CHAIRMAN: Delegate George Loo is recognized.

DELEGATE GEORGE LOO: Mr. Chairman, I would like to ask somebody a question. The question is this, is this provision about having at the latter session, having one reading in the house in which the bill originated, is this in the constitution of any state at the present time?

CHAIRMAN: Would any delegate care to provide an answer to that question? Delegate Doi is recognized.

DELEGATE DOI: We have not been able to determine whether it's in the constitution of other states but certainly the committee was in favor of this provision so that it would provide a safeguard in the house of origin so that they would not be surprised in any way, a sort of a second review.

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: Delegate Ando is recognized.

DELEGATE ANDO: All the many questions raised regarding this proposal and this paragraph, I think, essentially can be answered by the provision in Section 13 which states that each house shall choose its own officers and determine the rules of its proceedings and keep a journal. This paragraph that we are discussing essentially gives the legislature a very broad guideline as to the intent that such a concept be carried out in our state legislature for many very good reasons. And with the mandate in the Constitution that they shall determine the rules of its proceedings, I believe regardless of the many past practices this would be a new ball game in terms of rules in proceeding with this manner and that it could be answered by what the legislature would develop. So I see no apprehension about this paragraph and I am totally in favor of this paragraph and proposal.

DELEGATE HO: Mr. Chairman.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ho is recognized.

DELEGATE HO: Mr. Chairman, I rise to speak in favor of the proposal in this respect, and more particularly in response to the representative from the 17th District. While there may be confusion in his mind as to the intention of the committee in this respect, I would like to state clearly that there is no confusion, Mr. Chairman, in the mind of the committee. The mind of the committee is clearly that a pending bill is a bill upon which no final action has been taken. In this regard, a filed bill is a pending bill, and as so aptly put by Delegate Dodge and Delegate Ching—Delegate Ching, so far as the first day of the second session is concerned with respect to the first session, it is simply the 61st day, nothing more.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, the movant has asked me to close debate so I would like to ask if anyone else wants to speak on the provision?

DELEGATE YOSHINAGA: May I ask just one question?

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: I think it was answered but I wasn't sure. Is this paragraph original language or is it based on any specific state constitution or state statute?

DELEGATE DONALD CHING: It was as original as it can be.

DELEGATE YOSHINAGA: Thank you.

CHAIRMAN: Does any other delegate wish to speak before I let Delegate Donald Ching speak? Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, very briefly. As Delegate Kawasaki so aptly put it, I think this is one of the few new things that will come out of this committee and this Convention. I think that we would be remiss if we were not to adopt it. This is the one time, one instance, where I will agree with some of the critics outside the Convention when they say that perhaps there are too many legislators in the Convention. I think we are a little concerned about it as legislators because it may change our *modus operandi*, but I think as Delegate Dodge so aptly put it, that on the sixtieth day the chief clerk of the house, and the chief clerk of the senate will lock the files up and open it up on the first day of the second session just as though nothing had happened.

As to the contention from the delegate from the 17th District that he would then have to put in another bill because the other bill had not been acted on, this

goes on at the present time—the dying days of any session and there is nothing to prevent him from reintroducing a bill two or three times for that matter. So I think after all has been said, this is a step in the right direction and it will make for a much more progressive legislature.

CHAIRMAN: Are you ready for the question? The motion before this committee is to adopt the second paragraph of Section 16 as shown in Committee Proposal No. 7. The Chair will call for a standing vote. All those in favor of the committee's second paragraph will rise; please remain standing until the Clerk has finished the count. All those against will stand. The motion is carried. The committee will now proceed to those sections of Article III for which the Committee on Legislative Powers and Functions recommended be retained without amendment.

First of all, Mr. Clerk, are there any amendments for Sections 1, 5, 6, 8, 9, 12, 13, 14, 15, 18, 19 and 20 on your desk?

CLERK: There are none, Mr. Chairman.

CHAIRMAN: Do you have an amendment for Section 7?

CLERK: We have three proposed amendments for Section 7. These are numbered III (1), (5) and (6).

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: I am the author of Amendment No. 5 and No. 6, and I had intended to offer them to the Convention but I'd rather maintain my .500 batting average for today so I withdraw them both.

CHAIRMAN: Thank you, Delegate Dodge. Delegate Hansen is recognized.

DELEGATE HANSEN: Mr. Chairman, I'd like to move to adopt Amendment III (1) which amends Section 7 relating to the qualifications of legislators, and which reads as follows:

“Proposal No. 7 is hereby amended by adding a new amendment.

“Section 7 of Article III of the Constitution is hereby amended to read as follows:

“Section 7. No person shall be eligible to serve as a member of the senate unless he shall have been a resident of the State for not less than three years and be a qualified voter of the senatorial district from which he seeks to be elected. No person shall be eligible to serve as a member of the house of representatives unless he shall have been a resident of the State for not less than three years and be a qualified voter of the representative district from which he seeks to be

elected.’”

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson is recognized.

DELEGATE LARSON: I'd like to second that motion.

CHAIRMAN: Delegate Hansen.

DELEGATE HANSEN: May I speak to this amendment?

CHAIRMAN: Proceed.

DELEGATE HANSEN: In colonial times, legislators and parliaments were distrusted by the people because they represented the crown rather than the colonist. This same attitude of skepticism lived on after the War of Independence was won and was reinforced by the individualism of the frontier. Throughout the 19th century, the office of the legislator was carefully circumscribed by elaborate checks on qualifications; property holders could hold office, taxpayers, complicated citizenship requirements, and age restrictions. And this is the one qualification that has carried over in today's Constitution. The age of voting is the most common age requirement for a membership in the lower house in the majority of the other 49 states. And 14 states have now moved to be consistent and change the age requirement for the upper house to the age of voting. There are several arguments for deleting the house and senate membership age, and inserting that they should simply be a qualified voter.

First, separation of powers in the classic sense means a legislature structured to make policy. And policy cannot be made if only an elite designated by age are represented. Democracy is an ideology associated with equality and concerned with recognizing the common people and not just the privileged class or the persons that have attained a certain age. It is the old deleted theory propounded by Plato, Montessori and Locke that the elite should govern a democracy. They did not believe that everyone who is qualified to vote should be allowed to hold public office because they felt the qualifications for voting and public office were different. This philosophy, I would contend, has long since fallen out of popularity. I say that everyone who is a qualified voter should be allowed to hold public office no matter what the office. If a person can judge between candidates and issues, then no system of age should be applied to him. In other words, it's the elector's right and privilege to run for, to lose, or to win for every public office. If the legislature is to be representative of all the people, then all the people must be allowed to become members of that legislature. Consistency, I think, is the word here. Consistency in every phase of the Constitution. This perhaps is an ideal but it should be explored here in Hawaii.

Heath Bone in *American Politics and the Political System* says that the improvement of political participation would begin by removing obstacles to that

participation whose restrictions have for their purpose the maintenance of inequality of political opportunity; namely, age restriction. Overhauling legislative qualifications then, or the laws, weighed down by age requirement is a prelude to bringing more and more people into the active political body. These overhauls in themselves should begin to combat traditions in areas which exclude certain people from running for office because of age, or which assert, subtly or otherwise, that political action is not a proper role for those certain citizens who have not reached the right age.

The second argument is that the two ages of the two houses should be consistent, not just lower one proportionately to the other. The practice of having a higher age for the senate or the upper house is based solely on English tradition that carried over when we formed our thirteen colonies. The House of Lords and the House of Commons had different requirements and images. Largely due to Montessori's misunderstanding of the British Parliamentary System, the 19th century American political bodies adopted the idea of the two houses and based them on different residency, age, property ownership and other requirements. It was traditional that the senate be the elite, philosophical and aristocratic body, that the house represent the working plebeian member of society. But we have moved from this, and hence we see the different requirements in twenty-nine of the states. But it is interesting to note that of those states who have seen this inconsistency and changed to consistent ages for both houses, twenty-one for the house and twenty-one for the senate, or twenty-five for both, have changed since the turn of the century when the elite philosophy or this elite political philosophy of Plato fell out of public acclaim.

Now if one propounds the theory that a graded age system is good, in other words, you should have eighteen or twenty-year-old voting, 25-year-old house membership, thirty-year-old senate, then one is necessarily asserting that if one becomes older he can hold increasingly more and more important offices and that at age twenty-five, for example, he has sufficient maturity, wisdom and knowledge to belong to the house, and when he has reached the age of thirty he has reached his prime of life and he can hold the most important office in the legislature because his wisdom and maturity and thinking ability have reached their peak. By carrying this logic further then, if we say this is true, then he should be barred from holding certain public offices as this same wisdom, thinking ability and maturity decrease. In other words, we should put into effect a degraded system of running for office starting around the medical age of the beginning of physical deterioration and upon reaching that age he should not be allowed to hold the office of the house and then senate, and then finally at the age of senility, all adult privileges should be taken away from him. That's not fair, you say; there are just as many people who are just as chipper at age fifty-five as at age thirty. And then I point out to you that there are just as many people who are maybe as qualified at age twenty as they are at age fifty-five. We all agree that this reasoning is sort of ridiculous and it makes little sense, but I would contend this makes just as little sense as

having a graded age system for twenty, twenty-five and thirty-year-olds. When you read Amendment III (1) you immediately envision a senate and house composed entirely of eighteen-year-olds all making policy geared to that age level. And this is the fallacy in the people that are against Amendment No. III (1) in their reasoning because it is unlikely first of all that a person eighteen years old would ever run for office, have the money machine, the ability, the responsibility to do so. And then if he did run, the chances are that he would not win. Furthermore, it is ridiculous to assume that both houses could ever become composed entirely of eighteen-year-olds. But I say this doesn't matter. We should let the voters decide. No one person or body has the right to arbitrarily set up age qualifications for public office and thereby set themselves up as the judge of maturity and responsibility needed for that office. That right should remain with the voters. The electorate should be the judge of the person's responsibility, his knowledge and ability to hold office, and if the electorate wants to elect the house and the senate full of eighteen-year-olds, then that should be his right. We sitting here have no right to minimize the voter's choice. I maintain that upon the attainment of the age of voting, a citizen should enjoy every adult aspect of political life. It is only natural and fair and logical, therefore, to ask everyone once they become a qualified voter the opportunity to hold public office. Whether they will take this responsibility and privilege is another story.

I have heard the argument given to me that reducing the qualification of legislators is quite inconsistent coming from one who so strongly was against lowering of the voting age. The issue with the voting age, however, is maturity and the question of reducing the qualifications of legislators is based on the rectifying of the situation which amounts to what was known in colonial days as citizenship or adulthood or taxation without representation. We find ourselves with around thirty to thirty-five percent of the electorate in Hawaii between the ages of eighteen and thirty, and yet this electorate has no means of representation and they cannot by law vote for representatives of their own age group. They are literally without representation and expected to conform to all the standards of adulthood and citizenship and the responsibilities which come with this. And yet they have no right to have representatives who would voice their thoughts and their opinions and represent them. In colonial days, the Bostonians dumped tea to remedy the situation. Here at the Constitutional Convention all you have to do is vote "yes" for Amendment III (1). Thank you.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: Point of information, Mr. Chairman. I appreciated Delegate Hansen's opening remark. She raised the issue regarding the aristocracy of the senate as opposed to the house. I'd like to ask one who has served in both whether his experience indicates the senate is more aristocratic. Delegate Fernandes? Oh, I'm sorry, he's not here.

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson is recognized.

DELEGATE LARSON: Mr. Chairman, I would like to speak in favor of this particular amendment. It has one observation which I might like to share with you and this body regarding the point so well expressed by the delegate from the 8th District regarding that of consistency. If I can make one observation in this Constitutional Convention and about men in general, I would think that the observation I would make is that if men are consistent with anything it's in their inconsistency, not their being consistent.

Mr. Chairman, I don't intend to belie this body by repeating the arguments so well expressed, I feel, in the minority report which I trust every member of this body has already read. I'd like to merely make several points. The committee report, now I am speaking of the Committee on Legislative Powers and Functions, mentioned in support of the status quo on Section 7 that maturity and experience are important factors in determining the qualifications for office. However, Mr. Chairman, I thought we discussed maturity, experience and judgment when we discussed the age for voting and the voting age recommendations from the Committee on Bill of Rights, and Suffrage and Elections. The amendment under discussion today, Mr. Chairman, is basically, in my opinion, whether all voters should be equal in opportunity. Opportunity to choose among candidates for office, opportunity to use their best judgment in deciding upon various campaign issues, in choosing between party platforms. An opportunity, Mr. Chairman, to run for office themselves if they so desire.

Mr. Chairman, it is my belief that all voters should be equal in this respect, of having the privilege for running for office. All voters, Mr. Chairman, are not equal in their educational backgrounds. They are not equal in their occupational backgrounds. All voters again, Mr. Chairman, are not equal in experience, maturity or judgment, in sex or in ancestry. And it's stating the obvious, Mr. Chairman, that all voters are not equal in age. However, age is the only one of these factors which we constitutionalize.

Mr. Chairman, I would dread having a state government which was filled only with male representatives, all with master's degrees and all of the same age. Likewise, Mr. Chairman, I would dread having a state legislature filled with all 45-year-old lawyers. I think our government draws its strength from its diversity, the blending of the very backgrounds and ideas which we find in our state government coming from men and from many varied backgrounds. Mr. Chairman, again, we presently do not give such equal opportunity to voters. Some are so privileged to run for office; other voters are not so privileged. We live in the youngest State in the Union, the lowest median age and yet we have the highest, most restrictive age requirement of any state in the Union. Again, Mr. Chairman, I urge this body to consider that we have already been arbitrary in setting the voting age. Let's let all voters be equal in their opportunity to run for

office. And, Mr. Chairman, let's let the voters decide who shall be elected to office. Let us not set ourselves up like a qualifying commission to choose among voters and decide which ones are qualified, merely on the basis of age, to offer themselves to the rest of the voters to run for office. Again, Mr. Chairman, I say, let the voters choose. Thank you.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: Mr. Chairman, I rise in support of the amendment. It is about time that we recognize that anyone who is qualified to vote in this State is qualified to serve in the halls of our legislature. There was a time, an ancient time, when we had the phrase that the older you are the wiser you will be, but that isn't so in America today. The youth of America can give wise advice to some of their elders not only in matters of our legislation but also in matters pertaining to the community as a whole—social, economical and political. And I believe that if this Convention convened here extends the privilege of running for public office to all of our qualified voters we would be taking the lead in telling America and the world that the young people in Hawaii have a place in our social, economical and political development, and it would be a forward step in this showplace in the Pacific. Thank you.

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, I also speak in favor of the amendment. I want to say that I don't think the rational force of the arguments presented by the three previous speakers here can be refuted on the floor on this issue. I subscribe to and buy all the arguments presented in favor of the amendment. But I want to at this time point to specific examples of people who might be denied the right to serve in the house of representatives and the senate of the State of Hawaii, and the people be denied the right to their good services. And I point to both Delegate Hansen and Delegate Larson. I think they have served in this Convention so far with competence, dedication and good judgment. As one member of the senate, I certainly would be proud to have them serve with me in the senate. I think the only people being shortchanged by not adopting this amendment would be the people of Hawaii because we have circumscribed and narrowed the field of selection from which we can pick our house members and from which we can pick our senators. I urge the adoption of the amendment.

DELEGATE O'CONNOR: Mr. Chairman.

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, I rise also to speak for the amendment.

I would like to say to those of you here who, like I,

take the position that we ought to vote in favor of committee proposals whenever we possibly can, that this was a virtual committee proposal. What happened was that this position passed overwhelmingly in that committee one morning, and the next morning, apparently without debate it was reconsidered again and lost. I missed that meeting the next morning, Mr. Chairman, but I never missed another one after that.

Mr. Chairman, I want to be clear on what we are talking about. We simply are not talking about flooding the legislature with kids. If you want a perfect example of what would happen in Hawaii if we eliminated these archaic age requirements, I ask you simply to look to your left and look to your right. We did it for the Constitutional Convention, Mr. Chairman. There were 370 candidates for office in this Constitutional Convention and there are two people here who are under twenty-five years of age. I think there are two. However, if there are three, the matter isn't really thrown out the window because of that. My point is simply this. Young people have a built-in difficulty when they run for office. So do women. People simply don't like to vote for females or young people. They don't. I don't think there's a woman here who'd disagree with me. They have a tremendous obstacle to overcome. And, Mr. Chairman, if you're a young person expecting to be elected in the market place, or a woman, you've got to be outstanding to make it because you must overcome what I think is a great deal of prejudice on the part of the voter. My point is simply this. If you'll look around you, I think you'll find that the results tend to bear out my hypothesis that this is what we have. I think it's fairly clear that the young people who did get here have been outstanding delegates as Delegate Doi has stated. I don't have to go into it any more. I think you all know that.

So, Mr. Chairman, we are not talking about a rule which in any way is going to flood the legislature with kids. Far from it. What we are really talking about now is a rule that forbids—that forbids a voter of this State from voting for an outstanding young person if he pleases to do so.

Mr. Chairman, this is a democracy. And in a democracy as I understand it, all power lies in the voter. It seems to me that if we put some restriction on what the voter can do, if we sit here and say, "Well, you're all-powerful, sure, but you can't vote for this kind of people and that kind of people, and this other kind of people," we're setting ourselves up as a kind of a super-voter. A kind of super-special fellow who decides what the voters can do and what they can't do. I don't think that's our function, and I don't think it's the function of a Constitution. I think the rules are archaic. I think they are outmoded. I think they deserve to go, and I hope very much that this Convention will kiss them "sayonara."

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Mr. Chairman, although I agree with the philosophies expressed by all of the previous speakers to this point, I am going to have to

vote against this amendment for all of the reasons that I stated to this body when the argument of the eighteen-year-old vote was batted back and forth.

I cannot see, Mr. Chairman, and the only fallacy I see in the amendment is the fact that you will allow by voting for it, a person between the ages of eighteen and twenty to be a state legislator. I cannot see, Mr. Chairman, a situation in this State, where a person who cannot, himself, be responsible for his contracts, is not answerable to his liens and cannot sue in court, I cannot see where that person can represent me in the legislature of this particular State. I would point out the obvious anomaly, Mr. Chairman, of a situation, for example, of the various members of the senate or the house taking a case to court as they have had occasion to do several times in the past several years over apportionment, and the eighteen-year-old representing me staying home because he could not be a party to that particular action unless his mother or father came down and sued for him.

For this reason, Mr. Chairman, I will have to vote against the amendment. I can see where the chances of an eighteen or nineteen-year-old being elected would be slim, but they are still there. If the amendment were worded so that the minimum age were the age of majority, I would gladly join with my brethren who had spoken for it previously.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: I rise in favor of the amendment and I merely wish to point out that there is no relationship whatsoever between granting an eighteen-year-old the right to vote and saying that they also have the privilege of being a legislator. Their right to vote or the privilege of being a legislator. Their right to vote or the privilege of voting is given to them under our Constitution without regard to their sense of responsibility or their qualifications. They cannot become a member of the legislative body unless they show that they do have those, so I will vote for it.

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: I rise in support of the amendment proposed by Delegate Hansen except that it doesn't carry enough to the point of the political subdivision. In case Delegate Hansen being twenty years old was requested to run for the City Council, and by the City Charter it says you must be two years in the limits of the City, that disqualifies her. So she is qualified in every respect and found that the law restricted her from entering into this County race. Whether we can provide that provision under this amendment to include the political subdivision is a matter for the consideration of these delegates here. I believe that by extending this courtesy privilege of any person who has the right to vote I think would establish a career in government. Many young attorneys,

you might say, looking toward government and entering into politics will find that the political game is fascinating and therefore decide to dedicate their future upon that basis. And I am sure that by determination of the local situation and condition under the State, someday they may rise to be the so-called Hawaii congressman or congresswoman as they see fit, and so today we have Representative Mink, Sparky Matsunaga, Dan Inouye and Mr. Fong as the congressmen from Hawaii. Those are the persons who found themselves political careers in Hawaii and I feel these opportunities extended to these young people of this State would give them a brighter future for this State of Hawaii. And I believe that those of us who are qualified to run because the law says that you must be the age of twenty-five or thirty-five in the respective office, should not be afraid of competition by these young, growing energetics of the State of Hawaii and probably the nation. And they may contribute someday to the understanding all over the world to bring peace and prosperity to which the young, energetic youth of today look forward. Wars and wars are being made but the young man and the young woman look toward an opportunity to live in the life of peace, prosperity and happiness. And what do we do? We prevent them from participating in the government in way of representation, and even if they have this representation in the government, many of these unjust laws should be corrected and looked over so they would know some of their rights and proper conditions that are printed in many of our papers not only in Hawaii but throughout the nation. And this was considered toward a better government, better laws that we felt should be brought about in Hawaii as well as throughout the nation. What I am saying is that if we are to restrict by age, then why not restrict the professional by age? The young people come out from colleges at the age of twenty and twenty-five. Yet by a professional examination they are qualified to practice. But if you should put a restriction by age, then I believe that they will disagree with that part of the law. And I believe that this great opportunity in the idea of Delegate Hansen should be concurred by the entire delegation here so that the people of this State would have a choice to vote whether the delegates have made a wise decision by putting that proposal to the vote and their confidence. Thank you.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: Mr. Chairman, I rise to—

DELEGATE MIYAKE: Short recess, please.

CHAIRMAN: Recess while we change the tape.

At 5:10 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:25 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Hansen is recognized.

DELEGATE HANSEN: Mr. Chairman, during the recess we met with some of the people who were interested and we've come to sort of a consensus and I would like to withdraw the original amendment and substitute instead an amendment which would read, "No person shall be eligible to serve as a member of the senate unless he shall have been a resident of the State for not less than three years, be of the age of majority and be a qualified voter of the senatorial district in which he seeks to be elected," and the same thing for the second half of the paragraph.

CHAIRMAN: Is there a second to that motion?

DELEGATE GOEMANS: Mr. Chairman, I believe I have the floor.

We called a recess to replace the tape while I was recognized and I don't think I have yielded the floor as yet, to amendment or to any other purpose.

CHAIRMAN: You're right.

DELEGATE YOSHINAGA: Mr. Chairman, I second the motion and yield the floor to Delegate Goemans.

DELEGATE GOEMANS: Thank you, Delegate Yoshinaga.

CHAIRMAN: The motion has been seconded. Before Delegate Goemans speaks, I'd like to make sure everybody see if you will look on there—Amendment No. 2, on the yellow sheet, you go down 1-2-3 lines where it says, "resident of the State for not less than three years, comma"—

DELEGATE DONALD CHING: Mr. Chairman, which amendment?

CHAIRMAN: What?

DELEGATE DONALD CHING: Which amendment?

CHAIRMAN: Amendment designated (2).

DELEGATE HANSEN: It's not printed.

CHAIRMAN: Right. I have a printed copy that says (2); so I'm sorry, it is (1) on everybody else's desk. And if you will go down to where it says, "resident of the State for not less than three years," insert, "be of the age of majority, and be a qualified voter of the senatorial district..."

You go down to the second sentence, "No person shall be eligible to serve as a member of the house of representatives unless he shall have been a resident of the State for not less than three years," and then add, "be of the age of majority and be a qualified voter of the representative district from which he seeks to be elected."

If there are no objections, we will handle this thing on an oral basis. Delegate Goemans is recognized.

DELEGATE GOEMANS: Mr. Chairman, I assume that Delegate Hansen's motion to amend her amendment will meet with the approval of this body, and does not affect the remarks that I had intended to make before the recess.

I agree in principle with all of Delegate Hansen's reasoning to this amendment as amended. However, I am going to speak against the amendment, and I do that because I feel that we have missed and lost sight of a basic premise here in this Convention. We have been here eight weeks. We have voted up an awful lot of things, we voted down a number of things. We were elected in June as delegates, possibly to a certain degree because of our potential knowledge and abilities, judgment, wisdom. I would hope so. But certainly we were elected in a representative capacity.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I rise to a point of order. What is before this body is the amendment offered by Delegate Hansen. It is not what the purpose of this Convention or why we were elected. If we start on that, I'm going to want to speak, too, because I have different ideas about why we are here than Delegate Goemans does, but I don't think that's the appropriate time to discuss this. We're talking about an amendment.

CHAIRMAN: Delegate Goemans, will you confine your remarks to the amendment before you. I believe you were leading up to a point on this.

DELEGATE GOEMANS: My remarks have been confined to the amendment before me, Mr. Chairman. And the connection between my remarks and the amendment is that I think we have lost sight of the representative capacity, not only on this amendment, but heretofore.

You can say that as delegates, this is a one-shot deal. We are not accountable, as the saying goes, at the next election. But we are in fact accountable because each one of these provisions that is voted down is a reflection on our lack of meeting our responsibility as representatives. Certainly we must meet—

DELEGATE LARSON: Mr. Chairman, point of order. I don't understand the statement of the delegate from the 16th District. I don't understand the line of thought. I don't see the pertinence to the discussion at hand.

CHAIRMAN: I will let the delegate proceed because he is speaking against the motion. Proceed, Delegate Goemans.

DELEGATE GOEMANS: The point that I have been speaking to is our failure to meet our responsibilities as representatives of our respective communities. I think in this particular amendment, it is my judgment that a majority of the qualified voters in my district will not favor a removal of the qualifications

for office. I do favor, as I have stated, the philosophy and the principles behind Delegate Hansen's amendment. But cognizant of my responsibilities as a representative, cognizant of the fact that I am accountable to the electorate in my district, insofar as I feel that they may vote this particular provision down, I have to vote "no," and I would suggest that all of us keep in mind on this motion and subsequent motions that we are here as leaders but also as representatives.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess is recognized.

DELEGATE BURGESS: First of all, I would like to ask a few questions. What is the age of majority in the State of Hawaii?

CHAIRMAN: Are you directing this to the Chair?

DELEGATE BURGESS: To anyone who can answer it.

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Twenty.

DELEGATE BURGESS: Is it possible for the legislature to lower it down to the voting age?

DELEGATE O'CONNOR: That is correct. It is possible for the legislature to change the age of majority to any age.

DELEGATE BURGESS: Is it likely for the legislature to lower it down to the voting age?

DELEGATE O'CONNOR: Not being a legislator, Mr. Chairman, I cannot answer that question.

DELEGATE BURGESS: Thank you. Secondly, the Committee of the Whole has already acted on the Committee Proposal No. 6 dealing with the legislature—dealing with the executive, and one of its recommendations was that the qualification age is thirty years old. I believe there was no attempt to amend that section.

DELEGATE HANSEN: Mr. Chairman, may I answer that statement?

CHAIRMAN: Delegate Hansen is recognized.

DELEGATE HANSEN: I felt that the age of legislators was more pertinent to bringing this down. I felt the governor is one man and I felt that if it was the consensus of this body that the age qualification of legislators be reduced that we could go back on second reading, take a look at the age of the governor. But I felt this was a completely different situation. It evolved around one man and this could be discussed later if it was the will of the body that the legislative age should be lowered.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, I might answer that question. In committee, as chairman of the Executive Committee, I recommended the qualified voter age for the Chief Executive, but that particular proposition lost. The committee went ahead and lowered the present age of thirty-five down to thirty and this is what was adopted by the Committee of the Whole.

DELEGATE BURGESS: In other words, Mr. Chairman, the Committee of the Whole has approved the age of thirty as one of the requirements for the governor. Is that not right?

CHAIRMAN: That is correct.

DELEGATE BURGESS: Mr. Chairman, we have heard the first three speakers say—

CHAIRMAN: You are rising to speak for or against the motion?

DELEGATE BURGESS: Well, first of all, is this motion a stand-in for the original amendment or is this an amendment to the amendment?

CHAIRMAN: This motion is a new amendment. The other one was withdrawn. This is an amendment to Section 7 of Article III of the Constitution.

DELEGATE BURGESS: Mr. Chairman, I speak against the amendment with words the first three speakers mentioned, this philosophy of consistency that if we allow a person to vote then we should allow him to run. And we should not make any requirement for any office. We should let the voters decide on whether the person is qualified and not put any restriction. So I'd like to propose more consistencies. We also have the requirement for being a resident of the State for three years. And if we are going to follow this philosophy of consistency, I propose that we take away this three-year requirement. We also have a requirement of a person living in the district in which he is running, and if we are going to be consistent, I propose that we take away these requirements and then face the people in being more consistent in our actions.

DELEGATE LARSON: Mr. Chairman, point of order.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: With all due respect to the delegate, I don't think that we are discussing other amendments which have not been proposed at the present time or other sections of the Constitution. I say this with high regard to the delegate who is speaking and also with sympathy to the proposals that he is mentioning. I think, though, that we are discussing the matter at hand which is the proposal to reduce the qualifications to running for office to age of majority and be a qualified voter, not to residency requirements or the requirements for the governor or any other matter at the present time. Thank you.

CHAIRMAN: Delegate, your point is well taken. We do not have before us any elimination of residency or any other amendment. If you tie your remarks more to the point at hand, delegate, we'd appreciate it.

DELEGATE BURGESS: Allow me to explain why I follow this idea. A supporting statement behind this move to lower the age requirement is that we should be consistent in our actions. I am saying that by lowering the age requirement we are not being consistent in our actions, for we are saying that only age must be lowered or must be deleted and we should still retain other requirements. And I am saying that we are acting inconsistently when we act in this manner. Thank you.

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Mr. Chairman, it is obvious from my previous remarks that I am now in favor of this amendment as written and I have proposed a written amendment which is identical to Delegate Hansen's. Therefore, I speak in support of her amendment.

CHAIRMAN: Ready for the question?

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lewis is recognized.

DELEGATE RHODA LEWIS: I am one of those who is bothered by the fact that when we were working on the Executive Article we fixed an age requirement of thirty. The chairman of the Executive Committee tells us that it was not his vote that so fixed it but other members of his committee. I would like to hear from those members, or at least one from the Executive Committee who favored that requirement of age thirty as to whether there is a distinction between the way we should regard the qualifications of the executive, and the way we should regard the qualifications of legislators.

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Mr. Chairman, I am a member of that committee. We discussed this quite thoroughly and I suggested—

DELEGATE KAGEYAMA: Mr. Chairman, point of order.

CHAIRMAN: Delegate Kageyama, state your point of order.

DELEGATE KAGEYAMA: What is before this body is to vote on this amendment as proposed by Delegate Hansen and the question of the governor, of the requirement of the age has been disposed of and can only come up on the second reading of the Convention.

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: The thoughts I am concerned about will influence my thinking; if I can't get an answer to my question, I will have to vote "no." I consider it highly relevant.

CHAIRMAN: Delegate Lewis, I would have ruled the other delegate's point of order as not being well taken. Delegate Lum, would you proceed to answer.

DELEGATE LUM: I think that it was felt by the committee, those who discussed this, that perhaps it would be better to have our governor have a little more experience than just the age of majority. I think there is a distinct difference here between the governor and a person representing a particular group. A young person twenty years old probably has become an adult as far as the eyes of society and he is now ready to assume all financial liability and be a full adult. Well, why not give him the right to represent the people?

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman. I have very mixed feelings about this and I do not know whether I am speaking for or against it. I am speaking for part of it and against the other part, I think. But I'd like some help from this body perhaps in reactions to what I would like to say in order to give me a little direction.

Our house of representatives, in my opinion, is supposed to be truly representative of the electorate. In this instance, I feel that the age of majority should be the age for the house of representatives, and I would welcome that. However, the senior body, the senate, is always expected to be just that—the senior body. Those with more experience, more maturity, more judgment supposedly, and I question in my own mind the wisdom of lowering the age for the senior body, at least lowering it as low as the majority. Now, I don't know whether I am the only one who feels this way or not, but I have very mixed feelings about it and I would very much like to see the age lowered to the majority for the house but as far as the senate is concerned, I am really a little bit concerned about this area.

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I don't know if I can add much to what the delegate from the 15th District has said, except that I think I could perhaps clarify the matter somewhat.

Mr. Chairman, presently, I think these figures may help clarify this matter somewhat. Presently, the average age of legislators in the State of Hawaii is forty-eight years old. The average age of senators of our legislature is forty-nine; the average age of members of the house of representatives is forty-seven. So, in all likelihood, I do not feel that there would be much difference to be expected if this particular amendment would be passed. Now, more important, I think that age qualifications for—and having different age qualifications for what is

called the upper house are factors such as that the senate offers a greater degree of security first of all. It offers a longer term. These alone will lend the senate to having a greater amount so to speak of prestige and will attract perhaps more able candidates perhaps, candidates who are better known. Candidates, in fact, I believe, who would be older and who would have perhaps more basis and more financial ability to run over a larger area. So in fact, Mr. Chairman, I think that though the sentiments of the lady delegate from the 15th District are well expressed and well taken, I think in reality it wouldn't make any difference, that in reality the second house would attract such older candidates. Thank you.

CHAIRMAN: Are you ready—

DELEGATE RHODA LEWIS: Mr. Chairman, I think that the delegate from the 15th District has a very good point and I would like to ask for a division of the question so that we could vote separately on the senate and the house.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki is recognized.

DELEGATE KAWASAKI: I think what I've got to say will come as a surprise to some of my very close associates who I suppose have rightly or wrongly considered me to be pretty liberal in my political thinking.

I served my first session in the legislature at the age of forty-seven. I was referred to as the freshman legislator. I have had the benefit prior to running for office—a benefit that I think many of our youngsters who desired to run for office would not have. I have served as vice-chairman of the Democratic party, president of the Young Democrats, chairman of the Legislative Committee, et cetera. I have managed the campaigns of four successfully-elected officials. Generally speaking, I think I was very fortunate in having been exposed to political activity, a greater amount of this type of exposure than the average twenty-year-old would be exposed to if he desired to run for office. And looking back, in retrospect, in my first term of office, I am quite convinced that had I been elected at the age of twenty or the age of majority, for that matter the age of twenty-five, I doubt that I would have fared as well as I have in my first term of office. Because I was twice older than what is now being proposed, I think the question that was answered by our good friend, Delegate Larson, perhaps an argument in favor of those who would be against this proposal. The average age of the legislator in the State of Hawaii right now is forty-eight—is that what I heard you to say?—the proposal now before this body is asking that that age be lowered almost a half of what it is today. And I just wondered whether the person serving the legislature would serve better at a much older age than even at the age of twenty-five, of having gone through the daily successes, the daily frustrations, of having coped with the problems that an older person who has a family, who has to meet taxes, who has to worry about sending his kids to school, or has to worry about

meeting the monthly bills, this kind of experience that the elder person has. I would like to think that we can all be fortunate enough in this community to have people with the judgment, the exceptional polish—what you call, displayed here by people like Delegate Hansen and Delegate Larson be in the majority of those at young ages running for office. I doubt if this community's going to be this lucky. I think these people, exceptional people, with the chances of this kind of outstanding individuals being the ones who are running at a younger age, I think is nil or very, very remote, and this is what worries me. And as I said, I hate to have to take this position but I think a person's judgment, the average person's judgment, not the outstanding people like these two individuals here, I think is better, it matures his understanding of life, his sense of values I think is much better at the age perhaps a little older than twenty. And I am just a little dubious about our lowering this requirement for running for office to the age of twenty. I just want to make it brief but I have my doubts that we are doing the right thing at this moment, and I'd like to speak against this proposal.

DELEGATE SUWA: Mr. Chairman.

CHAIRMAN: Delegate Suwa is recognized.

DELEGATE SUWA: Mr. Chairman, I seldom get up to speak but when I do, I mean business. Thank you.

I speak for the action taken by the committee and I speak against this amendment. If you are sincere in having the eighteen-year-olds privileged to vote, then I say, let's vote down this amendment because if you do tie it up, the eighteen—and also lowering the age for the candidates—then I say you are compounding and surely you're going to defeat the eighteen-year-old chance of voting. Thank you.

CHAIRMAN: Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, I rise to speak in favor of the amendment submitted by Delegate Hansen. In fact, I am somewhat disappointed that she inserted the phrase, "the age of majority," but I believe on further thought that this is a good amendment to affix to her earlier proposal.

I pondered the concern that the delegate from the 15th District has had. She speaks of the senior house, the upper house. I know of no such legal or constitutional provision that states that one house of our legislature is senior to or has some other designation other than that both houses of our legislature are equal in their power. The only specific difference that I can see—and I don't know whether this grants them any seniority in any respect—is that they had been given by the people of the State the right to confirm the governor's appointments and advise him on such appointments. Essentially, there is no special qualification on being a member of the senate versus that of the house except that of age and so I would say, Mr. Chairman, that the powers and the responsibilities of members of both houses are equal,

and we should understand that as we vote on this question.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: I'm assuming that nobody has not spoken who chooses to speak, I rise to a point of—

CHAIRMAN: Does anybody else wish to speak who has not spoken on this proposition?

DELEGATE YOSHINAGA: I object to somebody trying to read my mind.

CHAIRMAN: Delegate Goemans, would you yield to Delegate Yoshinaga who is recognized?

DELEGATE YOSHINAGA: Mr. Chairman, I wish that we could have voted on the eighteen-year-old but unfortunately things being what they are as proposed and is more practical to vote on the amendment before us—I only hope that if the eighteen-year-old vote passes this Convention successfully and passes—

CHAIRMAN: Delegate, do you rise to speak for or against the motion?

DELEGATE YOSHINAGA: I'll get there by the time I'm finished, I think. As I assured you, if we have to be for or against a thing, it may be that many of us may not be able to speak. Maybe after listening to people and listening to yourself, you may come to a conclusion whether you are for or against something. Now, I won't waste any more time. I do hope that in case both proposals are successful before the Convention and the people, then that in the next session, those of us who are here will have a proposal to the next legislature to reduce the age of majority to eighteen, and that, that too is successful so that then everybody will be happy.

DELEGATE HANSEN: Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: I want to apologize to Delegate Yoshinaga. Far be it from me to feel that I can read his mind, I haven't been able to in the past, no reason why I should be now, I just assumed that he was—

CHAIRMAN: Delegate, confine your remarks, please.

DELEGATE GOEMANS: My remarks are more in the nature of a point of information, Mr. Chairman. We have heard the phrase "the age of majority" before in this body, and for my own part, I don't know what that precisely means and I would like to have a legal opinion as to whether there is such a thing as the age of majority for all purposes. It is my understanding that contrary to what we were told in our earlier discussions regarding the eighteen-year-old vote that a marriage

contracted by parties younger than twenty without their parental consent is invalid. My understanding is that a girl eighteen years old or over who contracts a marriage, that's a valid marriage and that marriage cannot be voided, and is not voidable. Therefore, the age of majority for marriage is not, for all purposes, twenty years old as I see it. I think there are other examples where exceptions are made to the twenty-year-old level as being the level of majority. Therefore, I request at this time that we have a statement as to whether there is such a thing as the age of majority for all purposes.

CHAIRMAN: Apparently nobody wishes to rise to answer the question.

DELEGATE GOEMANS: Could I have a legal opinion from the lawyers on that, Mr. Chairman?

DELEGATE O'CONNOR: Mr. Chairman.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: We have a specific statutory provision in our Revised Laws of Hawaii that says, "The age of majority is twenty years of age." It doesn't say any *if's*, or *and's*, or *but's*; it simply says that.

CHAIRMAN: Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, on that subject, I think this would be for the Style Committee. I think the intention is—has attained the age of majority. To be at the age of majority would be to be twenty under my interpretation; however, I am quite sure that would be open to the Style Committee. I did want to pursue my request for division of the question under Rule 40. Any delegate may call for the division of a question which is in its nature divisible, and the question presented is divisible into the senate and the house, two separate parts of the section.

DELEGATE DODGE: Mr. Chairman.

DELEGATE SCHULZE: Mr. Chairman, point of order.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, this question is not by its nature divisible. The amendment says "both houses," not one or the other. If there were two amendments or two questions that could be separated for purposes of separate discussion, that might be the case. But this is a single amendment that says that the age will be the same for both houses and that's the question before this house, Mr. Chairman.

DELEGATE GOEMANS: Mr. Chairman, in any case, according to Rule 40, this being a motion to strike and insert, it is not by its nature indivisible.

DELEGATE KAWASAKI: Mr. Chairman, point of order.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Point of inquiry. I think Delegate Lewis was inquiring on the—you refer to the division of the house. You are asking for a roll call vote; is that correct?

PRESIDENT PORTEUS: Mr. Chairman.

DELEGATE RHODA LEWIS: I was asking for a division of the question.

CHAIRMAN: Delegate Porteus is recognized.

PRESIDENT PORTEUS: Mr. Chairman, may we have a brief recess?

CHAIRMAN: A brief recess.

At 5:55 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:58 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order.

In response to Delegate Rhoda Lewis' request, the Chair will rule that this amendment is divisible, and it may be voted on separately.

DELEGATE GOEMANS: Mr. Chairman, I'd like to appeal the ruling of the Chair and my reason being that Rule 40 specifies, and I quote, "A motion to strike out and insert shall be deemed indivisible." That's the rules of this body.

Delegate O'Connor's motion, which is an amendment, is a motion to strike and insert. He is moving to strike Section 7 of the committee report and insert his own Section 7. It can only be a motion to strike and insert, or a motion to add on to what the committee report considers Section 7 and we know that is not the case. Therefore, this is definitely a motion to strike and insert, and indivisible. Therefore, I call for an appeal to the Chair's ruling.

PRESIDENT PORTEUS: Mr. Chairman.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Porteus.

PRESIDENT PORTEUS: Mr. Chairman, in view of the call for an appeal from the Chair, the Chair should put the appeal immediately before the body without any further debate; and I request that the Chair be supported.

CHAIRMAN: All those in—

DELEGATE MIYAKE: Mr. Chairman, point of order. There was no second to the appeal. You need a second according to the rules.

DELEGATE HANSEN: I second that motion.

CHAIRMAN: All those who support the Chair's ruling will signify by saying "aye." All those opposed signify by saying "nay." The Chair's ruling is supported. We will proceed at this point and call for the question.

DELEGATE KAGEYAMA: And what is the question, Mr. Chairman?

CHAIRMAN: The question before us—we are dividing the amendment into two votes.

DELEGATE KAGEYAMA: And what was the motion?

CHAIRMAN: I will proceed to—the motion before us is to amend Section 7 of Article III, the first sentence to read as follows: "No person shall be eligible to serve as a member of the senate unless he shall have been a resident of the State for not less than three years, be of the age of majority and be a qualified voter of the senatorial district from which he seeks to be elected."

DELEGATE LARSON: Mr. Chairman.

DELEGATE KAGEYAMA: What was Delegate Rhoda Lewis' motion?

CHAIRMAN: Delegate Rhoda Lewis' motion was to divide the vote up and vote first on section 1 and—

DELEGATE KAGEYAMA: How did she make the motion? Would that secretary repeat Rhoda Lewis' motion, Delegate Rhoda Lewis' motion?

PRESIDENT PORTEUS: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

PRESIDENT PORTEUS: The Chair has already ruled on the matter.

DELEGATE KAGEYAMA: But this is a point of inquiring as to how Delegate Rhoda Lewis made the motion.

CHAIRMAN: If the Chair may speak a moment.

PRESIDENT PORTEUS: The Chair has ruled.

CHAIRMAN: The Chair may call for a division on his own.

DELEGATE KAGEYAMA: That depends on how the motion was made by Delegate Rhoda Lewis.

DELEGATE MIYAKE: Mr. Chairman.

DELEGATE KAGEYAMA: Will she repeat the motion, then? That will satisfy me.

DELEGATE MIYAKE: On the point of information—

CHAIRMAN: State your point.

DELEGATE MIYAKE: If I am not wrong, I think the information that the good delegate wants is in Rule 40 if he'll read it.

CHAIRMAN: We have the motion before us—it calls for a standing vote.

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Yes, delegate.

DELEGATE LARSON: May I request a roll call, if you please?

CHAIRMAN: I do not see ten hands raised. Mr. Clerk, will you call the roll?

DELEGATE MIYAKE: Mr. Chairman, will you state the motion again, please?

CHAIRMAN: The motion before us is to amend Section 7 of Article III to read as follows and we are dealing with the first sentence only: "No person shall be eligible to serve as a member of the senate unless he shall have been a resident of the State for not less than three years, be of the age of majority and be a qualified voter of the senatorial district from which he seeks to be elected."

Mr. Clerk, call the roll.

(Roll call having been ordered, the Clerk proceeded to call the roll. Amendment III (1), Section 7 of Article III (senate) carried by a vote of 37 ayes, 32 noes and 13 excused, with Delegates Aduja, Ajifu, Akizaki, Alcon, Andrade, Ansai, Burgess, Devereux, Goemans, Hasegawa, Hidalgo, Kage, Kato, Kawasaki, Lalakea, Rhoda Lewis, Frank Loo, George Loo, Matsumoto, Minn, Morioka, Oda, Pyo, Saiki, Schulze, Souza, Sutton, Suwa, Ushijima, Yamamoto, Yim and President Porteus voting no; and Delegates Amano, Amaral, Chang, Dyer, Fasi, Fernandes, Ho, Kaapu, Kawakami, Nakama, Taira, Takahashi and Wright being excused.)

CHAIRMAN: The motion has been carried.

We will now move to the second half of that question. The motion before you will be to amend the second sentence of Section 7, Article III which will read as follows, you will be voting on this sentence: "No person shall be eligible to serve as a member of the house of representatives unless he shall have been a resident of the State for not less than three years, be of the age of majority and be a qualified voter of the representative district from which he seeks to be elected."

PRESIDENT PORTEUS: May we have a division of the house?

CHAIRMAN: All those in favor of this motion will stand.

DELEGATE YOSHINAGA: Mr. Chairman, I think in fairness to those who voted—

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: In fairness to those who voted on eighteen-year-olds on the roll call, in the prior vote on the roll call, I think we should take a roll call vote.

CHAIRMAN: Are there ten people that want a roll call? Mr. Clerk, call the roll.

(Roll call having been ordered, the Clerk proceeded to call the roll. Amendment III (1), Section 7 of Article III (house) carried by a vote of 47 ayes, 22 noes and 13 excused; with Delegates Aduja, Ajifu, Akizaki, Alcon, Andrade, Ansai, Burgess, Goemans, Hasegawa, Kawasaki, Lalakea, Frank Loo, George Loo, Matsumoto, Minn, Oda, Pyo, Saiki, Sutton, Suwa, Ushijima and Yim voting no; and Delegates Amano, Amaral, Chang, Dyer, Fasi, Fernandes, Ho, Kaapu, Kawakami, Nakama, Taira, Takahashi, and Wright being excused.)

CHAIRMAN: The motion has been carried. Mr. Clerk, do you have any other amendments on your desk?

CLERK: Yes, Mr. Chairman. We have an amendment numbered III (7) which was submitted by Delegate Rhoda Lewis. It reads as follows:

“In computing the number of days designated in this section there shall be excluded Saturdays, Sundays and holidays, and any days in which the legislature is in recess prior to its adjournment as provided in Section 11.”

CHAIRMAN: Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, this is just a housekeeping amendment. Since Section 17 has to do with the veto power of the governor, and I have offered this amendment because I think that it would be desirable to count the number of days the same way upstairs as you do downstairs so to speak; in other words, the legislature counts the days in a certain way so at the end of a session when you come within ten days of the session, end of the session, the time when the governor's veto is very closely watched, as I remember the process, and that ten days before the end of the session really should be counted the same both in the governor's office and the legislative chambers. I therefore have offered this amendment so that the method of computation will be the same as was adopted in—I believe that was Section 11. I so move.

CHAIRMAN: Do we have a second to this amendment?

DELEGATE GOEMANS: I'll second the motion.

DELEGATE RHODA LEWIS: I have already spoken on it. I should have waited for a second. Thank you.

CHAIRMAN: Call for the question? The amendment before us is to amend Section 17 of Article III by amending the last paragraph to read as follows: “In computing the number of days designated in this section, there shall be excluded Saturdays, Sundays and holidays and any days in which the legislature is in recess prior to its adjournment as provided in Section 11.”

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: I am not very bright so what's the position of the committee, and the committee chairman on this thing?

DELEGATE HUNG WO CHING: Mr. Chairman.

CHAIRMAN: Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Since this is just a housekeeping item we have approved it.

DELEGATE YOSHINAGA: Thank you very much.

DELEGATE DONALD CHING: Mr. Chairman, I rise on a point of inquiry. I notice that—

CHAIRMAN: State your point.

DELEGATE DONALD CHING: —in acting earlier today we did renumber the section so that Section 17 is now the salary section. I am sure the Committee on Style will be cognizant of this and take that into consideration.

DELEGATE DODGE: Mr. Chairman, that was Section 17 of a different article.

CHAIRMAN: Delegate Dodge is correct.

All those in favor signify by saying “aye.” Those opposed signify by saying “no.” The motion is carried. Delegate Hung Wo Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, I move for the adoption of Standing Committee Report No. 46 and Proposal No. 7 as amended.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: I second the motion.

CHAIRMAN: All those in favor of the motion signify by saying “aye.” Opposed, by saying “no.” The motion is carried. Delegate Hung Wo Ching is recognized.

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DELEGATE HUNG WO CHING: Mr. Chairman, I move that this committee rise and report to the Convention that progress and deliberation have been made.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: I second.

CHAIRMAN: All those in favor signify by saying "aye." Opposed, by saying "no." The motion is carried. If the delegates will remain in their seats for just a minute, we will be out of here very shortly.

The Committee of the Whole adjourned at 6:15 o'clock p.m.

Debates in Committee of the Whole on **THE LEGISLATURE— Apportionment and Districting**

(Articles III and XVI)

Chairman: DELEGATE ED C. BRYAN

Thursday, September 12, 1968 • Morning Session

The Committee of the Whole was called to order at 9:25 o'clock a.m.

Delegate Bryan presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. Before we start our business on reapportioning and redistricting, I'd like to acknowledge the presence in the bleachers of fifty McKinley High School students, a class on American Problems, and the class teachers are Miss Arlene Yee and Miss Carla Parado. We're very happy to have you with us. I suggest that the delegates give them a hand.

This committee has before us Standing Committee Report No. 58 prepared by the Committee on Legislative Apportionment and Districting. I think perhaps I shall read from the cover page which will outline the approximate scope of this report: "Your committee has performed two separate functions. First, it has prepared plans for the present apportionment and districting of the State, and has proposed Sections 21, 22, 23 and 25 of Article XVI, and an amendment for Section 2 of Article III of the Constitution. Second, it has provided for periodic future reapportionment and redistricting and has proposed an amended Section 4 of Article III and Sections 24 and 26 of Article XVI of the Constitution." This is the material that's before you. I think you've all received the committee proposal and I hope that you've had an opportunity to read it.

Because of the length and complexity and importance of this particular issue, I will ask the approval of the body to allow the committee chairman and vice-chairman to speak for more than ten minutes on the opening of this consideration this morning. As we take the committee report up, section or subject by subject, I don't think there's any necessity for more than ten minutes. However, in the initial presentation, I would like to know if there's any objection to the committee chairman and vice-chairman in their presentation taking more than ten minutes. Is there any objection?

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: There are about eight new

senatorial districts and about twenty-five or twenty-six representative districts. I think at the outset, there should be some understanding how many minutes each delegate will be permitted to speak with reference to these representative districts and senatorial districts. Now, if we are going to say that the total allocated time will be only ten minutes for the entire debate on reapportionment, then we will be speaking maybe only one minute a piece on those senatorial districts or representative districts that we might be interested in. There might be, for instance, a delegate who is interested in three contiguous representative districts and if he is going to participate in the debate of the, supposing the 7th, 8th and 9th Representative Districts, and he is debating with reference to the 7th for ten minutes then he is cut out on the 8th and 9th. I believe that a great deal of latitude and leeway must be given to the delegates in debating the representation from the various senatorial and representative districts. And at the outset, perhaps, there should be some agreement with the chairman of the committee as to how we will conduct the debates, whether we will start with the 1st Representative District, start with the 2nd Representative District or start with the 3rd. And sometimes with reference to an entire island, the 4th Representative District may be interested in what the 1st has to say. So we must have some kind of understanding.

CHAIRMAN: If the delegates could wait for just a minute, I'm going to ask the committee chairman to outline the procedure that he would like to follow in his presentation. And after that is finished, then some of the questions such as the one just raised by Delegate Mizuha may be in order.

Delegate Fernandes is recognized.

DELEGATE FERNANDES: Mr. Chairman, could I ask for a recess at this time.

CHAIRMAN: A recess is declared subject to the call of the Chair.

At 9:32 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:35 o'clock a.m.

CHAIRMAN: Will the committee please come to

order, including those looking at the maps. Because of some questions about whether all of the delegates have all of the material pertinent to this subject, I'm going to ask the assistant clerk if he will review or read the amendments that have been proposed.

CLERK: Mr. Chairman, the thickest amendment we have is numbered A, which amends Sections 22 and 23. These relate to the descriptions of the senatorial and house districts. Amendments 3, 1, 2 and 5 relate to amendments to Section 4.

CHAIRMAN: I understand Amendment 5 has not been distributed yet but will be shortly.

DELEGATE MIZUHA: Mr. Chairman, we do not have the amendments in front of us.

CHAIRMAN: Which one don't you have, Delegate Mizuha?

DELEGATE MIZUHA: We don't have any of them, Mr. Chairman. We don't even have any in the back row, Mr. Chairman.

DELEGATE KAUHANE: Recess, Mr. Chairman.

CHAIRMAN: At the request of Delegate Kauhane, a short recess is granted.

At 9:43 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:45 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The Chair will recognize Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I move the adoption of Standing Committee Report No. 58, dated September 7, 1968, along with Supplementary Standing Committee Report No. 58, dated September 10, 1968.

CHAIRMAN: Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: Mr. Chairman, I second the motion.

CHAIRMAN: You've heard the motion and the second. Delegate Schulze, would you like to speak on your motion?

DELEGATE SCHULZE: Mr. Chairman, I would appreciate the Chair's indulgence in asking consent that we extend our opening remarks just a little bit. With the Chair's further indulgence, I will withhold those opening remarks for a few moments until some preliminary matters are taken care of. I would however like to address the delegates and explain to them in a general way how we propose to present the work this committee has done to the body as a whole. There are some rather unusual features of this particular aspect of constitutional revision, Mr. Chairman, that it was

necessary for us to plan the floor presentation very carefully in order to insure that everyone who had some part of it that they wanted to attack or wanted to speak on got an appropriate chance. I believe we've done that and I believe that all of you who have something that we've done that you feel is absolutely wrong and you must say so about, I think you'll find there's a chance to do it.

As the Chairman mentioned, we have divided our total product into two major categories. In the first instance, we have reapportioned and redistricted the State of Hawaii a reapportionment plan which we are proposing to take effect as of the 1970 general election and to stay in effect until reapportionment takes place, according to our proposal that would be for the 1974 general election.

Our second major category of work is that we have prepared changes to the Constitution and a rather thorough going plan which will take care of future reapportionments and future redistrictings. That particular section has almost no relationship to the present plan we have before you. By no relationship, I don't mean it doesn't have any relationship in terms of the kind of thinking we did, but it does have no relationship in terms of constitutional implications.

Therefore, we would propose to present to the delegates the existing plan prepared by the committee for the structuring of senatorial and representative districts throughout the State first. And we would propose to complete that before we begin discussion of such matters as the reapportionment commission, the minimum representation and the fractional voting on which there are a number of amendments. Those matters will not come up until we have completed the present apportionment and districting plan.

With those two broad categories, Mr. Chairman, I would then like to address myself now to the first one and explain the approximate order in which we will handle the questions presented there. Sections 2 and 3 of Article III of the Constitution presently provide that the senate will have twenty-five members who will be elected from the senatorial districts, and the senatorial districts are laid out. All this can be found on page 8 of our supplementary report.

Throughout my presentation, Mr. Chairman, and throughout my remarks today I will try to refer to specific page numbers in our report for the benefit of the delegates who don't know exactly where to go in that volume. As you'll see, Section 2 states that the senate will be composed of twenty-five members elected from the respective districts and it then goes on to lay out what those districts will be. Those are the same districts that were created in the 1950 Constitutional Convention. They have since been declared unconstitutional. They are not the sections which are presently used within the senate. Section 3 does exactly the same thing for the house of representatives, except that in Section 3, the specific legal descriptions of the districts are not laid out and reference is made to a Schedule which is contained in the transitional

provisions.

Mr. Chairman, we have changed only Section 2 or have proposed a change only to Section 2 and all we have done there is to strike out the already outdated and unconstitutional descriptions which presently exist and also to provide that the senatorial district descriptions will also be contained in the transitional provisions. I think this is nothing more than a technical change to make Section 2 just like Section 3. The reasons for this are laid out on pages 10—or at page 10 of the report. I don't think they need concern us. There is no substantive effect to this change. I would point out, however, that adoption of Section 2 and retention of Section 3 in its present form does have the effect of retaining the existing size of both houses of the legislature. That would be my first order of business, Mr. Chairman. I will briefly go through my second and third.

The second thing we will do right after that is ask for the body's approval of our use of registered voters as an apportionment base. It was necessary to approach that particular question in this unusual manner because nowhere in the Constitution is there a single word which you could change and thereby change use of the registered voter base for this particular apportionment. It's simply one of those funny things but if we went through the Constitution even word by word, there would be no place where a person would be able to challenge our use of registered voters or question it. Therefore, we have asked that it be brought up separately and discussed separately before we get to the actual maps so that anyone who wishes to ask any question or have any comment on that would be able to do so. Thereafter, once that has been approved and assuming it is approved, we will—I will then make my opening statement to explain to the delegates how we have gone about the process of apportioning and districting and we would thereafter take up the actual apportionment on an island-by-island basis. It will be our intention to ask first for approval of the districting of Kauai. Second, Maui. Third, the Big Island. Fourth, Oahu. This is the order which is followed in the report with one exception and that is that we have removed Oahu and held it until last. This was at the suggestion of some who felt that one or two amendments might be offered with respect to Oahu. I didn't think this was really going to happen but bowed to their superior knowledge.

Mr. Chairman, I believe that is a general outline of the manner in which we will attempt to handle the first part of the committee's work. There are two matters which will remain to be handled at the end. One is a section in the transitional provisions which provides that incumbent senators, those elected for four-year terms in the 1968 general election will continue to serve out their full four-year terms even though the reapportionment plan will take place as of 1970. There are amendments which have been proposed on this and I would ask that those amendments be considered at that time.

Finally, Mr. Chairman, we have Section 25 of Article

XVI which is simply a technical provision establishing the effective date of the amendments offered here. That would be the completion of our presentation of the initial phase of our work which was the reapportionment and districting of the State. I would propose at this time, Mr. Chairman, that the body approve the changes the committee has recommended in Section 2 of Article III and that we approve the committee's decision to leave Section 3 of Article III as it is and I would repeat for the benefit of all delegates that such approval has only the effect of approving—only the substantive effect of approving the existing numbers in both houses and has nothing to do with approving the district lines which we have drawn.

CHAIRMAN: Thank you, Delegate Schulze. Are there any amendments or questions concerning Section 2 and Section 3? I might say the procedure which I planned to follow this morning is that the main motion before the house shall be the approval of the standing committee report and we will go through this in the order outlined by the committee chairman. And as each section or subject arises, I will call for amendment or discussion. If there be none, we will go to the next subject. If there is an amendment, it will be received, discussed and voted upon then and there. Delegate Goemans.

DELEGATE GOEMANS: At what point and time would it be appropriate to speak to the issue of the committee report as a whole rather than separate amendments of the committee report?

CHAIRMAN: Is it my understanding that you wish to comment on the report rather than to amend any sections therein?

DELEGATE GOEMANS: Well, I'm asking at some point or time we're going to have to vote on the—whether to accept or reject the committee report as presented or as amended and I think there could be feelings that perhaps the committee report is basically wrong or basically right.

CHAIRMAN: Delegate Goemans, without knowing the nature of your comments, I can't rule whether it would be better to make them now or at the time when this vote is taken on the committee report as amended. You will have to be the judge of that. If you wish to speak now on the whole subject, why, perhaps, this is the time to do it.

DELEGATE GOEMANS: Well, I wasn't necessarily speaking of myself. I do have a question as to the committee report generally and perhaps the committee chairman could respond.

DELEGATE DOI: Mr. Chairman.

DELEGATE DEVEREUX: Point of order, Mr. Chairman.

CHAIRMAN: One moment please. Let me ask the delegate one other question. Are the questions that you have on the committee report itself such that they

might be answered in the discussions which follow consideration of the various sections?

DELEGATE GOEMANS: I don't think so, Mr. Chairman, because I think it would have to do with the basic premise behind the report.

CHAIRMAN: Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, would it not be possible to ask the delegate to hold his question until after the chairman of the committee makes his presentation of the report?

CHAIRMAN: This is what I was trying to determine. Delegate Doi.

DELEGATE DOI: Might I make another suggestion here, that the delegate rise to speak on specific issues as they come up. Then, if at the end, his particular several points that have not been taken up which he is concerned about, then he could discuss the whole report at that time. Would this not avoid duplication and save time?

CHAIRMAN: I think so. The Chair is of the general view that if there is no amendment to a particular section, really it's not necessary to discuss it. However, because of the complexity of the problem and the extent of the work by the committee I know there are questions that will be legitimate and should be thrashed out at this time. This is the time to do it. And I'm asking Delegate Goemans whether his questions are those that can be answered when the vote is called for the committee report as amended, at which time perhaps some of your questions may be answered. If not, if you have a specific question that's pertinent to the entire subject, we'll receive it now.

DELEGATE GOEMANS: Mr. Chairman, I agree with Delegate Doi that the proper place to discuss the committee report as a whole is at that time that we vote on the committee report as amended or as presented. But to meet the particular problem I have right now, perhaps the committee chairman, during the course of his presentation, could discuss the basic issue that I have some question about. And I could say that now briefly and he could get into it whenever he chooses.

CHAIRMAN: Proceed.

DELEGATE GOEMANS: My concern is as to what the thought of the committee was in determining the basic issue of whether to include in the Constitution a specific apportionment plan or to do it in the alternative, what the model state constitution recommends, which is to spell out particular criteria for a plan of apportionment to be done by a particular body set up by the Constitution. In other words, my question is, what consideration has been given to the question of this body putting a particular plan in as opposed to just setting up criteria and why has it decided to put this particular plan in rather than setting up the criteria and directing the commission to do its work immediately?

CHAIRMAN: Delegate Goemans, I'm quite sure the committee chairman will answer both of those questions. One, in the course of discussion at the introduction to the reapportionment plan; and secondly, in discussing the apportionment commission which is provided for in here. And I will request that he make a note so to do. Very good. If not, can we proceed with the—are there any further remarks or amendments concerning Sections 2 and 3? If not, the second order of business will be the item of the registered voter base. I think all delegates should realize that this, as a subject in itself, does not appear in the Constitution. But it is necessary to make this determination in order to do the districting and apportioning. Therefore, we'll take this up as a general subject. The committee, in concept, has adopted the registered voter base. Does anyone have an amendment to that? Or any objection to that?

DELEGATE GEORGE LOO: Mr. Chairman, I have an objection to it.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: I have an objection to it. I was told that the committee chairman would make his presentation before I do.

CHAIRMAN: In the interest of time, I was not going to call on the committee to speak on it if everyone was in agreement.

DELEGATE GEORGE LOO: I am not in agreement.

CHAIRMAN: You are not in agreement? Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, Delegate Loo's remark is quite correct, I did promise those members of the committee who disagreed with our use of the registered voter base that I would speak on it this morning and explain to the delegates the reasoning behind our choice of that base. Mr. Chairman, at the outset may I say that it's necessary in considering this particular matter as well as several others we had to deal with to separate the policy consideration from the legal requirement. There are some decisions having to do with the use of registered voters as a base over the use of various other headcount. That is one consideration and it will be taken up after I have presented what I deem are the policy considerations.

Our committee went about this by sitting down and trying to determine first what was best for the State of Hawaii. And second, once we had determined that, is it legally acceptable. And with your consent I will follow precisely that order in presenting our reasoning to you this morning.

Mr. Chairman, we're talking now about an apportionment base. That's a big four-letter word that must have been thought up by political scientists somewhere to name the heads you're going to count to find out where you're going to put your representatives and your senators. Many states use a total population

count as determined by their every-ten-year federal census. The use of population in Hawaii, however, has several problems. The committee explored these for the better part of a full week, perhaps two weeks. We went through every possible headcount that has ever been used and several that have never been used and probably some that could not be used. I'd like to run quickly in just a few moments through the kinds of considerations we heard and the kinds of decisions we made.

First of all, while total population may be an appropriate headcount method for some states and a relatively easy one since the census comes in and does it for them, it is not as adaptable to Hawaii as it is to the other states. There is—the primary reason for this is the extensive nature of our military population. There are perhaps other states with more military people in them than Hawaii has but we are sure that there is no other state where the proportion of the military and dependents has a percentage of its total population that Hawaii has. We're a State with a small population in total and a very large military and military dependent group. As of the last estimates which were very recent, the military and military dependents constituted a full fifteen percent or approximately fifteen percent of our total population in Hawaii. This is a very, very significant amount, Mr. Chairman, and the enormity of this problem can further be considered when one thinks that most of these military people are congregated in a very few districts and almost all of them are on the Island of Oahu. The committee did not feel that military people should be excluded from its count simply because they were military people and indeed we feel that that would not be legally acceptable in any event. But we did feel that many military people are transients, do not take any significant part in the politics of our State and perhaps are not really significantly affected by them. We did feel that those military people who are either permanent here or who have registered to become voters here should be counted in the base that we use. But we also felt that we could not count military and dependents who were of a transient nature.

It was very difficult for us to take population figures and then eliminate from those population figures the military people. The data on military in the census is very sketchy. At best it takes a great deal of estimate and the data on military dependents is almost nonexistent. All that would have to be estimated in addition to which that which we do know about military and their dependents does not include knowing what districts they live in. So even if we excluded them we would again have to estimate to find out where to exclude them from. Finally, there is absolutely no way that we could eliminate from the census figures only those military people who are not registered voters in Hawaii. That is, only those who are transients or who are not citizens of the State. There are other problems with population, Mr. Chairman. It includes ships in harbor, for example, on the day the census is taken, whether those people live here or not. It excludes people temporarily out of the State, but who normally do live here in schools or in other capacities, and in

general produces a somewhat distorted count of the actual population of our State. Now, this is true of all states, of course, but we must consider that Hawaii's population is small, highly mobile, moving around all the time and at any given point many of them are on the mainland and a few distortions of that size here make a great difference because of our smaller total population than they might in other states.

In addition, we felt that there were some other groups which would be included in total population in which perhaps we felt should be excluded from any count that we use. These included other nonresidents of the State who are not military. Those people who come here for six-month jobs or one-year jobs but have no intention of staying. Aliens who have no intention of staying here. I would say that as to nonresidents who are not military, we have no information whatever. As to aliens, we know how many there are but we don't know where they live so we wouldn't know what districts to exclude them from. We would feel that the count of disqualified people who could not participate in the election process, incompetents, felons, should also be excluded and of course, those other disqualified people, the children as well. The committee's ultimate decision, Mr. Chairman, was that Hawaii's best interests would be served by allocating representatives and senators according to the people in the State who are eligible to register to vote. That is, citizens of Hawaii, people who live here permanently, and by permanently, the law requires that they have resided here at least one year.

The next question we had to face was how we calculate this. Where we get our figures from. There were three possible sources: number one, we could adjust census figures. As I just pointed out, this is a very, very rough process. It could possibly be done with some semblance of accuracy shortly after a census is taken. The accuracy of the figures then begins to diminish considerably within five years. The testimony before us has shown that they would be very, very inadequate, very inaccurate. We could also take an individual census periodically, census only of permanent state citizens. This is most accurate, I suppose, but it's extremely expensive. And also it gets out of date quickly too. Therefore, it would have to be done fairly frequently.

The committee's decision after much testimony, Mr. Chairman, was to utilize a count of registered voters to give us a rough approximation of the totals of eligible voters. The registered voter figures have a number of very, very good points for us. There is a high voter participation in Hawaii, traditionally, so that we are fairly sure that a very high percentage of those eligible to vote has actually done so. The registered voter figures adjust themselves immediately, every two years and show an accurate count of what's going on. Also, these figures adjust themselves by districts so that we not only know how many there are but we know where they are and this is the only information available which gives us that kind of data. There are some flaws which the lieutenant governor's office pointed out to us. One is that some registered voters apparently vote in

places where they don't live. It was the committee's conclusion that while this was a troublesome matter, it certainly wasn't critical. And indeed, the lieutenant governor's office has begun a concentrated campaign to straighten this out. In addition, tomorrow or this afternoon we will get to a provision which we have recommended to the Constitution which would constitutionally empower an officer of government to continue that work. Also, there is some indication in preliminary work that the number of—the proportion of eligible voters who are registered varies from district to district. This is highly preliminary data. The lieutenant governor's survey was conducted on a precinct basis, one precinct polled from several districts and not on a district basis. We listened to an analysis of this information for several days before our committee decision was made and concluded partly on the testimony of the state statistician that notwithstanding this factor, the registered voter figures would nevertheless provide a more accurate total picture of eligible voters, not only total but also by districts, than would any other method of counting. It will also be noted that our provision for a chief election officer which will come up tomorrow also constitutionally empowers an officer of government to try to minimize any imbalance of this kind.

Mr. Chairman, one other point we might make, the use of registered voters as a base means that the more registered voters a district has, the more representatives and senators it's going to get. And this usually means, Mr. Chairman, that the political party that is active in that district is induced to go out and get just as many people to register and to participate in the election process as possible. We think for that reason as well as the others, it is a very sound base to choose for Hawaii.

Finally, it does permit us to undertake more frequently, apportionment, something that we've deemed to be necessary and which we'll get to later. Mr. Chairman, there still are the legal implications of our choice. With the Chair's consent I yield to Delegate O'Connor, a member of the committee, to give his conclusions with respect to those.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, from a legal standpoint, and I'll try to make this brief and as nonlegal as I can, the problem of using an apportionment base, of course, begins with the series of cases which we usually refer to under the title of *Reynolds v. Sims*, which was the leading case of a group that came down from the Supreme Court of the United States in 1964.

Commonly we say one-man, one-vote when we refer to *Reynolds v. Sims* but in reality the rule of that case is the right of a citizen to equal representation and to have his vote weighted equally with those of all other citizens. In *Reynolds v. Sims* and the other cases that came down in 1964, the Supreme Court used as an apportionment base, total population. In none of those cases were there any problems pointed out to the court as far as total population of those states involved at

that time. In fact, Mr. Chairman, there were no real problems pointed out by the Supreme Court of the United States in the utilization of total population figures for reapportionment until Hawaii took its case to the Supreme Court.

We're very fortunate in this Convention, and we were very fortunate in the committee in having the decision in *Burns v. Richardson*, which, of course, is our reapportionment case in the Supreme Court. In reapportionment for *Burns v. Richardson*, the State of Hawaii used registered voters as a base. The court, in *Burns v. Richardson*, therefore was able to comment both on that utilization and on the evidence presented in the district court here in Hawaii in support of that particular utilization. There are several choices, Mr. Chairman, which a committee such as this and a committee such as your reapportionment committee could use for a reapportionment base. As the chairman of our committee pointed out, these could include total population, permanent population, civilian population, eligible voter population and state citizen population. The court in *Burns v. Richardson* said for the State of Hawaii, that state citizen population would probably be the ultimate or the best apportionment base that we could use.

As Mr. Schulze, our chairman, has pointed out, it is almost impossible in the State of Hawaii, to determine by any political subdivisions what the particular state citizen population is for that political subdivision. And I speak now as one who would present evidence in court. In order to determine state citizen population, it would be necessary to take total population and subtract from it military transients, their transient dependents, aliens, and transient tourists.

In some other states this may not be a problem, Mr. Chairman, but from a practical, hardcore evidentiary standpoint in the State of Hawaii, it presents a tremendous problem because, for example, we have 45,000 aliens in the State of Hawaii and no one knows where they live. Furthermore, we have 45,000 military men who can be considered transients at last count in the State of Hawaii and we can only guess at what particular precincts or districts they might be in. In addition, we have 65,000 military dependents in the State of Hawaii and we can only guess where they live and furthermore we're not sure whether they're transients or permanent residents. In addition, we have a large floating transient tourist population at any given time and these, although we assume they would be concentrated in our tourist hotel areas, we're not absolutely sure and these affect any attempt to determine from a hardcore evidentiary standpoint a state citizen population.

In the trial of *Burns v. Richardson* in our local district court for the District of Hawaii before Judge Martin Pence, all of these factors were brought out and conclusively shown to the judge and all of these factors were before the Supreme Court of the United States when it decided *Burns v. Richardson*. And the Supreme Court took cognizance of each of these factors and laid them out very specifically in its decision, and decided at

that time, in *Burns v. Richardson* that registered voters on that set of evidence and for the State of Hawaii at that time was an acceptable apportionment base. Now, I would be less than frank, Mr. Chairman, if I did not also say that the Supreme Court of the State of Hawaii indicated at that time that it was not accepting registered voters as an apportionment base for any state or for the State of Hawaii for all times but simply was accepting the base under the state of facts that it had before us when this particular case came to it.

Now, Mr. Chairman, the committee, your Committee on Reapportionment sat and heard extensive evidence on reapportionment base as Mr. Schulze, our chairman, pointed out. All of the evidentiary facts which were before the district court of the State of Hawaii and were commented upon by the Supreme Court of the United States in *Burns v. Richardson*, were reemphasized to your committee again and again by the evidence heard. Nothing has changed as far as aliens go. Nothing has changed as far as the military goes. As a matter of fact, at this instance our statistical experts can't even tell us what the military situation is. It's so fluid because of the Vietnamese situation. And nothing has changed as far as the military dependents go. As far as the tourists go, the problem only gets worse every year when you talk about the reapportionment base. It does not get better. Therefore, Mr. Chairman, your Committee on Reapportionment, when faced with a hardcore legal decision, decided that first of all, total population was now unacceptable in the State of Hawaii as an apportionment base. As a matter of fact, Mr. Chairman, it was pointed out in the committee that an excellent case could be made in court that total population for the State of Hawaii would never be acceptable as a population base. And that if we accepted this population base in our Constitution, we would always be faced with a court challenge based on the fact that for Hawaii total population does not truly reflect the *Reynolds v. Sims* rule in that the right of the Hawaii citizen to equal representation and to have his vote weighted equally with those of all other Hawaii citizens could never be measured because of our peculiar situation. Furthermore, Mr. Chairman, we discarded every population derivative from total population because of the same problem. And we've had to discard, reluctantly, the state citizen base because it is impossible in Hawaii to lay out with any degree of accuracy the number of state citizens in any given political subdivision, no matter where you draw it and no matter how you draw it.

It was pointed out more forcibly, Mr. Chairman, that in certain of our political subdivisions and I draw the attention of the committee to the committee report, page 12, the existing 8th, 9th and 10th Representative Districts on Oahu, that Mr. Robert Schmitt, the state statistician, made a guess and guessed that at a certain time the military population of this area was approximately 12% of the total population and the military dependents constitute approximately 13% of the total population. But Mr. Schmitt could not say as of today if that were true because, of course, the fluid Vietnamese situation has changed that area completely. For these reasons, Mr. Chairman, all of the other

constitutionally accepted bases were discarded one by one by your committee and we again arrived, as the district court of the State of Hawaii arrived when *Burns v. Richardson* was before us and the Supreme Court of the United States arrived, we arrived at registered voters as an acceptable and the only logical population base for Hawaii.

We made some further steps, Mr. Chairman, in our proposals to this committee to nail down registered voters as an acceptable base in the future. First of all, we had testimony from the lieutenant governor, as Mr. Schulze pointed out, that there were strong voter registration drives going on now and the lieutenant governor's office was concerned and therefore was doing everything under its power to insure in the future that voter registration would be kept up to snuff. We included in our committee proposal, and this will come on later on for your determination, Section 4.3, a section having to do with the chief election officer. And we included as one of the chief election officer's duties in our Constitution the maximization of registration of eligible voters throughout the State that this committee sees fit to pass that particular provision. It will insure in the future, both in court-contested cases and from a practical in-the-field standpoint that registered voters will truly approximate an acceptable population base for the State of Hawaii. In fact, will be an acceptable population base for the State of Hawaii.

Further, we took the step to make frequency of reapportionment more frequent—on a six-year basis. And this too will, if there is a future court contest regarding this particular facet, stand up in good stead in this provision in making the registered voter base an acceptable base. Furthermore, we found out that there is strong citizen involvement in politics. In Hawaii this is something that the Supreme Court and the district court found previously. And for all of these reasons and for others that are contained in the committee report, Mr. Chairman, we determined that registered voters was now and would be in the future the best apportionment base for our particular State.

DELEGATE FERNANDES: Mr. Chairman, point of information.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Mr. Chairman, I appreciate their talk but I'm just wondering, are you going to set at least some time limits? In other words, half an hour for my good colleague Loo or one hour, so that we know just about how much time you're going to give them extra.

CHAIRMAN: The point is well taken. Delegate Loo is recognized. Delegate Loo, it would facilitate the discussion, the subject of whether registered voters shall be used as a base or not, is before us. I understand from your previous remark that you're against this. If in your remarks now, you'd be so kind as to propose something else so that at least the body will know what we're comparing. Thank you.

DELEGATE GEORGE LOO: Well, as to your question, Mr. Chairman, we could either have a state citizen base or resident base. I would like to comment briefly on what Delegate O'Connor said about total population. On page 12 of the standing committee report it says that total population does not include tourist. Delegate O'Connor said it did.

Now as to my speech. The use of registered voter base is not constitutional. That's why I'm against it. The registered voter base in and of itself is not a permissible base for apportionment. Delegate Schulze told you that from the registered voters list they got the eligible voters. It should be the other way around. *Reynolds v. Sims* held that both houses of a bicameral legislature must be apportioned substantially on a population basis. The court in *Burns v. Richardson* said that the registered voter base must approximate a distribution of state citizens or another permissible population base.

What is a permissible population base? Total population, resident population, civilian population, citizen population, eligible voters. In the United States, the traditional measure of population for apportionment purposes has been total population as reported by the federal census. There are only eight states which use the population measure differing substantially from total population.

Indiana bases its apportionment on adult population. Three states specify qualified voters as their apportionment base, Tennessee for both houses and Rhode Island only for the senate. The population measure in Massachusetts is legal voters as enumerated by special state census conducted decennially. Hawaii is one of only two states which uses a registered voter base. Vermont, the other state, uses the measure only for apportionment of its house. Now, the rationale for using the total population base is that all inhabitants of a state regardless of its citizenship or voting status deserve inclusion in the apportionment base and that the use of any base other than total population discriminates against certain groups in the community who need representation. On the other hand, the use of a total population base in Hawaii would result in a substantial distortion of value of electoral votes cast for district representation because of tourists or military tend to be highly concentrated on Oahu and are largely confined to particular areas on Oahu.

The Supreme Court in *Burns v. Richardson* suggested that state citizen population might be a permissible population base for Hawaii since it presents no danger of grossly distorting the weight of vote or excluding citizen groups with vague representation but who are ineligible to vote such as children. A resident state citizen base performs a dual function of excluding aliens and transient military from consideration and includes all others who might conceivably have a protective interest in state government. If it is desired not to exclude aliens, a resident base may be utilized in Hawaii.

A resident voter base does not approximate a

permissible population base in Hawaii for the following reasons:

(1) A high mobility of eligible voters. During a twelve-year period, 25% of our households moved to a different location.

(2) Apathy on the part of certain eligible voters who do not register. Statistics indicate that the percentage of registration among persons of lower economic groups is lower than those in high economic groups.

(3) The existence of a different age structure in various districts. The proportion of persons twenty or over differs widely from area to area. On Oahu, such persons range from 21.8% of the total in Census Tract 54, this is at Mayor Wright Housing and 42% in Census Tract 20 which is central Waikiki. On the neighbor islands, the lowest proportion was in the Kawaihae District with 52% and the highest in the North Hilo District at 64.7%. Moreover, the percentage of registered voters has declined since 1960. The 1960 study reported that 87.1% of all island residents eligible to vote were registered for the 1960 election. In 1966, this percentage has dropped to approximately 65%.

The lieutenant governor conducted a house-to-house survey of 13,314 units or about 8.5% of the total number of units on Oahu in the period of March 18 to May 2, 1968. The purpose of this survey was to determine as accurately as possible within the time and money allocated the relative percentage of eligible voters who were registered in the various representative districts. The result of this survey showed that about 20% of those eligible to vote are not registered to vote in Honolulu County and that in the various districts on the Island of Oahu, the percentage of eligible voters who are not eligible to—who are not registered varied from a low of 14% in the 16th District to a high of 38.8% in the 13th District.

How can it be said that the registered voter base substantially approximates the eligible voter base when there is such a discrepancy in the percentage of nonregistered eligible voters in the various districts as shown by the survey? Now as to the argument that a registered voters base should be used because it is easily obtainable, this argument is fallacious for this reason, that the registered voter base must approximate a permissible population base. And the only way you can say that it approximates a permissible population base is by having that permissible population base. The fact that it is difficult to get this permissible population base doesn't detract from the requirement that you should have it. In conclusion, fellow delegates, I feel that the registered voter base is not constitutional because it does not approximate the eligible voter base in the State.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Will Delegate Loo yield to a question?

DELEGATE GEORGE LOO: I will.

CHAIRMAN: Will you address the question to the Chair please.

DELEGATE FERNANDES: Yes, the question is that I would like to find out if whether Delegate Loo is satisfied with the division of his district as it stands today with the proposal.

CHAIRMAN: That question is out of order. We're not up to the districts yet.

DELEGATE FERNANDES: Thank you.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I would like to ask the previous speaker, the proponent on registered voter base, a few questions.

CHAIRMAN: Sorry, I can't quite hear you.

DELEGATE BURGESS: I would like to ask a few questions of Delegate O'Connor.

CHAIRMAN: Proceed, please. We'll save a lot of language during the day if you address all the questions to the Chair.

DELEGATE BURGESS: The first question is this, if we do take the population base as a base instead of using registered voters, what types of information would be needed to use population base? Would it be just the number of people living within a certain area? Would this be satisfactory?

CHAIRMAN: Delegate O'Connor, do you understand the question?

DELEGATE O'CONNOR: I understand the question. First of all, let me say that if we utilize total population we probably could utilize total population if we insist upon it. But in order to make it a true population of the State for apportionment base purposes, it would be necessary first of all to locate all 45,000 aliens in the State and subtract them by geographical location from the total utilizing each area.

Secondly, it would be necessary to take the transient military, not the local military, and subtract them from the total amount. Then it would be necessary to take the transient military dependents and subtract them from the total population. And then furthermore and despite a comment made by Delegate Loo, each time there's a census taken, and total population is based on census, the census counts every tourist in the State of Hawaii unless that tourist is picked up to a census department gimmick that they have in his own state.

DELEGATE BURGESS: Mr. Chairman, I think I possibly phrased the question wrong. Let me ask it in

this way. Would the total resident population base be more accessible than using a registered voter base? If it were possible to get total resident population base, this base would include the residents, aliens, would include the normal residents, this would exclude all tourists and exclude all military transients and their dependents. Would this be a more acceptable base?

DELEGATE O'CONNOR: May I ask, Mr. Chairman, more acceptable than what?

DELEGATE BURGESS: Than the registered voter base.

DELEGATE O'CONNOR: The U.S. Supreme Court said that the most acceptable base would be state citizen base. Therefore I can only assume that probably a resident population base would be more acceptable, if we can pinpoint it, than a registered voter base.

DELEGATE BURGESS: Second question.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: What type of information would be necessary before you can accurately get figures on the resident population base according to the political subdivision? Would it be a number of people living within a certain address? Would this be sufficient for a population base?

DELEGATE O'CONNOR: Mr. Chairman, as I said before, in order to determine a resident population base, you would have had to of course exclude all nonresidents. So you'll have to know at the time of any given census who the nonresidents were, why they were nonresidents, why they were being counted at the locale that they were being counted and you would have to exclude them.

Now, unfortunately up to now, the U.S. census has not excluded, for example, transient military families on Oahu. And we'd have to know that. The U.S. census includes, for example, all the ships in Honolulu Harbor and their crews. They would have to know how many ships are in Honolulu Harbor and how many were on each ship, and you have to subtract those. It includes military people so you can't—

DELEGATE BURGESS: Mr. Chairman, I think I can save time by saying that I am not, where it appears that the delegate can only look at population from the census base information, I'm asking if it's possible to get this information by not going necessarily through the census bureau, by getting this information possibly every year using an agency that we already have.

CHAIRMAN: Delegate Burgess, perhaps in order to clarify this, if you have a proposal of something other than registered voter base and other than the base that Delegate Loo proposed, maybe you should turn your presentation around to a positive statement of what you think should be done.

DELEGATE BURGESS: The reason I'm not sure

whether I should make a plan is that I'm not sure of the legality of the plan and I'd like to have the comments of Delegate O'Connor. Let me briefly outline my plan.

The state tax office every year requires every resident of the State, not tourists or transients but only residents to file personal income tax forms. And all residents making over \$600.00 must file these forms and must also put down their resident address. All the dependents of these people filing the forms must also be registered on these tax forms according to resident address. Now, from my point of view the only needed information to decide what is the citizen population as according to the different political subdivisions is the number of people living at a certain address. Now from this information all that is necessary is simply breaking down this into political subdivisions as according to what precincts they live in.

I have worked a little with someone from an agency of the IBM Corporation and the figure they give me is that to break this information down and get an accurate figure on total population or on resident population would be about \$30,000 which is less than the supplies, the cost of supplies for the state senate in one year. I was wondering if the Committee on Apportionment had looked into this problem and if they had, what would be the problems of using this proposal or this plan?

CHAIRMAN: Delegate O'Connor, would you like to speak for the committee?

DELEGATE O'CONNOR: Yes, Mr. Chairman. The committee did look into the tax record situation. Not for the purpose that you outlined but for the purpose of possibly using the new tapes that the tax department has devised to check against registered voters. Because of that I can very definitely answer your question.

First of all, you have set a \$600-a-year limit on voting. This would exclude from your voters or from your list of people in each district all adult dependents, many housewives who are not included in joint returns, all people on welfare and many, many others who for one reason or another do not file income tax returns each year. And we determined that although this list, if it were supplied to the State by the tax department, would be a good checking list that could not in any case be inclusive as to check against the total number of either registered voters in the district, nor would it show you how many people were living in a geographical area of a certain age group or a certain ability to vote or to be citizens of the State of Hawaii. For these reasons, although we encouraged the lieutenant governor's office to go forward with this project, we felt as the committee that it would not be a cure-all.

DELEGATE BURGESS: Another question. Is there a greater amount of error, let's call it, among those who make less than \$600 than among those who do not register to vote?

DELEGATE O'CONNOR: I don't understand the

question, Mr. Chairman.

CHAIRMAN: The question is, would the comparison, what is the percentage relationship between those who do not register and those who do not file as against the respective totals.

DELEGATE O'CONNOR: There is absolutely no way, Mr. Chairman, to tell. For example, the only survey that's been run on the nonregistration is this survey that was run by the lieutenant governor this year. It was admittedly a spotty survey. It was not complete and it showed certain factors. The committee, after hearing all the evidence and hearing the lieutenant governor and the people that did the survey for him, felt that it indicated just what it indicated. Namely, that certain households and in certain addresses, people who should have been registered weren't registered. But we felt that the total figures indicated by that survey had no great overall validity for the State.

Secondly, there are absolutely no figures to my knowledge as to how many people who are adults in the State of Hawaii who will be considered adult citizens, or for that matter children because children would have to be included in a total population base or resident population base. There's no indication as to how many children or adults who don't pay taxes there are in the State. And we simply could not determine this information.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Could we not determine this information by using the state tax forms where all dependents must be registered on the state tax forms?

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: The only output from either taxing organizations were the names of the taxpayers. There was no output which included dependents. And it was also indicated to us that all children in the State are not necessarily put down on someone's tax form as a dependent. For example, for all welfare cases there is no tax or forms.

CHAIRMAN: Delegate Burgess, do you have any more questions?

DELEGATE BURGESS: I wish to make a brief statement at this time.

CHAIRMAN: I beg your pardon?

DELEGATE BURGESS: I wish to make a brief statement at this time.

CHAIRMAN: Proceed, please.

DELEGATE BURGESS: Mr. Chairman, I feel that we do have a more accurate way of measuring population base instead of using registered voters as

reflective of population. I believe that if we do use a state tax form we will have a much more accurate measure. The State uses two different types of forms, the N12 and N13 forms and in these forms they ask the number of people living within a household, the head of the household and the address of these people. These forms are sent out to only residents of the State. I think if we use these forms as basic information, we can very easily break down the number of people living within a political subdivision through some kind of computer process. I think if we do use these forms, we'll have a much more accurate measure of population than what is reflective of—whether it is reflected by registered voters figures. Thank you.

CHAIRMAN: Thank you.

DELEGATE AMANO: Mr. Chairman, may we have a short recess?

CHAIRMAN: May we hold that for just a second? I believe a short recess will be in order. The Chair would suggest that if there are no other proposals in this area that we put to a vote two subjects: one, registered voters versus the population, as proposed by Delegate Loo; and second, the residents as obtained from the tax form versus registered voters. If there are other people who want to speak on this subject we'll take a recess and come back.

DELEGATE HARA: Mr. Chairman, I'm not speaking on this subject, just a point that I'd like to make in regards to the statement that was made earlier by Delegate Burgess. And that one of the qualities of his argument for depending on the tax office for the information of residents and determining population is that I know of many, many instances where people deliberately by design refuse to put any of the dependents hoping that they will be compelling themselves to sort of a self-imposed short saving so that at the end of the fiscal year when the taxpaying period comes along they have an ample amount of tax accumulated. And for this reason, we will not be getting the kind of accuracy that you are striving for, if we were to depend, really, on the tax office for information in determining population.

DELEGATE YIM: Mr. Chairman.

CHAIRMAN: Delegate Yim.

DELEGATE YIM: Mr. Chairman, I feel that we are hitting on a very important question which may have implication in future judiciary review. We have already heard the importance of the use of total population as the criteria throughout the country. And we all recognize the problems that we face in Hawaii. The question now that's been raised by Delegate Burgess and the proposition set forth by Delegate George Loo are very important in setting forth in this record for this particular convention of 1968 for possible future use in making any determination as to the reapportionment for the State. I think we should spend a few more moments to make this determination as to how difficult it would be for this State to set up the machinery for

future use in making a concise and accurate determination as to the State, who constitutes state citizens and possibly use that as a base for future reapportionment. I would like very much to take a short recess and have the state statistician, Mr. Schmitt, to come before us to explain very briefly whether it's possible. If so, how much it costs to set up the machinery for future use to make a determination as to whether we can find out who, where, are our state citizens.

DELEGATE SCHULZE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Schulze, is it necessary that you speak before we have a recess?

DELEGATE SCHULZE: I've asked for a point of order, Mr. Chairman.

CHAIRMAN: State your point, please.

DELEGATE SCHULZE: I do not believe it's appropriate to call the state statistician or any other witness before this body, Mr. Chairman. That question can be addressed to me as a committee chairman and I can answer it.

CHAIRMAN: That is correct, and I think as soon as we return from recess that we'll follow that procedure. A short recess subject to the call of the Chair is declared.

At 10:50 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:00 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The Chair recognizes Delegate Schulze for the purpose of replying to the question raised by Delegate Yim.

DELEGATE SCHULZE: Mr. Chairman, the only way that the information suggested could be made available in a form more accurate than the use of registered voters would be through the use of an independent census. We have an estimate on the cost of an independent census as of 1964, approximately one million dollars. I think it's reasonable to assume that that cost will have gone up since that time. In addition, of course, one would have to consider how frequently we would have to have that census; if our six-year reapportionment plans are adopted it would cost that much every six years.

CHAIRMAN: Thank you very much. Are there any further questions? If not, Delegate Lewis is recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, this is not a question but I did want to make one point for the record in connection with the survey made by the lieutenant governor from March 18 to May 2, 1968. That was a survey made with what funds were available.

The report we received of that survey indicates that it is recognized that it is not a professional survey. A request was asked of our statistician as to whether we could use this survey and build in some corrective figures where it was indicated that registration was low in one area or another and we were advised that really there was not sufficient accuracy for the survey to do any of the kind.

For example, calls were made at 13,314 homes and 4,350 were not home but there were no call-backs whatsoever. Furthermore the selection of the homes that would be contacted was not a sufficient sampling so that we were not able to use the survey to arrive at any corrective figures because of its inadequacy and because it was not professional. And I think by the same token, the committee was obliged to conclude that we would have to proceed from the basis selected, namely registered voters, that on the total picture it was still the most accurate and reliable basis we could select.

CHAIRMAN: Thank you very much. The question before the house is whether registered voters shall be used for the purpose of apportioning the State of Hawaii at this time and the Chair will put the question.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Yes.

DELEGATE BURGESS: Before you put the question I think I misunderstand. If we do go along with registered voters, does it mean that only for this coming six years or from this Convention we will use registered voters and in the future we may use any other system which we find more effective or are we tying ourselves down to registered voters from now on until we change the Constitution?

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Mr. Chairman, the provisions of the Constitution which are proposed would establish registered voters as the apportionment base for the State of Hawaii in the Constitution. This would in a conceivable future establish that base and that base would be so used. However, if, say twenty years from now, if there was no Constitutional Convention and if it becomes possible to nail down from an evidentiary standpoint, a state citizen population, it might be possible for someone to go into court and have established a new apportionment base, namely whatever base can be proved, and this would then have to be used by the districting and apportionment commission. But for the present and until such a time comes, and believe me from everything that's been said this morning, your committee feels that the evidentiary problem is a large one. Until that time registered voters will be the constitutional apportionment base for the State of Hawaii.

CHAIRMAN: Thank you.

DELEGATE BURGESS: Mr. Chairman. I can accept using registered voter base—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: State your point of order. I thought you're rising to a point of order.

DELEGATE YOSHINAGA: I just wanted to add to the precise information given by Delegate O'Connor on this question. If Delegate Burgess can convince me that he has a superior population base, in a few months when the legislature meets, I shall be glad to propose that as a constitutional amendment just in case nobody goes to court, which is the other procedure that Delegate O'Connor has suggested may be possible.

CHAIRMAN: Very helpful information. Thank you. Delegate Burgess, does that answer your question?

DELEGATE BURGESS: No, it doesn't. What I'm trying to say is that I can accept registered voter base for this—the purpose of reapportioning with this Convention but I don't see why we should tie our hands for the next ten or twenty years and continue to use registered voter base if we can find another means more effective. I think we should let this stand loose and in the future, if the commission does find another more effective way of measuring, instead of going through the process of amending the Constitution let them go ahead and just change their base. On this basis I will vote against the proposal.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I am one of those on the Reapportionment Committee that took a stand against the use of the registered voters base and as an alternative possibly to use what is categorized as the resident population base, which is to say the total population base minus the military and the transient tourists. I realize that to gather data in time for a reapportionment decision in this body here for the purpose of this Convention is an impossibility and consequently, I'm one of those in the rare minority I suppose that feel that there is no dire necessity for this body itself to determine the reapportionment at this time. I am one of those that advocated possibly this body setting up a formula that could be utilized by the reapportionment commission that is proposed by this committee in time for the 1970 elections. In any case, one of the questions that bothers me about the use of the registered voter base is that for one thing, the use of this base completely ignores the fact that there are some 253,700 people, those of age nineteen and younger who are completely ignored. Add to this, and this is only on the Island of Oahu incidentally, there are some 29,281 aliens also residents of Oahu for a total of 283,000 people on the Island of Oahu alone that are completely ignored by the use of the registered voters list. It just seems to me that this number of people not being included in our calculation in the registered voter base is something we've got to think very seriously about. And I just have my doubts that the courts will allow the use of the registered voter's list based by merely a 1966 data which has been brought up to the full point in the last few weeks.

I think one of the criteria that the Supreme Court set up was that other basis are permissible other than a total population base if the use of this particular population base, in this case, and the committee's recommendation to use the registered voter base, if it does not deviate substantially from what the apportionment result would be by using the total population base. It just seems to me that we deviate too much and there is a question in my mind whether the legal validity can be substantiated by the committee recommendation, the use of the registered voter base. Consequently, I speak against the use of the registered voter base system.

CHAIRMAN: Thank you. Are there other speakers who wish to be heard? If not, we will put the question. The question is whether a registered voter base shall be used. All those in favor will say "aye." Opposed, "no." The question is carried.

The next subject in the order of business is to call upon the committee chairman to go into the procedures and the districting. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the members of my committee won't believe this but this is the last long speech I'll make today.

May I start and ask that the record show that we have inadvertently from the committee report left off the names of Delegate Emilio Alcon and Delegate Jack Mizuha as among those who testified before the committee. We apologize for the inadvertence and we apologize if there are any others who did get left off. The report was prepared in somewhat of a rush as I'm sure you understand.

Mr. Chairman, I would like now to give to the delegates, if I might, a broad overview of the problem of apportioning and districting the State of Hawaii and some general outline of the means by which our committee undertook to accomplish this task. Initially, let me say there's a difference between apportionment and districting and I hope you won't think I'm being too precise if I ask you to consider this difference. Apportionment is the process of allocating numbers of representatives or senators to various districts within the State. Districting is the process of making those districts.

These are quite different activities, Mr. Chairman, and as a matter of fact the ball game, the apportioning and districting game, has changed very considerably in recent years so that for those of you who've been through this many times before, it may interest you to know that the game is not played the way it used to be played. For one thing, apportionment, the process of allocating people out to the district used to be one of the most difficult jobs of all. Now it's the easiest.

The difference is the Supreme Court which has ruled that there's only one way you can apportion and that is according to a population or apportionment base such as the use of the registered voter base that we have used. You've got to count them up and you've got to

apportion your representatives and your senators almost precisely in exact multiples of the total number. That is to say that each representative and each senator must represent approximately the same number of people no matter what.

I would think that the process of apportioning the senate undertaken by the 1950 convention was a real dilly. There, there were no real guidelines as to which county got how many, at least no legal guideline, and it all had to be hammered out by negotiation. That is no longer the case, Mr. Chairman, and apportionment is no longer a big deal. Apportionment was all taken care of for you. You don't have any leeway, you don't have any choice, you just add up your numbers and put them out. There are some small exceptions to that that we'll get into later, but they're minor.

Districting, however, is still a very, very difficult job. Districting is the process of drawing lines and if our committee didn't know it before we started, we found out very quickly that one does not draw lines in a vacuum. There are a number of people who seem to be very interested in the process of drawing lines. With this in mind, Mr. Chairman, we began our deliberations in the committee in this way. We started off in a very general approach to the whole problem. We spent days listening to experts in the field of political science, people who discussed with us the theories underlying apportionment, underlying districting, the various things that one tries to accomplish, the various things that one tries to avoid. We listened to a battery of legal experts, some of them probably some of the country's foremost experts in this field, telling us what the courts had said and had not said and just where the limitations were on what we could do and could not. We also listened, Mr. Chairman, to representatives of a number of interest groups around the State who had their own ideas about how apportionment and districting should take place. I'll get back to them in a minute. I would like to say this.

I would like to say that early in this game, the committee members realized openly that what we were involved in had always been, not only in this State but in other states as well, a highly complex, a highly pressure-laden job, a highly political problem in which lots of people ran a risk of getting hurt or helped depending upon what our decisions were. For that reason, Mr. Chairman, we took the most elaborate procedures to try to avoid any deviation from a process of objectivity, from a process of impartiality in our deliberations. One of the things that we did was to listen and study a number of matters on general problems before any pen was laid to paper. One of the second things we did was not issue pens to any of us. Instead, we engaged a totally-independent computer and a mapping team consisting of a full statistician, the state statistician, Mr. Robert Schmitt, who probably knows more about numbers in Hawaii than any other living man or men. We also had an assistant statistician, we had a computer programmer and a computer. We had a draftsman. We had a statistical typist. These people were housed in an office downtown, separated from us, separated from the convention. To the best of my knowledge no delegate other than myself has ever been

to that office. Certainly, they received instructions and suggestions from no one but the chairman of this committee.

The committee deliberated at some length the criteria and the standards which it would want to utilize in establishing an objective and impartial districting of this State. I would like to comment on them if I might. I'd like to say first that the job of apportioning the State was relatively easy. We used the method of equal proportions which is a formula derived from somewhere and constitutionalized in 1950 and used by us to allocate the existing house and senate members among the various counties. Among the various basic island units.

Then, with respect to districting, we studied and studied and studied. I would like to elaborate just slightly on the kinds of conclusions we were able to come up with. Some of them were tentative but we had to give the computer team instructions. We had to tell them what kind of standards they would utilize in preparing maps for us. One of the first major matters to be presented to us was the size of the legislative districts, Mr. Chairman. The United States district court, the three-judge district court in *Holt v. Richardson* which was evaluating the senate reapportionment, gave great criticism to the fact that Hawaii, particularly Oahu, had very large multi-member senatorial districts and also very large multi-member representative districts. Some of these, the court deemed to be monolith. I would like to quote from the court's opinion just for a moment. I quote from 240F, Supp., page 729: "While there perforce must be some overlap of representation with the several senate and house districts, that overlap must not be such as to concentrate and intensify the voting power of a single senatorial-representative district to the point that the voters therein have a built-in disproportionate representational advantage over any other voters of the state." The report then goes on to state that we did have in Hawaii several monolithic districts which the court considered to be violative to this and in addition these were particular districts where the representative district was virtually the same as the senatorial district. The same, of course, holds true where both are very large.

In addition, Mr. Chairman, we received many comments from political scientists and persons who had studied the field of apportionment for many years. We did a good deal of reading on this. There is a great deal of controversy back and forth on the relative merits and demerits of small districts versus slightly larger districts. Almost everyone agrees that very large districts, that is, in terms of the numbers of representatives they elect, are undesirable. As you get up to five or six or more, however many you set as a limit, you begin to get a substantial number of names on the ballot making it difficult for people even to determine who is running. I will not go into the hundreds of other merits and demerits which have been advocated for large and small districts. I think it's fair to say that probably there's a certain amount of truth on both sides and that each type of district has its advantages and has its disadvantages. There were a number of very active

organizations in Hawaii, the Hawaii Chamber of Commerce and the ILWU among them, who very strongly advocated reducing house districts so far that none of them elected more than one member. Their general premise of course was that the smaller the district, the closer the representative or senator is going to be to his constituency. This kind of suggestion came in from a rather large number of people and for that reason, we did go into the process of single-member districts with some thoroughness. One thing we did determine after reviewing all this was that it was evident that if we're going to have two houses, there should be a difference in the types of districts generally at least. If you're going to have large multi-member districts in one house, they should be smaller in the other. And I think the feeling could have been described as overwhelming that the smaller districts ought to be in the larger house. The reason for this becomes fairly clear. If you think about it, the larger house, the house of representatives, has shorter terms; therefore, it's much, theoretically at least, more responsive and more immediately responsive to the people. Also since there are a larger number of them by definition they represent a smaller geographical area and they are capable of being reduced to smaller districts.

This was a general conclusion, Mr. Chairman, and so we did determine that one consideration that was to be utilized by the mapping team was that we were to go in the house to smaller representative districts throughout the State. I might say that we also instructed that computer team to come back with maps which showed all of Oahu in single-member districts only. That is, with no district electing more than one representative. The team did two of these maps and we have described the problems which we found with respect to them on page 29 and the following in our report.

It is, a number of problems that we encountered are listed there. Primary among the problems was that it was impossible to avoid making nonsensical districts. It was impossible to avoid district lines which simply chopped up helter-skelter, existing neighborhoods and existing socio-economic groupings and it was impossible to avoid wholesale submergence of small groups of people in rather arbitrary districts. Not rather arbitrary, Mr. Chairman, they're totally arbitrary because they have to be precisely a given number, not more, not less. And because of Hawaii's—I won't go into the various reasons that we did not select the rigid restriction to single-member districts. I think they're reported appropriately in the report. I would say this, other states have used them and apparently have not had the kinds of difficulties that we encountered. One very definite reason for this emerged as we studied computerized methods of creating single-member districts, and that is that our geography is very, very different from the geography of other states and particularly other large cities who have the problem of creating districts. When you start chopping out five thousand member segments you begin running up mountain ridges and down through parts of the ocean and bays and the computer—it's very difficult to program the geography into the computer in such a way

that we come out with anything approaching a realistic kind of thing.

The other difference I think between Hawaii and other states is that our population distribution is quite different in terms of our geography here. And it's also very small, and it's also very growing and it's also very highly mobile. And all of these elements mean not only the statistics simply didn't work out very well but that everytime there was a reapportionment there would be a very violent change, wholesale change in size and structure and appearance of these districts, so that voters in them, everytime there is a reapportionment, many of them would be allocated to entirely new districts, entirely new races where they knew none of the people running. We felt that the end result might well be to alienate a great many people who now remain active in the electoral process.

We also investigated the possibility of having all multi-member districts. And for other reasons which are listed on pages 34 and 35 of the report, we found that in some cases it makes excellent sense to have a single-member district. There were two general times when we found this was so. One is that where we can find an area which is substantially homogeneous in its socio-economic makeup which is different from the socio-economic makeup of the people in adjoining areas and which is sufficiently large and geographically separable to be a representative district by itself. By all this it means if you get about five thousand people, all living together, separated geographically from their neighbors, and different from their neighbors, and you get a group that's just the right size and in just the right place, particularly in a rural area, it may sometimes make sense to go ahead and get them the single-member district. It may in many cases provide them with the most effective type of representation they can have.

The other criteria, the other area in which we found that single-member districts made a good deal of sense was areas which were so sparsely populated that multi-member districts would cover inordinately large geographic areas. This has particular reference to the Big Island, Mr. Chairman, where population comes in small clusters where even single-member districts are huge by comparison to distances normally encountered here in Hawaii and the use of single-member districts is almost required in the country areas.

Our conclusions, then, Mr. Chairman, for the size of districts was that we would not be bound by a rigid requirement that we use single-member districts alone nor multi-member districts alone. We came up with additional criteria. I'd like to state them to you although I think many of you have seen these before. All of you who had attended our hearings have seen them on the boards or have been given a copy of these criteria. We refer to them constantly and use them sometimes I suppose even in talking to our wives, they've become so common to us. I'd like to simply read them for the people and I don't think that I'll go into any substantial discussion of any of them. Number one, we required that the average number of registered

voters per legislator in each district shall be as nearly equal as possible. This is simply another way of saying that you must apportion according to numbers. That you can't play any games with the numbers. And that if you have any deviations beyond a certain point, they must be explained in terms of a substantial and real state interest.

Criteria two, "No district shall extend beyond county boundaries." Perhaps it would be well to explain that to you for a moment. Some states—it has been indicated by the Supreme Court that some states may be required to combine counties. Two or three counties if necessary into a single area in order to avoid distorting their population base by having one representative or one senator assigned to each county. Even though the Supreme Court has done this in other states we do not feel that Hawaii has to follow suit. We feel we're really unique in this regard and we have therefore taken the bull by the horns and stated that we will not draw district lines which will include more than one county.

Three, insofar as possible, districts must be contiguous. Obviously this doesn't follow where there's more than one island in a district and compact. These are common enough terms, Mr. Chairman, they're simply used to try to avoid gerrymandering when you set up criteria for any future commission or even for yourself. You must—you simply don't allow pockets of population here and there to be joined by imaginary lines. All the people have to be able to theoretically at least travel within a district where they all vote.

"District lines must follow permanent and easily recognized lines." For example, major streets, streams and clear geographical features and should follow census tract lines where possible. One of the things we undertook to do this time, Mr. Chairman, was to utilize a census tract line to the extent possible. This is a very great advantage, not only because census tract lines are entirely impartial and entirely bipartisan but also because they permit the correlation of census data which is collected by tract with precinct data. That is to say that we will be able to find out a great deal more about our voters and about their habits and their socio-economic aspects by district to the extent we are able to correlate these two things. We also preferred—very much liked the idea of census tract lines in establishing some criteria for the future because it is, as I said before, highly impartial.

Number 5 is a little more complicated. It says that wherever possible, the division of areas with a substantial community of interest, that is, a substantial socio-economic community of interest, is to be avoided. What this means is simply this, if you have a district of 4,300 and you need 700 more, we try very hard to avoid cutting 700 out of some other district and just lopping that 700 off and putting them together with somebody they don't really belong with if we can avoid it. You've got to come up with 5,000 and sometimes there's just not much you can do. Also, we tried to draw our lines in such a way that if we could keep a neighborhood together we did. And that wasn't always possible either. But this is the criteria we're talking

about.

Number six tends to be somewhat like it, "The submergence of small areas or groups within larger districts where substantially different socio-economic interests predominate is to be avoided." This is somewhat vague criteria, Mr. Chairman, and it used the unfortunate word "submergence" which has come back to haunt us ever since. Everybody who had a problem with any district always refers to the submergence of something within that district. I won't say that we found it to be unworkable but we did find it to be—and we did at times find it to be helpful. We tried to construct districts in every case where you avoided significant pockets of voters or of population who were quite different from those people who surrounded them and who were totally outnumbered by those who surrounded them. The net effect of including a small pocket of very poor people in an otherwise very wealthy residential area is in effect to disenfranchise those very poor people because the people they are going to vote for are very likely going to be different from the people the wealthy residents are going to vote for. This is oversimplified but it is one of the criteria we used to try to avoid insofar as possible unfairness in the construction of our districts.

The next criteria says districts may not be drawn, may not be so drawn as to unduly favor one person or political faction. I think this is obvious. I'm not—it sometimes sounds like you get your head in the clouds a little bit but it is a criteria which our committee took very, very seriously and I think has followed through on right straight through its deliberations up until today.

Eight, no multi-member house district shall have more than three representatives and no single-member districts shall be created in highly urban areas. Now these two go hand in hand, Mr. Chairman. It was our conclusion that you can reduce the size of the house of representatives districts effectively and that if you will allow yourself two and where you need them three representatives you do get a situation in which the districts are not too large to be so large that they are unwieldy. You get a situation in which those who are elected are fairly close to their electorate and yet you're not in the same kind of problems we have with single-member districts where your lines simply become arbitrary and very difficult to deal with.

The "no single-member district" criteria I think is understandable. I've already discussed the problems we had with those.

The tenth criteria, and I'm on page 29 of the report now, all of these are discussed in the report, "Except where districts constitute entire islands or counties, the senate districts should be larger than representative districts, and senate district lines should avoid cutting across a house district." We used the word "should" because you just can't always do it. But we tried to avoid having senate lines and house lines different where we could because you run into quite serious problems of precincts or your counting units, that is your units of voters which would then have to have different

boundaries for the house and the senate. It gets kind of unwieldy and very complex.

Well, these are criteria, Mr. Chairman, we gave them as they stand here in front of you to the computer group. The computer group went out, perhaps it's unfair to call them entirely a computer group but it was a team of people involved in districting the State and I suppose it would be fair to call them the districting team. They came back with a very large number of plans, some of which emphasized one criteria more than another. Others had various problems with them. I don't recall at this point how many we went through but there were a very large number of plans that we went through before we began to narrow down to the plans that we felt appropriately reflected the needs and the criteria that we had established.

Mr. Chairman, that's a picture of the process that we used. I am now simply presenting a generalization to the people because I think the delegates have a right to know. I'm not now talking about any specific island or specific map and I will do that next. I do want to say this, Mr. Chairman. This committee has, ever since its inception, met almost daily, every week since the convention began and has been one of the most highly self-disciplined committees that I've ever seen in my life. And by this I mean that anyone has a temptation to think about his own personal problems or those problems that his friends have when he's drawing a map. And I will say to you here that this committee fulfilled its criteria for itself of remaining objective and impartial. I will say to you that although we fully understood that when we reduced the sizes of representative districts you must, you must hurt some incumbents. We knew this. We also knew, Mr. Chairman, that if we tried to draw districts in such a way that no incumbent was hurt, we would simply have to vacate our chosen job of drawing the best objective and impartial plan that the State could muster. And so, we chose the latter and not the former as a criteria for guidance.

I will say this, we had substantial discussions about how the situation which incumbents and prospective candidates for the house and for the senate could ameliorate their problems after an apportionment. It is quite difficult for people whose districts have just been redrawn and who suddenly find themselves required to run from an electorate which is foreign to them or to require them to go out and generate a whole new following in an area which has just been redesigned. We are sympathetic with this problem. The committee report shows that we did inquire into the possibility of suggesting a constitutional amendment which would provide a period during which the residence requirement might be relaxed after an apportionment to permit adjustments by people who were hurt by a redistricting. There is some controversy within the committee on this but at least the general feeling was that this could be handled by the legislature and we recommended that they do so.

We're not recommending any elimination of residence requirements but we are recommending that this is

something beyond the ability of anybody to deal with and we feel that it does sometimes present a significant difficulty not only to those incumbents or to those prospective candidates who will run but also to any commission or body which is trying to do a job. And if some kind of legislation could be enacted which would simply ameliorate the situation, we think that the job of any future commission would be much easier and we think that a good deal of fairness would result.

Now, Mr. Chairman, beyond that, I will say to you here categorically that these plans have been drawn as impartially, as objectively, as fairly as any apportionment that's ever been done in this State and I would even go farther and I'm not known for my humility, sometimes I will say that it's done as impartially and as objectively as any apportionment plan that will be done in this State. I have a great deal of pride in this plan. I think that if the Committee of the Whole adopts it and the Convention adopts it, that they too can have a great deal of pride in the fact that an objective, a fair and a very sensible apportionment plan for the whole State has been completed. And that, Mr. Chairman, will perhaps help to answer Delegate Goemans' original question, why didn't we just duff this job and turn it over to somebody else. The reason is that we don't think that any more qualified group than this committee has ever been put together in this State. We don't think that any group has ever studied harder or tried more objectively to do the job and we just don't think that there's anybody else around who can do it any better.

CHAIRMAN: Delegate Schulze, as a matter of procedure, I believe that we're discussing Sections 22 and 23 in general at the moment and I believe that there is a committee amendment covering those sections and it would be the Chair's suggestion that we have a motion to amend the committee proposal by substituting Amendment A; and secondly, that we take up Section 23 before Section 22. Section 22 being the senate, Section 23 being the house and as I understand the procedure the senate districts are somewhat dependent upon the house districts. So, would that be in order, and if so, would you make the appropriate motion.

DELEGATE SUWA: Mr. Chairman, before the motion I wonder if the Chairman—I know the Chairman has a corrected copy but in Standing Committee Report No. 58, page 46 and page 48 is, we could have them corrected for the record so that everyone has a uniform copy.

CHAIRMAN: The corrected page 46 and 48?

DELEGATE SUWA: Yes, Mr. Chairman, I have spoken to the chairman and he had noted that correction, Mr. Chairman.

CHAIRMAN: Is there any identification to indicate which ones are the corrected ones?

DELEGATE SCHULZE: Mr. Chairman, I was going to handle that when we got to the Big Island but we

can take it now since we're all on that page. On page 46, the error is that District No. 2 has one representative and not two as listed in the report.

CHAIRMAN: The corrected page should indicate one representative for District No. 2.

DELEGATE SCHULZE: And District No. 5 has two representatives and not one as is indicated.

CHAIRMAN: I see.

DELEGATE SCHULZE: Mr. Chairman, the error on page 48 is that District No. 5 is shown to have one representative. In fact it should be shown to have two representatives.

CHAIRMAN: Very good.

DELEGATE SCHULZE: Mr. Chairman, the proposal to—

DELEGATE HARA: Just for the record, Mr. Chairman.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: I'm not too happy and pleased the way this has been arbitrarily changed. Because traditionally the 2nd District was in Hilo and it was going counterclockwise. This changes numbers all around again.

DELEGATE SCHULZE: Mr. Chairman, we will get to the Big Island—

CHAIRMAN: We will get to that one when we get to the Big Island map. Will that be satisfactory, Delegate Hara? We will open that question at that time.

DELEGATE SCHULZE: I will be happy to explain why the number of districts has been changed, Mr. Chairman. The process of making these amendments, proposing these amendments, Mr. Chairman, comes when we begin to consider each individual island. I hoped to have an initial presentation which did not consider maps or islands but simply considered the committee's process. I would appreciate it if the Chair would permit either other comments to be made on this or questions to be asked in general terms and then we can go on to the amendments and to the individual islands.

CHAIRMAN: Very well. Delegate Akizaki is recognized.

DELEGATE AKIZAKI: To set the record straight, I'd like to ask a question. Is the plan on the boards over there the original districting plan direct from the computer?

CHAIRMAN: We have not come to these plans yet. If you want to discuss whether the committee proposal and the plans are alike, fine.

DELEGATE AKIZAKI: I understand that, Mr.

Chairman. But he has been stressing the word "computer" and I'd like to know for myself whether this is the plan that originally came out from the computer itself when he made his presentation.

CHAIRMAN: If you can give a simple yes or no answer, go ahead, Mr. Chairman. Otherwise I think this kind of question should wait.

DELEGATE SCHULZE: For all islands, Mr. Chairman, the original maps that were presented to us have come right out from the computer and the calculators. These maps are not straight out of the computer or calculator.

CHAIRMAN: Does that answer your question?

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: Mr. Chairman, I'd like to ask the committee chairman if the committee members have actually seen the computer printouts of the statistical study and basically in terms of the census tract and the number of registered voters in each of these census tracts. I'm obliged to ask this question because I've been concerned whether the computer printouts were actually examined by our members or are we taking the word of one person?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, let me clarify that for a moment. First of all, no, printouts were not inspected by us. Secondly, if they had been inspected by us, we wouldn't have known what we were inspecting anyway so there didn't seem to be a great deal of point in it. I will say this, Mr. Chairman, except for a few specific plans which have been developed on the mainland for single-member districts applicable only to certain geographical types of areas, it is not possible to have an entire plan including all districts drawn completely by computer. And I did not mean to intimate that the computer printed out these maps. I simply meant to say that the calculations going to the numbers of people in each census tract and precinct and the combinations of those were computerized and were used by our team in arriving at the lines in the maps which were made.

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: There is a reasonable doubt whether there exists in our State registered voter census based on census tract and I would say that this committee is obliged to examine this data. And it certainly can be understood by any person in terms of what the printout would say.

CHAIRMAN: Thank you. I think that comments along that line probably would be more in order when we actually get to the maps themselves. I would like to

adjourn in a very few minutes, or recess rather, for—

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I want to know when it would be proper to ask questions directly related to what has just been said.

CHAIRMAN: Would you address the Chair, please?

DELEGATE LUM: I'd like to know when it would be proper to ask questions about what has just been said.

CHAIRMAN: State your question, please.

DELEGATE LUM: I'd like to know when it would be proper to ask questions about what has just been said by the previous speaker.

CHAIRMAN: Will you please state your question.

DELEGATE LUM: Okay. First of all, I'd like to ask the question, was there any official decision rendered by the court that the house of representatives was malapportioned?

DELEGATE SCHULZE: There was none, to the best of my knowledge it was not an issue.

DELEGATE LUM: Is there any particular decision by any part of the state government or any official action that motivated the committee to look into this particular area?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Yes, Mr. Chairman, the voters voted to have a Constitutional Convention.

DELEGATE LUM: Mr. Chairman, also in reference to the particular criteria we set up here, am I to understand that this criteria was voted upon by this group and be a basis for future reapportionment?

DELEGATE SCHULZE: The answer to that, Mr. Chairman, is negative.

DELEGATE LUM: The purpose of this criteria is only for this particular reapportionment?

CHAIRMAN: Delegate Schulze, I believe that is correct.

DELEGATE SCHULZE: That is correct.

DELEGATE LUM: Mr. Chairman, I'd like to also know if the committee did decide whether there was any importance of one particular criteria as opposed to another?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I think that the answer to that is in the affirmative. We found that some were more workable than others. We found, for example, that we could impose a criteria that senate districts would be larger than house districts and stick to it. We found that we could impose a criteria that multi-member districts in the house would not exceed three members and stick to it. We found that we could impose a criteria that clear geographical features would be followed where, and census tract lines, wherever possible and stick to it most of the time but not always. We found that with respect to other criteria as they got rather more general, we had to deal with them in a rather more general way.

DELEGATE LUM: Then can I assume that the decision was then made by the committee as to where the line would fall or how a particular combination of a group of voters would be met to be put into a particular district? Is this a fair assumption?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I'm not sure I grasp the import of that question.

DELEGATE LUM: Let me put it this way then. I want to know that when there is a decision that has to be rendered as to whether we're going to take an area, let's say a decision as to whether we're going to have a single-member district in an urban area or we're going to stick to the provision that says we're going to keep the district lines within permanent, easily recognizable lines, major streets and so and so as well as another concept which may come about keeping a community of interest of separate socio-economic group together, when you have a decision that has to be made whereby these three things are in conflict, let's say, who made this decision?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Our committee, in every case. Mr. Chairman, may I add a slight elaboration on Delegate Lum's first question? No court has ruled, to the best of my knowledge, that our particular house reapportionment is presently unconstitutional. But there is no question that it is.

CHAIRMAN: Thank you. The Chair would like to declare a—excuse me, Delegate Lum, are you completed for the moment?

DELEGATE LUM: I wanted to ask just one more question. I don't know whether it's proper to ask it here or wait until we get into different districts because it does relate directly to the criteria here and I see a direct conflict in a particular area. Perhaps we should wait until we reach the district.

CHAIRMAN: Perhaps we could take that up after the noon break. Okay? The Chair would declare about a one-minute recess to confer with the president.

At 11:50 o'clock a.m., the Committee of the Whole

stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:51 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The Committee of the Whole will stand in recess until 1:30 o'clock p.m. today.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Before we recess, could you give us an idea whether we're coming back this evening and at what time so those who have plans for dinner or for the evening may plan accordingly.

CHAIRMAN: I think that we could probably recess from six to eight if there are no strenuous objections. It seems to be about the best time.

DELEGATE FERNANDES: Mr. Chairman, could we have it at 8:30?

DELEGATE YOSHINAGA: I have no objection to time. I'm just asking that you let us know roughly what the plan is.

CHAIRMAN: Is there a strong feeling in favor of 8:30 rather than 8 o'clock?

DELEGATE SCHULZE: Mr. Chairman, the committee would not object to 8:30.

CHAIRMAN: Okay.

DELEGATE KAWASAKI: Mr. Chairman, could we make that determination after we see how the afternoon discussion and debate go on the floor here to know how much ground is covered.

CHAIRMAN: Delegate Kawasaki, I think the problem is that various delegates want to make plans and therefore, I think for the purpose of personal plans, we should consider that we will be in recess from 6 p.m. to 8:30 p.m. If it becomes necessary to change that, we will change that but we will try to stick to it if possible.

DELEGATE KAWASAKI: Could we have a half a minute recess right at the moment please?

CHAIRMAN: So ordered.

At 11:55 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:56 o'clock a.m.

CHAIRMAN: Will the Committee please come to order. Is the problem settled? Delegate Kauhane would like to withdraw his amendment.

DELEGATE KAUHANE: Yes, I'd like to withdraw the amendment. There is some miscalculation in the proposal, III-7.

CHAIRMAN: Thank you. If there's no further business, this body will stand in recess until 1:30 and shall expect to recess from 6 until 8:30 p.m. this evening.

At 11:57 o'clock a.m., the Committee of the Whole stood in recess until 1:30 o'clock p.m.

Afternoon Session

The Committee of the Whole reconvened at 1:40 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. I'm informed that we have a little more than a quorum. I believe we should be on our way if it's satisfactory with all concerned. When we closed just before noon, I believe the committee was prepared to start its presentation on Sections 22 and 23. Is that correct? Delegate Saiki is recognized.

DELEGATE SAIKI: Are we in session, Mr. Chairman?

CHAIRMAN: We are in session.

DELEGATE SAIKI: Mr. Chairman, before we continue into this maze of districting, I would like to offer a few remarks to my fellow delegates. Your Apportionment and Districting Committee whose plan we are about to discuss is a very unique group made up of twenty-three people from all segments of the community and composed of twenty men and three women. They, of course, are of the highest calibre and duly elected by the people of this State. We have businessmen, legislators, both representatives and senators, a city councilman, learned attorneys, school teachers and even a judge on this committee.

Most of us were not well acquainted with each other before the Convention. But during the course of the past seven weeks we got to know each other very well. There developed a feeling of mutual respect as we faced the difficult decisions of apportionment and districting. Those members of the committee who tackled this problem before were patient and helpful to give those of us less informed a chance to fully grasp all the complexities and implications of equally districting the State. We worked under the shadow of the courts and were made fully cognizant of the legal effects of every decision. We carefully studied and examined together the evidence presented to us and under the direction of our able chairman we narrowed alternatives and came to agreement.

Mr. Chairman, this committee has representatives not only from the various segments of the community but also representation from every district in this State; differing political and philosophical backgrounds are also evident, and yet, Mr. Chairman, we worked together and arrived at objective and impartial decisions. Some of the

decisions we made were rather painful but we made them, we compromised. We always however remained united in our effort and always were aware of the big picture. We were always sincere in meeting the responsibility and the criteria that were set before us. And therefore, Mr. Chairman, I offer to my fellow delegates the same challenge this committee has faced. I feel very confident that they are equal to the task and will approach the districting plan we have in the light in which it was developed and presented. Thank you very much.

CHAIRMAN: Thank you. Delegate Akizaki is recognized.

DELEGATE AKIZAKI: I'd like to ask a question first of all.

CHAIRMAN: State your question.

DELEGATE AKIZAKI: Are we discussing this whole plan now? Right now? Or are we going to wait until we adopt this plan?

CHAIRMAN: The committee wishes to have two members speak on the general subject first and then I understand the committee will offer Committee Amendment A. Is this correct? This is correct. And at that time, these subjects will be before you. Does that answer your question?

DELEGATE AKIZAKI: This morning you gave me the privilege of asking the chairman whether this was the original map right out of the computer. Now, I was not fortunate enough to be on this committee, so I'd like to see or I'd like to have the chairman show me the lines that originally came out of the computer if that's possible.

CHAIRMAN: I see. Delegate Schulze, did you understand his request?

DELEGATE SCHULZE: No, I didn't, Mr. Chairman.

CHAIRMAN: The request is that he'd like to see the map as originally drawn by the computer.

DELEGATE SCHULZE: Mr. Chairman, I pointed out this morning that the computer didn't draw any maps. Maps were drawn by our draftsman and our draftsmen team. The present plan is a conglomerate of Plans "S" and "S-1" which were formulated—Plans "S" and "S-1" were as they came from the computer team.

This was an adjustment of those two plans which were revised by the committee after substantial hearings, public hearings including hearings to which all delegates were invited. I might say, if I may answer that question that I think is being asked more directly, Mr. Chairman, although the question might have been asked earlier, I believe Mr. Akizaki may have reference to a line existing between the 14th and the 13th Precincts—Districts and I will explain the change in that line when we get to the matter.

DELEGATE AKIZAKI: Mr. Chairman, I'm not interested in lines. I just want to see the original plan that the computer came out with. He just told us this morning that this is not the original plan.

CHAIRMAN: Well—

DELEGATE SCHULZE: We have them in the committee files, Mr. Chairman, and they've been posted on the committee bulletin board for almost a month now. We had no intention of bringing them to the floor but if the delegate would like to see them they can be made available from the committee files.

CHAIRMAN: Very good. Thank you. Delegate Ozaki.

DELEGATE OZAKI: I'd like to rise and speak in favor of the committee report. Delegate Saiki already indicated to the body here much of which I was hoping to discuss.

However, in addition, I would like to indicate to the delegates here as one who comes from one of the smallest representative districts, the 6th Representative District, which includes Molokai, Lanai and Kalaupapa that even though our district will be completely eliminated and even though we may be possibly submerged, I do recognize that every consideration was given my district in the Reapportionment Committee. Every effort was made to see that we were not deprived of representation and to that degree, the County of Maui now will be split into two multiple-member units. However, to those delegates who feel that the committee acted in any way to submerge or to divide any area of adequate representation, let me assure you that I feel that the committee acted fairly and justly with whatever criterion was set forth for us to follow.

The Supreme Court has indicated to us that we must follow the one-man, one-vote principle. We must also recognize that approximately 5,000 voters will be required to comprise each representative district. In drafting out the plan, the committee made every effort to see that no area was unjustly deprived of representation and no group submerged. As usual not everyone can be satisfied and individual areas will naturally be to some degree submerged like in the case of my district. But I would like to indicate to this delegation that the committee acted in a statesmanlike fashion and that every effort was made to see that the plans drawn would do justice to every area. Thank you.

DELEGATE KAGE: Mr. Chairman.

CHAIRMAN: Delegate Kage is recognized.

DELEGATE KAGE: Mr. Chairman and delegates, I speak in favor of the committee plan. If ten persons were asked to individually present us with a plan to reapportion and to redistrict the state legislature I am sure that we will have ten different plans. I believe this to be a fact because in reapportionment and in redistricting, personal needs and personal preferences will come into play.

I speak in favor of the committee proposal because I know that the committee has spent countless number of hours, explored every possible combination with help from all possible sources to come out with their proposal.

Mr. Chairman and delegates, the committee proposal is not a perfect plan. The committee members, I am sure, will be the first to admit that it is not a perfect plan. But you and I must admit that it is a good plan. A good plan which is the product of a group of twenty-three delegates who perhaps at first had personal pecuniary interests and their own little kingdoms to preserve but who were willing to lay aside their own personal, let us say, greed. When twenty-three delegates can agree to report out a plan, even if it may be with some reservations, the product must be the best plan available. To try to amend it would be paying too much attention to the trees and forgetting the forest.

Let me further venture to state that there isn't a single delegate here present who can offer a plan that will totally be acceptable to the other eighty-one delegates, or do I underrate anyone? Someone somewhere may have a better plan molded around his own personal needs. I am sure there is. But let us not kid ourselves. We can go around the mulberry bush eighty-two times and still not come out with a plan that will be totally satisfactory to all eighty-two delegates assembled here. Let us forget our personal backyards. Let's keep a level head and think a little better, bearing in mind that we have a great plan before us. Let us not quibble about a few lines here and a few lines there. I know that it is not that simple.

But let us remember that we are expendable. The reapportionment and redistricting plan is not. Let us rise to the occasion like true statesmen that we are. Your backyard? I know your backyard was not properly redistricted. But, Mr. Chairman and delegates, it had one noble hour to remember as President Kennedy so aptly said, "Ask not what your country can do for you, ask what you can do for your country." Let's give of ourselves for the good of our State. Let's not fiddle while Rome burns. Let's accept the committee report. It is a very good report. Thank you.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, it seems to me that those of us who would like to take a position to somewhat object to the format of the committee are not being considerate of the work that's been undertaken by the committee. I feel that it is not the position with as where we question the hard work of the committee. The area in which we question and may have a difference is the application of all of its efforts in arriving at a suitable and acceptable plan so that all of us can happily live by and under. I look at the reapportionment question, being a layman I am only guided by what I read in the newspaper and the symposium that I attended and the many moments that I have attended the committee meetings relative to the

decision of the Supreme Court.

I have read some of the decisions and I find that as far as the house is concerned that there was no greater concern in the decision of the Supreme Court that the house was properly apportioned and the house can continue to remain in the same apportioned manner. The only question that was raised is the validity of the senate setup. So that when we come back to the total package of acceptance I tried to find out what formula was being considered as far as the senate is concerned and I found that the only consideration that we had for the senate was that which was passed by the state senate and which was then I'm sure under consideration by the Reapportionment Committee. Even though the senate has taken a position to try and justify the ends for which the Supreme Court questioned the validity of the senate setup, I certainly feel that although the state senators may feel they are charged with the responsibility of discharging the duties and responsibilities of the best interest of the citizens of the State of Hawaii may be a valid one. But I still have some questions of doubt as to the master planning of the senate proposal.

Now when the committee in its endeavors to arrive at an acceptable, reasonable and just package of reapportionment for the house of representatives and in the committee's attempt to accept any guideline, reasonable guideline as they may say, they finally came up with the decision to use the Lunalilo Freeway as a guideline in setting up some of the districts. And I'm speaking particularly of the 17th, 18th and 19th Districts. When I look at the committee's recommendation for the 16th Representative District, also the 16th Representative District, again using the Lunalilo Freeway as a dividing line or as the guideline for division in the setting up of the 17th and 16th Districts, I note that in the committee recommendation they have included in the 17th Representative District the 1st Precinct of the 12th which is Farrington High School between Waiakamilo and Kalihi Street on School—

DELEGATE ARIYOSHI: Mr. Chairman, I do not wish to call a point of order on the good delegate from the 11th District but the committee's proposal here is to follow a rational method of procedure on the floor and the delegate will have an opportunity, when we come to the Oahu maps, to set forth the points that he is speaking of. I wondered, Mr. Chairman, if I can prevail upon the good delegate from Kalihi if he would take it up at that appropriate time.

DELEGATE KAUHANE: I'm going to, Mr. Chairman, but since others were permitted the privilege of—

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Yes sir.

CHAIRMAN: Are you, in discussing this particular district, talking about the overall approach the committee took?

DELEGATE KAUHANE: That's right.

CHAIRMAN: Well, you may continue, please.

DELEGATE KAUHANE: In order to illustrate my position with respect to the committee's report, the same as other delegates had the opportunity to illustrate their position with respect to the committee's report.

DELEGATE FERNANDES: Mr. Chairman, point of order.

CHAIRMAN: State your point of order, please.

DELEGATE FERNANDES: Mr. Chairman, this morning one of our delegates spoke here while I sat here, while Delegate Kauhane sat there and now I notice our delegate is out in the audience.

CHAIRMAN: What is your point of order?

DELEGATE FERNANDES: My point is I would appreciate it if the delegate would take his seat to hear what the rest of us have to say.

CHAIRMAN: Your point is well taken. I think that delegates who wish to participate in the discussion on this matter should be present when the others talk so it won't unnecessarily use up the time of the body. Will the delegates who are in the hall please be seated in their own seats. Delegate Kauhane, will you continue please.

DELEGATE KAUHANE: Mr. Chairman, thank you very much for the brief moment of delay.

Mr. Chairman, looking back again and I repeat, in the 17th Representative District with the 1st and the 12th Precincts, Farrington High School, using the Lunalilo Freeway as the dividing line in the inclusion of this particular precinct into this new 17th District, I feel that maybe this is a good guideline for the committee to use but when I look further in the 16th Representative District and looking at the Farrington School inclusion, I cannot help but see where the committee has lost track of the same kind of situation, the Hawaii Housing premises, the rehabilitation area, the 2nd and the 4th Precincts of the now present 12th Representative District. Another point, Mr. Chairman, the 3rd Precinct of the 12th District, Lanakila School, is again being divided by the Lunalilo Freeway, being included in the 17th Representative District. What is closer to Lanakila School, the 3rd of the 12th than the 2nd and the 4th Precincts of the 12th Representative District, using that Lunalilo Freeway as the dividing line than to reach way over to Farrington which is rightfully included because of the division of this Lunalilo Freeway. This is the area I feel that the committee in using their good judgment that their good judgment was all right as far as appeasing the other members of the committee and also members of the district who were fighting to keep their present representation too intact. But look at us in the 11th Representative District, Mr. Chairman, we have three representatives presently. In the 1950 convention we were permitted two

representatives under the reapportionment plan. But it took the delegates representing the 11th Representative District in the 1950 convention to fight and to show the need that we should have an additional representative. This was granted to us. But under the committee's proposal as contained in the report, we find that instead of maintaining our three representatives that we have now which we fought so hard for in 1950, we're losing one of them because of the use of this division line of the Lunalilo Freeway.

If this is what the committee wants to do actually, to use the Lunalilo as a guideline, then I say, Mr. Chairman, that its effort to present a reasonable, justifiable and acceptable reapportionment plan has defeated their own purpose. And this can be shown on the map, the map that we have right here, regardless of the map that has been shown before the committee. That we should say that the committee has not done a fair, reasonable and acceptable plan for all areas concerned. And this is the reason why I feel, Mr. Chairman, that although some of the delegates feel that because they had been fully satisfied in the retention of their position, where originally they were submerged, they come in and ask that we go along with the committee report. That we should not think of our own self-being as against what the committee has done.

I stand here as a delegate from the 11th Representative District not with my personal interest in concern but in the interest of my constituents in Kalihi who feel that they are being denied of their just representation in this type of reapportionment. I feel also that the people of Kalihi are being used as an example as I stated once when we tried to, before the committee, when I appeared before the committee and spoke about the reapportionment question and I paid particular attention to the 11th District. I paid no attention to the other districts. That I said in putting the people of Kalihi, the 11th District in the 13th Representative District and I find in the committee report this is just what they are doing. They are bringing the socio-economic status of the people in the low income districts in one area, identified area, and this is clearly written out in the committee report.

Thank you, Mr. Chairman, for the opportunity to state my position early with respect to the committee report and I shall continue when the proper time comes.

CHAIRMAN: Thank you. I believe it would be helpful if the committee would put specific information before the delegation so we can be more specific in our debate. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I move the adoption of Amendment No. A to Committee Proposal No. 12.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: I second the motion.

DELEGATE SCHULZE: Mr. Chairman, may I explain the import of this amendment, please.

CHAIRMAN: Proceed. Delegate Schulze, the Chair is going to ask permission of the body to take up Sub-section 23 ahead of Section 22.

DELEGATE SCHULZE: Mr. Chairman, the Constitution is drawn in such a way that in Article III which is the legislative article, there is a reference to the house of representatives and a reference to the senate. It establishes the numbers but it doesn't establish the districts. The districts are taken care of in the transitional provisions. In the committee proposal which was issued last Saturday, the technical, legal descriptions of the districts were not complete and therefore our proposal did not include full legal descriptions of all districts even though the maps were then posted. Accordingly, we have moved to amend Sections 22 and 23 of the transitional provisions to add the legal descriptions of the districts which are what is included in this committee amendment. May I say, Mr. Chairman, that the committee would propose to take up these districts island by island on an island-wide basis and we would proceed beginning with Kauai and we would request of the Chair that we be permitted to take up so much of Sections 23 and 22 at the same time as pertains to the particular island in question. I'm not sure that I see any benefit to be derived from discussing senatorial districts separate from house districts at this time.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Are we moving from districting now into the actual districts?

CHAIRMAN: What is before the house is Amendment A which is of the committee covering Sections 22 and 23 which provides for the various representative and senatorial districts.

DELEGATE LUM: Then I'm to assume that we have already accepted the criteria for the basis of this districting?

CHAIRMAN: No, the criteria is not part of the Constitution and do not have to be adopted by this body. The criteria were placed before the Convention as a matter of information and for discussion. I will ask the committee chairman whether this same criteria—I believe that they appear in the area of the districting commission. Is that correct?

DELEGATE SCHULZE: The criteria somewhat adjusted as they appear in the districting commission, Mr. Chairman. We would get to them at a later time when we consider the commission provisions.

CHAIRMAN: Does the committee chairman feel that it would be productive to discuss the criteria before we start talking about districts?

DELEGATE SCHULZE: Mr. Chairman, we talked about the criteria in our general discussion of districting and it is my hope that we would have talked about it there and gotten it finished. I take it that if there is any specific complaint with a particular island, the non-applicability of the criteria or the fact that the criteria are no good can be utilized in argument at that time.

CHAIRMAN: Thank you. Delegate Lum, your question on criteria, would it be as it pertains to a particular district or do you prefer to discuss it now in general?

DELEGATE LUM: I want to discuss it in general only as a matter of record to express my concern about this criteria. I'm just trying to find out whether I should do it here or should I wait until we start discussing different districts.

CHAIRMAN: Well, the general discussions have a tendency to get out of hand. However, if you think that you can confine this even though it is a general discussion, I think perhaps it would be in order for you to proceed as expeditiously as possible.

DELEGATE LUM: The reason why I'm so concerned about these criteria that we're setting up here for future use, I don't agree with the chairman when he says that this is not going to be set up for future use. I can see no other action but to have this commission that is being set up by another portion of this committee report, looking back into the records here and seeing what criteria we set up here and probably using most of these criteria to guide them in their districting. I think it's too great in importance although I don't see it here in the report and maybe the chairman could enlighten me in this area that we do set a precedent as to what we think is more important than others. I realize a statement has been made that we have to pick a particular districting that would satisfy most of the particular criteria. But I maintain that it's more important for us to keep the communities together and I think there should be an expression in this report saying that this is the most important, to keep the communities together. When we're going to give up the community or divide up the community for the sake of, let's say, making it possible to have two members instead of one member, I say it's grossly wrong. The reason why we redistrict and the reason why we have these criteria is try to, first of all, have a guideline. I think it is more important to keep any community together. I don't see any reason why we should start dividing communities up. Unfortunately, as we progress and as we have a need to build highways so very often, the highways are built right in the middle of a community. I realize this. But I can't see whereby when we have a community that has been together traditionally for years that we would have any reason to break them up just for the sake of, let's say, making other criteria methods become acceptable. And I was wondering if the committee at any time in the future before this hits its final reading will make an expression here as to making exceptions to certain criteria when there are two or three different criteria that possibly

could be in conflict. I do not see any here. Maybe the chairman can enlighten me in this particular area.

I'm concerned because what we do here in this Convention would be on record and would be a guideline for not only the next commission but possibly the commission after that in setting up the districting. So I think it's of great concern here and I don't know what to do here because we cannot amend the committee report.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: I would like to respond to the inquiry made by Delegate Lum here. A criteria is just what it is, a criteria. It's not something that cannot be violated. Where you have several criteria it may become necessary depending on the circumstances to give more weight to a particular criteria than you would to another and vice versa in another situation.

When we speak about a community of interest, it's assumed that this community can be very clearly and definitely identified. And this I don't believe to be completely so. Then the other thing to bear in mind also is that while there was a criteria of trying to keep a community of interest together, we were faced with a very strict legal requirement, the numbers problem. And sometimes when you try to put the two together, the requirement of adhering to the average registered voter base made it very difficult for communities to be kept together. And I suppose this is the only way that I can reply to the comments made by the good delegate.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: Yes, Mr. Chairman. We're speaking on Section 23 as I understand right now. Are we speaking on Section 23?

DELEGATE SCHULZE: Mr. Chairman, I would ask—

CHAIRMAN: There was a motion to amend the committee proposal by adding Amendment A on Section 22 and Section 23. This was the motion made by the committee chairman and seconded by Delegate Ariyoshi.

DELEGATE HARA: Fine. Well, Mr. Chairman, I rise at this time to speak on this amendment as well as, with the good indulgence of the members of this body here, I would like to make a general observation of the committee as being presented to this body.

CHAIRMAN: Proceed.

DELEGATE HARA: I would like to at the very outset stand and take a position that I am for and in total support of the committee recommendation as it stands, in spite of comments which I will touch upon later in Amendment A.

I'd like to echo the sentiments that have been expressed by many of the members of the committee who have said that the chairman of this committee has lent a real good type of sound direction to this committee and of many plans that we discussed and of many, many imperfect plans. We have attempted to finally have decided to present to this body a plan that we consider that will be facing the needs of apportionment and redistricting for the State of Hawaii. This proposal is being presented to you today and includes the many criteria that have been discussed.

Fellows, let me tell you, I've heard about apportionment problems but this is the first time I have been fully, truly exposed to it flush in the face. They are numerous, are varied, and there isn't one, one solution to the problem for eighty-two members to be happy with. There isn't a solution. Somewhere down the line, I'm learning that we must accept a sort of a give-and-take proposition. And unless we take this attitude, I think, Mr. Chairman, we're going to be here for the next two weeks.

As to illustrate, in Amendment A, I just noted this morning how disturbed I was and I made my feelings known to the chairman and some of the delegates from my island. That I was dissatisfied with the changing of the numerals and so on. In the redistricting number, for example, traditionally Hilo has been the 2nd Representative District and this changes it to the 5th Representative District. I didn't know about this until I saw Amendment A. Well, as I understand, some discussion was had. I probably wasn't there. I'll take that responsibility unto myself for not being there. And this is the kind of a peculiar kind of setting we're faced with in this reapportionment problem. And this is why I would like to humbly solicit the support of all of the delegates here in supporting the committee chairman's recommendation in this apportionment proposition. I know it's painful and I'm taking this problem straight home.

My 2nd Representative District is now only a two-member district that formerly was three. And in that single-member district for Hilo we had two incumbents. That stopped. They're sensitive and they really know political actions and reactions and yet I had the opportunity to call them up, discuss this matter. And do you know, I am rather proud to say they will not fight this plan when this proposition is being sent to the people in my district and in my island. I was assured that they will do whatever they can to support this plan in spite of the fact that they will be excluded. This is the kind of painful proposition that is involved in an apportionment proposition. And delegates, in view of this kind of general setting my feeling is if we could get along in this session this afternoon in resolving this apportionment problem in the tone that we had the least of the amendments, I think for one thing we're going to have less blood, needless blood and scars being created here and developed here. And the sooner we do this, I think we'll all be going home a little happier than otherwise. Thank you.

DELEGATE YIM: Mr. Chairman.

CHAIRMAN: Delegate T. C. Yim.

DELEGATE YIM: May I also make a general comment on the committee report?

CHAIRMAN: You may. I would like to limit the general comments so—I think we've had nearly enough but we're certainly willing to listen to you.

DELEGATE YIM: Mr. Chairman, the several previous speakers are speaking somewhat favoring the committee report. I would like to take certain exceptions of statements made by several of those speakers. I do not think as to how long the committee worked, as to how—what kind of relationship each member had with each other in the committee, the ability of the committee chairman and many other statements made earlier as to reasons for which we will adopt this committee report. I think the only test before us in the next few hours and the next couple of days maybe is whether the guidelines as set forth by the committee are acceptable to this body.

The second question is whether the reapportionment proposals as set forth by the committee fit those guidelines. That is the test. Not whether the committee is made of saints. And therefore, because they are all good men and women, we are going to adopt this committee report.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Point of inquiry as far as Amendment A. If Amendment A is adopted and subsequently is found that it is inconsistent with the map, which takes precedence?

CHAIRMAN: The maps. Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I rise to speak in support of the adoption of Amendment A. With very mixed feelings however. I, too, am a delegate to this convention—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I don't want to interrupt Delegate Devereux but I'm concerned about the answer you just gave to Delegate Loo so—. So that the record may be cleared up at this time, may I refer this to Delegate Schulze?

CHAIRMAN: Delegate Devereux, would you pardon us for a moment?

DELEGATE DEVEREUX: I yield to Delegate Schulze.

DELEGATE SCHULZE: Thank you, Delegate Devereux. The answer given by the Chairman, Delegate

Yoshinaga, was that the maps would prevail. Obviously that's a temporary matter. What I think the question was is if there are errors found in the legal description, would we be adopting the districts as shown in the legal descriptions which most of us can't really visualize as we read them or will we be adopting the districts as shown on the maps. And the answer which I think is appropriate is that it is the maps we're dealing with as a body and that if there is an inconsistency between these descriptions and the maps located and found out before we get to second reading, that the committee would propose that the descriptions be changed to conform to the maps rather than vice versa.

DELEGATE O'CONNOR: Point of information, Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Query to the chairman of the committee. Is it not a fact that once this matter has been nailed down and adopted, that the descriptions of the districts as laid out in this amendment will prevail for the future, once we have completed second and third readings on the matter?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I would gather that would be correct once we have completed third reading. So we would hope that if any delegates see any inconsistencies whatever, they will be brought to our attention and we'll immediately make corrections between now and second reading and take care of it there.

CHAIRMAN: Thank you. Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, to continue, before I go further I would like to suggest that it is necessary for us to adopt Amendment A in order for us to continue with consideration of the maps. If we will read the original committee proposal, we will note in parenthesis Section 22 and Section 23 that the legal descriptions will be supplied later and this legal description is now what we find in Amendment A. So in order for us to get on with the business, it is important for us to adopt this. It can be further amended later on if changes are indicated.

Now, Mr. Chairman, as a member of this committee, I, too, faced hard decisions. The one thing that I found very difficult to accept throughout the whole period was the Supreme Court ruling that we had to work with numbers. Now, I recognize that the Supreme Court meant numbers of people. However, working specifically with numbers is automatically going to have to break up certain community patterns. I find myself at this point very concerned about two specific areas in the State which I believe the future will take care of. And I would remind the delegates that we are having a population explosion in Hawaii.

Our population is so mobile at this moment that within the next year or so, we'll have vast numbers of people moving out of homes and into condominium

apartments. We have high-rises coming up all over. We have hotel developments on all islands which means more working people to work in those hotels. So whole communities are going to change. I foresee that by the time we have another reapportionment, many of the knotty problems we're going to be facing as of this moment will perhaps be solved by the new commission. And it is for this reason, though I am not totally happy with every decision that has had to be made, as I think there isn't anybody in this room who is, if there is, it would be a miracle that everybody was satisfied or even a few people were totally satisfied.

Any plan such as this no matter who draws the plan or who adopts them is going to be painful, is going to be difficult to accept for some people. For this reason I hope that we're going to be able to look at this objectively, realize it is not perfect but it is the best we could do under the circumstances and hope that at the next apportionment time we'll be able to correct some of the things perhaps that some of the people are unhappy about.

CHAIRMAN: Thank you. Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, as a matter of procedure, I wonder whether or not there would be any objection on the part of this body to accept the Proposal No. 12 marked A as the committee proposal and we can take it from there and we can go right into the consideration of the plan, that portion of the proposal which relates to the Island of Kauai. Then go on to Maui, Hawaii and then to Oahu.

CHAIRMAN: Delegate Ariyoshi, I think your suggestion is a good one. Is there any objection to it? If not, the Chair will declare a short recess for the recorder and then we can start and continue without interruptions.

At 2:35 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:35 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. I recognize Delegate Jaquette for the purpose of making an announcement.

DELEGATE JAQUETTE: Thank you, Mr. Chairman. I just want to announce for those members of the Committee on Submission and Information who could not make this morning's meeting that we're meeting again tomorrow morning at 8 o'clock.

CHAIRMAN: Thank you. Just before we broke for a brief recess, we were discussing committee amendment A which, by the consent of the body, had been placed before us in consideration. In order to keep the record straight, I would call for a vote to adopt committee amendment A as a part of the committee proposal. All those in favor will say "aye."

DELEGATE KAUHANE: I raise a question, Mr.

Chairman.

CHAIRMAN: State your question please.

DELEGATE KAUHANE: In voting for the acceptance, will this preclude any further amendment to be made at a later time when each district is considered separately?

CHAIRMAN: The question before the body is merely to place Amendment A into the committee report for consideration. Any other discussion? All those in favor will say "aye." All those opposed, "no." The motion is carried. Thank you very much. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, we would now request that the Chair entertain a request from us for approval of the apportionment and the districts as listed on the committee proposal, Sections 22 and 23 for both house and senatorial districts as they apply to Kauai. It will be our intention, Mr. Chairman, to ask that the Chair entertain a consideration of both house and senate districts together for the neighbor islands. We may want to separate them on the Island of Oahu because there are so many.

CHAIRMAN: Very well. If there are no objections, the question before the house is the 8th Senatorial District on the Island of Kauai and the 25th Representative District. Are there any amendments to be offered?

DELEGATE FERNANDES: Mr. Chairman. I have two amendments. At this time, Amendment No. 6. Attention has been called by our chief justice here that the constitutionality of this amendment has been tried in some foreign areas in Texas and so forth so therefore the Amendment No. 6 is withdrawn by myself.

Mr. Chairman, I have here Amendment No. 2 and I would want to ascertain from the chairman of the committee as to whether he is considering the fractional voting in this area or whether this is going to be taken up later on in the calendar.

DELEGATE SCHULZE: Mr. Chairman, it is our intention at this time to handle only the apportionment and districting of the twenty-five and fifty-one regular members of the senate and the house. In the order of the committee report and of the proposal tomorrow or whenever we get to the propositions for future apportionment and districting, there is a provision which would pertain to the fractional voting problem and to the minimum representation for Kauai. It would be my feeling very strongly, Mr. Chairman, if these amendments would be in order and appropriate at that time and that there would be no problem with raising everything contained in them then.

CHAIRMAN: The Chair will so rule.

DELEGATE FERNANDES: Mr. Chairman, I would also request that when the cessation area comes about that the Chair would ask Delegate Schulze to inform me

and that this amendment be pending until that time.

CHAIRMAN: That is correct. No problem. Any other amendments?

DELEGATE FERNANDES: Yes, Mr. Chairman. Mr. Chairman, I would want at this time, first of all, to recognize our member on the committee and I feel that after he has said his words of wisdom that, well, I'll say something, Mr. Chairman, concerning the Kauai area, I think I'm in order:

CHAIRMAN: You've been recognized.

DELEGATE FERNANDES: I want to say just that a bouquet of roses should go to the committee and that a bouquet of roses also go to the sacred cow, the computer. I raise this point because eventually we will be speaking about this sacred cow and about the sacred numbers. And that's going to be important and I want all of the delegates to be served with this notice of the sacred cow and its numbers because when it comes to the point that Kauai will be able to speak again these numbers will come up and it will rotate like a slot machine.

As far as we're concerned on the Island of Kauai we appreciated the views taken by the committee and we want the record to show very briefly that we are a part of the State. And in no manner regardless of the rumor was going about that we might want to secede we will maintain to go along with the whole State. Again I repeat that I appreciated my colleague's, Delegate Kunimura's work in the committee, because I now see in the horizon somewhat of a two senators. Thank you very much.

CHAIRMAN: Thank you. Are there any amendments to the districting and the apportionment plan for the Island of Kauai? If not, I believe we can go to the Island of Maui or the County of Maui, the island group of Maui. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, do I take it as a matter of procedure here that once we have completed with the discussion of Kauai as we just had, that that closes the matter for purposes of the Committee of the Whole?

CHAIRMAN: As far as the Chair is concerned that closes the matter.

DELEGATE SCHULZE: Therefore, if there are any objections of people who wish to speak against it, they should do it at that time?

CHAIRMAN: The item before the house is the committee proposal as amended and we are going through that. And any section of that that passes without amendment should stand. At the very end we will take a vote on the entire matter.

DELEGATE SCHULZE: Mr. Chairman, I would ask now for consideration by the Committee of the Whole and approval of the redistricting plan for the Island and

County of Maui containing the 2nd Senatorial District and the 6th and 7th Representative Districts.

CHAIRMAN: Very good. Delegate Ansay is recognized.

DELEGATE ANSAI: Mr. Chairman, despite the fact that Maui is one of the counties that had a great loss, not merely a change of precinct lines or district lines but a loss of one warm body, one representative, I'd like to strongly support the proposal of the committee. At the outset, I'd like to say that I'm not a member of the Apportionment Committee but I have kept myself closely informed of the issues that were discussed in this committee. I attended meetings a couple of times. I have had lengthy discussions with both the chairman and the vice-chairman of this committee and was much impressed by their sincerity, their objective approach of this problem. Particularly in the case of Maui where we are going to lose one representative and their sense of, deep sense of, fair play and concern of the neighbor islands impressed me very much.

We know that we were going to lose one man because no matter which measuring stick we use, population-wise, area-wise, any other wise, this is a fact that we must accept and we did accept this. But the big problem to us was, how are we going to, inasmuch as Maui County is devised of three separate islands, divided by water, Maui, Molokai and Lanai. How are we going to effectively have the four remaining representatives represent the people of these three islands? We had a combination of Molokai, Lanai and a part of Maui as a single-member district. Also, running at-large was another proposal. Then they finally came up with a solution that perhaps the best and the most effective representation they can give the people was to divide Maui County into half.

Lanai, Molokai and that portion of Maui, the Island of Maui is formed like a woman's body with a head and a neck and a bust and a body. If you cut off right at the neck and join the head of the Island of Maui together with Lanai and Molokai, forming that as one district and the balance of Maui, the other Maui as another district. Well, we're blessed in that this division was made with a least amount of disruption. These two areas will be about even in every aspect, population-wise or rather voter-population-wise, one will have 9,800 as against the other's 9,600. From the county seat of Wailuku to the extreme point of Molokai is about the same distance as from the county seat of Wailuku to the extreme end of Hana. The number of precincts existing in the two districts are identical, seventeen in number. The socio-economic activities are about the same. Both of these two districts are very much dependent upon agriculture as their basic industry, sugar cane and pineapple, ranching, truck cropping, hog raising, poultry raising and all the other activities that come under the heading of agriculture. But these two areas are rapidly developing into a resort area.

Lahaina is rapidly developing into one of the highlights of the State of Hawaii and so is Hana. And while Molokai is also rapidly developing itself into a

resort area, a big section of Kihei which is in the other district is likewise being developed into this kind of activity. So we have a very clean and close balance. And therefore, by dividing Maui into half right at the neck with the description outlined in this report, it gives Maui, the people of Maui, about an equal and even representation. Therefore, I don't think there's going to be any difficulty in any of us going back to Maui and sell these proposals to the people of Maui.

DELEGATE SCHULZE: Thank you. Is there anyone else who would like to speak? Are there any amendments to the Maui plan? If not, we will go on to the Island of Hawaii being the 1st through the 5th Representative Districts and the 1st Senatorial District and I ask for a short recess, Mr. Chairman.

CHAIRMAN: A short recess is granted.

At 2:50 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:25 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. At the time of our recess it was discovered that the wording in Amendment A which was adopted did not conform with the map so far as the Island of Hawaii is concerned. The Chair now recognizes Delegate Hara.

DELEGATE HARA: Mr. Chairman, the amendment has not been printed and circulated as yet. May we take this matter up later if there's no objection by the Chair?

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, that would be acceptable to the committee. We'd rather simply, the idea is to renumber the representative districts on the Big Island. It is acceptable to the committee, acceptable to the Big Island delegation. We would prefer to put that before the floor at a later time out of order.

CHAIRMAN: Is there any other amendment as far as the districting and apportionment of the Big Island is concerned?

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: May I rise for a point of personal privilege but for the Hawaii delegation privilege? May I speak?

CHAIRMAN: You are recognized.

DELEGATE YAMAMOTO: On behalf of the delegation from Hawaii, may we thank the Reapportionment Committee for allowing us to go in yesterday at the eleventh hour to plead for some of the members who wished changes. We'd like to say thank

you very much for allowing us in again. And we know that your committee has really worked hard, very hard. Thank you. Mr. Chairman, now, may I speak on the amendment?

CHAIRMAN: You may. One moment, there's no amendment before the—

DELEGATE YAMAMOTO: The committee's report.

CHAIRMAN: Pardon?

DELEGATE YAMAMOTO: On the committee report. Hawaii's portion of the committee report.

CHAIRMAN: You may.

DELEGATE YAMAMOTO: Mr. Chairman, I rise to speak against the committee's report in regard to Hawaii's redistricting. Basically, by virtue of the United States Supreme Court decision in the Reynolds versus Sims case on June 30, 1964, we are now sitting here as delegates to apportion our State of Hawaii legislature. We sat for eight and a half weeks, made decisions on all articles of our Constitution but now we have come to make our supreme decision in apportioning our state legislature to conform to this decision of the United States Supreme Court, the one-man, one-vote principle. To me this is the meat of the Convention and I do hope that we will come out with something applicable to the decision of the Supreme Court. It is our prime responsibility of the people to assure themselves that they retain and develop an effective and representative government as it is possible.

Mr. Chairman, first of all, I would like to commend the diligence and hard work of chairman Richard Schulze, vice-chairman George Ariyoshi and every member of the committee for being fair as much as possible. However, I must disagree to the decision this—the division of the house members under the bicameral legislature specifically, the County of Hawaii. Mr. Chairman, I spoke in favor of the bicameral legislature. The reason for me taking that stand was that I believe sincerely that the makeup of the house of representatives be on a single-member district for the Island of Hawaii so that each district will have a representative who will be close to its people and very responsive to its constituents. Our three senators represent the whole island. Two of the distinguished senators are delegates to this Convention.

Mr. Chairman, each county is peculiar in its physical differences. How densely populated and the availability of land for each home. Therefore we cannot conclude and make the same decision as applicability to its elements. Mr. Chairman, I'm trying to say—what I'm trying to say is that some able area like Hilo can be redistricted as proposed by the *Hawaii Tribune Herald* plan. Yes, like the city of Honolulu, a metropolis. They have even a single condominium with 400 to 600 families which is equivalent to some of our large precincts on our island. I know that creates a problem.

We, on the Island of Hawaii, actually are not crowded. By redistricting Hawaii as the committee's

report, the boundary for the 4th Representative District cuts off the portion of northern area of South Hilo. And the 1st Representative District cutting Hilo from the southernly side thereby increasing and cutting up further and submerging them into rural districts. I'm sure the committee intends to avoid this very thing. Mr. Chairman, this will cause much dissension among the people in the district. However, if the 1st District, Hilo proper, was made into a single-member district, then explanation can be made to justify the changes. This may be accepted by the people of Hilo. Stated by the United States Supreme Court in *Reynolds v. Sims*, 377 U.S. 576-577: "Different constituency can be represented in the two houses. One body can be composed of single-member districts while the other could have at least some multi-member districts. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house."

The 1965 Hawaii legislature in its Conference Report No. 1, dated April 13, 1965, stated, "Hawaii traditionally has had, as a Territory and a State, a house of representatives and a senate with a member of the house having a shorter term representing a smaller constituency and being of a numerically larger body than a member of the senate. This experience has proved meaningful in achieving the concept of bicameralism."

Mr. Chairman, I've had this passed down to the members of the committee in my testimony that the house of representatives be single-member districts. But here, the committee has made now the 2nd Representative District where three represent, which has at the present time three representatives, the Hilo proper, the 5th Representative District with two representatives. This came about when the north and south end of Hilo were cut off. As I understand, the committee's view was that they did not buy single-member districts in the area of Honolulu and Hilo. If this view is taken by the Convention, then I say retain the three representatives under the multi-district plan since Hilo will have 15,554 registered voters by the 1966 general election record. If the committee's proposal prevails, the people of Hilo will react unfavorably I feel; thereby there is a chance of jeopardizing the accepting of the amendment.

Mr. Chairman, if the single-member district is accepted, then there will be less chance of dissension and will be much preferable for acceptance by the people. How else effective if Hawaii puts into effect the intent of the Supreme Court apportionment ruling with respect by the district court since the court still retains jurisdiction pending the effectuation of the permanent plan of legislative apportionment. In view of my disagreement with this report, Mr. Chairman, I am voting against the committee's proposal with reference to Hawaii redistricting in protest. Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Are there any other comments?

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: I believe there are some members of the Big Island delegation who would like to speak before you speak. Delegate Andrade.

DELEGATE ANDRADE: Mr. Chairman, a point of information. I'd like to refer to page 5 please of the committee's report. Page 5—

CHAIRMAN: State your point, please.

DELEGATE ANDRADE: The third name from the bottom of the list is—may I suggest a correction there for the record—it should be Nakahara.

CHAIRMAN: Thank you very much.

DELEGATE ANDRADE: May I also request that, inasmuch as I appeared as a witness for this committee, may I be listed for the record on this correction here to this page.

CHAIRMAN: There are other corrections, I believe, to that list of witnesses.

DELEGATE ANDRADE: Mr. Chairman, may I speak against the committee proposal?

CHAIRMAN: You are recognized. Go ahead.

DELEGATE ANDRADE: Thank you. Mr. Chairman, I rise to speak against Plan H-2-A. I speak against Plan H-2-A because it proposes to split historical North Kohala from South Kohala and combine it with Hamakua. North Kohala and Hamakua are separated by steep, uninhabited valleys, ridges, and the ocean without access from one point to another. It also is contrary to the committee's criteria 2 and extends beyond county boundaries. Contrary to the committee's criteria 3, it is not contiguous nor compact, nor is it geographically sound. Contrary to criteria 5, there is no substantial interest between North Kohala and Hamakua even though they are both sugar communities. Kohala's sugar and molasses products are trucked from North to South Kohala's seaport at Kawaihae Harbor. Contrary to criteria 6, North Kohala will not only become submerged but it will become isolated as far as representation for its people is concerned.

While you have been concerned with facts and figures, you have ignored the human elements. It is also contrary to the one-man, one-vote theory as these people will have no vote. Two hundred and twenty-five residents who live in North Kohala commute daily to work in South Kohala. Because these people live in North Kohala and work in South Kohala, they should be represented in this area. Two million dollars were spent to closer knit North and South Kohala because of the flow of traffic and commerce which stretches out and continues to develop. Both Parker Ranch and Kahua Ranch from South Kohala extend into North Kohala and will be adversely affected by this transition. Kohala Sugar Company is developing a resort in the area of the newly-constructed two million dollar

highway along the seacoast of North Kohala. Residents in Hamakua and North Kohala, deeply concerned with this unfair districting affecting their lives, flew into Honolulu at considerable expense to appear before the Reapportionment Committee to protest this connection with Hamakua. At the demand of the Japanese Chamber of Commerce and Industry, the League of Women Voters, the Big Island Press Club, both political parties and the *Hawaii Tribune Herald*, a special meeting was called in Hilo last Saturday. A secretary from this Convention accompanied us to Hilo and I would like to ask that her record of that meeting in Hilo be made available to all the delegates because of the thirteen people who spoke only one, Mr. Penhallow, favored Plan H-2-A providing that North Kohala be kept intact. Kohala was represented at this hearing with a petition signed by 413 people. This petition was hurriedly circulated in a day and strongly voiced their objection. The people of Hawaii demanded a hearing and were heard. They have spoken. They have objected to this plan for Hilo also and are sending in letters to us daily. I have just received by special delivery this morning, objections of twenty-four people from Hilo again. It is their request. They cannot, they should not be ignored again.

I have been accused of stirring up the people in Hawaii. For the record, I wish to state that all I am doing is to stand on my principle of my original objection to the separation of North Kohala from South Kohala. Thus, if my stand on my principle makes me guilty, then indeed I am guilty of fulfilling the wishes of the people who have sent me here and their delegates from the 5th Representative District which runs from North Kohala through South Kohala and includes Kailua-Kona and as a delegate from that district, it becomes my responsibility to speak in their behalf. One good feature of this plan, however, is the return of Kailua to Kona. For eighteen years, since the districting of the 1950 convention, Kailua was linked with Kohala and therefore became submerged or became isolated over the many years. I am pleased that Kailua is finally proposed to be returned to Kona which has been my strong stand. For this same reason, I have objected to North Kohala's separation from South Kohala. Kohala is part of the gold coast and it is potentially developed at present. King Kamehameha's original statue stands in North Kohala and the people of Kohala and Hawaii plead for your reconsideration of this proposed submergence. The fundamental, historical and economical ties of North and South Kohala will have been torn asunder. Here again, in county and state governmental structure, North and South Kohala have always been a part of West Hawaii. We should not carve up the whole island by weakening West Hawaii with the proposed loss of North Kohala. We need this socio-economic balance and it should not be pocketed into Hamakua where it does not belong. If this Convention does not want to be guilty of pocketing North Kohala by this proposal thereby hampering the flow of traffic and commerce for the future of West Hawaii, then we must seriously consider leaving it alone. I thank you.

CHAIRMAN: Thank you. Delegate Takamine.

DELEGATE TAKAMINE: Mr. Chairman, I'm standing up here with little mixed feelings because I started out on the premise that I was for one-member districts. But having sat through the committee's deliberations for the past several weeks and having set up the criteria, I feel compelled to speak. I think I speak for the majority of the members of the Hawaii delegation. We have reviewed about ten maps and I think we have visited Hilo twice and we have taken into consideration all the testimony given by the members from Hawaii.

If we were to keep North Kohala, as Delegate Andrade has explained, this would mean that we have to shift many other boundaries. And if we were to adopt her plan, the 1st District would have 5,574 voters as compared to the 3rd District with 4,323 which would be unacceptable I'm sure to the courts. If cut through the populous area of Kona, I'm sure that if we had a hearing in Kona, I'm sure that all the people in Kona would object to it. North Kohala is a sugar district and I'm sure that although there's a valley, Waipio Valley, between North Kohala and Hamakua, it is of the same industry, Hamakua coast is sugar industry. If we were to accept expanding the 5th District, the person representing the 1st District would have to travel half of the island. I think after due consideration of and after several weeks of deliberation, we have come up with a compromise plan. We have created another district on the Big Island and reconsidered favorably an amendment which explains that we have created another single-member district. I think this is the best compromise plan that the Hawaii delegation would like to recommend to this Convention. Thank you.

CHAIRMAN: Thank you.

DELEGATE NAKATANI: Mr. Chairman.

CHAIRMAN: Delegate Nakatani.

DELEGATE NAKATANI: Mr. Chairman, I would like to speak supporting the committee's recommendation on reapportionment for the Island of Hawaii. I know the plan that's being recommended to this body is not a perfect plan but I think in final we all have to compromise and though I campaigned on single-member districts I believe that this compromise is a good one. It's not perfect and I'd like to speak on the 2nd Representative District that I represent as one of the delegates from the district. Looking at the committee's criteria and the area that I come from, I believe strongly that that should be a single-man district by Wailuku River up to Hakalau. And basically this area is a complete agriculture area and of course we have small suburbs in this area. As far as submerging this area, I don't think that the plantation area will be submerging this area. As one of the delegates said that it's hard to sell this plan when we go back, I'm confident as one of the delegates, that whatever the committee adopts that I'll go back and sell this program.

Now let me touch a little on Kohala. It's been an

issue for the last week in the committee. For the delegates' information, first I'd like to point out to you, our lady delegate from Eastern Waimea, and this *Hawaii Tribune* dated September 11, the community she comes from and bought the committee's recommendation. That Waimea-Kawaihae Community Association is supporting the committee's recommendation.

And number two, I would like to point out to you, in 1966, when the Hawaii County Charter was recommended on the single-man district, Kohala was recommended into the Hamakua area. And I checked with the county clerk this morning. The people in Kohala area voted by a majority to go into the Hamakua area under the charter. So with this information to the delegates, I do hope that you will wholeheartedly accept the committee's recommendation on apportionment for the Island of Hawaii.

CHAIRMAN: Delegate Hara is recognized.

DELEGATE HARA: Mr. Chairman, I rise to speak in support of the Hawaii plan. As mentioned earlier by Delegate Yamamoto, the apportionment committee chairman and its members did extend many extra courtesies to the delegation from Hawaii and to the people of the County of Hawaii. And for this we are truly grateful. Throughout these many deliberations, it has been pointed out to the delegation which attended the recent hearing that was conducted in the past weekend in Hilo, that there was urgent need for a possible reconsideration of the area plan that was adopted by your Committee on Apportionment and Redistricting that Plan H-2-A was not serving the best interests of the people of the County of Hawaii and for this we attended this hearing and several other plans were presented to us, explained to us. The public was invited and there were somewhere between seventy-five and a hundred people who expressed an interest and of which nine, ten people testified. Of the ten people, nine testified in support of the *Hawaii Tribune Herald* plan at that time. One was opposed. And this one opposed came from the district called Kamuela. His concern was the possible submergence of the district of Kamuela in the so-called proposed plan of the *Hawaii Tribune Herald*. Within the nine that supported the *Hawaii Tribune Herald* plan, however, there was one—I take it back, there were eight—there was one that was wanting of a single-member district throughout the Island of Hawaii. This was his proposal. After listening to the 11th-hour plea of the people of Hilo, your committee came back to this chamber, rather to conference the other day at the call of the chairman of the apportionment committee. Your Hawaii delegation, also, prior to attending this meeting, did meet and the consensus after hearing the plea of the people, the proposal of the *Hawaii Tribune Herald* and of the arguments for Plan H-2-A concurred. In consensus, we had seven, four for Plan H-2-A, one insisting that the single-member district should be the plan for the Island of Hawaii and one wanting the plan, any plan, that would give North and South Kohala the original combination of a district. With this finding, this consensus was reported to the Committee on Apportionment and Redistricting. The Committee on

Apportionment and Redistricting, after listening to the pros and cons of the argument, decided that we will stand and recommend to this Committee of the Whole Plan H-2-A.

And for this is the background and agreeing as I said earlier, fellow delegates, this is a very difficult proposition, but the majority of your Hawaii delegation is in accord and in support of the plan that is being proposed by your Apportionment Committee. And I do urge your support for Plan H-2-A as submitted in the committee report. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Hara, do you wish at this time to offer your technical amendment?

DELEGATE HARA: Yes, may I, with your permission, Mr. Chairman, submit an amendment that is somewhat technical in nature simply to conform with the plan that the committee has been discussing throughout. It is on the board there, and it conforms to the plan that we have been using as a model throughout our discussion. And it starts with Puna, I believe is District 1; Hilo proper, District 2; and the Puueo-Hakalau, District 3; and the Hamakua Coast becoming District 4; and the South Kohala-South Kona coastal area becoming District 5.

Mr. Chairman, I have an amendment to propose and I move for the adoption.

DELEGATE SUWA: Mr. Chairman.

CHAIRMAN: Delegate Suwa.

DELEGATE SUWA: I second the motion.

CHAIRMAN: You've heard the motion and second—

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, as I understand the amendment, the offerer or the amendment is merely saying to have slipped Hilo forever be second.

CHAIRMAN: The technical amendment, the Chair understands, makes the committee proposal conform to the numerical designations on the map. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, it is a technical amendment and the committee has met with respect to it. The committee has approved the amendment, has no objection to it. It makes no substantive change in the plan.

CHAIRMAN: For the purposes of the record, we should vote on it. Any further discussion? All those in favor of the amendment will say "aye." Opposed, "no." The amendment is carried.

Is there any further discussion on the districting and

apportionment plan for the Island of Hawaii? Delegate Yim.

DELEGATE YIM: Mr. Chairman, I have several questions to ask. First, to Delegate Andrade and second, to Delegate Schulze. My question to Delegate Andrade is this: according to her proposal, would her proposal meet the guidelines as set forth by the committee report as found on page 25 to around page 29, the ten guidelines among which is meeting the number requirement?

CHAIRMAN: Delegate Andrade, would you like to respond to that?

DELEGATE ANDRADE: Mr. Chairman, at this time, I would like to direct my answer to Plan H-2-A and the only objection I have to that plan is the separation and for the record, I would like to make it clear that my point is the separation of North Kohala from South Kohala. The area in question at the moment is the separation of North Kohala. Now, as to the plan that I submitted, I left it with the committee and I don't know if there was any time or work involved on that plan. But as far as I can ascertain, my reply is that it was submitted to the committee and I don't know what happened.

CHAIRMAN: Thank you. What is your second question?

DELEGATE YIM: Mr. Chairman, I would like to ask this question to Delegate Schulze and my question to him is this: we had earlier stated that the whole discussion should not be personal and that we should not discuss it based on one's gain and one's loss but based on some high-level discussion and I assume that to me that we are to use the criteria that's set forth in the committee report. My question to Delegate Schulze is that which of the two proposals, one that is proposed by the committee and that by Delegate Andrade more nearly meets the criteria as set forth by the committee report.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I'm just as glad the question was asked. I think it's time for the committee to express its views on this matter. The plan submitted by Delegate Andrade was submitted yesterday and as I recall it very closely approximated a previous committee plan numbered H-7. The committee plan, H-7 is essentially the same as Delegate Andrade's, is discussed at some length in the committee report, along with Plan H-2-A. The committee had a great deal of difficulty deciding which of these two plans was the lesser of the two evils. I would refer Delegate Yim to pages 39 and 40 and 41 and part of page 42, which discuss the problems that the committee faced as between the plan like Delegate Andrade's and the plan established and which has been recommended. I will say that the committee first made its decision, then we went to Hilo, then we had another hearing, then we reconsidered that decision, and Mr. Chairman, we continually came back to H-2-A, not as a perfect plan

but as the lesser of two evils. We, too, do not like the idea of splitting North from South Kohala and I wanted to state that for the record in hopes that if the future reapportionment commission reads the record, it will try to do something about it four years hence. Nevertheless, the number distributions on the Big Island were such that it was simply impossible to apportion the island without splitting something somewhere and the splits which were required as an alternative between North and South Kohala were simply worse and violated our criteria more than that split did.

I would like to add also that the committee very much appreciates the efforts made by the people from North Kohala who had been very effective in getting their views across. The people from the Big Island as a whole have swamped us with letters. We've held extra hearings, they've appeared here on two separate occasions for hearings on these plans. I believe everyone on the Big Island and I believe the delegates too are convinced that our committee has made every possible effort to accommodate everyone on the Big Island and I believe the delegates too are convinced that our committee has made every possible effort to accommodate everyone on the Big Island and simply could not do so. We believe that the plan we have come up with hurts least. We believe that it violates our criteria least and we believe that it is more easily correctable after next reapportionment than any of the alternatives would be. We urge its adoption and we do say to the people of North Kohala, we apologize. Somebody had to get a little bit of split somewhere along the line and it turned out to be you.

CHAIRMAN: Thank you.

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: Will Delegate Schulze yield to a question?

CHAIRMAN: Will you state your question.

DELEGATE YAMAMOTO: The question is, after the appeals that we made in the special meeting for the Hawaii delegation, will the voting, will the record of the voting could be given to us on the different plans?

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: May I answer that question since I presided at the meeting? I do not recall the exact number of votes, but I would say that the vote in the committee was overwhelming.

DELEGATE YAMAMOTO: Thank you.

CHAIRMAN: Thank you. Are there any further remarks? Are there any amendments to the plan for Hawaii other than the one that has been voted on? If not—Delegate Andrade.

DELEGATE ANDRADE: Mr. Chairman, for the record, may I request that all the petitions and letters that have come in from Hilo which I am routing to the Hawaii delegation and to the apportionment committee be made a part of the records on the Hawaii discussion, please. In fairness to the people of Hawaii.

CHAIRMAN: I don't know whether there is any problem in that, Delegate Schulze?

DELEGATE SCHULZE: I don't know, Mr. Chairman. They are, of course, a part of the formal and permanent record of the apportionment committee which will go to the Archives. Is that sufficient to the delegate?

DELEGATE ANDRADE: I want to be sure to have a record of what has transpired on the Island of Hawaii in fairness to the people of Hawaii who have wired us and written us and petitioned us and this is my concern, sir.

CHAIRMAN: The record will be preserved and they will be deposited in the Archives.

DELEGATE ANDRADE: Thank you.

CHAIRMAN: If there are no further amendments to act on in the case of the Island of Hawaii, it's time that we come to the Island of Oahu and for an introduction to that, I call on Delegate Schulze.

DELEGATE SCHULZE: Brief recess, Mr. Chairman.

CHAIRMAN: Recess subject to call of the Chair.

At 4:02 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:15 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The subject before the Committee of the Whole is consideration of the districting and apportionment on the Island of Oahu and appurtenances. As a matter of procedure, unless there is any objection, the Chair will suggest that we take the house first and then the senate. In other words, we'll complete the house problems as far as the entire island is concerned before we take up the senate.

Number two, that we start with what is now the Eighth District, the Windward Side. I can't see the number on this map, 21st Representative District, no, 23rd Representative District, corrected again, 24th Representative District. We start with the 24th Representative District to 23rd, 22nd, go to the 21st and the 20th. This will bring us to approximately the Moanalua or Aiea boundary. If we can complete that work by 6:00 o'clock it would be the Chair's feeling that we should recess until tomorrow morning.

DELEGATE KAMAKA: Mr. Chairman.

CHAIRMAN: Yes?

DELEGATE KAMAKA: May I request that that matter be delayed until some other time inasmuch as an amendment is being prepared for both the 23rd and 24th Representative Districts.

CHAIRMAN: Very well. Is there any problem if we start with the 22nd and come back to the 23rd and 24th? If not, we will start with that. Delegate Schulze, would you like to make the presentation concerning the Island of Oahu? We are starting with the 22nd Representative District which includes Haleiwa, Waialua, Wahiawa and Waipio.

DELEGATE SCHULZE: Mr. Chairman, may I have permission to come forward and stand near the map please? Thank you.

CHAIRMAN: You may. We have a microphone here for you.

DELEGATE SCHULZE: Mr. Chairman, the statistics for these representative districts may be found on page 48 of the committee report. The deviations which they represent will be found in the second column from the right end of the page. Perhaps I would do well to explain these deviations for your benefit. There have been a number of cases before the Supreme Court on apportionment. All of you have heard a great deal about the one-man, one-vote principle. Essentially stated, that principle is that each representative and each senator must represent approximately equal numbers of people. What we have done is taken a number of representatives, divided that into the number voters on the Island of Oahu and obtained an average for the entire island. I believe that average is about 5,082.

The second column then from the right end gives you the extent to which deviations from that average have been encountered. Most of them are very good. There are two and only two which are in the two figures; we had felt that whenever we get that high, we've got to have a rational explanation of the districts and the reasons for going above a 10% deviation.

The 22nd District is a two-member district, relatively unchanged from the pre-existing central Oahu district. There is some change in the configuration of the dividing line on the south. This is done, the line was roughened up to provide for expansion of Mililani town, I believe, and to permit the building of that town so that the new houses would remain in the same district as the bulk of the town's area would be. This is the only reason, I think, for the line change. Otherwise there isn't a great deal of difference in what went on before. I think it's appropriate, Mr. Chairman, if you don't mind, that we talk about the whole central Oahu, Waianae Districts together, 21, 20 and 22, if there's no objection, let me go on to them. The 20th Representative District—

CHAIRMAN: Delegate Schulze, may we take these one at a time at least until we get to the urban areas?

DELEGATE SCHULZE: If you wish. I have nothing to add about the 22nd District at this time then.

CHAIRMAN: Does any delegate have an amendment pertinent to the 22nd Representative District?

DELEGATE LUM: Mr. Chairman, a short recess, please.

CHAIRMAN: A short recess is declared.

At 4:21 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:22 o'clock p.m.

CHAIRMAN: Will the committee please come to order. Are there, is there any discussion or is there any amendment pertinent to Representative District No. 22? If not, we will go to Representative District No. 21.

DELEGATE SCHULZE: Mr. Chairman, the question asked by Delegate Lum was quite appropriate and I'd like to address myself to it for the benefit of all delegates. He noted that the 22nd Representative District was very short on voters, minus 8.0, and the 21st was rather heavy on voters, plus 12. The question was, should we not have allocated some voters from the 21st into the 22nd. The 21st is the Waianae-Nanakuli area. It is the only single-member district on the Island of Oahu. It is an area as all of you know which is surrounded on three sides by mountains and water. The only access really is right here by the sea at the mouth of this area. Otherwise it is geographically set off from its neighbors.

We do have plans before us which would have involved taking some of the population around Kaena Point but as a matter of fact, Kaena Point is impassable even though it doesn't appear to be so on the map and we felt that there was simply no community of interest between these people here and these up here. We therefore took the deviations even though they are somewhat large ones, accepted them because we felt that the people in this area made up a homogeneous group, largely problems of a common nature among all of them, it is the one area on the island that met, we felt, all of our criteria for a single-member district. We therefore made it one even though there is a relatively large number of voters and the deviation is higher than any other deviation is permitted anywhere in the State. The sole reason was because we thought, and the indication had been given to us from Waianae, from people in Waianae-Nanakuli on occasions that their problems were quite different from those of others, Pearl City, Aiea, and they felt that they needed somebody who had their own problems in mind or at least somebody that was only required to look after the rather common areas and common problems appurtenant there. There really was no way that we could allocate any part of this population any place else without simply eliminating this line and making it back into a very large multi-member district again.

CHAIRMAN: Are there any questions? Is there any amendment?

DELEGATE BURGESS: Mr. Chairman, point of information.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Are we discussing 21 or 22 at this time?

CHAIRMAN: We are discussing 21.

DELEGATE SCHULZE: Twenty-one.

DELEGATE BURGESS: Mr. Chairman, I apologize for not having the amendment ready. We have to go through this process of going to the surveyor's office, working with Mr. Schmitt. I do want to make an amendment. I don't think it will be very controversial but I was wondering if this would be the proper time to—

CHAIRMAN: Delegate Burgess, would it suit your purpose if we went back to the 23rd and 24th Districts? The amendments pertinent to those districts have been prepared and in due time I presume your amendment will be available.

DELEGATE BURGESS: I'd appreciate that.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: That's correct, I think that will give sufficient time for the preparation of the amendment.

CHAIRMAN: Very good.

DELEGATE SCHULZE: May I ask for a very short recess, Mr. Chairman?

CHAIRMAN: A short recess is declared.

At 4:25 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:32 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. While the delegates are finding their seats, I'd like to comment that there's been some problem this afternoon adequately staffing the Convention and request that the delegates hereafter not request messengers to go away from either this building or the other building as it has left us shorthanded for the purpose of distributing amendments, et cetera.

The consideration of the 21st Representative District, which I believe is Waianae, was temporarily stopped because Delegate Burgess had a technical amendment to the boundary between the 21st and the 20th involving some ten people. Apparently, the information pertinent to this change is not readily available and he has agreed

to letting his amendment go until second reading, but asked that the Convention be notified at this time that he has that amendment. Would you like to explain that amendment now so that everyone will understand it?

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: If I may ask, I have stated to Delegate Burgess that we would, it being a technical amendment, we would take it up in the committee before second reading to determine whether the committee would go along with it. Perhaps it's better to leave it at that for now. We would reconvene our committee to take up the problem of his technical problem there and perhaps it's better to let it go for now and wait till we see what the committee recommends.

CHAIRMAN: Is that satisfactory with you, Delegate Burgess?

DELEGATE BURGESS: Yes, it is.

CHAIRMAN: If you don't say it in the microphone, it doesn't get on the record.

DELEGATE BURGESS: It's completely satisfactory to me.

CHAIRMAN: Thank you very much. I understand that the information pertinent to the 24th and 23rd Districts is not yet available. Is that right, Delegate Kamaka?

DELEGATE KAMAKA: That is correct, Mr. Chairman.

CHAIRMAN: In that case, we, if there's no further amendment or question about the 21st District, we will pass that. Hearing none, we will go to the 20th District. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the 20th District is a three-member district including all of the central area of Pearl City and the other areas. It's not an area that's completely familiar to me but I do know that the lines are not substantially different from the pre-existing districts with the exception that the Waianae area has been excluded.

CHAIRMAN: Thank you. Is there any amendment to the district or the plan proposed by the committee as far as this district is concerned? Any discussion? If not, we will proceed to the 19th District.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Yes?

DELEGATE YOSHINAGA: Just for the record, the chairman is aware of the technical amendment so, we're just putting that in the record.

DELEGATE SCHULZE: That is correct, Mr. Chairman, there will be another technical amendment with respect to the description of this line at this point. It will also be submitted to the committee and we'll put it out on second reading with the committee's recommendation.

CHAIRMAN: Very good. Thank you. I believe that we can go to the 19th District and the Chair will recognize Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the 19th District runs from this line, which is essentially the boundary of Kalihi, through Tripler, Moanalua, on out to the—I'm sorry, it's to Aiea. The outside line is not available on this map. This district is a two-member district, very closely approximates 10,000 people, slightly over. The district contains large numbers of military personnel. On the whole it tends to contain among—most of the voters it has are among the civilian population and most of those are middle class to upper middle class socio-economic bracket relatively good residential areas in and around the Moanalua area. There are some slightly lower socio-economic areas, most of them military. This also includes the officers' military housing out at Makalapa but in any event the numbers of voters among the military is very small through this area. Most of the voters are in the civilian subdivisions.

CHAIRMAN: Is there any amendment or discussion pertinent to the 19th Representative District?

DELEGATE UECHI: Mr. Chairman.

CHAIRMAN: Delegate Uechi.

DELEGATE UECHI: I would like to make several statements with regard to this particular district. As proposed by the committee this particular district combines both Aiea and two precincts of the existing 11th District. For the record I would like to say that with regard to two of the criteria used by the committee, I do not believe that this particular apportionment plan is consistent with these two. Mainly, these two are, first of all, the socio-economic makeup of this particular area: traditionally Aiea has been considered rural and as you know, in the present districting, it is included in the 10th District from Aiea through the Waianae area. And for this reason, the socio makeup of the community, I believe, is more closely aligned with Pearl City, Waipahu and other Leeward communities rather than with regard to the urban community of Moanalua and Aliamanu as now existing in the 11th District.

Also in the lines drawn here, the historic line has been the Ewa-Honolulu line as it was the division with the present 11th and the 10th Districts. So with this, as I said, I would like to register my objections to this particular area combining both Aiea and the two precincts of the 11th District. However, I have not had enough time to come up with some definite proposal, so with this I would like to say that as far as these two criteria go, I do not believe we can reconcile placing Aiea and the two precincts of the 11th.

CHAIRMAN: Thank you. Is there any further comment? Are there any amendments? If not—

DELEGATE UECHI: Mr. Chairman, I believe there's going to be some technical amendments to this on the Ewa boundary. Isn't that right, Mr. Chairman?

CHAIRMAN: That's the same amendment we have mentioned before.

DELEGATE YOSHINAGA: Yes, that's the same boundary amendment.

DELEGATE UECHI: Thank you.

CHAIRMAN: Thank you. If there's nothing further on that district, we will go to the 18th District on the Island of Oahu. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, excuse me one moment, Mr. Chairman. Mr. Chairman, I have spoken to the delegation earlier this morning concerning the committee's preliminary findings and preliminary decision-making with respect to the size of representative districts. We're nearing the point now where the districts have been substantially changed to accommodate the committee's basic decision and I think it is therefore appropriate to remind the delegates that in accordance with the, not only the comments of the courts but also the comments of the political findings in other publications that we read and the comments of many groups throughout Hawaii, and in accordance with our own findings and our own decisions based upon the evidence that appeared to us, we did decide that the size of representative districts should be decreased. We felt that—we tried it frankly first to all sorts of plans, or ones, or twos or threes or fours. We finally hit on the idea that we would minimize size and if we could design an appropriate elaborate plan without any four-member districts, we would do so, and that is what we have done.

It is the committee's feeling, I think in significant numbers, I think Delegate Ariyoshi used the term "overwhelming" is appropriate here for what he, committee's decision, that four-member districts should be avoided in the house, that smaller two- and three-member districts will provide better representation, closer communication between the people and their representative and nevertheless leave the district sufficient size that we are able to work it and able to make a meaningful district out of it without having to cut up too many neighborhoods and submerge or sink any more groups than we absolutely have to. And, Mr. Chairman, I preface my remarks with this because the 18th District is the first of many which bears a definite resemblance to pre-existing districts except for the fact that the committee has decided that the only way to change the size of our districts in Hawaii is somehow to cut them off through the middle. This is not a truism but it extends to any other state. But because of the geographical configuration of Honolulu going back up into valley areas as it does, it makes almost no sense to start with block forms of districts such as are used in other states. To do so would mean that people on two

sides of mountain ridges, totally impassable and have no relationship between them at all, will have been lumped together.

Accordingly, the committee early decided that the old Ahupuaa lines, the mountain ridges, the extent that have already been used and to the extent possible, would continue to be used. There were appropriated substantial geographic boundaries, there were physical boundaries, they were there and unlikely that they would be moved any time in the next four to six years, and they factually and actually did separate the neighborhoods one from the other. The one exception to this is the Pali Highway which is still used as a dividing line. All I can say about that is that it's a major highway and it's been used as a dividing line as far back as most people can ever remember.

The district, the retention of these lines did not leave us without some difficulties because it does leave districts which at least at one end look like they used to look. Most committee members realized fairly early in the game that if they could completely change the districts, we might have less than we would have making what appear to be slight changes in them. Nevertheless, this just isn't in the cards because of the geographical problems we have and we early found out that if we are going to reduce district size at all, we were going to have to do it by some kind of Diamond Head-Ewa line, which cut them off between the mountains and the sea. This is appropriate in any event because the old Ahupuaa lines which were used are not really existing lines. They are not for the most part geographical features. This is for the most part flat area and these lines have been changed from time to time without particular regard to the Ahupuaa. They don't set our criteria or anybody else's as recognizable geographical features or permanent geographical boundaries. I'm talking now about the formerly existing lines. I say that these have not only geographic and historical importance for us and actual physical importance for us but these particular lines below had very little. We also found after a very great deal of experimentation that as a matter of fact the freeway was available to us as a nonpartisan districting agency which could take care of the existing job for us. I would freely admit before we ever start that the use of the freeway to some extent may be called arbitrary. In many ways it is not arbitrary but to some extent the fact is we decided on a single line all the way through was the choice which was made for a number of reasons.

Number one, most of our studies were available to us and the testimony showed that the freeway as a matter of fact does divide every neighborhood it runs through. That pretty soon, people whose neighborhood is separated by the freeway begin looking in the other direction for shopping and the other direction for their social activities. And economic tests have already shown that freeways such as in this area, that people makai of the freeway are already beginning to go makai for their shopping and their social activities, and the people mauka are beginning to go mauka and there is a very definite change in economic patterns in this neighborhood. This is true virtually throughout the city.

It is a truism that seems to follow freeways wherever they go. The freeway is of course a very significant physical boundary almost more so than the mountain range because it would be an awful lot safer for you to climb over here than it would be for you to climb over here in most places.

The effect then of the freeway is generally, not always but generally, to provide an actual physical splitting of a neighborhood. In the early days of the freeway, people tend to look at what used to be rather than what will be in the future, and of course it's not so easy to see this but it is clear where the freeways have gone, that this has occurred. Therefore, the census bureau sometime ago began redrawing its census line to end at the freeway. We feel that this is very appropriate. We feel it's appropriate for precincts as well. It is a physical boundary of some strength. It is highly unlikely that it will be moved anytime in the next few years and it does actually make a physical division of people so that it's the kind of division we're looking for in dividing representative districts anyway. One thing that I'd like to say to you about the freeway is this, it is a totally bipartisan freeway. It was not drawn by any member of the committee, it was not designed, I don't think, to create a gerrymander, it is a physical fact which pre-existed the committee's meeting. I've told you before that we were aware that whenever you reduce the size of a representative district you're going to hurt somebody. We know that and we strove to find a line which was impartial, with which nobody could say: "You chose that line just to beat me." The freeway serves this function for us very, very nicely.

Hardly enough, and for reasons that I never have quite understood, the freeway has also permitted us to retain in many respects the existing mauka-makai boundaries, mauka of the freeway and the numbers work out. Perhaps that's simply an accident that won't be repeated next time but I hope for the sake of the next districting commission that that's not so. The freeway makes an awfully logical dividing line between the two areas of the city and it would be very nice if people would continue to move into and register to vote in terms of the Supreme Court rule.

I would say finally that with respect to this, generally speaking, although I cannot say that categorically, there are distinctions of the socio-economic nature and the neighborhood nature between the people who live in this general area and the people who live makai of the freeway. But this is not a truism that I'd want to tell you that I can carry too far because I can't, but it is a truism that the freeway not only will actually divide the neighborhood it goes through but it generally marks the dividing line in the population distribution of the city. Now, the 18th Representative District has a kind of a funny line in it which I would like to explain to you. The initial plan from which this plan was derived did not use the freeway and School Street, the old boundary, was retained as the boundary for the 16th District. The 16th is a fairly heavily populated district anyway. We would prefer to have brought our line for the 18th directly down into the freeway and cut it off cleanly

but the numbers just wouldn't work at all. Our deviations would have been much too high, far too many people here and too few here in the 18th. So we had to leave that middle jog in there. The jog was not deliberate, the jog took place after we adopted the freeway and found that the freeway actually cuts down a little bit here and leaves that little split. That's where it happens to come from. The 18th District is not a very familiar district to me but it is the mauka area of Kalihi. It is generally of a socio-economic group which is quite different from the 19th and quite different from the 16th on either side of it, generally speaking, I believe, lower socio-economic groups although there are educated groups in that area, a substantial community of interest among the citizens in this neighborhood. I think it makes quite an appropriate representative district.

CHAIRMAN: Are there any comments or amendments? Delegate Loo.

DELEGATE FRANK LOO: Mr. Chairman, I had not intended to suggest an amendment but sitting here, I would be remiss in not bringing in this thought and perhaps for amendment to the plan as suggested by the committee. The committee has made much of the use of the Lunalilo Freeway and also the fact that they should keep the socio-economic grouping together. It so happens that in the bottom, that loop there, the area that was taken from the 12th District, the area that is traversed by the Lunalilo Freeway now puts in a good portion of people that are leaseholders of Bishop Estate below School Street and above the Lunalilo Freeway. And thereby, they are cut off from their natural brothers, the leaseholders above the School Street area. I think that these people of the middle class area should be combined together and kept together and an appropriate amendment should be made so that the continuation of the boundary should be following the Lunalilo Freeway as the committee had suggested in the first place.

DELEGATE KAUHANE: Mr. Chairman, may we take a short recess so that I can answer a long distance telephone call? I'd like to discuss this 18th District but because of the—

CHAIRMAN: A short recess is declared.

At 4:55 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:05 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, this morning I spoke and stated my reasons why I was going to vote against the standing committee report and its recommendation. I also beg leave to withdraw the amendment that I had turned over to the clerk, which amendment was distributed amongst the delegates present. I now beg leave, Mr. Chairman, to put over any

further discussion or acceptance of the committee's proposal with respect to District 18.

During the course of the recesses we've had, I talked to other delegates within the immediate area fronting the 18th District. There's some questions raised as to the acceptance of the inclusion of precincts by the committee's recommendation. Also I stated this morning that the use of the freeway would be the guideline by the committee for the separation of mauka and makai areas. And I stated this morning that if we used the one foot road under the committee's proposal and the enclosing of the precinct which is being divided by the Lunalilo Freeway, immediately within the one foot road there's a precinct where a total number of about 1,700 voters can be well included in the new district concerned rather than pick up the precinct that was introduced to yardstick rule and to pick up two precincts in that wide separated districts.

I would like to, at this time, ask leave of the Chairman to submit an amendment with the proposals that we, Delegate Kawasaki and I and Delegate Kageyama, have been discussing with respect to the 18th District after which we can more intelligently discuss the proposal which we will support by way of the amendment that we will offer.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, the position that the committee would have to take is that the proposal that we have here is one that was submitted by the committee and the committee feels no necessity for submitting anything else.

DELEGATE KAUHANE: Mr. Chairman, may I rise for another point that I would like to raise in there? This will be in the way of a question.

CHAIRMAN: You are recognized.

DELEGATE KAUHANE: Thank you, Mr. Chairman. You know this morning there was lots of talk about how well the composition of the committee was made as to representatives of the various areas concerned. During the course of the statements made, I began to write down and to check over the membership the committee has reflected in the standing committee report. I find, Mr. Chairman, for the information of my senator from the 5th Senatorial District, the vice-chairman of the committee, that in addition to having six senatorial district members represented on the committee, that the 11th Representative District as compared with the other districts, other districts of great concern is that of the 18th Representative District now known, that we had no one representing the district, as a unit representative. So it puts us in a disadvantage when it comes to the concern of the 11th District. And the composition of the membership you know will support any recommendation perhaps the committee will finally come out with and more particularly in the areas of the senate reapportionment.

But I am concerned primarily at this point with the representatives as far as the house of representatives is concerned and particularly as it affects the registered voters in the population of the 11th Representative District.

CHAIRMAN: The Chair will declare a brief recess in order to confer with the committee chairman, the committee vice-chairman and the president.

At 5:10 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:17 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole come to order. It's obvious to the Chairman that there are delegates who either already have amendments and don't have the figures, or are trying to prepare amendments for which they require additional information. If we are to recess for twenty minutes or longer for each one of these, we will not be making good use of the time of all the delegates. Accordingly, it is my proposal that we continue to go through district by district describing what the districts are, answering questions about the boundaries and so forth to provide as much general information as we can between now and six o'clock. That we will then recess to reconvene tomorrow morning. In the interim, the Chair would ask that all the delegates who have amendments please have them prepared. The vice-chairman of the committee has indicated that he is available and will get whatever other help he can and make it available to any delegate that needs information. But ladies and gentlemen, if we have a recess from 6:00 o'clock until 9:15 tomorrow morning, I hope that you will make the best use of this and have your comments or your amendments ready tomorrow because we must move ahead with this business. I feel that this will give everyone more than a fair opportunity, particularly when we realize that every delegate has had an opportunity particularly in the last week to see the maps in their present form. Is there any question as far as that procedure is concerned?

DELEGATE KAUHANE: May I ask a point of information?

CHAIRMAN: What is your point of information, Delegate Kauhane?

DELEGATE KAUHANE: Will Mr. Schmitt be around so that we can use his good service?

CHAIRMAN: You will have to work through the vice-chairman of the committee who will be here. Delegate Ariyoshi is recognized.

DELEGATE KAUHANE: Is my point of information going to be answered by him?

DELEGATE ARIYOSHI: Mr. Chairman, upon the conclusion of this session, if all of the people who have any desire to secure any information, desire assistance in

preparation of amendments would stop by to see me, I will work with Mr. Schmitt and supply the information and have available the amendments which will be necessary by tomorrow.

DELEGATE BEPPU: Mr. Chairman, I rise on a point of information.

CHAIRMAN: State your point, please.

DELEGATE BEPPU: Am I to understand that the state statistician, I mean if you want his services, would we have to go through the committee chairman or vice-chairman?

CHAIRMAN: The services of the state statistician have been put at the disposal of the committee and it's just a matter of orderly procedure so that he will not be besieged by a large number of people all asking the same information.

DELEGATE BEPPU: Mr. Chairman, I think every delegate in the house here should have the services of the statistician. That's what he's being paid for.

CHAIRMAN: That is correct.

DELEGATE BEPPU: And I hope, Mr. Chairman, that he be available tomorrow.

CHAIRMAN: I'm not saying he won't be available tomorrow. The Chair was asking that as many of the amendments that are forthcoming be prepared before tomorrow morning if possible.

DELEGATE BEPPU: Well, Mr. Chairman, some of the amendments cannot be made without the help of the statistician. This is what I'm driving at.

CHAIRMAN: I realize that. I think Delegate Ariyoshi will arrange for—let's find out. Delegate Ariyoshi, can you answer that question?

DELEGATE ARIYOSHI: Yes, Mr. Chairman, the intention here is that if the request could be channeled through me, Mr. Schmitt could go back and do some work. My concern is that if this is not done, Mr. Schmitt is going to be besieged with requests and he is going to be bothered to the extent where he will not be able to produce the kind of result that we want.

DELEGATE NOGUCHI: Mr. Chairman.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: That's exactly my point. I think—for instance this Mr. Schmitt is given a lot of requests, he's only one man, he's got two young people working with him. Is it possible for the president to release our funds to hire some others perhaps in charge to help us with these statistics? I think it's very important. I think the fund itself should be made available to us because like he said, the first party takes it and Mr. Schmitt works on it, and there are other delegates in the same request here, we have to wait to

get our answer and how can we prepare a proper report and amendment tomorrow?

CHAIRMAN: I believe the delegate is anticipating a problem that has not yet developed. It may be that only three or four delegates want information. And I would leave it up to the judgment of the committee vice-chairman to secure the information for you in the most expeditious means possible.

DELEGATE KAMAKA: Mr. Chairman.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I've already been told by Mr. Schmitt, that we're not going to get any information from him without the approval of the committee chairman. I take it upon myself to get the needed help from the governor's office.

CHAIRMAN: This is the reason for asking the delegates to coordinate the request through the committee so that the services of Mr. Schmitt would be made available.

DELEGATE KAMAKA: No such message was given to us prior to this moment, sir.

CHAIRMAN: It has been given now.

DELEGATE ARIYOSHI: Mr. Chairman, may I respond to that?

DELEGATE SCHULZE: Mr. Chairman, a point of personal privilege.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: I yield to the chairman.

DELEGATE SCHULZE: I just wanted the record to show, Mr. Chairman, that Delegate Kamaka did not come to me and ask for that information of any kind and it's never been refused him.

CHAIRMAN: Delegate Schulze, I will ask you and Delegate Kamaka not to engage in a who-said-what argument at this time, please.

DELEGATE SCHULZE: I never will.

CHAIRMAN: Thank you. Delegate Kauhane has the floor.

DELEGATE KAUHANE: Thank you very much. You're looking at Kageyama and calling me. Thank you, Mr. Chairman.

DELEGATE KAGEYAMA: Mr. Chairman, I protest the Chairman's decision to point out another member while I stood up to be recognized the last fifteen minutes.

DELEGATE KAUHANE: I want to yield to Kageyama.

CHAIRMAN: Delegate Kageyama has the floor.

DELEGATE KAGEYAMA: Mr. Chairman, leaving jest aside, I rise to talk on that proposal of 18th District, although I sat here in discussing the 19th District, of which I am a member, to this Convention. The relationship between the 17th, 18th and 19th must be discussed backward and forward when the representative districts of 17th and 18th are discussed. I take issue at this time, as the last stand, as General Custer said, so that in this representative district of 18, the original proposal as submitted to this committee which I understand was the basis of discussion.

I further rise in protest to the statement made by the vice-chairman of the committee that this is the recommendation of the committee and refusing to accept any statement. In such a statement I think the nonmembers of the committee are here to share and participate and to contribute. There I hear the wisdom to the recommendation of the committee that made such a recommendation of the standing committee as well as to the detailed maps presented here. And I think that kind of a statement to the rest of the members is not fair and just because I feel that in final analysis the entire delegation assembled here will vote one way or the other.

And coming back to the representative district 18, I believe that the 19th District has the entire military area and to give the 19th District that responsibility and not shared by the neighbor 11th District or 17th and 18th, will do slight injustice to those elected to represent the people of that respective district. In the original 11th District which included that district of Precincts 1, 2 up to 12, should be restored back as I have heard the discussion of some of the other members that that was the original plan which plan does give one additional member to the representative district of the present 18th and reduced the 19th Representative District to one. And I believe that there are other areas that have one representative. In coming to the 17th, I shall state my position later on the question of the 17th District and I leave the 18th District with this statement. Thank you.

CHAIRMAN: Thank you. Are there any other comments on the 18th District?

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: So that people won't be reluctant to come to me with their requests, I want to say that during this afternoon I have been traversing around this convention hall trying to get the requests of those whom I knew had some requests for, a desire for additional information.

My specific comments are addressed to the 18th District because there was an amendment which was proposed by the gentleman from Kalihi who later on withdrew the request and my remarks are prompted because I did not know, and I don't know now, the

kind of additional information the delegate from Kalihi desires. My understanding further, and I was hopeful that this information would come from him, is that the chairman of the committee would supply him with the information which was the basis of the amendment which was first introduced and withdrawn. At this moment, I do not know what the request is, and if the request is made, I would be very happy to cooperate with him also.

CHAIRMAN: Thank you very much. I don't think we need any further discussion on that subject. I think it's established that people who need information will contact the vice-chairman of the committee. Is there any other comment concerning the 18th District as shown on the map and as described by the committee?

DELEGATE YIM: Mr. Chairman.

CHAIRMAN: Yes, Delegate Yim.

DELEGATE YIM: I would like to make some comments on the committee proposal on District 18. Mr. Chairman, I consider the committee proposal pertaining to Representative District 18 inconsistent to two of the criteria that are set forth in the committee report. On page 27 of the committee report, criteria No. 5 which states: "Wherever possible, the division of areas with a substantial community of interest is to be avoided." The use of the Lunalilo Freeway I consider is an arbitrary consideration of drawing a boundary line. If Lunalilo Freeway happened to be there, it cuts across a community of interest. In addition to that, the committee proposal also violates criteria No. 4, on page 26. Criteria No. 4 states that the "district lines must follow permanent and easily recognized lines, for example major streets."

So here, we have another inconsistency. The committee put a lot of stress as to the use of the Lunalilo Freeway and yet in that particular proposal, they are using School Street. The proposal for Representative District 18 does not use a major highway known as Likelike Highway. Furthermore, not implying as to the intent of the members of the committee, no doubt they are all honorable men and women, and I'm not accusing them on any matter but as a matter of fact, by looking at the map, it is in fact gerrymandering.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, on behalf of the committee, I want to plead guilty to the charges made by the good delegate from the 14th District. I want to say, as I have stated earlier that the criteria are only criteria and they should not be followed to the T in every district.

Unfortunately, the Island of Oahu is not made up in symmetrical districts where you have a symmetrical grouping of socio-economic people. You do not have lines which exactly fit in so that it's possible for us to

divide up the island in the manner in which we would have liked to have done this. Some hard decisions had to be made, some criteria had to be violated in some instances. But what the committee has attempted to do is to look at the overall picture and try to bring out the best kind of redistricting plan that we thought possible. And in the process of doing this, I would be the very first to admit that some criteria had to be violated.

The point I want to make is that each of the districts in the mind of the committee best represents the, and best follows, the various criteria set up even though in some instances they were not followed to the T.

CHAIRMAN: Thank you. Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, I was just wondering whether we should not hold any discussion on Districts 16, 17 and 18 in abeyance inasmuch as I anticipate that there will be an amendment to the District 18 boundaries which will materially affect perhaps both the 16th and 17th District boundary designations. And inasmuch as these amendments are going to be worked on tonight and the early part of tomorrow morning, perhaps we should hold in abeyance all discussions on Districts 16, 17 and 18. I just wondered if we could go on to some other district.

CHAIRMAN: If there's no further discussion on this district we can go on. I think the Chair should state that from here on, from the 19th District—up to the 19th District, we have had no amendments. And from here on, the amendments will be considered tomorrow. Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, I rise on a point of personal privilege. The vice-chairman told us a moment ago that he pleaded guilty to the accusations of the former delegate who just spoke before him. I do not believe that he meant to plead guilty to the accusation of gerrymandering. And as a member of the committee, I should like to make it very clear that in this instance, there was no effort at gerrymandering whatsoever. This would be the last thing we would consider.

CHAIRMAN: Thank you. Is there any further discussion of District No. 18? We will come back to 18 tomorrow morning incidentally, Delegate Kawasaki, if that's what you were concerned about. If not, let's go to 17. Does anyone have any question? Delegate Loo.

DELEGATE GEORGE LOO: May we defer discussion on District 17 because it is integrally involved with District 18 and District 16 and the 11th District delegation is proposing or thinking about proposing an amendment to affect these various districts.

CHAIRMAN: The Chair indicated that we would come back to District 18 tomorrow morning and then go from 18 to 17 to 16. But in the meantime, if anyone wishes to make a statement, to propose an amendment, or to request information, or to question

where the lines really are, let's get that cleared up tonight so we don't develop new information tomorrow and then develop additional amendments. Is there any question?

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: I yield to Delegate Akizaki.

CHAIRMAN: Delegate Akizaki.

DELEGATE AKIZAKI: I just wondered because of the time, when they throw in an amendment, it's going to throw all the board out of whack so I wonder if we can recess until tomorrow morning?

CHAIRMAN: Well, we can't recess until—

DELEGATE AKIZAKI: I for one would not like to touch 14, 12, 11 and 13 right now because they depend on what amendments are coming in.

CHAIRMAN: Well, we'll get to that. If we're discussing the 15th District, for example, all of the districts that border on that are open for discussion. The Chair would rule that they all—

DELEGATE AKIZAKI: That is true but, in case they have an amendment, the boundary has to be moved. And that's going to affect 15. It's going to affect 10. It's going to keep on affecting everybody else.

CHAIRMAN: I think we all recognize that. The point is that because there are some reports to come in that must be received at approximately 6:00 o'clock, we're not going to make any progress if we adjourn before then. I would like to use this time as productively as possible to let the delegates make comments on these districts, ask questions of the committee, whatever they want, develop whatever information is pertinent to any amendments that may be forthcoming.

DELEGATE FERNANDES: Mr. Chairman, may we have a short recess?

CHAIRMAN: There will be a short recess subject to the call of the Chair.

At 5:38 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 6:00 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. In order that the Convention may receive all the reports that are in the process of printing, we will be here for approximately ten more minutes. Is there any delegate who wishes to ask any questions, obtain any information or make any

comments about the districts 18 through 8 on this map at this time? Tomorrow morning, when we reconvene as a Committee of the Whole, we will start with District 18 again.

DELEGATE KAGEYAMA: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Richard Kauhane is recognized. Delegate Kageyama.

DELEGATE KAGEYAMA: Just for information, is District 17 included in your statement?

CHAIRMAN: District 17?

DELEGATE KAGEYAMA: For discussion, is it included in your—

CHAIRMAN: You may discuss District 17 now if you wish, yes. Any district from 8 through 18, if you wish to discuss at this time, proceed.

DELEGATE KAGEYAMA: Mr. Chairman, on District 17, I'd like to just make a few suggestions here as to the boundaries that have been presented on the map. My recommendation for the District 17 would include the International Airport and the Hickam Air Force Base. Although they are not—

DELEGATE ARIYOSHI: Mr. Chairman, Mr. Chairman—

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: In order not to take time of the record, may I suggest that Delegate Kageyama please come to see me after the meeting so that we can sit down and talk about it.

CHAIRMAN: I think he can do that. I requested that anyone who had a statement to make, since we will be here for ten minutes in any event, make them now.

DELEGATE KAGEYAMA: Well, this is only a suggested statement to improve the boundaries of the 17th for the reason that I shall explain. District 17 has the effect of the airplane noise from the International Airport and the Hickam Field airport engines. And therefore, the responsibility of the representative or the senator coming from the 17th District has that responsibility and problem because such flights take over the district of 17th and other areas throughout the city and I felt that the responsibility should be given to the representatives or the senators that come from the 17th District rather than those from the 19th or the 18th and that was my suggestion and if the suggestion has any merit, then the committee would consider such a recommended change on the boundaries. As to the detail, we'll leave it up to the chairman or the vice-chairman. That is the only statement and suggestion that I'm making at this point. Thank you.

CHAIRMAN: Thank you. Is there any other

delegate who wishes to be recognized? Delegate Noguchi.

DELEGATE NOGUCHI: I have a question to ask. When we propose amendments tomorrow, do we have to go to the procedure of having it written out as to the boundary lines?

CHAIRMAN: I think that might be difficult. If you have a general description and a map, this might be sufficient. Is there any objection to that?

DELEGATE NOGUCHI: Could we just—is it possible to have made available to the delegates who wish to make amendments, could we have copies of maps so we can draw the district lines in instead of having it written out so we can present it possibly in the front?

CHAIRMAN: Delegate Ariyoshi, would you like to respond to that?

DELEGATE ARIYOSHI: Before responding, may I ask a question? Delegate Noguchi, I have requested Mr. Schmitt's team to work out some information that you desired. Are you asking for maps to draw in something in addition to what you have already requested?

DELEGATE NOGUCHI: Is the statistician going to draw the lines for us when we give you the request?

DELEGATE ARIYOSHI: Yes, I will ask him to rough in the lines so that you will have an idea as to what is being considered.

DELEGATE NOGUCHI: Oh, I see. The reason I ask is because if one amendment fails we have a series of other amendments coming up and this is a forewarning. And to have all the boundary lines printed all the time, I think is going to take many weeks here.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, may I make a suggestion to vice-chairman George Ariyoshi. To solve his problem of amendment boundary lines, if we could have plastic overlays over the maps that we have on the bulletin boards now and you could use a soft crayon, you could achieve the amendment boundaries for visual examination by all of the delegates.

CHAIRMAN: Very good suggestion. Thank you.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: How late will vice-chairman Ariyoshi and chairman Schulze be available tonight?

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: I would like to get the requests as soon as possible, right after we adjourn today so that I can sit down with Mr. Schmitt and send

him to work.

DELEGATE TAIRA: Okay, thank you very much. Mr. Chairman, I'm from the old 14th District and I rise a very bloody mess this evening because we've been carved very badly into two and I have lost a lot of blood and I hope to go for a blood transfusion this evening and I don't know whether I can come back in time, so maybe I won't have any amendments to offer.

CHAIRMAN: Thank you. Any other comment?

DELEGATE NOGUCHI: Yes, Mr. Chairman.

CHAIRMAN: Perhaps someone who hasn't spoken yet would like to speak. If not, Delegate Noguchi.

DELEGATE NOGUCHI: In regard to all the number of requests that have been made to the committee statistician, Mr. Schmitt, is it possible, Mr. Schmitt, to have this information available to those who made these requests at an earlier evening so that we can prepare the proper arguments as the Chairman recommended, or is it necessary to hire possibly outside help?

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: May I have one minute, please?

CHAIRMAN: You may. One-minute recess is called.

At 6:06 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 6:12 o'clock p.m.

CHAIRMAN: Committee of the Whole, please come to order. The Chair recognizes—oh, excuse me, Delegate Ariyoshi, you were in the process of answering a question when we recessed.

DELEGATE ARIYOSHI: Mr. Chairman, I have consulted with Mr. Schmitt and he cannot give me a definite answer as to how long it will take for these things to be finished up.

DELEGATE NOGUCHI: That is why I say, should we ask for—Mr. President here, is it possible for Mr. Schmitt to have some aid? He's been worked very hard here and is it possible to hire some outside help here to help Mr. Schmitt here in order for us to have these figures available here?

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: I believe the thing is that we ought to try to find out whether we can get the information from the state statistician. I'd rather not try to bring in any outside help because by the time you finish with their bids and their proposals, arranging the contract may delay us unduly. So I rather we stay with state processes and see if we can't get the answers first.

DELEGATE NOGUCHI: Do we have to go through bids and proposals? I mean—

PRESIDENT PORTEUS: No, not if we don't ask—

DELEGATE NOGUCHI: A statistician?

PRESIDENT PORTEUS: That's right.

DELEGATE NOGUCHI: There must be someone else available in this State to—

PRESIDENT PORTEUS: Let me restate it again. I'd like to stay with the state statistician to find out whether we can't get you the facts and figures after working so long on this, rather than trying to go to anybody else and try to get him educated in this area at this stage.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, I think the tentative rule that you had articulated a while back that the absolute deadline for amendments be tomorrow morning may have to be relaxed a bit. I think some of these districts asking for amendments or reports to be submitted may take a while. Could we be a little more informal on that and give these people enough time to come back with amendments within some reasonable deadline we set?

CHAIRMAN: Delegate Kawasaki, we will try to be as reasonable as possible. However, if we provide leeway at this time, we will be right back where we were a week ago and the maps were available and no amendments were studied.

Any further discussion? If not—I recognize Delegate Schulze.

DELEGATE SCHULZE: I move that we rise and report to the Convention and ask leave to sit again.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, before I second the motion, I want to say that I have a request here from Delegate Loo, from Delegate Lewis, from Delegate Akizaki, Delegate Kauhane, Delegate Noguchi and from Delegate Kamaka. I want to know whether or not, if there are others who have not made a request yet, I want them to make a request immediately after we adjourn.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: About nine others and myself may have requests yet but we don't want to bind ourselves.

CHAIRMAN: Very good. Do you second the

motion, Delegate Ariyoshi?

DELEGATE ARIYOSHI: I second.

CHAIRMAN: You've heard the motion and second. All those in favor say "aye." Opposed, "no." Motion is carried.

The Committee of the Whole adjourned at 6:12 o'clock p.m.

Friday, September 13, 1968 • Morning Session

The Committee of the Whole was called to order at 10:56 o'clock a.m.

Delegate Bryan presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. At the time the committee rose to report progress yesterday, we had considered District 19 and we were proceeding with District 18. Delegate Loo is recognized.

DELEGATE FRANK LOO: Mr. Chairman, I was one who had indicated that I would propose an amendment today, but I think we could save the delegates some time and the staff some time by me asking the chairman of the Committee on Apportionment the question and I think that could be clarified if I could preface the question with a few remarks.

CHAIRMAN: Proceed.

DELEGATE FRANK LOO: Delegate Schulze, as far as the apportionment of District—present District 18, you have included the area which is known as the Bishop Museum Tract which is part of that, front of that boot there. The Bishop Museum Tract is below School Street and it consists of the same leasehold owners as the people above School Street. Now, they also attend the same school, Kapalama School, and also most of them go to the shopping center which is across the street, the Kam Shopping Center. Besides that, what you have done here by using School Street, you've deviated from your proposal that you would follow the landmark of, deviation landmark of, I mean demarcation landmark of the Likelike-Lunalilo Freeway. Could you explain to us why you did that?

DELEGATE SCHULZE: Mr. Chairman, I'd be happy to do that if the delegates would give me just a moment while the gentlemen bring the map down from upstairs so I'll have a map in front of the room.

Mr. Chairman, to make the question more visible, the question is, why could we not have taken this blue area and eliminated School Street as a boundary for the 18th and instead have drawn the boundary straight down in a line like this. The question is a fair one, it's the kind of boundary we'd always like to have drawn. The fact of the matter is, if we had done that, the deviation in the 16th District would have been 26 percent above the average for the island as a whole.

Way, way out, far above any possible deviation that could be permitted and that would be permitted by the court. May I say also that it is true there is some difference between this neighborhood and that one but the difference really runs from about here. It's a very small area that has been sort of hooked on. This area fits in rather nicely. We hate to do this and it's something we've always tried to avoid but it simply happened that in order to retain any 16th District at all, we had to get a bottom boundary line and it wouldn't work out any other way there. We assume that it's a temporary situation. We hope that it will be cleared up four years from now. It is very minor in terms of the number of people and it simply measures in terms of deviations, and the Supreme Court won't allow us to follow the results you suggested.

CHAIRMAN: Delegate Loo.

DELEGATE FRANK LOO: Mr. Chairman, what I have indicated there, is not the whole front there that he indicated. However, only just that portion that includes the Bishop Museum Tract which is part of the whole portion that he indicated, that triangle there. However, I will accept his explanation because even though it is not 26 percent, it is my understanding, above the acceptable limits set forth by the Supreme Court. Is that right, Mr. Schulze?

DELEGATE SCHULZE: That is correct, Mr. Chairman, and no matter what we did, the deviations, in 18 a negative, in 16 a positive, and we simply can't add more to 16 and take away any from 18.

DELEGATE FRANK LOO: Thank you very much.

CHAIRMAN: Thank you. Does any other delegate have any further comments on District 18? Or any amendments pertinent or which might affect District 18?

DELEGATE ALCON: Mr. Chairman.

CHAIRMAN: Delegate Alcon.

DELEGATE ALCON: May I just make a few comments regarding the general area of the present 19, 18 and 17?

CHAIRMAN: You are recognized, certainly.

DELEGATE ALCON: Thank you, Mr. Chairman. Mr. Chairman, to say goodbye is to cry alone. Mr. Chairman, I say this because of the fact that in 1970 the 1st Precinct of the 11th District, the area in which I reside, will be legally divorced or separated from the rest of the 11th District. I had appeared before the committee to preserve the present 11th District. I had been heard, my recommendations have been judiciously considered but unfortunately, Mr. Chairman, they did not pass the supreme test of the number game. For being so considerate, Mr. Chairman, the committee deserves my thanks. Although it has been my hope that at least the old Kalihi proper would be preserved and left intact, Mr. Chairman, I see now that it has been

further fractured and divided into upper and lower Kalihi. For what reasons, Mr. Chairman, I shall know not but I have a hunch that it has been done as a matter of expediency. It has been stressed, Mr. Chairman, that all information has been fed into the computer. And so, Mr. Chairman, we are now playing a number game. I submit to you, Mr. Chairman, that the computer is blessed with a brain far superior to a human being. But let me stress upon this Convention, Mr. Chairman, that they are machines that do not have a heart. Let me repeat, Mr. Chairman, the machine does not have a heart. Thank you.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I, yesterday, asked permission to prepare an amendment that I would have wanted to offer this morning. I sought the counseling and advice of Senator Ariyoshi in trying to assist me in the preparation of this amendment including the map so that I could show what I had wanted to do for the district of Kalihi, the old 11th Representative District. Upon my receiving the data from Senator Ariyoshi this morning, I began to sit around and lay out some figures as to how this can be well worked out. I note, Mr. Chairman, that in my presentation of the amendment to preserve the old 11th District, now known as the 18th District, that I would have to possibly affect the boundaries of the now 16th District, the former 12th Representative District. Because the answers to the questions asked by the delegate from the 12th Representative District with respect to the use of School Street as the dividing line and the equation of dividing of the present precinct composition, that he is willing to accept the answer given to him by the chairman of the Committee on Apportionment and Redistricting, but, Mr. Chairman, if you look at the map that's over here—possibly, Mr. Chairman, if I can go up front and use the mike and that map up there, I can more or less illustrate what I'm trying to say here.

CHAIRMAN: You may use the other microphone, Delegate Kauhane. There's a pointer on the desk also.

DELEGATE KAUHANE: Mr. Chairman, I feel that the use of School Street as well as the Lunalilo Freeway as the guideline so that we can properly divide the 17th, 16th and 18th Representative Districts, that those lines are contrary to a basic formula in trying to arrive at a solution to the problems facing us. I look at this little jog in here using School Street as a dividing line. I look also at the Lunalilo Freeway. Certainly the 11th Representative District which is 18th, is not so interested to accept this as part of the 18th Representative District. Now a look at the line drawn for the new 17th Representative District. On the Kahuku side of Kalihi, that's this line up here, Mr. Chairman, we find that the committee used very good sense by taking from Kalihi, Precinct 2, Precinct 3 and possibly Precinct 4. And yet when you look at the original 13th Precinct, if we use the Kalihi line, which line has been used as the division line for the 11th, the 12th and including the 13th Representative Districts today, you don't see the extension to take care of

Precincts 2, 3 and 4. I don't think this was done in order to provide the necessary figure they need to justify the reapportionment plan. Mr. Chairman, I feel that this is contrary to any, in my thinking, any accepted division of the reapportionment for the Kalihi district. They talk about the census tract that they have to use. I'm glad that the mention of census tract has always been brought forth in any statement that has been made on this floor. I'm connected with the application of census tract by being chairman of the Congress of the Model Cities Program of Kalihi and Palama. When we use census tract in our submission to the federal agency to accept the city and county's plan for the model cities program in the Kalihi-Palama area, we distinctly left Kalihi line as the dividing line for what is presently known under the model city program, the Palama section. And we kept what is presently known and called in the model cities program, the Kalihi section. So that these areas here, these precincts that are now being taken over by the committee's good judgment are now a part of the Kalihi's model cities program under census tract and accepted by, I would say, the more common single heart, the federal agency, the same as Palama. They have census tract numbers that indicate what division is in here.

Mr. Chairman, this morning when the committee recessed and when they called the Committee on Reapportionment, some of us who had wanted to testify were there, but because of the involvement in the support of amendments, proposals, including this area, that we have not had an opportunity to come in and justify our position here, neither here, nor there, plus here. Secondly, Mr. Chairman, after looking over the plan that was submitted to me this morning by Senator Ariyoshi, there was some question that we had in mind with respect to whether to submit the proposed amendment or to stand by the former amendment that I had introduced, or to come in with another amendment to say to keep the boundary lines for Kalihi as against the 16th Representative District running all the way down to Kalihi and using the old Kalihi Road. This would be one alternative that we would be coming in with, Mr. Chairman.

There's another problem that confronts us. We have members in the house of representatives who live up in this area that is now being included in the 19th Representative District. There's the 1st Precinct at Moanalua. Then we have the Pearl City Elementary which is commonly known as the Aliamanu area. I have no quarrels, Mr. Chairman, that this could very well be included as part of Aiea because the back door of the people in this area empties out into Aiea section. So that, Mr. Chairman, in order to—

CHAIRMAN: Delegate Kauhane, the Chair will have to point out that any discussion of the 19th District will be out of order because we finished with that yesterday.

DELEGATE KAUHANE: I understand that. So that rather than continue, Mr. Chairman, I ask permission to submit amendments later which will affect this precinct as well as district, the 16th and the 17th.

CHAIRMAN: How much later will that be?

DELEGATE KAUHANE: As soon as we have an opportunity to meet with the members of the committee like the rest of the others. Certainly, Mr. Chairman, I feel that perhaps that we in Oahu should be given the same type of consideration that is extended to the Island of Hawaii, whereas the decision has been reached by the committee says further considerations went into particular island group because of the imposition to arrive at a unit acceptance of the committee's proposal. I feel that we here in Oahu are in the same kind of a problem so that we should be given a little bit more time. That we ask the consideration not only of the Convention and of you but of the committee chairman to permit us the opportunity. At least a reasonable and equitable opportunity to appear before them even though the committee chairman may feel that we are holding up as far as the oral presentation is concerned. I say, Mr. Chairman, in one sense they have not heard fully enough of the protest that has arisen from those of us who represent the people at the 11th Representative District fully.

CHAIRMAN: Are there any other delegates that wish to speak on this particular district? District No. 18? Delegate Schulze, would you like to comment on the probability of the committee meeting to hear Delegate Kauhane's argument? I think the question—Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, this morning we were—the committee met this morning to consider some of the amendments proposed. One of the amendments that we attempted to work up for Delegate Kauhane from Kalihi was one which retained the—basically the present 11th Representative District with the exclusion of one precinct. That plan showed a deviation as large as plus 33 percent in some areas. My understanding was that this plan was not going to be proposed because of the deviation involved. The delegate from Kalihi was present at the time that the committee met this morning. I do not know what he has in mind now and for that reason I do not see whether there will be anything fruitful coming out of any meeting that the committee would hold this morning.

DELEGATE KAWASAKI: Mr. Chairman, if I may for a point of clarification.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I think, speaking on behalf of the request by Delegate Kauhane, I think Delegate Ariyoshi's piece of information is accurate. However, I think Delegate Kauhane was busy this morning trying to work out a plan that would be acceptable in terms of the minimum deviation from what would be allowed. And I think he plans, so far as I know, to perhaps submit as an amendment for the districting of the 18th District, a plan that was given to him, a tentative plan by Mr. Schmitt that allows, I think, a five and a half deviation. I think he's trying to work that out. This is the reason he is asking for this additional time. I fully realize that the committee has

had to meet to consider some of these requests that have come in late. But in fairness to Delegate Kauhane—I know he has been working on this. He sits next to me here and he's been having some dialogue with me. He's been trying to work out something that might be acceptable to both the committee and the floor as a whole.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: In fairness to a fine man who has been assigned a very difficult, complex and frustrating job, chairman of the Legislative Apportionment and Districting Committee, he did not say that the doors are all closed, locked, shut tight. If any miracle comes up, committee and Convention, I'm sure, are willing to accept the miracle on behalf of the people of Hawaii. Thank you.

DELEGATE KAWASAKI: I think the point taken by Delegate Yoshinaga is well taken.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I understand he has some miracle plans to submit to this body too.

CHAIRMAN: The problem that the Chair faces is the problem of time. We have recessed last evening in order to provide time for delegates to prepare amendments. I don't think we can keep doing this day in and day out. I'd like to ask the committee chairman whether he plans to meet over the noon hour. The other question is whether we should go on to other districts. The Chair is reluctant to go on to other districts because the things that happen in the next district may back into this one and then the amendments would have to be redone. Therefore, there should be some order of procedure and I can't determine an order of procedure until the people intending to make amendments can give me a timetable. Now, Delegate Kauhane, can you give me some kind of a timetable?

DELEGATE KAUHANE: Mr. Chairman, may I rise to offer a possible solution to this matter?

CHAIRMAN: You may.

DELEGATE KAUHANE: Mr. Chairman, I would ask your permission that rather than meeting with the committee as a body, that I will be permitted some time to prepare the proper amendment and to offer the amendment to the Convention as a whole. I want to bypass the committee chairman if this is going to create some problem for the committee as a whole, I mean the Committee on Legislative Apportionment.

CHAIRMAN: When will you be prepared to do this?

DELEGATE KAUHANE: Mr. Chairman, I'm ready to proceed now if you can find me, Mr. Chairman, if I

have to go out, out of this confine to get some legal talent to help me prepare this thing in a legal fashion. I do understand that the committee—the counsel that is assigned to reapportionment has quite a job to do and I certainly do not want to take him away from his most important work in behalf of the Committee on Reapportionment.

CHAIRMAN: Delegate Kauhane, when will you be ready to present your amendment to the body?

DELEGATE KAUHANE: Possibly tomorrow or the next session of the Convention—

CHAIRMAN: It's the Chair's intention that the consideration of this article be finished today.

DELEGATE KAUHANE: Then Mr. Chairman, I stand by the ruling of the Chairman of the Committee of the Whole.

CHAIRMAN: Thank you very much. Is there anyone else who has an amendment pertinent to District 18? If not, we will go to District 19. Does the chairman of the Legislative Apportionment Committee wish to introduce the subject or shall we stand by for comment?

DELEGATE SCHULZE: Mr. Chairman, I take it you meant District 17?

CHAIRMAN: District 17, pardon me. Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, the maps have been on the board and I think most of the delegates, if not all, understand the maps just as well as Mr. Schulze and myself and I think we can save some time by not having to explain the various boundaries on the map.

CHAIRMAN: Thank you. Are there any comments as far as District 17 as shown on the map is concerned?

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I'd like to ask the committee chairman or any member of the committee who wishes to answer, just why were Precincts 2, 3 and 4, I hope I'm correct, included as part of the 17th Representative District? I feel that the division line of the old Kalihi Street and the location of the precincts that were included in the 17th are far beyond that. Again, I want to repeat, in my illustration yesterday I said we should use a one-foot rule and come close to precincts that can be included in the present 17th District rather than use the two-yardstick rule and move way over into—we say passing Mokauea into Puuhale Street which is some distance away. To me, this is gerrymandering.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I don't know at the moment where those precincts are located.

CHAIRMAN: The Chair believes this is the same question you answered to Delegate Loo. Is that correct, Delegate Loo?

DELEGATE GEORGE LOO: Mr. Chairman, may I answer Delegate Kauhane's question?

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, my answer is directed to the chairman of the committee for an answer—

CHAIRMAN: What is your question?

DELEGATE KAUHANE: The reason that the precinct that belongs in Mokauea and Puuhale Street is in the 17th District when it is, in my humble opinion, is far removed from the boundary line, the acceptable boundary line. To me, in my humble opinion, this is gerrymandering.

CHAIRMAN: Would you like a recess now to examine where those precincts are, Delegate Schulze?

DELEGATE SCHULZE: Mr. Chairman, all the precincts in, the district lines in that area have been drawn by the committee primarily to incorporate appropriate and precise numbers of registered voters in each district. We had very little freedom to move lines around once we got near the magic 5,000 or the multiple of 5,000. I would suggest to the delegate, therefore, that the lines drawn here were drawn in order to maintain the greatest possible accuracy in terms of numbers of registered voters with the least possible disruption of neighborhood contiguity and socio-economic people living together, that is the same socio-economic strata.

CHAIRMAN: Thank you. Are there any other questions? Delegate Loo.

DELEGATE GEORGE LOO: May I rise on a point of personal privilege?

CHAIRMAN: State your point.

DELEGATE GEORGE LOO: Delegate Kauhane claimed that this is gerrymandering.

CHAIRMAN: I don't think it's a point of personal privilege. If it was gerrymandering, you didn't do it. Thank you. Delegate O'Connor.

DELEGATE O'CONNOR: Can I ask Delegate Loo a question?

CHAIRMAN: Will you address your question to the Chair.

DELEGATE O'CONNOR: Can Delegate Loo answer the question concerning the makeup of the freeway as it passes over the present 17th District? Can you tell us what the freeway looks like, Delegate Loo?

DELEGATE GEORGE LOO: I don't get the gist of your question. What do you mean, the way the freeway looks like?

DELEGATE O'CONNOR: The physical makeup of the freeway.

DELEGATE GEORGE LOO: Well, I think it's readily noticeable but there's one thing I would like to bring out and I brought this out in the hearing before our committee, is that according to the present plan, the freeway divides a portion of the present 13th District from the rest of the 13th District. And this is about ten percent of the people. But because the committee, I would say rather overwhelmingly favor the freeway as a dividing line, I reluctantly abide by the decision.

CHAIRMAN: Thank you. Any further questions or comments regarding the 17th District as shown on the map?

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: I didn't have a chance yesterday to discuss District 17. I repeat here today as to the Representative District 17 for which the proposal gives two representatives and gives the other areas of a similar number of representatives. I believe that the area of the 17th District should be included, that area known as the Honolulu International Airport for which there is no resident population, and the Hickam Air Force which is of a military reservation and therefore there's no significance as far as registered voters. But the representatives from the 17th District should be concerned with that airport for which the present situation of airplane noises does bear across the Districts 17, 16, 14 and 18. And we turn back to the total area of District 19, for the two representatives it gives large area to canvass for the sake of political elections and whereas the 17th a total area is about that of one-fourth of 19. And therefore, by shifting and including that area which I have just mentioned would enlarge the District 17 as far as total area is concerned for the purpose of putting the 17th District to such an area that would include the Honolulu International Airport and Hickam Air Force. That would reduce some of the high cost of campaigning in a larger area in District 19 for which the proposal submits for two representatives. And the responsibility that's carried by the elected officials is one of a greater burden in comparison to 17 from 19. And I believe that the delegate from the 17th, or the representative, might not wish to include this for the purpose of reducing the area to such a proposal as submitted by this committee. But I am merely bringing this suggestion in order that we have some sort of an appearance on the map. And when you compare to the other district area like 8

which has a huge territory, I believe that 17th should cover this airport for which they should be concerned as to the flight of airplanes across the 17th Representative District for which one of the main problems in the city of Honolulu is one of airplane noises. And there are many other problems connected with the 17th, known as the industrial area of Honolulu, with the pineapple canneries and with the oil service, you might say, that have been located in the district of 17. And therefore this problem may be one of making laws that will be concerned with the safety of the people of the city of Honolulu. And you all know that a few years back a plane crashed into the Kalihi district and fortunately no one was hurt or damaged in that accident.

The future safety of the city of Honolulu should be the great concern of those representatives not only from the 17, 18 and 19 but the entire legislative body as far as the safety of the city of Honolulu is concerned. As you read the many newspaper headlines, there are many airplane crashes throughout the nation and one of these days the gasoline refineries located in the harbor of Honolulu might endanger the city. Chances might increase as to the falling of airplanes in which instance the condition, I believe that the 17 responsibility should include the federal Hickam Air Force Base as well as the Honolulu International Airport bases as far as the area is concerned to give them some sort of responsibility because the people from the 17th District are greatly concerned with that condition that exists today. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Kageyama, your remarks are noted as they pertain to the 17th District. However, I would like to point out that the consideration of changes to the 19th District was concluded yesterday afternoon. I would like also to point out to other delegates that have amendments, that they should make their amendments the first time consideration comes to any district which the amendment is concerned with.

DELEGATE KAGEYAMA: I would like to say this remark. As far as going backward to one district, I'm ahead. That should be permissible but if I should go on to District 20 that would be out of order but in discussing the district of 17, the right of the delegate should be given to backtrack to the nearest representative district and one that is ahead so that this is an overlapping district. And then if we are to discuss the old type of a representative district, 11, 12 and 13, I feel that that is in order also. And in the votes cast in the Constitutional Convention, the present 13th District has a population of registered voters of 5,000 for which there are—

CHAIRMAN: Delegate Kauhane, you're off the point. The point is if the delegate—

DELEGATE KAUHANE: Mr. Chairman, may I rise for a point of information. Are you calling my attention to something?

CHAIRMAN: The Chair is trying to make a ruling. If you wait, then you may have your point of

information. Delegate Kauhane, if it is going to be—

DELEGATE KAUHANE: I rise to a point of order, Mr. Chairman.

CHAIRMAN: Delegate Kageyama, Delegate Kageyama—

DELEGATE KAGEYAMA: That is the correct name now.

CHAIRMAN: Thank you. Delegate Kageyama, if the delegates are going to insist on going back after the consideration, then it will be necessary to have each district voted on as we go through it. We have not taken this procedure because it's a cleaner procedure to consider amendments, vote on amendments and go to the next district. However, if there's going to be any question of this procedure, we will change the procedure. Delegate Kageyama.

DELEGATE KAGEYAMA: It's not the procedure, Mr. Chairman, because every delegate is entitled to make an amendment so that if you don't have the sufficient time to deliberate before we skip to the next representative district, what would happen is that we would have every two amendments on all the districts coming back before the final vote. And if we're not satisfied in the Committee of the Whole, every effort would be made by the delegates to throw an amendment before the second reading which I'm trying to stop to do that kind of an amendment so that every kind of consideration and time should be allotted to the satisfaction of the delegates affected by the representation or to the entire delegation here so that they are satisfied with the questions and answers, that they will approve such a recommendation and proposal submitted by the committee who haven't done this job. And that is my point of appeal to the chairman, that your decision to say that because the 17th has been discussed that we should skip it and should not discuss, I think should be in error, so that the purpose for which the future time that is consumed by the members of the delegation for which they are not restricted by the rules of this Convention or by the rules of this Committee of the Whole and I thought will come to submission of the minds before we skip to the next—

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: Yes, Mr. Chairman.

CHAIRMAN: The ruling of the Chair is intended to give everyone ample opportunity for free debate and for providing amendments. However, we have to have an orderly procedure or we will never finish this subject. Delegate Taira is recognized.

DELEGATE TAIRA: Mr. Chairman, I rise on a point of personal privilege. May I?

CHAIRMAN: You may.

DELEGATE TAIRA: Mr. Chairman, unless the public be misled into thinking that we are trying to

railroad the provisions for reapportionment at this Convention, I think it's only right that we understand that this committee proposal from the apportionment committee has been lying on the Convention floor for the past three, four, five days. I don't recall. Not only that, we as individual delegates have had about eight or nine weeks to present our ideas to the apportionment committee and I think out of fairness to that committee and to all of us here as Convention delegates, we ought to remember that there is no railroading being done here on this issue of reapportionment. If individual delegates still have new ideas to inject, that's their privilege but I think it's time that we all understand there is work to be done, lots of time has been allowed everybody to make their views known and I, for one, am ready to decide on the specific issues which come up as they affect each representative district and I say we ought to get busy and get to a vote on these things.

DELEGATE KAGEYAMA: Mr. Chairman, I also rise for a point of privilege. I—

CHAIRMAN: One moment. Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: I concur with Delegate Taira so I go further. That it took the committee almost seven to eight weeks to put out such a proposal for the recommendation and study by these delegates. And to give the delegates and to say that the plan was submitted in the last four or five days and to have the delegates agree with the committee proposal, I think is unfair to the nonmembers of the committee. And if they took that long, I think every delegate here is entitled to submit his ideas as well as his amendments to this proposal as submitted by the apportionment committee.

CHAIRMAN: Delegate Beppu.

DELEGATE BEPPU: For the benefit of the stenographer, may we have a short recess?

CHAIRMAN: Recess is declared.

At 11:38 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:45 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. We will proceed with consideration of District 17. Are there any other delegates who would like to be heard? Is there any amendment to this committee proposal? Hearing none, there will be no further consideration of District 17.

We will consider District 16. Would the committee chairman or vice-chairman like to make any statements concerning District 16? If not, is there any delegate who would like to speak concerning District 16? Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, District 16 is basically the old 12th Representative District with very minor changes on the bottom portion. Changes have been made to fit the numbers problem and it provides now for two representatives in that district.

CHAIRMAN: Thank you. Are there any questions? Are there any comments? Delegate Loo.

DELEGATE FRANK LOO: Mr. Chairman, the problem that was affecting the proposed 16th District was covered when we discussed the proposed 18th District so I won't go over that territory again.

CHAIRMAN: Thank you. Are there any other comments? If not, we will conclude the consideration of District 16 and enter consideration of District 15. Is there any comment that the committee representatives would like to make concerning District 15?

DELEGATE YIM: Mr. Chairman.

CHAIRMAN: Delegate Yim.

DELEGATE YIM: I have a few remarks on District 15. Based on the criteria set forth by the committee, I will accept the committee report and the proposal as it affects District 15 even though it means a good possibility of my retirement in politics. I've only got to say this, that the committee ought to maintain the criteria throughout Oahu and I find that there are some glaring errors, that they have not used the criteria and that discussion will come about in the several other precincts coming ahead of us. I accept the committee's recommendation as it pertains to District 15 even though I have noticed that the committee has not accepted Pali Highway as one of the boundaries, even though throughout the discussion the committee somehow keeps referring to the Lunalilo Freeway. The Pali Highway runs up to this point here and stops, then it goes to Old Pali Highway. There's every indication to be fair, to maintain again the criteria as set forth by the committee that the Pali Highway ought to be used and be straightened out and include this section here now in the present 12th District ought to be within the present 14th District or the proposed 15th District for the reason that these people here are almost identical to those people living in the Dowsett area. I say this, even though the voters in this area here are two to one Republican and I am a Democrat. Further, the committee assure the use of Pali Highway up to this point that used the old Nuuanu Avenue, all the way down here, and have not used the Pali Highway coming down to Bishop Street. I say this, even though I am a Democrat, if you do this, this section here that vote Democrat almost two to one. So I say to the committee members, I am not talking about total loss or total gain. I'm talking about certain criteria that ought to be used throughout the city areas. And I say in certain areas the committee has violated those criteria.

CHAIRMAN: Thank you. Any other comments?

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: My only response to that is one of numbers. That it is not possible to adhere to all of the criteria that were referred to and have the numbers come out all right.

CHAIRMAN: Delegate Yim.

DELEGATE YIM: Mr. Chairman, let's test out those numbers. Let's get those numbers before us as to whether this works out. Let's find out from the vice-chairman. For example, I have failed to mention that on this boundary here, which is an arbitrary line coming on the ridge, there's no road pattern. It's just a line. Within the 15th District, there is up at Tantalus, where the average home will be selling close to \$100,000 as compared to just below the area, the Hawaiian Homestead area. This area can be put into the proposed 13th District to compensate a possible increase from this section in Old Pali into the 15th District. Now, we don't have figures. I'll retract my statement if I can see those figures from the committee.

CHAIRMAN: Any further comments?

DELEGATE MENOR: Mr. Chairman.

CHAIRMAN: Delegate Menor.

DELEGATE MENOR: I feel obliged as a member of the Reapportionment Committee from the 14th District to at least say to the other delegates that we have noted in the records of that committee the objections of the 14th District delegates to this reapportionment plan. Our position has always been that we are in favor of four-man districts. And in this new plan, what it has done is to effectively sever the present 14th into two separate districts. In reviewing the various criteria that were used in formulating this particular plan, we had first thought that there might be undue submergence of minority groups. However, if you look longer at the plan and try to analyze the type of community of interest which exists throughout the whole district, the whole present 14th District, then you'll note that maybe this plan begins to make sense. We have used the Lunalilo Freeway as a dividing line and as it stands, I think you will find that the areas above the freeway are basically residential-oriented. While you look at the makai area of the freeway, you will find that it's primarily apartment-oriented, and that those portions of the 15th District which have been attached to the makai portion are almost equal as far as socio-economic status are concerned. So I feel that, although we hate to preside at our own funerals and I hate eulogies, that perhaps this plan might turn out to be something that will stand the people in the 14th District a long time. And I think they'll be satisfied with it in the end. Thank you.

CHAIRMAN: Thank you. Are there any other comments? Is there any other delegate who wishes to be heard? If there are no amendments, we will conclude our discussion of the 15th District as shown on the map and go to the 14th Representative District as

shown on the map. Does the committee wish to be represented in any discussion? Are there any other delegates who would like to speak concerning the 14th Representative District as shown on this map? If not, we will conclude our consideration of the 14th District and go to the 13th District. Does the committee wish to be heard as far as the 13th District is concerned at this time? If there is no introductory statement, I will call on any delegate who wishes to be heard concerning the 13th Representative District. Delegate Ho is recognized.

DELEGATE HO: Mr. Chairman, I have remarks on the 13th District but they will also overlap into the 11th and 12th Districts. Is it appropriate at this time to make these remarks?

CHAIRMAN: It certainly is.

DELEGATE HO: Thank you, Mr. Chairman. May I approach the bulletin board for a brief moment?

CHAIRMAN: Certainly.

DELEGATE HO: Mr. Chairman, I direct the attention of the delegates to the cutout on the board which roughly represents the McCully-Moiliili area in Honolulu. Mr. Chairman, this is a community of about roughly 10,000 people of strong sense of community identity who have been living there for many generations. Mr. Chairman, I would like it noted that I represent this district and I am very proud to represent this particular district at this Convention. I would also like it noted, Mr. Chairman, that while I represent this district, I do not live there. And that under any reapportionment plan, rational or irrational, I would not live there although I certainly represent that district in the legislature.

Mr. Chairman, I wish that I could join my fellow delegates for voting for this plan which includes the 13th District as reapportioned. On the whole, it is an excellent plan and the chairman and members and staff of the committee deserve the thanks of the people for their competent and their earnest efforts resolving what everyone can see to be a very difficult problem. But, Mr. Chairman, I represent the people of McCully and Moiliili and I know that one of the things that they do not expect me to do is to stand as an idle witness to their political liquidation. And this is precisely what is about to happen. Mr. Chairman, the communities of McCully and Moiliili have been sliced into three parts. Each part has been redrafted and appended on to a larger neighboring community having very little or nothing in common with McCully and Moiliili; to wit: the community of Waikiki, the community of lower Punchbowl and the community of Kaimuki. Mr. Chairman, it is a truly remarkable piece of lateral surgery, created I know some amount of mental anguish to members of the committee. But not as much anguish, I suggest, as to the resident, the man on the street, of McCully and Moiliili. Whereas once McCully-Moiliili could vote as one neighborhood for representatives who know of McCully-Moiliili problems, and there are many, this neighborhood will now find

itself represented by a broad variety of persons who will look to the dominant surrounding communities for their main political support. This is particularly true of lower Punchbowl which will now swallow the rest of McCully. And this is true of Kaimuki, which will now swallow Moiliili.

The problem, as I see it, Mr. Chairman, is that the committee has roughly made a choice. Now, I appreciate the problems which the Reapportionment Committee has gone through. Much has been said about the nature of, the role of the computer and the part that it played in this Convention. I think that perhaps much too much abuse has been placed upon the computer than is necessary because what the problem, as I understand it, that the committee faced was trying to match existing communities with numbers. And I appreciate the fact that this at times is much like squeezing an elephant into a milk bottle. But in the process of squeezing an elephant into a milk bottle, what happened that strikes me was that a choice was made between a compact McCully-Moiliili community and a compact Diamond Head community. That is to say, as between the two evils, the submergence of McCully-Moiliili into the other surrounding communities, the choice of the committee appears to be as they would prefer a Diamond Head community consistent of socio-economic ground or the surrounding communities to the fracturing of the McCully-Moiliili community. Now, I guess that these are two unsatisfactory situations. I don't wish the same thing which has happened to McCully-Moiliili on the residents of Diamond Head. But I say this to you. That, on balance, if the choice is to be made that the committee should have considered which interest should better have been represented by the community remaining as one integral part. In this connection, I suggest, Mr. Chairman, that the choice should have been made in favor of McCully-Moiliili as against the community of Diamond Head.

Mr. Chairman, there's very little else to say. The committee tried and I thank them for their effort. The chairman and Mr. Schmitt in particular were sympathetic to the problem and went out of their way to seek a solution. But the result nevertheless is still the cutting up of an old neighborhood into useless political folders. Mr. Chairman, my responsibility to these people requires that I vote "no." I frankly do not believe that my vote will be of much consequence notwithstanding the vigor with which Delegates Akizaki, Noguchi and Devereux and I have urged the opposition. But I must make a stand in any event, Mr. Chairman. I thank you.

CHAIRMAN: Thank you. The Chair will declare a recess if there are no objections from now until 1:30. Recess is declared.

At 12:01 o'clock p.m., the Committee of the Whole stood in recess until 1:30 o'clock p.m.

Afternoon Session

The Committee of the Whole reconvened at 1:47 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes is recognized.

DELEGATE FERNANDES: Mr. Chairman, I wish to ask your indulgence and the members here for a short comment. The young lady on our left here that's been with us from the day we started has a beautiful lei on and she was inquired as to what the occasion by one of our staff and she said she is leaving for New York to go back to school. And I informed her that we will try in all sincerity to get the reapportionment plan ironed out before she leaves. She informs me that this should be sometime tomorrow and I informed her at the rate we're going, 1:30 we were supposed to reconvene and I'm very sorry to apologize to her that I don't think we can finish, but in all sincerity the young lady starting with us through the beginning, going back to New York, telling the people in her school, college what we're doing, deserves a hand of applause. Could I have the young lady please stand to be recognized.

CHAIRMAN: Thank you very much.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Since Mr. Fernandes used the word "tomorrow," may I quote, "Tomorrow, and tomorrow and tomorrow food for its better taste from day to day," and so forth for the young lady.

CHAIRMAN: Thank you. I think you have already done that.

DELEGATE FERNANDES: Mr. Chairman, I would appreciate that the honorable Yoshinaga continue that word of wisdom and not stop because I've heard that during the session and if you only hear the ending of that, what it means in plain language, "Let's get going."

CHAIRMAN: Amen.

DELEGATE MEDEIROS: Mr. Chairman.

CHAIRMAN: Delegate Medeiros.

DELEGATE MEDEIROS: Delegate Fernandes keeps up at this rate, we may appoint him to decorate the Christmas tree.

CHAIRMAN: Before we recessed we were considering District 13 and those districts whose boundaries might affect District 13. Delegate Ho had just completed speaking. Delegate Akizaki is recognized.

DELEGATE AKIZAKI: First of all, I'd like to ditto my remarks what Delegate Ho presented. However, I think I should try to disprove the so-called justification of smokescreen to come out with something like that.

Mr. Chairman, I present to this Convention that the committee itself did not take into consideration its own criteria set forth for redistricting purposes. On

committee report, page 26, criteria 3 reads, "Insofar as possible, districts are to be contiguous and compact." How compact can the McCully-Moiliili area be with 10,000 plus registered voters? It can have one or two representatives by itself. Either single-member district or multi-member district. This is a closely-knit community as all the delegates to this Convention from this area know. Criteria 4, "District lines must follow permanent and easily-recognized lines." What more recognizable line than the Ala Wai Canal? Yet, the committee chose to disregard this line to get into the McCully area because they needed 2,000 votes to justify Waikiki's two representatives.

Criteria 5, "Wherever possible, the division of areas with a substantial community of interest is to be avoided." By gosh, these communities have so much in common that they fought for four and a half years to finally decide where their library should be located.

Criteria 6, "The submergence of small areas or groups within larger districts where substantially different socio-economic interests predominate is to be avoided." A portion of McCully wasn't submerged, it was sunk. Entirely different socio-economic interest is involved also.

Criteria 7, "Districts may not be so drawn as to unduly favor one person or political faction." A big joke. No explanation needed here, it's obvious. Mr. Chairman, the original Plan S-1 that came out from the so-called computer was the work of professionals. And only after humans took over, that all this ridiculous boundary line was created. One must ask why. I can assure you that someone will always have a legitimate answer to hide its real purpose. After studying this plan I know that my plea is in vain. It's a voice in the wilderness. I can see that this plan has mustered enough votes to be passed by this Convention. But I am also convinced that only a court can come out with the most equitable solution for our voters. To sacrifice the McCully-Moiliili community, one of the oldest communities in the State of Hawaii, to support other areas to justify their number of representatives because they lack voters, is ridiculous. For these reasons, Mr. Chairman, I shall vote against the so-called plan. Thank you.

CHAIRMAN: Thank you. Is there any other comment? Delegate Noguchi is recognized.

DELEGATE NOGUCHI: Mr. Chairman, my comments were exactly those as expressed by Delegate Ho and Delegate Akizaki so I don't want to repeat for the sake of expediency here. We started in the area of 13 and I do have an amendment to offer regarding areas 12, 11 and 9, and with a slight effect on 10. However, it does not affect 13 here. Would you rather vote here on the 13 and get it out of the way first before I offer my amendment?

CHAIRMAN: I think that will be in order. We'll call on you at the next district. Any other comments where District No. 13 is concerned? If not, we will close consideration of District 13 and go to

consideration of District 12. Does anyone wish to speak on behalf of the committee proposal at this time? If not, I recognize Delegate Noguchi.

DELEGATE NOGUCHI: Mr. Chairman, I do have an amendment to offer. It's Amendment III (17). It should be on all the delegates' desks, and it reads as follows:

"The ninth, tenth, eleventh and twelfth representative districts as set forth in Section 23 of the Transitional Provisions in Committee Proposal No. 12 are amended to read as follows (description in terms of existing representative districts and precincts set forth as RD/precincts):

Ninth Representative District:

RD 16/4 (30%), 15 (92%)
RD 17/1, 2, 3 (50%), 4 (40%), 10-13, two representatives;

Tenth Representative District:

RD 15/6; RD 16/1 (50%), 2, 3, 4 (35%), 9-14, two representatives;

Eleventh Representative District:

RD 15/8 (50%), 9, 10, 20-22
RD 16/1 (50%), 4 (35%), 5-7, 15 (8%), 16, three representatives;

Twelfth Representative District:

RD 15/11, 12, 23, 24
RD 16/8; RD 17/3 (50%), 4, 14, two representatives."

DELEGATE NOGUCHI: Is it possible for me to, Mr. Chairman, place this over the map?

CHAIRMAN: I think that would be wise.

DELEGATE NOGUCHI: To explain my amendment?

CHAIRMAN: Please do.

DELEGATE NOGUCHI: Can all the delegates see the plan here?

DELEGATE YIM: Not too well. Mr. Chairman.

CHAIRMAN: Delegate Yim.

DELEGATE YIM: We can't see it from this distance. I was wondering if it's possible for that map to be moved forward so that as many of us can see exactly what is being said?

CHAIRMAN: I think that after the delegate makes his remarks, we'll declare a short recess so everyone can come and look at it. Will that be satisfactory?

DELEGATE NOGUCHI: The purpose of introducing this amendment, we know that the committee has worked hard; however, we do feel that because they had some rather preconceived notion and the fact that so many plans have been already entered, perhaps there can no longer be a plan as objective as it really should be. And the reason I would like to point out is that under the present plan, I'd like to point out, as the argument brought out by Delegate Ho and by Delegate Akizaki, I hope you keep that in mind now, the reference here that Delegate Ho showed of the cutout of the Moiliili-McCully area is divided into three parts. Just like dividing the town of Kailua into three parts, just like dividing the city of Hilo into three parts. We realize that in some areas you must split the districts up in order to come up with a good plan. But nowhere in the whole State has a community which has been so considerate and so much together all these years have been cut up into three parts. And I'd like you to remember the words of Delegate Ho here of how the three parts are put, here and there, in Waikiki a small portion thus submerging that small area in McCully. This particular area over in Kakaako. Another area over in Kapahulu. And this area again is enough to support two representatives itself. And yet they went around and divided it into three parts.

My plan here, in this portion of McCully, will be incorporated into 11. And because we're not—although we're not entirely satisfied with this cutout here, we felt that it's best not to disturb this side of the plan and so we worked this way, feeling that a one split is at least the lesser of the evil than a three-way split. So we incorporated this particular area which is a Moiliili-McCully area into this area along with Kapahulu and part of Kaimuki. And Waikiki is cut off by the Ala Wai Canal area which would be—meet one of the criteria as set forth in this committee proposal, that the boundaries include freeways, roads, and including canals and streams. Well, this is as good a boundary as any and this includes an area that needs representation of their own, the Waikiki area and was combined in here along with the Diamond Head area, along with the Waialae-Kahala area to include—to this become a two-member district. Now, you might say Waialae-Kahala area is different from Diamond Head area but I say there's a lot more interest in this area because of the seashore, and detours, et cetera, than it is to submerge the Moiliili-McCully area into the Waikiki area. And so with this plan here—this particular portion here is Kilauea Avenue and I was able to follow this Kilauea Avenue right across here but because of the deviation lack of population in District 9, we had to cut, deviate a little from Kilauea Avenue down this way and towards the present boundary. But this would be a two-member district. This would still be a three-member district. And this will be a two-member district. These are the only three districts involved. We just took a little slice of District 10 but then this is Sierra Drive all the way up to here is Sierra Drive and instead of cutting across the Koko Head Avenue and down by the National Dollar Store, we went straight down to Sierra Drive which runs right into 11th Avenue. To me, this is a much better boundary. Now you might be asked here about the various deviations. The deviation for District

9 would be minus 4.5 which is minimum deviation. District 10 will take it down to plus 1.1 deviation. And District 11 would be a deviation of minus 1.5. And deviation in District 12 would be plus 2.2. So as you can see, this plan which has just been checked out by Mr. Schmitt, the deviation is all right here. It is all within the means.

Now you may ask why I didn't use the freeway here. We made a slight deviation in this area here because we feel that the committee here itself made a slight deviation. If we look at the original plan, you can see that the freeway concept is not followed all the way through. But you will see that there is a little cut made in here instead of following all the way through to the freeway. So we felt that if that were the case, if there is a modification here, then let's continue the deviation solely, go all the way across right up to the border line here which we did. And therefore, we continue this right down here and that was the plan that we came up last night with, that I worked along with Mr. Schmitt and his other workers.

So once again, a two-member district here, a two-member district here, and we retain the same three-member district here with the lines just a little more that way. And there is a little argument near here that perhaps Waialae-Kahala here, this small portion west of Kilauea Avenue, is split up from this group. Why I ask you to compare, first of all, this particular area here is almost very similar with this area here in the valley anyway, so they still have about the same type of representation if that's what you're worried about. And if you're worried about splitting up the Waialae-Kahala area for this small little particular section, well I ask you to take a look at the Moiliili-McCully area and see which is of the worse evil. To split up a whole community in three ways or to take a small slice of Waialae-Kahala and this upper portion which would be west of Kilauea Avenue which includes the shopping center. The Waialae Shopping Center.

CHAIRMAN: Delegate Noguchi, do you move for the adoption of this amendment?

DELEGATE NOGUCHI: I'm sorry, Mr. Chairman, I move for the adoption.

CHAIRMAN: Delegate Akizaki.

DELEGATE AKIZAKI: I second the motion.

CHAIRMAN: Thank you. If you have no further remarks at this time, I'll declare a recess so the delegates can examine the plan. Is that satisfactory with you?

DELEGATE NOGUCHI: Yes, it is, Mr. Chairman.

CHAIRMAN: Short recess is declared.

At 2:05 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:15

o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. We have before us Amendment No. 17 which has been explained by Delegate Noguchi. You've had an opportunity to look at the map. I will call for any comments, questions, people preferably speaking for or against the amendment. Is there anyone who wishes to be heard?

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: Delegate Ando is recognized.

DELEGATE ANDO: I speak in favor of this amendment submitted by Delegate Noguchi, Amendment No. 17. I note by looking at this amendment that 12a and 12b one representative. Is that correct? Did you change that subsequently?

DELEGATE NOGUCHI: Mr. Chairman.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: The statistician used my plan, my request and also Delegate Akizaki's request on the same plan. Now Delegate Akizaki's amendment has 12a and 12b which means that single-member district for those two. But my plan I'm proposing is to disregard 12a and 12b and just regard this area as District No. 12 with two representatives.

DELEGATE ANDO: I stand corrected, Mr. Chairman. I see that in this distribution here, it doesn't do violence in the surgery of the McCully-Moiliili district. Mr. Chairman, I spent thirty years of my life right at that knob that is now being taken away from the McCully-Moiliili District and put into the Diamond Head-Waikiki district. I say to you, Mr. Chairman, that those of us who live right there, right by the stadium on Makahiki Way consider anything beyond Kapiolani Boulevard and the Ala Wai Canal as almost foreign territory. We hardly ever go there. We, even today, this isn't an area that we do our business, our social activities, in any form except to go down to Ala Moana or Waikiki Beach. And generally Waikiki Beach is still too crowded, being the domain of the tourist. So it really violates precisely what this committee report has said it's trying to maintain, certain integrities, in terms of the socio-economic status, and various other things that I've quoted here. There is no real rationale, Mr. Chairman, to grant precinct of that area because there appears to be just the right number to give Waikiki another opportunity to have more than one representative to throw it into Waikiki. This is violating essentially what high ideals they have enunciated in terms of the reapportionment that they have tried to do. It is indeed submerging this area into an area that is totally foreign.

I submit, Mr. Chairman, that if this is to go through you will have a total disagreement of this reapportionment plan by all the people in Moiliili and McCully. And I think we ought to seriously consider

the plan that is submitted here by Delegate Noguchi so that we'll have a reliable plan to present to the people over there in the Moiliili-McCully area. I still have property over there, Mr. Chairman, I still have a home where I grew up in. It is not being developed because I don't know what Honolulu Stadium is going to be like. But it's still my home over there although I do not physically live there this week. I'm a voter in the 15th District.

CHAIRMAN: Thank you. Delegate Ho.

DELEGATE HO: Mr. Chairman, I would like to speak in favor of the amendment. Mr. Chairman, I would like to address my comments specifically to one area which might cause some concern in the minds of some of the delegates and that is the area in Waikiki, 12a and 12b. Now, I understand there was some objection to, in the consideration of this plan that this might attach some of the Kahala voters with the Waikiki voters and this might not be fair to the Kahala voters. I might point out that if the plan as amended would make two single-member districts, one including all of Waikiki and the other including Diamond Head and Kahala, I think this might answer that particular objection. Now, as to single-member districts in urban areas alone, I am acutely aware of the fact that one of the criteria of the committee is that single-member districts in urban areas should at all times be avoided. I think that as a general rule, this makes good sense inasmuch as we've had experience in the past with special-interest groups affecting the outcome of elections in urban areas where single-member districts obtain. But I, Mr. Chairman, I submit that this does not apply in the case of Waikiki nor does it apply in the case of Diamond Head and Kahala. I think that simply the past experience shows that the people who reside in this area number one are not members or do not generally adhere to the views expressed by any special-interest groups throughout the—that I know of at least—within the State. Certainly not the labor unions. This is a high ranked district, silk stocking district, if you will. In any event, the prime issues in Diamond Head, and I can speak to this from personal experience, have all been taken care of by the public as you can obviously see in the last year or so. So I do not think that in this particular instance, a single-member district for 12a and 12b is bad per se. And, Mr. Chairman, the result would be, under Representative Noguchi's amendment, the preservation of existing communities, at the same time satisfying the numbers. That is to say, the preservation of the integrity of Waikiki, the preservation of the integrity of Diamond Head and parts of Kahala, the preservation of the integrity of McCully-Moiliili, and preservation to a great extent of Kaimuki. And I think that in this respect, and thereby satisfying the numbers, the plan makes a good deal of sense. Thank you.

CHAIRMAN: Thank you. Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I rise to speak in favor of the amendment. I'm not going to repeat the logic and arguments in favor for the amendment. I just want to say that since there is a question as to what's

going to happen to the Honolulu Stadium, I would like to allay the fears of the Delegate Ando that four years from now, it will still be there.

CHAIRMAN: I think the stadium is not the issue at the moment. Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I rise to speak against the amendment and in favor of the committee proposal. I'm a delegate-at-large from the 15th District which is affected by this change, by either one of them. And there are three of us from the 15th District to sit on that committee. Three of us have wrestled with this problem for several weeks. Three of us have tried to figure out some better way to do it than the committee proposal. We have been unable to and I can say categorically that this plan is not as good as the one of the committee. I'm well aware of the small area between McCully and Isenberg and King and the Ala Wai that is put into the committee proposal as part of the Waikiki area. To me that does less violence than the proposal on the board. It is true that Moiliili-McCully are being split in what I consider to be a minor way. It does not make any sense to me to say that that is worse than dividing two other areas. And the other two areas that I make reference to is a split right down the middle of Kaimuki which this amendment proposes and to split right down the middle of Waiialae-Kahala. To me the Moiliili-McCully district is a changing district. The Waiialae-Kahala district is a developing district. Pig farms and chicken farms fifteen years ago. I moved in there about fifteen years ago. People on both sides of Kilauea play with people on both sides of Elepaio, worked together in the development of the Waiialae-Kahala Elementary School. We took land that had pigs on it and made homes out of it, developed the school, worked together for the shopping center, worked together for the post office. It is a new area and it's developing as a cohesive area. To me that is more important than the Moiliili-McCully area which is a changing area as Dr. Ando points out, he doesn't know what it's going to be in a few years. Neither do I. I do know what the Waiialae-Kahala area is going to be in a few years because there's a pattern of plan for its development. I see no rationality, if there is none in dividing Moiliili and McCully, I see no rationality in dividing Kaimuki down the 11th and 12th Avenue. That doesn't make any sense to me. And the Kaimuki area is developing, is not in a state of flux as the Moiliili-McCully area is at the present time. I do not consider that there is a submergence of the voters in the little McCully area that's added to Waikiki because there is a substantial similarity between that kind of housing, that socio-economic group and in the large area of the Diamond Head end of the Waikiki island. That too is a developing area. I just can't see any better, any more logic in the amendment proposed by Delegate Noguchi than I do in the committee proposal and in fact I see considerably less merit in it.

CHAIRMAN: Thank you.

DELEGATE JAQUETTE: Mr. Chairman, a point of information.

CHAIRMAN: Delegate Jaquette.

DELEGATE JAQUETTE: I would appreciate knowing what, if any, implications there are for the senatorial district in the proposed change in the representative district.

CHAIRMAN: The committee chairman may be able to answer that question. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, perhaps I can cover that question as part of the committee's response to the amendment if I may come forward.

CHAIRMAN: I think there are several others who want to speak first. Were there some others asking to speak? Delegate Dyer.

DELEGATE DYER: I just as soon hear the committee response because it might, perhaps what I have to say would be completely unnecessary.

CHAIRMAN: Delegate Noguchi, did you want to speak first?

DELEGATE NOGUCHI: Is it possible for me to ask two questions of the last speaker?

CHAIRMAN: If they're brief, yes.

DELEGATE NOGUCHI: He pointed out that he felt there was no big substantial difference between the area of McCully and Waikiki. And another thing is that, he said that he wants to avoid the splitting of Waiialae-Kahala because they have the same community interest, et cetera, working together as a cohesive group and therefore he prefers the old plan because this plan would split Waiialae-Kahala and because this plan here, these people here will change in the future and have the same interest as Waikiki. Am I correct on that? That you made these arguments?

DELEGATE DODGE: I think that's what I said.

DELEGATE NOGUCHI: Now, may I ask you, Waiialae-Kahala, is it considered a white area?

DELEGATE DODGE: I didn't get that.

DELEGATE NOGUCHI: Waiialae-Kahala, is white area, sir?

DELEGATE DODGE: Yes, it is. It has no substantial community of interest with Waikiki, however. And your plan would put it in Waikiki.

DELEGATE NOGUCHI: And would you say then that this area here, it has the same interest as Waikiki?

DELEGATE DODGE: I say that that comes closer. The portion of McCully that's put into the Waikiki

district is more similar to large portions of the Waikiki district.

DELEGATE NOGUCHI: Okay, thank you. In response to that, I think all of us here who really know that area, who really know Honolulu, know that what he is saying is an out-and-out lie.

CHAIRMAN: Now, wait a minute. I think we should—

DELEGATE AKIZAKI: Mr. Chairman.

CHAIRMAN: Delegate Akizaki.

DELEGATE AKIZAKI: May I request a short recess?

CHAIRMAN: You may. I would ask the delegates to be more temperate in their remarks and their language. I think these things can be discussed without calling names.

DELEGATE AKIZAKI: Thank you very much.

CHAIRMAN: A recess will be called subject to the call of the Chair.

At 2:29 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:30 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Delegate Noguchi is recognized.

DELEGATE NOGUCHI: I yield, Mr. Chairman, now to the following speaker. I'm through now, Mr. Chairman. I believe the chairman of the committee wanted to—

CHAIRMAN: Anyone else who wishes to speak? If not, Delegate Schulze.

DELEGATE SCHULZE: May I step forward, Mr. Chairman?

CHAIRMAN: You may.

DELEGATE SCHULZE: Mr. Chairman, no two areas in the State gave the Apportionment and Districting Committee greater difficulty than this area of Waikiki, McCully, Moiliili and the area of North Kohala. In both cases, any solution to the problem involves some difficulty in some areas. I think that most of the delegates here who have any interest in this area have appeared before the committee on one or more occasions. There are committee members, of course, from this area. I would hesitate to tell you how many plans we have considered in our committee for this area. Delegate Devereux alone may have produced fifteen. And there must have been at least that many more that have been considered in an effort to find the one plan that doesn't really hurt anybody. Even the

movant of this plan appeared before the committee and finally gave his agreement that as between the plans which the committee was studying at that time, at least, the one adopted by the committee was the preferable one. In any event, the committee, in order to give all members of the committee the fullest possible chance to explore every possible plan and in order to make sure that somebody had not done what we had been totally unable to do, that is to come up with a plan that really did solve the problem, met again during the morning recess and considered this plan.

The committee rejection of the plan was, I believe, unanimous. I would point out the reasons why at this time. Mr. Chairman, no one on the committee pretends that what has had to be done in this area is perfect. We haven't really liked it any better than anyone else. It's not, we have stated before, that one of our criteria is not to disturb existing neighborhoods wherever that can be avoided. And all I can say to you is that in the case of this particular area it cannot be avoided. The committee settled on its own plan even though it had considered the plan very much like this one as among the numbers of other plans it had considered. Our comments on this plan specifically are the following: first, these lines, many of the lines, the new lines which have been imposed, do not follow census tract or precinct lines. Now, this is not merely a technicality. It means that every figure in these population figures are total estimates, guesses. We have no idea as to their accuracy. It's true that this has had to be done occasionally in the construction of districts but we tried to keep our estimated lines to very short areas of any perimeter. Some of the two or three sides of some of these districts are estimated lines and it could be that when the exact figures are known we could be quite a distance off in terms of the variations in population between these areas.

Secondly, Mr. Chairman, one of the objections to the plan is fairly clear and that is that the committee had adopted the use of the freeway right through the end of its present structure and this, of course, begins the process of erosion of that freeway as a dividing line. I agree the freeway is no holy rail. It doesn't have any status which means that it must be adopted even though something much better could otherwise be available. But I say to you that where all things are relatively equal the freeway should be retained.

Finally, and most important of all, these other things are really by comparison, at least to the committee, insignificant. It's true that any plan, any reapportionment and districting situation, that if you look at the specific problem you can solve it. But you cannot solve it without creating other problems. The committee has had to look at this all over the city and all over the State and I'd like to point the other problems that are created by this approach to resolving a portion of the Moiliili-McCully plan. I point out to you that this particular line which divides that area still exists. There still is a division there which it is just not possible to do much of anything about.

Now, by putting this particular district back together,

one affects the lines all around the perimeter. It has, for example, created a district here in which Waialae-Kahala is split, an area with a definite community of interest. No more so perhaps than Moiliili and McCully and nobody's suggesting that there is. But it's just as badly split here between these two lines as Moiliili-McCully was here, so that you haven't really made a great step forward without taking also a step backward. Secondly, it does have the problem of putting Waialae-Kahala and Diamond Head, which are not terribly different in socio-economic interests but are somewhat different in their particular community needs, together with Waikiki. It's not often known and not apparently bandied about too much by the people who object to Waikiki having some part of Moiliili and McCully in it, but Waikiki has one of the lowest income, per capita income figures, than any district in the city. It is not a wealthy area, it is not a high income area and it consists of people who, socio-economically at least, look very much like the people in Moiliili and McCully. I will agree with you here that they don't vote the same way apparently but socio-economically, the populations don't look different. And socio-economically at least we have not created any kind of a monster in creating that district. Secondly, in creating this plan, not only is it necessary to split this neighborhood in Waialae, Mr. Chairman, but it's also necessary to draw a line right straight through the middle of Kaimuki. And the entire Kaimuki area which we have been very careful to try to keep together has now been split right in half, a split for which I think there is very little real justification. Again, I'm not suggesting that it's a split substantially worse than this one but this is two splits of two larger areas, two larger neighborhoods in order to accomplish the effect desired over here.

Incidentally, an interesting statistic which I thought many of you might care to consider is that in putting Waialae-Kahala and Waikiki together, that Waikiki has the highest or the second highest illegitimacy rate in the city and Waialae-Kahala has the lowest. It may be that putting them together may even that out a good deal. I don't know.

DELEGATE ANDO: Mr. Chairman, is it in order to ask a question?

CHAIRMAN: Later, please.

DELEGATE MIYAKE: Mr. Chairman, may I ask a question?

CHAIRMAN: I don't think the delegate is finished yet, Delegate Miyake.

DELEGATE SCHULZE: I have substantially completed, Mr. Chairman, if I may sum up the committee's attitude toward the plan? It is not the committee's position that this is a totally bad or disreputable plan, but simply the committee's position that this is another way of solving a very difficult area. It's not as good for the entire area as the committee's plan is. I suggest to you that the people who do get angry and excited about these things, the reason they

do that is because you begin to focus on one neighborhood and you see that something wrong is being done there. But when you must, as the committee had to, and I think you delegates must, look at the entire area, I think the conclusion is clear that the committee plan does a great deal less violence to neighborhoods, less violence to socio-economic groups, less violence to traditional settings than does the alternative plan. The committee reaction, as I said, I believe is unanimous this morning. The committee requests that you not accept the amendment and retain the committee's plan.

CHAIRMAN: Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, I would like to ask the chairman of the committee a few questions. I heard your statistician this morning and I walked out on him when he started talking about the Waikiki jungle as though this is a permanent entity in Waikiki. Is the committee aware that the Waikiki jungle is destined for immediate and very near future destruction and new types of dwellings being placed in Waikiki?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: It is.

DELEGATE ANDO: Can you, with the discussion of this Waikiki jungle, consider that Moiliili-McCully is socio-economically identical with Waikiki?

DELEGATE SCHULZE: Dr. Ando, it hasn't been disturbed yet.

DELEGATE ANDO: In the process of it, if you can go—

DELEGATE SCHULZE: Mr. Chairman, perhaps I ought to explain this. This is a type of question that came up in our Hilo hearings and comes up from time to time and I think if we had to explain the position that the committee has had to take. Many people feel, and I think with justification, that future changes in their district or in a district should resort in different treatment for that district. We understand the feeling that people have and yet if you take this on a state-wide basis it's frequently very difficult to be sure not only what is going to happen in a given district but when. Finally, the problems of getting past the legal difficulties, that is the problems of numbers, don't allow us to look one minute past the date on which our figures were compiled. For that reason, the committee has taken the position that it will look to the existing figures and it will try to draw up districts based upon existing patterns and existing socio-economic data. It's because we know that these things change that we have requested of the delegates, a matter that will come up tomorrow, that the first reapportionment be made in four years. So I hope that those of you who feel that this is a permanent capacity will keep that in mind. And secondly, that every six years from now on another reapportionment be made. One other matter I would want to point out to the delegate who asked the question, if I might. Testimony brought to us by the

lieutenant governor's office, which was substantial and very helpful, indicated that in new neighborhoods particularly where construction had not started, there's a substantial time lag between the point at which one plans that construction and the point at which the people who have actually built there, moved in there, and gotten organized there, then go out and register to vote there. That as a matter of fact, it frequently takes as much as four years or two general elections to get this accomplished. One reason is, that people from around the State as I understand it, although nobody knows the true reasons although they know a time lag exists, but the reason given to us in theory was that for one thing, when people move to a new developing area from other parts of the city, they tend to vote back where they came from at least once before they get around to re-registering in the new one. Not all, but a substantial number.

Secondly, many of the people who move in are not Hawaii residents but are from out of Hawaii and must live there for a year before they can register to vote. So we do have great difficulty in looking forward to expected anticipated construction and using that as a basis for our districting. I'm sorry if I overanswered the question but the committee has given it great consideration.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: He indicated that Waialae-Kahala and Waikiki are entirely different in the socio-economic interest but I think we might fail to remember that right at the end of the 12th, that area there near Waialae-Kahala, we have the beginning of our hotel complex. The Waikiki-Waialae-Kahala hotel complex is no different over there. And there's beach, the identity of interest in the beach development of the Waikiki area is indeed the same as on the 12th end of the Koko Head side of this complex and I just don't see that to be too greatly different than Waikiki compared to where McCully and Moiliili are so different from the Waikiki area when you cross the line that's called the Ala Wai Canal. I think the rationale bears a lot closer scrutiny.

CHAIRMAN: Delegate Miyake, did you wish to speak? Delegate Jaquette.

DELEGATE JAQUETTE: I wish to ask the question again as to the implications as to senatorial districts from this representative district division.

DELEGATE SCHULZE: Mr. Jaquette, I'm sorry I can't tell you now what this would do to senatorial district lines in that area. The senatorial districts fortunately, because of the size of our house and senate, the senatorial district has to have just about twice as many people in it as the house district. And therefore, it's fairly easy to combine, to take any even number of house districts, get eight of them together and you've got a senatorial district with four senators. It's a little difficult to tell right now what the implications would be. We could sit down and study that and would have to do so if the plan were passed. I would guess

that the line would not be too awfully much changed. The same number of people still live and still register in the same area. So that the actual configuration of lines might be changed but not really substantially by this plan.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Takahashi.

DELEGATE TAKAHASHI: Delegate Schulze has answered the question I had in mind.

CHAIRMAN: Thank you. Delegate Dyer.

DELEGATE DYER: You pointed out the, under this proposed plan, how there would be a division of Waialae-Kahala and also a division of Kaimuki but I think you failed to point out that under this proposed plan there would remain the division of the Moiliili-McCully and I think this should be pointed out.

DELEGATE SCHULZE: I apologize if I didn't make that emphasis. I said it first that the fact of the matter is that this plan does not solve the split. The split is still there. What it does do is try to resolve one portion of it and in the process of doing so create two others.

CHAIRMAN: Are there any other delegates who wish to speak or ask questions?

DELEGATE ANDO: May I make one more try at it?

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: As his last statement, Mr. Chairman, he says it doesn't solve the split. But the question that we're so apprehensive and so violently opposed to is that it submerges the Moiliili-McCully division over there. As the committee proposed, it shows that I went to school in one district, I lived in one district and I played in another district. How much violence can you do to people of the Moiliili and McCully area. They are an integrated community and we're dividing it. Submerging one segment of it completely right in the middle, I think this is hard to take.

CHAIRMAN: Thank you. Is there anyone else who wishes to speak? Delegate Noguchi, do you wish to close the debate?

DELEGATE NOGUCHI: Yes, I'd like to answer the committee chairman's rebuttal here. First of all, I want it clearly for the record to show that in this committee proposal plan, some of you perhaps infer perhaps the reason why I'm all upset is because my job as a state representative is in jeopardy. I'd like to point out to you that this is not true. That under this plan I'm very, very safe. It's in a very heavy Democratic area and so it does not concern me at all. My only concern here is trying to preserve as much as possible this area known as Moiliili-McCully area which has been divided, again let me repeat and remind you, in three parts. In three

parts. But he pointed out that in any solution to problems you're always going to have difficulty because you're always going to create other problems. Well, may I suggest that this plan here does less violence to the criteria established by the committee here than this present plan because as he pointed out, one of the arguments is that while you split Waialae-Kahala, well, let's take a look here now, the whole heart of Waialae-Kahala is really yet retained. And only if you are below this Kilauea Avenue and down this way, there's a small minute portion here considered Waialae-Kahala. And for your information, I was born in Waialae-Kahala but at that time we had pig pens there so I realize—we got moved out. So I realize that the area has changed. And I was born in Waialae-Kahala. I was raised in Kaimuki. I went to Kaimuki Intermediate School. I know the Kaimuki area.

If this does violence to Kaimuki, I doubt it very much if you know this area, 12th Avenue over here. You know that it runs right smack into a hillside and into a crater. And as you come around along here, it's about Fort Ruger. And as you go along Koko Head Avenue along this way, you know it's a good—you might say that it's the Kaimuki business district here. But under the old plan, I mean the committee's plan, it still splits up the Kaimuki district. Take a look here. So there's one argument that goes out the window. They cut into this little nook in here saying that this is the Kaimuki area and disregard it. They say from this side on is not the Kaimuki area. Well, if you use that contention then this part here is also indeed not Kaimuki area also. They try to include this nook here so they say it's hard to retain the Kaimuki area. I'd like to say that if that is their contention, then, this is not Kaimuki area according to the committee proposal. But their plan all the way splits up a Kaimuki district. That's their worry about splitting up the districts. This area passes the crater on this side. I think they have more familiar interest with these people up here and also in here too. So that like I say it's still a matter of opinion. The committee expressed its opinion and everybody else over here has expressed their opinions.

CHAIRMAN: You have one minute.

DELEGATE NOGUCHI: Okay, I'll try but I wanted to counterattack all his arguments here, Mr. Chairman.

Now, he mentioned that the committee gave this plan a chance. The only time they gave the plan a chance was this morning at 1 o'clock. And they said they considered all of the similar types of proposals. I want to remind you delegates that whenever I asked to see a plan of that committee when I was interested the other week, they all said it's not ready yet because we're coming up with a new plan. So they never really gave a delegate here a chance to really take a look and digest a plan.

DELEGATE DYER: Point of order. I thought the fact was that these plans have been available to delegates a week.

CHAIRMAN: Delegate Dyer, we can clear that up

after the gentleman has finished his—

DELEGATE NOGUCHI: I'm just merely pointing out what the committee chairman has pointed out. And he said that the rejection of this plan was unanimous. And I'd like to ask the chairman, what was the vote taken on that, if there was a vote taken.

CHAIRMAN: Delegate Schulze, would you like to answer that question? The question was what was the vote—would you repeat the question, please?

DELEGATE NOGUCHI: Mr. Chairman, the chairman stated that this plan was unanimously rejected by the committee. I'd like to know what the vote was on that, if there was a vote taken.

DELEGATE SCHULZE: Mr. Chairman, my recollection is that this morning, no one on the committee at the meeting voted to accept this plan over our plan, so that rejection was unanimous.

DELEGATE NOGUCHI: Was there a vote taken, sir?

DELEGATE SCHULZE: No, the question was asked, does anyone wish to speak for or accept this plan over the committee's plan. After all the speaking was done and no one spoke. This is committee procedure. I think there was none. If there were any—

DELEGATE MENOR: Mr. Chairman, I think I had—

CHAIRMAN: Delegate Menor is recognized to—

DELEGATE MENOR: The chairman showed that I was kanalua on this, that I would look into the arguments.

DELEGATE SCHULZE: I apologize, Mr. Chairman. That is correct. My memory was faulty. I said I wasn't quite sure and that is correct. Delegate Menor did kanalua on the vote.

CHAIRMAN: Thank you.

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: May I add a little bit more to this, if Delegate Noguchi will yield to me for a moment. I feel at this point almost like an Ethel Andrade the second. Because the committee has been very patient with me. As Delegate Schulze, the chairman, told you, I presented a number of different ideas in the hopes that the committee would buy it but I have learned in this Convention as in other deliberative bodies that if you don't have the votes you don't get very far. And I want it clearly understood for this record that I have been deeply concerned about this problem from the very beginning and the committee has made an honest attempt to find an answer which would be more equitable. But it appears that plan after plan after plan has had more violations

than in other areas than it has in this one and the majority of the members of the committee felt that the committee's final plan was one they wished to adopt. This morning, there wasn't a clear vote taken on it. I knew that there wasn't any reason to continue the argument because I presented enough of them although I did have the last word in the committee.

CHAIRMAN: Thank you. Delegate Akizaki.

DELEGATE AKIZAKI: This is plain and simple. Divide and concur. By the way, I wonder if I can ask for a roll call on this amendment.

CHAIRMAN: We will have a roll call. If there are no further remarks, the motion before us is the one made by Delegate Noguchi which amends the committee proposal in accordance with Amendment III (17). Those voting "aye" will vote in favor of the Amendment III (17), and those voting "no" will vote against the amendment and in favor of the committee proposal. Are there any questions about the voting?

DELEGATE YOSHINAGA: Yes, Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Are all 82 delegates aware of the fact that we are on the matter of reapportionment and redistricting and that votes are being taken on amendments? Do we have an excuse for all delegates here because I'm going to demand excuses from now. Written excuses to the chairman or the president of this Convention. We're voting on a serious matter and unless they are outside we're going to have everybody called in. There are a number of empty chairs around here.

CHAIRMAN: Delegate Ajifu.

DELEGATE AJIFU: I was just going to rise to a point of order in stating that as far as the Committee of the Whole, the quorum necessary is 42 delegates.

CHAIRMAN: I understand. However, I think the intentions are in order that we try to have as many people here present when we vote on important issues.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I just want to make a short reply to that. I don't give a hoot what the quorum is. Eighty-two people were elected by the people of Hawaii and I'd like to see 82 people here unless there is a justifiable excuse.

CHAIRMAN: The point is that we cannot hold up all of our business to wait for everyone to be here.

DELEGATE YOSHINAGA: Well, use your power of subpoena. What did the people elect them for?

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: In the same connection, if someone has been excused by the Chair or some other authority, that's an excuse. But if someone is absent without being properly excused I would like to have the record reflect that such a delegate, at the time of a crucial vote is marked absent.

CHAIRMAN: I believe the record of roll call will so indicate. Mr. Clerk, do you know how many are absent at the moment?

CLERK: Mr. Chairman, according to my record here, the following delegates are not present in this hall: Delegate Hung Wo Ching, Delegate Doi, Delegate Hitch, Delegate Kunimura, Delegate Frank Loo and Delegate Sutton. Of these, Delegate Hitch, Delegate Doi and Delegate Sutton have asked to be excused prior to this afternoon session.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: We have a request with our procedure that we have on our island that if any member intends to leave the Kauai delegation, he reports to the chairman and in turn the chairman would consider whether that request to leave is urgent or not and in this case the request of Delegate Kunimura to leave has been considered. As far as we're concerned, he should be marked excused. We're asking you to support the views of our Kauai people.

CHAIRMAN: Thank you. I believe that investigation will indicate that with the exception of one or two, all delegates are either present or excused. Accordingly, I believe it would be in order for the Clerk to call the roll.

(Roll call having been ordered, the motion to adopt the amendment was put by the Chair and failed to carry by a vote of 33 ayes and 44 noes, with Delegates Aduja, Ajifu, Amano, Amaral, Ansai, Ariyoshi, Burgess, Chang, Dodge, Dyer, Goemans, Hansen, Hara, Harper, Kage, Kato, Kawakami, Lalakea, Larson, Peter Lewis, Rhoda Lewis, George Loo, Medeiros, Morioka, Nakama, Nakatani, O'Connor, Oda, Ozaki, Saiki, Schulze, Souza, Steiner, Sutton, Taira, Takahashi, Takamine, Ueoka, Ushijima, Wright, Yoshinaga, Young, Mr. President and Mr. Chairman voting no; 4 excused, with Delegates Doi, Hidalgo, Kunimura and Frank Loo being excused; and 1 absent, with Delegate Hung Wo Ching being absent.)

CHAIRMAN: The motion to amend is lost. The Chair will declare a brief recess.

At 3:05 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:11 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole

please come to order. We are continuing with our consideration of District 13 as shown on the map.

DELEGATE AKIZAKI: Mr. Chairman.

CHAIRMAN: Delegate Akizaki.

DELEGATE AKIZAKI: Mr. Chairman, I have an amendment to offer. It's No. III (13) and it reads as follows:

"The Twelfth Representative District as set forth in Section 23 of the transitional provisions in Committee Proposal No. 12, is amended to read as follows:

Twelfth Representative District:

That area of land bounded by the Pacific Ocean and a line beginning at the mouth of the Ala Wai Canal Harbor from the Ala Wai Yacht Club along Ala Wai Boulevard until the end of the Canal to Kapahulu Avenue and thence along Kapahulu Avenue and a prolongation thereof in the makai direction to the Pacific Ocean, one representative."

CHAIRMAN: Amendment No. III (13)? Do you—

DELEGATE AKIZAKI: Yes, I move for the adoption of the amendment.

CHAIRMAN: Delegate Ho.

DELEGATE HO: I second the motion.

CHAIRMAN: You've heard the motion and the second. Delegate Akizaki has offered Amendment No. III (13) to Committee Proposal No. 12. Would you like to speak on the amendment?

DELEGATE AKIZAKI: Yes, Mr. Chairman. This amendment meets all the criteria starting from 1, 2, 3, 4, 5, 6, 7, 8 criteria except criteria 9, an arbitrary criteria, agreed upon by members which states, "No single-member districts shall be created in a highly urban area." The justification for this criteria is that a single-member districting system results in irrational district lines. I disagree. In this particular case, if made into a single-member district, the district lines would be more rational than they are at present. To those who know the Waikiki area, the Ala Wai Canal is an ideal district line, from the Ala Wai Yacht Harbor all along Ala Wai Boulevard to the end of Ala Wai Canal which meets Kapahulu Avenue and back towards the beach. Waikiki is an island by itself. In this area, there are 5,089 registered voters who are entitled to one representative. After meeting almost 100% of the criteria and while the present line meets only 40% of the criteria, I am now interested in knowing how sincere this committee report is and whether an amendment which meets all the requirements can be passed by this Convention. If this cannot, then I shall be convinced that there are other motives. Thank you, Mr. Chairman.

CHAIRMAN: Does any other delegate wish to speak on the amendment?

DELEGATE ALCON: Mr. Chairman.

CHAIRMAN: Delegate Alcon.

DELEGATE ALCON: Would it be possible for the delegate to show us exactly what area he is talking about?

CHAIRMAN: Yes.

DELEGATE AKIZAKI: I'll be very glad to. Mr. Chairman, this is the man-made Ala Wai Canal. The length is from here, from this end to probably to the beaches. Only four ways to getting to Waikiki. The Ala Wai bridge, the Kalakaua bridge, the McCully bridge and Kapahulu Avenue. This is the area I'm talking about. If you don't have these three bridges, the only way is to swim across from McCully or through Kapahulu Avenue. I claim that this area here is entitled to one representative because it meets almost 100% of the criteria, exact number, 5,089, that criteria for 5,082. So this is my argument that in urban areas, there are some exceptions that can go single-member districts.

CHAIRMAN: Delegate Akizaki, do we understand that your amendment is the same as the previously offered amendment except for that one change?

DELEGATE AKIZAKI: No. I'm talking only about this area, Mr. Chairman.

CHAIRMAN: No? Then the Chair has a question. What do you do with the area mauka of Ala Wai Canal which would be severed from your Waikiki district?

DELEGATE AKIZAKI: Mr. Chairman, I haven't gone that far. All I'm interested is that this area deserves one representative. Only one. And my argument is based on this man-made boundary right in this area. At this space you don't have to worry about because we've got no houses there except the golf course and down this way.

DELEGATE DONALD CHING: Mr. Chairman, point of information.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, may I direct a question to the movant? By reading his amendment I gather that he is cutting the proposed District 12 into two districts, into 12a and 12b. Am I correct in that premise?

CHAIRMAN: Delegate Akizaki.

DELEGATE AKIZAKI: It would turn out to be like that.

DELEGATE DONALD CHING: Now, can he sketch out the lines for us to see where the division is which cuts off this new 12th Representative District, let's call

it 12a?

DELEGATE AKIZAKI: I have to use the overlay, I guess. May we take a short recess, Mr. Chairman, to allow—

CHAIRMAN: Short recess is declared.

At 3:17 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:18 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE AKIZAKI: Mr. Chairman.

CHAIRMAN: Delegate Akizaki.

DELEGATE AKIZAKI: Because there is lots of confusion here, may I ask a short recess so I can come out with an amendment that will meet to my want that I really intended to do? It will take a matter of just a few minutes.

CHAIRMAN: Very well. Perhaps, someone else has another amendment pertinent to this district. We could take that up while you are preparing yours. Will that be satisfactory? Mr. Clerk, will you ask the delegates to be seated please?

CLERK: Will the delegates please be seated.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Akizaki is temporarily withdrawing his amendment and wishes to present it again in a few minutes. In the meantime I would like to ascertain, the Chair would like to ascertain whether there are any other amendments pertinent to this area. Does any other delegate have an amendment pertinent to this area? If not, a recess subject to the call of the Chair is called until Delegate Akizaki has his amendment ready.

At 3:20 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:36 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

DELEGATE AKIZAKI: Mr. Chairman.

CHAIRMAN: Delegate Akizaki is recognized. Hold it just a minute until all the delegates are seated, please. Delegate Akizaki.

DELEGATE AKIZAKI: Mr. Chairman, at this time, I would like to withdraw Amendment 13, Amendment 18 and all other amendments that I had in mind.

CHAIRMAN: Thank you very much. We are considering District No. 13 or any area which may border on it and any amendments which may affect it. Is there any further discussion? Are there any further amendments concerning District 13? If not, we will close the consideration of this representative district as shown on the map and go to District 12 as shown on the map and as proposed by the committee.

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: Delegate Ando is recognized.

DELEGATE ANDO: I had the impression we were on District 12, Mr. Chairman, and that we are now withdrawing everything—

CHAIRMAN: We were on District 13, where several of the amendments affected more than one district. Delegate Dyer.

DELEGATE DYER: I would have to agree with Delegate Ando.

CHAIRMAN: The Chair stands corrected. We are considering District 12 and for clarity, I will ask again if there are any further amendments proposed concerning District 12? If not, we will close the discussion on District 12 and go to District 11. Is there any discussion? Are there any questions? Are there any amendments?

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: Just some observations on this district. I have the permission of the chairman of the committee on reapportionment to make a statement. If my memory is correct, yesterday the chairman stated that he will take all the blame for any foul-up in this plan but I think he should take some of the praises too for the artistic cut-up of the district, the old 16th District. Instead of people being submerged, I see them fly off. It seems to me a cross between a flying nun and a flying fish, if you look at the map.

CHAIRMAN: Is there any other statement concerning District 11 as shown on the map? Any questions? If not, we will close the discussion concerning District 11 and consider District 10. District 10 as proposed by the committee and as shown on the map before you. Are there any questions? Is there any discussion? Does anyone have an amendment pertinent to this district? If not, we will close the discussion so far as District 10 is concerned and consider District 9. Are there any comments pertinent to District 9? Any questions? Any amendments to be proposed? If not, we will close the discussion for District 9 and go to District 8 as shown on the map and as proposed by the committee. Is there any question? Is there any delegate who wishes to comment? Are there any amendments to be proposed pertinent to this district? If not, we will close the discussion on District 8 and go to Districts 23 and 24 which we considered briefly yesterday and

postponed to a later date. Delegate Kamaka is recognized.

DELEGATE KAMAKA: Mr. Chairman, I do have an amendment to propose. I move that Amendment III (12) be agreed to. It reads as follows:

"The descriptions of the Twenty-Third Representative District and Twenty-Fourth Representative District as set forth in Section 23 of the Transitional Provisions in Committee Proposal No. 12 are amended to read as follows:

Twenty-Third Representative District:

That portion of the Island of Oahu for convenience herein referred to as all of Koolauloa and part of Koolaupoko, more particularly described as follows: beginning at the seashore between Waialua and Koolauloa districts, thence northeasterly and southeasterly along the seashore to the southeast corner of Kaneohe Marine Corps Air Station to Kaneohe Bay Drive, thence southwesterly on a straight line to Puu Papaa Triangulation Station, thence southwesterly on a straight line to a point where the proposed Mokapu Saddle Road intersects the Kailua-Kaneohe boundary, southwesterly along Kailua-Kaneohe boundary to Kamehameha Highway, southeasterly along Kamehameha Highway to the junction of Kalaniana'ole Highway where it intersects the Pali Highway and Kamehameha Highway, southerly and continuing along Pali Highway to a point opposite the Pali Lookout, along the top of the Koolau Range to the point of beginning, three representatives.

Twenty-Fourth Representative District:

That portion of the Island of Oahu for convenience herein referred to as remainder of Koolaupoko, more particularly described as follows: beginning at the seashore at Makapuu Point, westerly along the top of Koolau Range between the Honolulu and Koolaupoko districts to the Pali Lookout, northeasterly along Pali Highway to its junction with Kamehameha Highway and Kalaniana'ole Highway, thence northwesterly on Kamehameha Highway to the boundary between Kaneohe and Kailua, northeasterly along the Kailua-Kaneohe boundary to the top of the ridge, northeasterly along the top of the ridge to a point where the proposed Mokapu Saddle Road intersects with the Kailua-Kaneohe boundary; thence northeasterly on a straight line to a point where the east boundary of the Kaneohe Marine Corps Air Station intersects Kaneohe Bay Drive, easterly along the southeast boundary of Kaneohe Marine Corps Air Station to the seashore, thence southeasterly along the seashore to the point of beginning, three representatives."

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Bacon is recognized.

DELEGATE BACON: I second the motion, please.

CHAIRMAN: The motion has been seconded. Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I would like to also prevail upon the body that the document being passed out presently marked III (12A), that that description be substituted over this section that appears in Amendment III (12). Let me explain briefly, Mr. Chairman.

CHAIRMAN: Please do.

DELEGATE KAMAKA: The state surveyor prepared both and this morning he indicated that the description prepared under III (12A) better reflects the change that I had in mind yesterday when he made the first change. If there are no objections, then may we have III (12A) substituted for the description in III (12)? It reads as follows:

"Twenty-Third Representative District:

That portion of the Island of Oahu for convenience herein referred to as all of Koolauloa and part of Koolaupoko, more particularly described as follows: beginning at the seashore between Waialua and Koolauloa districts, thence northeasterly and southeasterly along the seashore to the southeast corner of Kaneohe Marine Corps Air Station, southwesterly along the southeast boundary of the Kaneohe Marine Corps Air Station to Kaneohe Bay Drive, thence southwesterly on a straight line to Puu Papaa Triangulation Station, southwesterly along the top of the ridge to the Kailua-Kaneohe boundary, southwesterly along the Kailua-Kaneohe boundary to a point where the Kailua-Kaneohe boundary intersects Kamehameha Highway, southeasterly along Kamehameha Highway to the junction of Kalaniana'ole Highway where it intersects the Pali Highway and Kamehameha Highway, southerly and continuing along Pali Highway to a point opposite the Pali Lookout, along the top of the Koolau Range to the point of beginning.

Twenty-Fourth Representative District:

That portion of the Island of Oahu for convenience herein referred to as remainder of Koolaupoko, more particularly described as follows: beginning at the seashore at Makapuu Point, westerly along the top of Koolau Range between the Honolulu and Koolaupoko districts to the Pali Lookout, northeasterly along Pali Highway to its junction with Kamehameha Highway and Kalaniana'ole Highway, thence northwesterly on Kamehameha Highway to the boundary between Kaneohe and Kailua, northeasterly along the Kailua-Kaneohe boundary to the point where the Kailua-Kaneohe boundary leaves the top of ridge towards Kailua Bay, thence northeasterly along the top of the ridge to Puu Papaa Triangulation Station, thence northeasterly on a straight line to

a point where the south boundary of the Kaneohe Marine Corps Air Station intersects Kaneohe Bay Drive, easterly along the south boundary of Kaneohe Marine Corps Air Station to the seashore, thence southeasterly along the seashore to the point of beginning."

CHAIRMAN: I have no objection.

DELEGATE HARPER: Point of inquiry, Mr. Chairman. Am I recognized?

CHAIRMAN: Make your point.

DELEGATE HARPER: On III (12A), it doesn't say how many representatives there are in each district.

DELEGATE KAMAKA: This affects, Mr. Chairman, only the description of the districts, not the representatives recommended by the committee.

CHAIRMAN: The substitution as I understand it is III (12A) for the portion concerning the description of the districts.

DELEGATE KAMAKA: That's correct. It does not affect the number of representatives.

CHAIRMAN: If there's no objection, this substitution will be accepted. Hearing no objection, it is accepted. Delegate Kamaka.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: Could the map be brought forward on this district before he begins?

CHAIRMAN: I think that would be in order. Delegate Kamaka, would you like to approach the map and—

DELEGATE KAMAKA: Delegate Bacon will assist.

CHAIRMAN: Very good. Delegate Bacon.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: Point of information. Is that map that Delegate Bacon is looking at, is that the committee proposal or proposal by Delegate Kamaka?

CHAIRMAN: I believe that's the committee proposal. Is that correct, Delegate Schulze?

DELEGATE SCHULZE: That is correct, Mr. Chairman.

CHAIRMAN: Very good.

DELEGATE KAMAKA: Mr. Chairman, in order to better describe the area that I'm speaking of if the

members would follow the pointer that Delegate Bacon has, the line that runs from the pointer into Kailua and then around back to Kaneohe is the area that we're concerned with. And the description set forth in III (12A) will take a straight line from that point that Mr. Bacon is pointing to, directly across the mountain range to that point there. So the area would end, the area bounded by those lines would be the area that we are concerned about and we can refer to them as the Kalaheo Hillside area. That is the only area of the 24th and 23rd Districts as proposed that we are considering this morning. Thank you, Mr. Bacon.

Mr. Chairman, I rise to support the amendment and certainly recognize that no one here doubts that the committee approached the matter of reapportionment and redistricting with anything less than total objectivity. Of this I am sure that we are all cognizant. Yet in so doing, it is possible that certain results some would necessitate a court decision where the desire of the committee for complete objectivity would result in a matter such as this. On page 26, the committee discusses the usage of geographical features such as major streets, streams, the use of mountain ridges and gullies, streets and also the new freeway. Discussing the matter of the deviation factor, it appears that the committee desires to maintain a deviation factor of around 5%. Perhaps, this then explains why Kalaheo Hillside which lies on the Kailua side of the mountain, the committee adopted, and—I'm sorry. It appears then that the committee put the Kalaheo Hillside which lies on the Kailua side of the mountain and used the Kawaiui Canal as the boundary between Kaneohe and Kailua. This means that approximately 934 registered voters who are Kailuans from sunrise to sunset and then thereafter while separated from Kaneohe socially, economically, educationally and in every other conceivable manner are thrown in with Kaneohe. There is more than a mountain range that separates Kaneohe from Kailua. Very recently, the City and County built a bridge across the Kawaiui Canal to connect Kalaheo Hillside into Kailua. No one intends that the State or the County will build a tunnel through the mountain to connect Kalaheo Hillside to Kaneohe. In fact, Mr. Chairman, H-3 is going to be built which, besides the mountain, proposes another separation between Kalaheo Hillside and the community to which it is being appended. On page 48, Kaneohe shows a deviation factor of plus 4.1 percent, in relation to the statewide average number of registered voters per representative of 4,965. And Kailua has a deviation factor of minus 2.3 percent. The number of registered voters, as I said before, in Kalaheo Hillside is approximately 934 voters and if added to Kailua, it gives Kailua a statewide deviation factor of plus 4.6 percent and Kaneohe, a statewide deviation factor of minus 8.5 percent. Perhaps these will be glaring when we have the figures reversed but anyway these are the maximum deviation factors involved. Perhaps these would be glaring in any table setting forth statewide deviation factors. Yet the 16th District, as proposed, has a deviation factor of 11.8 percent and in the 21st District, the deviation factor is plus 15.3 percent. Both of these, as I look at it, are very justifiable and very understandable. For ten years as a representative from the 8th District, I have always

felt that Kailua is different from Kaneohe as night is from day. If the amendment is agreed to, I feel certain that the deviation factor and the reasons therefore will be acceptable to the courts.

Mr. Chairman, under the decision of *Reynolds v. Sims*, and I think that at this moment I would like to read some of the matters in the decision which I think relate to this point of deviation factors. On page 444 of the *Swan v. Adams* case the court makes this statement: "In any event the fact that a 10% or 15% variation from the norm was approved in one state has little bearing on the validity of a similar variation in another state." And this I accept. It goes on further to indicate that in this case the writer made no attempt to justify any particular deviation. On page 446 in the same case the court reads: "We think the better view is that taken by a three-judge court in Maryland which disapproved a legislative plan involving an over-representation of 14.90 percent and an under-representation of 14.38 percent because the judge said there was no showing in this case that the difference of one third is unavoidable or justified upon any legally acceptable grounds." And the court states in *Reynolds v. Sims*: "So long as the divergencies from the strict population standard are based on legitimate consideration incident to the effectuation of the rational state policy, some deviation from the equal population principle is constitutionally permissible with respect to the apportionment of seats in either or both of the houses of a bicameral state legislature. But neither history alone nor economic or other source of group interest are permissible factors in attempting to justify disparity from population base representation." The point I'm trying to make, Mr. Chairman, is this. That perhaps this body is being a little bit too concerned about the deviation factor from the norm. I think perhaps we might be guilty of trying to play court. I would suggest that the thing that we must do is to review what we are doing in the sense that it does make sense as far as the statewide pattern is concerned. Under the decision of *Reynolds v. Sims*, and in the decisions of the cases that I have reviewed, reviewing apportioning and redistricting, it appears the courts will not only look to the result, not only look to what has been done, but most important the reasons therefor. This deviation factor such as in the Kaneohe-Kailua districts will be examined in relation to the reasoning underlying the same. Kailua is basically separated from the rest of Oahu on three sides by mountains and the fourth side by the Pacific Ocean. Further the construction as set forth in the proposed H-3 interstate highway will again emphasize the separation. That the 24th District is self-contained and putting Kalaheo Hillside into Kaneohe is not only offensive to logic but I think contrary to nature. It is my position that no one here can foretell how the courts will rule. I do believe that any judicial review will certainly involve the proceedings here, the fact and the reasoning therefor, and that the deviation factor, though to some of us may be somewhat judicially intolerable, will be supported. In the absence of any decision by the court that the inclusion of Kalaheo Hillside back into Kailua where it does belong is unconstitutional, I prefer that at this Convention, the first time that this matter can be intelligently reviewed

that the matter of constitutionality be resolved if we can do so in favor of the people of Kalaheo Hillside. If this is wrong, let the court say so. I do not believe that they will. At any rate, let's do our job as we see it and let the court do its as it sees it. I have taken both, Mr. Chairman, and I do believe that returning Kalaheo Hillside back into the 24th District does no violence but does great justice and I do believe that the court will uphold this because this is intelligent, justifiable rationale on the part of this body. And I would hope that this proposal be examined in that light rather than one where the position of the committee is being jeopardized. This is not one of the dominos in a domino game. I think that if we take a look at this one, it affects no other districts. It affects 934 voters whom I believe naturally belong in Kailua. I do not believe that the deviation factor which results is either repulsive to logic or repulsive to the court. Thank you.

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Bacon is recognized.

DELEGATE BACON: May I say a few words in support of my colleague from the present 8th Representative District? Mr. Chairman, this is a rather historic moment because it's one of the few times the former speaker and I have agreed during this Constitutional Convention. And I speak with mixed emotions because I do want to vote for an apportionment plan. This is important to the State but I am having difficulty accepting this plan because of this matter involved here.

Mr. Chairman, I was elected as a nonpartisan and am trying to act like one in this matter. The principle neighborhood involved is Kalaheo Hillside, an area of 900 voters which under the present plan as proposed will be detached from Kailua. This has been very adequately covered by my colleague. Mr. Chairman, being in Kaneohe would be a very nice matter for these people but on the other hand, I want to emphasize that this is going to be an isolated community, protected on one side by the mountain and the other side by another district. Kalaheo Hillside people consider themselves Kailuans. Their potential economic reasons are the same as their neighbors' right across the street who will be by this plan already in Kailua. Mr. Chairman, in considering this matter, and now speaking as a person identified with the Democratic party in this State, I would like to say that in this present matter that in Kalaheo Hillside and in Aikahi Park, I have never received a warmer welcome and fewer votes than any place in the district. However, this matter, as my colleague has stated, makes great sense. And I would like this Convention to think of this matter very seriously. I urge that you adopt this amendment. Thank you.

CHAIRMAN: Thank you. Delegate Sutton.

DELEGATE SUTTON: May I ask the Chairman to ask a question of Delegate Kamaka.

CHAIRMAN: You may address your question to the Chair. I'll—

DELEGATE SUTTON: First, exactly what deviation is involved herein?

CHAIRMAN: Delegate Kamaka, I believe those figures were given.

DELEGATE KAMAKA: The figures that I received from Delegate Ariyoshi which I assumed he received from Mr. Schmitt indicate that District 23 would have 13,105 voters or a deviation factor of minus 8.5. And District 24, which is Kailua, would have 15,949 voters or a deviation factor of plus 4.6.

CHAIRMAN: Thank you.

DELEGATE SUTTON: My next question is what does the Supreme Court consider to be a permissible deviation?

CHAIRMAN: I'm not sure that that question can be answered but do you want to take a crack at it, Delegate Kamaka?

DELEGATE KAMAKA: If I were the Supreme Court I might—I don't know that I'm qualified to answer.

DELEGATE SUTTON: Could I ask this question of the committee chairman?

CHAIRMAN: If the committee chairman would be willing to comment on it. I'm not sure it would satisfy your question. This is a question we have been unable to answer.

DELEGATE SCHULZE: May I cover the question in the presentation of the committee's point of view, Mr. Chairman?

CHAIRMAN: That would be adequate.

DELEGATE SUTTON: Thank you.

CHAIRMAN: Is there anyone else who wishes to speak on this subject?

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: Mr. Chairman, I rise in support of the request of Delegate Kamaka inasmuch as he has proposed and recommended and made a deep study of these boundary lines which cover a ridge separating the 23rd and the 24th Districts. And the 900 so-called registered voters is not a big figure inasmuch as there is great development of subdivisions in the 25th Representative District. That would surely offset the number of registered voters lost in the 24th area. The latest figure from the city hall as of today indicated that there are 20,000 new registered voters for the Island of Oahu which represents a figure of four representatives based on the equation of the committee. And to that extent I think there's no major changes except for which Delegate Kamaka requests that the

boundary between the 24th and the 25th be made under his amendment and therefore I support that amendment proposed by Delegates Kamaka and Bacon.

DELEGATE MEDEIROS: Mr. Chairman.

CHAIRMAN: Delegate Medeiros.

DELEGATE MEDEIROS: Mr. Chairman, I speak on behalf of this amendment. As far as the deviation figures are concerned, this is something that should be left up for the future. I speak on behalf of the people on Kalaheo Hillside. I, as well as practically all of our delegates here who represent the Windward area have one time or the other worked with community projects with these people at Kalaheo Hillside. These community projects were special interests for Kailua. These people who belong to Kailua, these people who shop at Kailua, these people even go to church in Kailua. The children go to school at Kailua. Their social activities are done at Kailua. As Delegate Kamaka has mentioned, the City and County just gave us a bridge that would go over Kawainui Swamp to join these people and make it more accessible for these people to Kailua. If this plan is accepted by the committee, these people here at Kalaheo Hillside would be separated completely by a mountain and they would be belonging to Kaneohe as far as the voting representation is concerned. I beg the delegation at this time, foreseeing the deviation factor and coming down to principles where the people themselves be not separated from their community. Thank you.

CHAIRMAN: Thank you. Is there anyone else who wishes to be heard? Delegate Schulze.

DELEGATE SCHULZE: May I come forward, Mr. Chairman?

CHAIRMAN: Please do.

DELEGATE SCHULZE: Well then, I thought maybe I have taken enough raps here today but now I find that I'm also going against the entire 8th District that I come from so I'm still on the chopping block. I would like to explain the committee's position, the reasons for this particular move. The Kaneohe-Kailua boundary in fact runs right along this line. Just about through or middle or third of that subdivision that's being discussed. A good portion of it therefore has always been part of Kaneohe and part of it has been a part of Kailua. However, the committee at this point was attempting to comply as closely as possible with the mathematical requirements that do exist. I would ask the delegates to turn to page 48 in the committee report, the Supplemental Committee Report No. 58, page 48. I would apologize to the delegates, there is an error there. The last two deviations in the column that is the island unit column which is the second from the far right, the deviations for District 23 and 24 are listed as plus 1.7 and minus 4.6 and they are both incorrect. Under the committee's plan, the correct deviations are minus 1.4 for the 23rd District; minus 1.5 for the 24th District. This is approximately the same deviation we would have had had we simply followed the

Kaneohe-Kailua boundary all the way and used that. There isn't a great deal of difference in terms of numbers. The committee did give consideration toward keeping all this particular subdivision in Kailua even though the kind of split we're talking about here is nothing by comparison to the problems, for example, in North Kohala, or any place on the Big Island. It is true that there is a natural boundary here. It is also true that there are houses and approximately the same socio-economic category all along Kaneohe Bay Drive and on into Kaneohe. I believe it is fair to say that the previous speakers are correct. These people do reside more closely to the Kailua shopping areas, probably go more frequently to Kailua for social and business activities than they do to Kaneohe. It is however, I think by comparison to the problems that this committee has had to face and the other difficulties that we had to wrestle with, a very minor kind of separation. The describing of the differences between Kaneohe and Kailua runs very close to the existing political boundaries as they always have been. It was our feeling that we could not justify the rather substantial changes that would take place in the deviation if we took the entire subdivision and put it in Kailua. The deviation range, that is the difference from zero to the end, is 1.5. The deviation range that would exist with Delegate Kamaka's change is 13.1. That is the range between the minus deviation on, that would exist on this side and part of the deviation that would exist on that side. To give the figures again so everybody would understand the deviations would be minus 8.5% over here in the 23rd and plus 4.6% over here in the 24th. The range between the two, that is, the range increase is between 1.5 which is the range difference before and 13.1 which is the range difference after. We have justified larger deviations than that, it is true, we've done so in Waianae, for example, we have done so with other areas where we had extremely compelling problems that we simply couldn't cope with any other way. It was our feeling and nobody can tell you exactly what the Supreme Court would do but the Supreme Court has thrown out deviations smaller than this on more than one occasion because they were not explained with an adequate state justification and policy. And nobody knows precisely what this adequate state justification and policy is going to be. We've studied the problem and as far as I can tell, beginning to end on both sides. We don't know either but we do feel that this is a rather substantial deviation for what we feel by comparison to other problems throughout the State, it is a relatively minor kind of problem. It was our feeling that if we went around getting this larger deviation to solve this small problem, we might well jeopardize the entire plan and certainly might jeopardize the bigger deviations we had to have elsewhere. In other words, we hope to explain them if the case goes up to court with the justifications we have but the justifications we have for the other deviations are much more substantial than any justifications we could really get here. I am sympathetic with the position that these people do look more towards Kailua. I hate to say it's no big thing because I'm sure the people in that district may disagree with me. At least some of them may. They have been a part of Kaneohe and many of them have for quite some

time thought so and it's really not wrenching them from home. Finally, it is not a problem which we can simply leave to the courts. It is true that in some of our work, there are areas we could simply leave to the courts and say, if you don't like it, strike that out. But if our reapportionment plan has deviations that are too big, that phase out the whole plan and therefore, we take an awfully big risk when we take deviations for which we don't have really very substantial explanations.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: You are recognized, Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, may we have a short recess because I can't reconcile some of these figures on deviations and I think it would expedite the work of the Convention if some of us had an opportunity to talk to the chairman and vice-chairman rather than asking the question out loud and engaging in debate on it. Could we have a short recess?

CHAIRMAN: Sure.

At 4:10 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:46 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The Chair will recognize Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the committee has consulted with Mr. Schmitt and apologizes to the delegates. At the time the report was being prepared and at other times too, because this particular line received no attention, and only one change in the entire course of the committee's deliberations, an error in the figures was not picked up until some time after the report was actually drawn. The committee does agree with the speakers that, and as I stated before, agrees that the area in question, the subdivision of Kalaheo Hillside, from a neighborhood point of view would more properly belong with Kailua than with Kaneohe. And as I stated, our reasons for voting otherwise were that the deviations were too great. It appears now that the figures on which we based our original decision were incorrect, that the deviation was a good deal smaller than we had suspected. We therefore, called a committee meeting to review the situation and the committee now feels that in light of the corrected figures, it would be appropriate to accept the deviation this large and to go ahead and permit the amendment putting Kalaheo Hillside in with Kailua. We also discussed the possibility that there might be other errors in the figures. We think not. This was a special situation over here because all the other figures were worked with any number of times during the committee deliberations. The figures in here were only worked with once and so they simply did not get the attention that the others did and the error was not picked up early enough. All the other figures including

this one have been double-checked now and we believe, although nobody can, I don't know how in the world we could guarantee that but we do believe that they are all now accurate.

DELEGATE GEORGE LOO: Mr. Chairman, point of information.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Delegate Schulze, what are the deviations for the amendment?

DELEGATE SCHULZE: Apparently, the correct deviation would be 7.5 percent.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I rise to express my thanks to the president for discovering the error and to the committee for reviewing the matter. Thank you, Mr. Chairman.

DELEGATE MEDEIROS: Mr. Chairman.

CHAIRMAN: Delegate Medeiros is recognized.

DELEGATE MEDEIROS: I also would like to stand and thank the committee.

CHAIRMAN: Very good. Are we ready to vote on this matter? All those in favor of the amendment which was noted as III (12A), I believe—is that correct—will say "aye." All those opposed? The amendment is carried. Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I do have one other amendment. I think it is numbered III (8). And it reads as follows:

"(1) The description of the Third Senatorial District in Section 22 of the Transitional Provisions as set forth in Committee Proposal No. 12 is amended by adding between the word 'Districts' and the words 'three senators' at the end thereof the following:

"and the Island of Moku O Loe (Coconut Island)."

"(2) The description of the Twenty-Third Representative District in Section 23 of the Transitional Provisions as set forth in Committee Proposal No. 12 is amended by adding between the word 'beginning' and the words 'three representatives':

"and the Island of Moku O Loe (Coconut Island)."

I move for its adoption please.

CHAIRMAN: Delegate Bacon.

DELEGATE BACON: Mr. Chairman, I second the

motion.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: In speaking just very briefly, I believe that this is an oversight by the committee. However, I would like to state that in the present Constitution, that in the catch-all phrase that is descriptive of the 17th Representative District, as an inhabited island lying offshore of Oahu, Coconut Island, or as it is more correctly known as, Moku O Loe which is part of the 17th Representative District, I think they would prefer to be back in the 23rd Representative District. This is all that it does. It recognizes that the Coconut Island which is inhabitable would become a part of the 23rd Representative District.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, as the map shows, it was not our intention to leave Coconut Island out of the 23rd Representative District. The description did not include it perhaps because the state surveyor looked at the description in the last Constitution and found that it wasn't there either. We do agree it's a technical amendment correction oversight and the committee has agreed this morning that the amendment would be passed.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: Is this III (8)? Paragraph one deals with senatorial districts. Paragraph two deals with Coconut Island. So how can we consider it without dividing it some way?

DELEGATE KAMAKA: Mr. Chairman, if I may, what actually occurred is that in the proposal from the committee relating to the senatorial district, there is the same omission. So if the body wishes to adopt the part of the amendment first, fine. But what it does in toto is to put Coconut Island in both a senatorial district and a representative district.

CHAIRMAN: All right. To keep the record straight, perhaps we should adopt the second paragraph of the amendment at this time. Will that be adequate?

DELEGATE KAMAKA: With the pleasure of the body, Mr. Chairman, I so amend my motion.

CHAIRMAN: Very well, any further discussion? All those in favor of the motion will say "aye." Opposed, "no." Motion is carried. Delegate Kamaka.

DELEGATE KAMAKA: Would it be in order now at this point to consider putting Coconut Island into a senatorial district? We only put it into a representative district.

CHAIRMAN: I believe the next order of business is the senatorial districts.

DELEGATE SCHULZE: That is correct, Mr.

Chairman. I believe we have finished with the representative districts on all islands now and with the Chair's permission the committee would like to move to the senatorial districts now on the Island of Oahu.

CHAIRMAN: As an order of consideration, if we can start with the 8th Senatorial District, the Island of Kauai, and then go to Maui and then—Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, to refresh your recollection we—

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of order.

CHAIRMAN: State your point of order, please.

DELEGATE KAUHANE: The 18th Representative District, the amendments are being prepared now. We have not finished the 18th Representative District as yet.

CHAIRMAN: The 18th Representative District? I believe we finished that yesterday.

DELEGATE KAUHANE: There is a pending amendment which was worked on by the committee last night. And in working it over this morning, with the statistician we now have the attorney, Attorney Funaki who has worked with the committee diligently and as hard as the committee, is now preparing the amendment to be offered.

DELEGATE FERNANDES: Mr. Chairman, recess.

CHAIRMAN: Before we call a recess, if there is no objection by the body, it seems to me it would be better to consider this matter now than to consider it on second reading. So if there is no objection, we should consider this now. Is there any objection? Very well, a short recess is declared.

At 4:55 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:15 o'clock p.m.

CHAIRMAN: Will the Convention please come to order. Delegate Jaquette is recognized.

DELEGATE JAQUETTE: Thank you, Mr. Chairman. I just wish to announce that the subcommittee of the Committee on Submission and Information will meet tomorrow morning at 8 o'clock and we will defer the meeting of the full committee, time to be announced later. So only the subcommittee will meet tomorrow morning at 8 o'clock.

CHAIRMAN: Thank you. Delegate Ando.

DELEGATE ANDO: If announcements are in order, Mr. Chairman, I would like to announce that the Style Committee will meet tomorrow morning at 7:30 if we quit before midnight tonight.

CHAIRMAN: Thank you. While we are waiting for the printing of an amendment by Delegate Kageyama and Delegate Kauhane, I'm informed that we did not consider Amendment III (15) yesterday when we were considering the Big Island and it had been the intention of Delegates Andrade and Yamamoto to bring this matter up on second reading. They would be satisfied if it could be brought up at this time rather than on second reading; however, it will take the consent of the body for a reconsideration. Therefore, I will ask for a consent of the body and if I have the consent we will allow Delegate Yamamoto and Delegate Andrade to present this amendment at this time while we're waiting for the printer. If there's no objection—I beg your pardon.

DELEGATE KUDO: Mr. Chairman.

CHAIRMAN: Delegate Kudo.

DELEGATE KUDO: I think it is proper that this be brought up during second reading.

CHAIRMAN: You would prefer it brought up on second reading?

DELEGATE KUDO: Yes, sir.

CHAIRMAN: Thank you. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, as committee chairman, I agree with Delegate Kudo. I think we should not reconsider this at this time. We did finish with the Big Island. I think once we're finished with a district we have to leave it finished. Stick by the procedure of the Chair as set.

CHAIRMAN: Very well. It will be brought up on second reading. Thank you.

DELEGATE YAMAMOTO: Mr. Chairman, I just want to—

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: Mr. Chairman, in the outset when the representative districts were in the discussion period, at that time we did not, as far as I'm concerned, I did not understand that any proposal should come forward at that particular discussion period. It was thought at that time, only in, I would say, in thinking to what we thought with the committee proposal, so with that thought in mind I made my presentation. However, if the body here says that we should come out in the second reading, it will be. We would like to—in fact as the introducer of this proposal I would like to clear it up after first reading and don't bother in the second reading.

CHAIRMAN: It can't be taken up unless by unanimous consent. I think the only way we can take it up would be to possibly to reconsider our action of yesterday afternoon.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Yes, Delegate Miyake.

DELEGATE MIYAKE: The convention rule allows reconsideration by majority vote.

CHAIRMAN: That's correct.

DELEGATE MIYAKE: Doesn't have to be by unanimous vote. Let's be clear in our proceedings here so everyone can be satisfied. All they want to have is a voice—it probably would be voted down anyway from the votes going on over here.

CHAIRMAN: The ruling of the Chair was that if there was no objection we would take it up. If there is an objection, then it must be taken up on the basis of reconsideration. Is that correct? Do you agree with that ruling, Delegate Miyake?

DELEGATE MIYAKE: Sir?

CHAIRMAN: Thank you.

DELEGATE MIYAKE: I do not agree with your ruling. I don't know what you're saying because Delegate Hara is distracting me, making funny faces at me.

CHAIRMAN: Short recess will be declared.

At 5:20 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:43 o'clock p.m.

CHAIRMAN: Committee of the Whole please come to order.

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: Mr. Chairman, as to Proposal No. III (15), with the approval of Delegate Andrade, we will withdraw this proposal.

CHAIRMAN: Thank you very much.

DELEGATE YAMAMOTO: We come from the Big Island, nine strong, and we want to go home, sing the song "Happy Days are Here Again."

CHAIRMAN: Thank you. Delegate Andrade is recognized.

DELEGATE ANDRADE: Mr. Chairman, I second the motion by my distinguished colleague here. I'm afraid I've been a ruin to the Hawaii delegation and I'll make up for it now.

CHAIRMAN: Thank you. Your cooperation is not only accepted but is much appreciated. Delegate O'Connor.

DELEGATE O'CONNOR: Point of information, Mr. Chairman. What is the schedule of the Committee of the Whole for the rest of the day?

CHAIRMAN: The schedule is to consider the amendment which I believe will be offered by Delegates Kauhane and Kageyama and perhaps, if we can come to a determination on that, at approximately 6 or 6:15, we will adjourn until 8 or 8:15 or 8:30, depending on when the break actually comes. Does that answer your question?

DELEGATE O'CONNOR: Is it the intention to come back tonight about 8:30?

CHAIRMAN: That is correct. Delegate Kauhane is recognized for the purpose of proposing an amendment.

DELEGATE KAUHANE: Mr. Chairman, I'd like to offer an amendment to Committee Proposal No. 12. And the amendment is III (21) which reads as follows:

"Section 23 of transitional provisions as set forth in Committee Proposal No. 12, is amended by deleting the descriptions of the 16th, 17th, 18th and 19th Representative Districts and the representatives allocated to these districts, respectively, and substitute in lieu therefor, the following descriptions and allocation of representatives:

Sixteenth Representative District:

Precinct 2 and Precincts 4 to 10, inclusive, of the existing Twelfth Representative District, two representatives;

Seventeenth Representative District:

Precinct 3 of the existing Eleventh Representative District, the existing Thirteen Representative District and Precincts 1 and 3 of the existing Twelfth Representative District, two representatives;

Eighteenth Representative District:

Precinct 1 and Precinct 2, and Precincts 4 to 12, inclusive, of the existing Eleventh Representative District, three representatives;

Nineteenth Representative District:

Precincts 7 and 12 of the existing Tenth Representative District, and 8th Precinct of the existing Eleventh Representative District, one representative."

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: I rise to second the motion.

CHAIRMAN: You've heard the motion and the second.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I would first like to apologize to the members of this Convention for perhaps my keeping them here late to hear me out. I know that this is a ticklish matter at this late hour to attempt to keep the delegates intact, to listen to other delegates who have some concern, concerning matters of this Convention. I ask their indulgence, I ask them to forgive me for this long delay in keeping them here.

Mr. Chairman, in proposing Amendment 21, I am proposing an amendment contrary to the recommendation of the committee's proposal. After looking over the committee's proposal, we had an opportunity to discuss an alternative proposal for consideration. This alternative proposal for consideration was not an idea picked out of the air in order to keep the delegates here. This amendment proposal was considered and was brought to the attention of our statistician, should I say, Mr. Schmitt. For which we asked him to prepare an alternative proposal for which he did. Earlier I introduced this proposal but after further checking the proposal with my delegate on my left, I found that there were some precincts that were not included and for that reason I asked permission of the Chair to withdraw the early amendment. In offering today's amendment, I have included the precincts that were left out, not intentionally, mind you, Mr. Chairman, not intentionally. But it is fair to abide by our request for an alternative proposal and as a human being we can respect the error that was made. So that now, Mr. Chairman, we find that in the amendment we offer, we have changed the composition of the 16th Representative District which was formerly the 12th Representative District. As you note in your copies, Precinct 2 and Precincts 4 to 10 inclusive of the existing 12th Representative District shall have two representatives.

In the 17th Representative District, which is now the 13th Representative District, Precinct 3 of the existing 11th Representative District, the existing 13th Representative District and Precincts 1 and 3 of the existing 12th Representative District would permit the 17th Representative District to have two representatives. In the 18th Representative District, the present 11th District, Precincts 1 and 2, here, Mr. Chairman, I would like to offer an oral amendment so that the intent and purposes of the amendment offered will be meaningful. After the figure 2, Precinct 2, delete the word "and" so that it would read Precinct 1 and Precinct 2, Precinct 4, and add the words "27," and add the words following the comma "and 9 to 12," inclusive of the existing 11th Representative District, three representatives. Then down to the new 19th Representative District, Precincts 7 and 12 of the existing 10th Representative District, and the 8th Representative District with the existing 11th Representative District, one representative.

Mr. Chairman, as a former representative from the old 11th Representative District and also a delegate from the 11th Representative District, we have still three representatives elected to the house of representatives. Under the committee's recommendation, we will lose one representative. Mind you, Mr. Chairman, according to figures of the registered votes as furnished me by the City and County clerk's office, which figures were used during the court case of the reapportionment of the city council of the City and County of Honolulu, the 11th Representative District has a total of 16,136 voters. If you were to subtract the 8th Precinct of the 11th District, totalling 1,581 votes, we still have a remainder of 14,555 voters. Certainly this total number of voters can continue to have three representatives. When we look at the 17th Representative District, formerly the 13th Representative District, Mr. Chairman, according to the record of registered voters, to have a total of 5,813, I feel that this is sufficient number for them to stand on their feet and have at least one, the minimum of one representative. But I'm willing to support their proposal to have two representatives. And in order for them to have two representatives, I feel that the 3rd Precinct, if need to be, of the 11th Representative District can be included together with the 1st and 3rd Precincts of the existing 12th Representative District in order to provide the 17th Representative District and still retain their two representatives. After all, this is what we have been fighting for, even in the committee. Any and every proposal that was considered by the committee, any plan that was submitted by the committee, the representative of that district certainly is a member of the committee, always fought for his just representation, the retention of their two members and I should say also that the committee, in trying to provide these two representations, the retention of the two representatives, that they have to find the means, the guidelines to provide this. They made a just provision as a guideline by inclusion of the 1st and 3rd Precincts of the 12th District. I disagreed with them when they moved into the area of the 2nd Representative District of the 11th. Because they were moving too far over to bring this precinct into the 17th Representative District in order for them to still retain their two members. In other words, Mr. Chairman, although as one of the delegates from Kalihi sitting in the Convention, I contend that the reaching over to Puuhale to pick up the Puuhale precinct which is close to or far away, rather, from the present line of demarcation which is Kalihi Street, that you have between Kalihi and Puuhale Road, Mokauea Street. So this is where I feel and I have always taken the position, and I have made my position clear, that this is somewhat an area of gerrymandering when they have to reach that far.

CHAIRMAN: Delegate Kauhane, how much longer will it take you to wrap up your amendment or the explanation of it?

DELEGATE KAUHANE: How much time is left for me?

CHAIRMAN: Well, your time is up. I'd like to be sure that your amendment is properly explained

however.

DELEGATE KAUHANE: I'd like to abide by the time allotted to each delegate who speaks. I've supported the adoption of the Convention rules. But in order for me to be able to justify the position that I take, I ask the leniency of the Chair to permit me to continue because for me to quit at this point would certainly be within the realm of the Chair to say: "Charlie, your time is up." I'm sure it won't take any more time, perhaps another three minutes.

CHAIRMAN: You may have another three minutes. Please continue. Let's not talk about the time, let's get to the amendment.

DELEGATE KAGEYAMA: So that Mr. Chairman, if I'm not in order if the Delegate Kauhane would yield, I'll take my 10 minutes and yield to Delegate Kauhane to explain so that the amendment proposal that was submitted III—

CHAIRMAN: Delegate Kageyama, you have not been recognized. Delegate Kauhane has been granted additional time.

DELEGATE KAUHANE: Mr. Chairman, thank you very much. If the amendment that I am proposing has been under consideration by the committee under various plans, Plan S, finally the committee adopted Plan S-I. But certainly, Mr. Chairman, that's the prerogative of the chairman to change his mind after having adopted one plan, but I looked at the plan where they provided the retention of two representatives from the present 13th Representative District and in order to do that they had it depressed in registered votes from the 11th Representative District, thereby denying us out of just representation of three members to the house. This is what I cannot buy. I'm sure that somewhere along the criteria or even the inference by the Supreme Court that no district should lose, but they have today. If this is true, then why should we from the 11th Representative District be denied the right of our three representatives even though we have given up some precincts still maintain a higher remaining total registered votes in this area? As I said, Mr. Chairman, the members of this committee had full opportunity to study all of the plans. If I was a member serving on the committee, I naturally would fight for what I think would be just for me as a member who represents the present 13th Representative District. Perhaps I would, and I don't mind saying this candidly, Mr. Chairman, that perhaps I would be favoring to vote for something in order to get a return of the vote that I worked at in order to protect my position. This is human for anyone to do. Human as it may be, but I certainly do not feel that in the exchange of this nature, that the 11th Representative District should be denied full members to the house of representatives which they presently enjoy. And for that reason, Mr. Chairman, in my discussion with some of the members, of the delegates to this Convention from Kalihi, we have felt that this is the only fair and reasonable way to approach our problem and to ask for the retention of the three representatives that we are

now enjoying and hope to continue to enjoy. And therefore we have submitted this Amendment No. 21. I'd like to further say, Mr. Chairman, that we withhold until the decision is made on 21 and submit 22. Thank you very much for the permission to continue.

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: Thank you, Mr. Chairman. Inasmuch as the chairman has granted Delegate Kauhane three extra minutes, I shall consume the three minutes and speak only for the rest of the five minutes so that the equality of the delegate shall be shared alike with no accusation that they were favored by the Chairman. In speaking of the proposed amendment as introduced by Delegate Kauhane, we are seeking a problem here to be solved by the delegates who assemble here to present to the voters of the State of Hawaii a proposal of a fair reapportionment so that they will have a unanimous approval of the voters of the State of Hawaii in the proposal submitted by the Convention which is the hope of all the delegates here today and in the hope of an early adjournment next week. In speaking of the amendment on the 18th Representative District, true it was the original 11th Representative District to recall and go back to the existing representative district under the Constitution. In the 10th Representative District we have 27,000 voters for which the committee saw fit to divide that into three representative districts and where the 11th Representative District we have 15,000 voters and the committee saw fit to chop suey the 11th Representative District by selling to the proposed 19, 18 and 17th Districts. In the 12th District, in the present Constitution we have two representatives with 11,000 voters and in the 13th, we have 5,000 voters. And therefore going back to this new proposal by the committee and notwithstanding the old proposal would fit it into the pattern of five thousand to one would have not given them much problem. We are concerned with the present 11th District for which we are chopped from the east to the west, from the north to the south. And as I have stated prior and previously that the community problem of the 11th Representative District is so complex that they put the airport industrial areas in the residential, to the commercial to the forest reserve and to have the three representatives of the previous, of the present 11th District work together in solving some of the problems is one of a teamwork and not an individual effort, and therefore I request the delegates to maintain the status quo of the 11th District for which the three representatives can serve the community. Not only the community but the State of Hawaii and Honolulu. The International Airport belongs to the people of the State. It doesn't belong to the 11th District and yet we have burden of responsibility to reduce the lines to control the traffic and there are numerous other problems that affect the confines of the 11th District. That is to say and what not, if you notice the report from the airplane in the morning and afternoon, you have miles and miles of cars, bumper to bumper from east to west and that is the kind of problem right in the heart of the 11th District and the cooperation of the entire delegates from the other precincts is more welcome to solve some of

these complex problems that we have in the 11th District. Without your vote I don't think we can even solve this in the legislature. But at this Convention, I hope that they will do so. You will consent to provide us with your support and I hope that you will give us your vote of confidence on the retention of the amendment to the 11th District. Return that to the status quo and I believe that the voters then would probably buy the whole concept of the reapportionment as submitted and this is only a request to the Reapportionment Committee for which I understand they have considered Friday, previously to the submission of this proposal. And I think every effort should be made. Thank you very much.

I guess I have one minute to go. Nevertheless, I believe that in the fairness and if you want to have the entire proposal as amended by the delegates in here to the various constituents the very precinct for which we have permitted the amendment for which you have merit, then we beg that the, all the delegates, 82 included many of the members can go out to the public and explain that this is the proposal to be accepted by the voters in the coming general election. Thank you very much and thank you delegates for your attention.

CHAIRMAN: Delegate Loo is recognized.

DELEGATE GEORGE LOO: Mr. Chairman, to set the record straight, the delegate from the present 13th District wanted a single-member district but because the overwhelming majority of the Committee on Apportionment did not want to have a single-member district in the urban area, we acceded to their wishes.

DELEGATE FERNANDES: Mr. Chairman, may I ask Delegate Loo a question?

CHAIRMAN: You may address the Chair.

DELEGATE FERNANDES: The question is when that decision was made on single member, was it the decision made on registered voter or population?

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: It was made on registered voters.

DELEGATE FERNANDES: Thank you.

CHAIRMAN: Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: Mr. Chairman, I would like to make a few comments on the proposed amendment. First of all, what it does to the 19th District is to reduce that from a present committee proposed two-member district to a one-member district. I have tried very fast to calculate the deviations here and it appears that in the 16th District which is basically the old 12th Representative District, there is a deviation of minus five percent. And the 17th District, there is a deviation of minus eight percent with two representatives there. And in the proposed 18th District, proposed by the amendment, there is a deviation of

minus 12% with three representatives. And the new 19th District which is proposed here, there is a deviation with one member there of plus 26 percent. Mr. Chairman, it appears that the numbers here just don't work out. And I am ready to state, as far as I am concerned, I think the members of the committee would go along with this that they would not believe that the Supreme Court of the United States would ever approve a plan which deviates to such a degree as it does, as this amendment does.

CHAIRMAN: Delegate Uechi.

DELEGATE UECHI: Mr. Chairman, in Delegate Kauhane's speech, he referred to the amendment that he withdrew last night because of the fact that he forgot some of the precincts. That is, he didn't include some of the precincts in his figuring. I would like to say that with regard to the 19th District, the deviation is not greater than what the vice-chairman has quoted because Mr. Kauhane also forgot to include the 13th Precinct of the present 10th. And that includes 2,298 voters, registered voters in this particular precinct. Surely, when this, the inclusion, of three precincts presently in Aiea and the 8th of the 11th, this one representative will be representing 8,692 registered voters. So I think the figures speak for themselves. I do not believe that this plan is workable.

DELEGATE KAUHANE: Mr. Chairman. I would like to rebut—before I do that I would like to ask your calling upon other delegates if they want to speak. Otherwise, I would like to—

CHAIRMAN: Are there any other delegates who would like to speak on this? If not, Delegate Kauhane, you may close the debate.

DELEGATE KAUHANE: Mr. Chairman, in rising at the projection in the proposing amendment, I used the projection that was made by Mr. Schmitt. In Mr. Schmitt's submission of an alternative proposal for consideration, and I have this handwriting on this piece of paper, with respect to the 19th Representative District he has here the figures 10, 7 and 12. This leads me to believe that the 10th Representative District, the 7 is the 7th Precinct, 12 is Precinct 12. Nothing is mentioned about Precinct 13 in his alternative proposal. The only thing that he forgot to add in here was Precinct 8 of the 11th Representative District so that he fails to register voters when he percentaged the deviation. His total ran 4,816. But if you add the 8th Precinct of the 11th District, then its percentage deviation is minus 5.2. Then we go down to the 18th Representative District which includes Precincts 1, 3 to 12. All we did here in the proposal was to substitute 2 for 3. Then this figure would read 14,751 and I come up with 14,555, so that the percentage deviation here is minus 3.2. In the 17th Representative District you have 11-2. You substitute 11-2 for 11-3. Then the whole 13th, including 12-1 and 12-3. This is District 12, Precincts 1 and 3 for a total of 9,667 registered voters with a percentage deviation of minus 4.9. In the 16th Representative District, he comes here with the figures 12-2 to 10. With a total of 9,600 registered voters the

deviation percentage of minus 5.5. So the representatives going upwards, 16-2, 17-2, 18-3, 19-1. I didn't do all of this, Mr. Chairman. I asked someone who is smarter than I am in this kind of work. The man who furnished the committee all of the information that the committee wanted. I sought his counsel, I sought his advice. And this is what he submitted. How can I be way wrong if the committee is willing to accept his projection and to say that the same man who furnished me this projection, that he is entirely wrong in his figuring and submission of this projection to me for the alternative amendment for consideration by this Convention. I can't see it, Mr. Chairman. Not unless I'm ready to accept that he was not giving all of us the full and correct information that we need in the matter of the reapportionment question for which we have been called into session. Not only if he had not given the committee the full and correct information that we need in the matter of the reapportionment question for which we have been called into session. Not only if he had not given the committee the full and correct information that is needed in order to sustain the decision of the Supreme Court and for which we have been called into session. I'm not going to call anyone names. I respect the rights of every individual to speak their own mind. Stand and respect their own position. The same as I highly respect the figures, the decisions given to me by Mr. Schmitt and which I submitted this amendment for consideration.

CHAIRMAN: Thank you. Anyone else who wishes to speak on this amendment? Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: Mr. Chairman, just for the purpose of illustration, I would like to have the members pick up three figures, 2271, 2545. The first figure as the 10th District, 7th Precinct, the second is 10th District, 12th Precinct, and then the figure of 1578 which is the 8th Precinct of the 11th District. And you come down to a total of 6,394 votes. The average base is 5,082. So you're roughly 1300 votes above the average for each fifty votes that you're above you deviate from that one percent that roughly you're talking 26% over the permissible basis.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I wonder if it may not be wise at this point for the Chair to call a recess for the delegates here to have dinner so that some of these figures and some of the discrepancies pointed out could be checked out with the statistician on points that cannot be cleared until those figures are double-checked.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Before you call a recess, I'd like to make this observation. I would like to present this observation. During the recess that was granted us and at the instructions and cooperation of Senator George Ariyoshi, I met with two staff members which he has assigned me to work out the differences.

In trying to work out the differences between the two individuals, I realized the position that these two individuals were placed under having worked with the committee throughout all of the periods in which the committee was trying to arrive at a fair and equitable reapportionment plan. As I talked to the individuals, in getting my point across, they came out with the very point that Senator Ariyoshi is saying, that the deviation is such. So I told him that I wasn't interested in the deviation, try and take their minds away from the concept of working for the committee. Try to feel free to work in what I want to achieve. It was pretty hard for these two individuals, I realize, to do anything but. I also told the two individuals when we went to lunch that in my layman's interpretation of the decision of the Supreme Court, and in many areas where we have an opportunity to hear the attorneys who would defend the case for the State of Hawaii, that there was no alternative plan submitted so that the Supreme Court will have an opportunity to look at two plans rather than the one plan that is before them. I also heard this remark made that if an alternative plan was submitted, it can be shown that we could prove the need for alternative plan that perhaps when submitted to the court with the necessary supporting factors, that the court will look with favor upon this. That's all we are trying to do here for the 11th Representative District is to present a fair and reasonable alternative plan.

CHAIRMAN: Delegate Kauhane, would you prefer to recess in order to cross-check the figures or would you prefer to vote on the amendment at this time?

DELEGATE KAUHANE: Yes, I would appreciate, Mr. Chairman, and I thank you to grant us a recess in order to check this matter out.

CHAIRMAN: Okay, the body will stand in recess until 8:30.

At 6:17 o'clock p.m., the Committee of the Whole stood in recess until 8:30 o'clock p.m.

Evening Session

The Committee of the Whole reconvened at 8:44 o'clock p.m.

CHAIRMAN: Committee of the Whole, please come to order. When this committee recessed, we were considering Amendment III (21) offered by Delegates Kageyama and Kauhane. There was some disagreement as to the numbers at that time. Delegate Schulze, are you asking for recognition?

DELEGATE SCHULZE: Mr. Chairman, I was going to ask to be recognized but not on the question whether the numbers problem has been solved because I don't know. But I will speak for the committee after you ascertain that.

CHAIRMAN: Is there no other question or—

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Perhaps I can attempt to give you the answer as to whether or not the figures were agreed upon or semblance of agreement has been reached. I think we're speaking about the figures and deviation more than the total registered votes to which each precinct in the amendment provided for. I would have to say that during the recess, in my attempt to reach Delegate Ariyoshi, he was busy with the president of the Convention taking most of his time so I stepped in between the two and told Ariyoshi that I would see him later, hoping that maybe we can come to some understanding. As of this moment, we have not been able to. I fully realize that peons don't have any real position. I'm speaking very bluntly here. Another thing, Mr. Chairman, you know in the fiasco we had this morning when you recognized me and then Kageyama was doing all the talking and he said—direct the attention on me, I want to say this, Mr. Chairman, may I just try to clear the record. When I went on home, fortunately for me I had my daughter who lives in Dallas, Texas, visiting me with my son-in-law. They saw this on TV so the moment I walked in the house, the first question they asked me was, "Hey, daddy, how come you raising so much hell there?" I said it wasn't me. So my son stepped in and said, "Well, no, it wasn't him—"

CHAIRMAN: Delegate Kauhane, I believe the record of the proceeding is straight.

DELEGATE KAUHANE: The thing is this, Mr. Chairman. The fact that the record is straight, but what goes up through the ranks to the general public outside, we can't change that record.

CHAIRMAN: Unfortunately it's turned off at the moment. Will the committee please come to order. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, I just wanted to say this much with respect to the figures. It is true that Mr. Schmitt several days ago prepared a plan that looked very much like the one presented by Delegate Kauhane. However, there are changes in the plan as presented by Mr. Schmitt and therefore, the figures apparently are not comparable. We had no way to compare the figures prepared with Mr. Schmitt with this particular plan so we're not able to explain to him why the figures prepared by Mr. Schmitt and those compiled by Mr. Ariyoshi are not the same.

CHAIRMAN: Very well. Is there any further comment on this particular amendment? If not, I believe we should vote. Delegate Kauhane and Delegate Kageyama, is the division of the house sufficient or do you request a roll call?

DELEGATE KAUHANE: Mr. Chairman, again I would like to repeat that we have no control over the management of the affairs of this Committee of the Whole. Except to say this, Mr. Chairman, that I would, for my own self, would disagree with the procedure to be undertaken. I protest the method, but who am I,

except to abide by the rule of the majority here. As stated by the chairman of the committee, there is no way to ascertain whether or not the figures furnished me by Mr. Schmitt in my attempting to fit the figure properly with the missing precincts that we can arrive at a justifiable deviation. Another point, Mr. Chairman, I feel deviation, as being interpreted by various individuals, I respect their interpretation in the use of deviation. So I certainly feel that my approach to the question of deviation and my interpretation in applying this approach is a meaningful one. We all have individual feeling toward the approach in the application of deviation. And the only legitimate body that I feel can settle this question as to whether, as to its rightful application, is none other than the courts of law. But again, Mr. Chairman, I want to thank you for the opportunity extended us in—giving us the opportunity to present our case. And whatever decision that you make with respect to our case, I will say that I do not feel that we have been given sufficient time to perhaps further prove our position. And therefore, I will not agree to, as an individual, I will not agree nor accept that this matter be just pushed on lightly. But again, this is your will, you're the commanding general of this Committee of the Whole and whatever you want to do will prove that the majority members of the Committee of the Whole, there's nothing that we can do, that I can do. So it's all up to you.

CHAIRMAN: Delegate Kauhane, the Chair would like to note that the Chair has made no comment concerning the validity of the figures presented by any of the delegates or by the committee and this ruling will have to be made by each delegate as he sees it. Is there any further discussion?

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: Point of information. I am perhaps a little at a loss to make a good decision regarding this particular amendment. I haven't seen it up on the board nor have I heard accurate figures. Now, isn't it possible that we can hear accurate figures pertaining to deviations from the norm and also as to a map or an overlay showing exactly what Delegate Kauhane is proposing here. In this case, I have no way of making an adequate, in my opinion, decision because I haven't seen his proposal other than on paper, and there's been argument over the statistics and no one has come up and said what these statistics are or what the correct deviation is.

CHAIRMAN: Delegate Larson, the Chair will answer that question this way. The vice-chairman of the committee read the figures for the precincts covered, for example, in the 16th Representative District and suggested—I'll take that back—in the representative district having one representative. Is that correct? The 19th Representative District. The figures for the various precincts were given and added and the total was given and the deviation was stated. Now, it's true that some of the delegates did not agree with that. However, I believe the information has been given to you. If not, I

will call a brief recess. I have a book here with all the numbers for all the districts, for all the precincts. You can add them yourself but I would urge that you do it in something less than five minutes. A five-minute recess is declared.

At 8:53 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:55 o'clock p.m.

CHAIRMAN: Committee of the Whole, please come to order. The question before the house is Amendment III (21). If there is no objection, the Chairman will call for a standing vote.

DELEGATE KAGEYAMA: Mr. Chairman, before we take a vote, I would like to ask a positive and a legal question, not to the member of the committee chairman or the—

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: Not to the chairman or the vice-chairman but to the authority and the author of reapportionment known as Delegate Dyer who has initiated services to the entire nation by raising the question of reapportionment. So that the question to Delegate Dyer probably would be in this fashion. Let's say that in this instance, where the 19th Representative District would have 8,700 which does not give them two representatives but in 1970 where 1968 election the registered voters will reach near the 10,000 mark, let's say 9,700 registered voters, so that the reapportionment does not come by this commission or whatever the proposal of this commission is. And then if the voters of that district should take this matter to the court, would that jeopardize the entire reapportionment or just the district of which the case has been appealed to as to be this portion to the formula that we are basing at this Convention. One to five, five to one.

CHAIRMAN: Delegate Dyer, would you be interested in answering that question? Delegate Dyer.

DELEGATE DYER: My best guess would be that it would, any legal suit would affect only the district that was concerned.

CHAIRMAN: Thank you very much.

DELEGATE KAGEYAMA: Yes, thank you very much.

CHAIRMAN: The Chair will ask, all those who vote in favor of the amendment to stand. Thank you. All those opposed to the amendment. Thank you. The amendment is lost. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, I believe that concludes consideration of the representative districts on the Island of Oahu. I apologize, there is one more amendment, I believe, by Delegate Kauhane.

CHAIRMAN: Delegate Kauhane, is it your intention to offer another amendment?

DELEGATE KAUHANE: Let me say, Mr. Chairman, that perhaps it would be best if I can bring it up on second reading.

CHAIRMAN: That will be fine. The next order of business, I believe, is consideration of the senate beginning with the Island of Oahu and beginning with the consideration of senatorial districts. May we have the map for the senatorial districts?

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Point of information. I think the Chair can answer this. I'm rather curious as to why we took the house districts first on the neighbor islands and Oahu last and why the procedure has been reversed. Could you tell me?

CHAIRMAN: I believe that we ended up taking both the senate and the house for the neighbor islands at the same time.

DELEGATE FASI: I wasn't here.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Is it possible for us to take the senatorial districts in the same order as we did the house, starting from the largest number working down to the smallest?

CHAIRMAN: The senatorial districts on the Island of Oahu numbering 3 to 7, we were going to take the ones on the Windward side first because we have an amendment which we passed half of concerning the house and we were going to take the other half immediately. Is that satisfactory?

DELEGATE SCHULZE: This is the order the committee would like to proceed in, Mr. Chairman, by going from the—in the same direction we went with the house seats.

DELEGATE GOEMANS: Mr. Chairman, am I to understand that we are done with the senate districts on the other islands?

CHAIRMAN: I believe so.

DELEGATE GOEMANS: Well, I—there's an amendment here concerning one of the senate districts on the other islands.

CHAIRMAN: Was it concerning districting or is it concerning something else? Delegate Schulze, would you like to explain the senate districting plan please, and then we will take up the first senate district.

DELEGATE SCHULZE: Mr. Chairman, the first senate district that we would take up is Senatorial District 3 which has precisely the same boundaries that it had before this Constitutional Convention, covering the same areas as the 24th and 23rd Representative Districts, and running from Makapuu Point to Waimea Bay. The entire Windward side of the Island of Oahu.

CHAIRMAN: Is there any question or discussion? Delegate Kamaka is recognized.

DELEGATE KAMAKA: Mr. Chairman, if I may, I would like to move that the first portion of Amendment III (8) be agreed to by the body. It reads as follows:

“(1) The description of the Third Senatorial District in Section 22 of the Transitional Provisions as set forth in Committee Proposal No. 12 is amended by adding between the word ‘Districts’ and the words ‘three senators’ at the end thereof the following:

“‘and the Island of Moku O Loe (Coconut Island).’”

CHAIRMAN: Delegate Bacon is recognized.

DELEGATE BACON: I second the motion.

CHAIRMAN: You’ve heard the motion and the second. Delegate Kamaka.

DELEGATE KAMAKA: Very briefly, Mr. Chairman, this is putting Coconut Island into a senatorial district.

CHAIRMAN: Is there any question? Any comment? Delegate Schulze.

DELEGATE SCHULZE: The committee concurs with this amendment, Mr. Chairman.

CHAIRMAN: Thank you. All those in favor of the amendment will say “aye.” Opposed, “no.” Amendment is carried. Any further amendment so far as this senatorial district is concerned? If not, the discussion of that particular district will be closed. We will open discussion of the 4th Senatorial District, I believe, but I can’t quite see it on the map. Delegate Schulze, is there any comment about the 4th Senatorial District?

DELEGATE SCHULZE: Mr. Chairman, I believe the district lines for the 4th Senatorial District remain precisely the same also as they were before this Convention and exactly the same number of senators.

CHAIRMAN: Thank you. Is there any question by any delegate?

DELEGATE KAUHANE: Mr. Chairman, could I ask the chairman of the committee a question through you?

CHAIRMAN: State your question, please.

DELEGATE KAUHANE: Mr. Chairman, does the

4th Senatorial District, as composed today, include Precincts 1 and 8 of the 18th Representative District?

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Was that question, one and eight of the 18th or the 11th?

DELEGATE KAUHANE: The present 11th.

DELEGATE ARIYOSHI: Yes, it does.

CHAIRMAN: You have a further question?

DELEGATE KAUHANE: No, I guess I’ll wait to the others—and I’d like to talk against the proposal.

CHAIRMAN: Beg your pardon. Do you have any—now is the time to comment if you have a comment on this senatorial district.

DELEGATE KAUHANE: Yes, Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: I can’t see the inclusion of the 1st and 8th Precincts of the present 11th Representative District into the 4th Senatorial District. And if, when we were trying to straighten out this confused situation, we were voted down in the acceptance of our proposal. I say that in putting in the 1st and 8th Precincts of the 11th into this 4th Senatorial District, deprives the 11th Representative District of two rightful precincts. But when we speak of representative district there two move right back to the present 11th Representative District and is counted as a member of the family. How the heck did these two precincts straddle the fence in propositions that affect the representative district, and yet permitted to vote in matters that still affect the 11th Representative District by voting as members of the 4th Senatorial District when we begin to sit down on the matters on the division of the 4th Senatorial District as well as 5th Senatorial District are concerned. If these two districts are to continue to be identified as a member family of the 11th Representative District, they certainly have the right to a place to being in the 5th Senatorial District.

CHAIRMAN: The Chair will declare a half a minute recess.

At 9:06 o’clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:07 o’clock p.m.

CHAIRMAN: Committee of the Whole, please come to order.

DELEGATE WRIGHT: Mr. Chairman.

CHAIRMAN: Delegate Wright.

DELEGATE WRIGHT: I would like to direct a

question to the chairman of the apportionment committee.

CHAIRMAN: What is your question, please?

DELEGATE WRIGHT: The question is, that with the creation of the apportionment of the 19th Representative District, and that of the 4th Senatorial District will coincide together?

CHAIRMAN: That is correct. Any further comment? Is there any amendment?

DELEGATE ALCON: Mr. Chairman, point of information.

CHAIRMAN: Delegate Alcon.

DELEGATE ALCON: Mr. Chairman, what is the percent deviation for the senate?

CHAIRMAN: The percent deviation? Delegate Schulze.

DELEGATE SCHULZE: Seven-tenths of one percent, Mr. Chairman.

CHAIRMAN: Thank you. Any other question? If not, we will conclude discussion of the 4th Senatorial District and go to the 5th Senatorial District, noting that there has been no amendment offered as far as the 4th Senatorial District is concerned.

DELEGATE KAUHANE: Mr. Chairman, it seems—

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: It seems that I'm the only one that's going to stand up and protest against this proposal by the committee on the 5th Senatorial District. I am protesting the—I am speaking against the proposal not just because of today. I've spoken against this many times. I feel, Mr. Chairman, that in the multiple districts that are combined to make up the 5th Senatorial District and we take the present registered voters of each of the districts in this 5th Senatorial District you will find a wide discrepancy of votes of one precinct against another. As an example, the 11th Representative District excludes 1 and 8 have on reserve 14,000 plus votes. It's combined with the present 13th Representative District with 58,513 votes. We move into the 12th Representative District, there's a total vote of about, if you'll bear with me for a minute, Mr. Chairman, well, approximately 12,000 votes. When you take the number of precincts that is combined into the 5th Senatorial District from the 14th, you arrive at about an approximate figure of about 7,500 votes. Who's holding who up in the multiple of precincts that make up the 5th Senatorial District? When you look at the recent election of the members from the 5th Senatorial District and apply the members that are elected to the respective precincts that make up this 5th Senatorial District, we find the following: Delegate Duke Kawasaki, representing the 11th Representative District, 14,500 and somewhat votes; in the 12th Representative

District, I can safely say that that district has two senators because both senators live on the dividing line of the old Nuuanu Avenue within that close proximity, namely Senator Ariyoshi and Senator Sakae Takahashi. When you look at the 13th Representative District, they have nobody elected to represent them in the senate. You look at that small portion of 7,500 votes in the 14th Representative District, they have one man, that great Senator David McClung. I say he's great because he's chairman of the Democratic party. And these four senators make up the senators coming out of the 5th Senatorial District. Now, let us look again at the illustration that I gave you. Who's being submerged here? The 13th Representative District with 5,813 votes. Do they have a representative? A senator to speak for them? They don't have anybody there, except for two representatives. The honorable Sakae Takahashi and the honorable George Loo. That's all they have. I mean Amano, excuse me. I'm like the man who gave me my highlights in political affairs. You look at the man, you know what he wants to say and give him another thing. So I'm sorry, Sakae Amano. That's all they have. I've heard this being said in the committee in the discussion, "One senator cannot handle all of the committee assignments." The 13th Representative District has no senators. They have to depend on their two representatives. Suppose that the two representatives are not members of the conference committee when important matters, CIP programs are being considered. They're not members of the Finance Committee to begin with when the CIP programs are being considered. Where do they come up? At the short end of the stick except for political give-and-take, will they survive. Now this is practical politics. I've been around where I've seen the give-and-take proposition working very well. And yet, Mr. Chairman, with our 14,500 we only have one senator. And to take away two of our precincts which make up about 3,000 votes which rightfully if brought back to us, we would have two senators instead of one. Now, certainly I personally would not want to go to my Kalihi people and say that I'm going to agree with the present multiple-district combination that make up the 5th Senatorial District as we have done in the past. I would like to see a division so that to give the 13th a helping hand. That a senatorial district made up of the 17th and 18th, the new 17th and 18th Districts so we'll have two senators. Bringing back our two precincts, our 1st and the 18th Precincts. I'm not concerned with the other people. Let them fight their own battles. I'm only fighting the battle of Kalihi. Are we getting a fair shake in this combination that they're presenting to us to approve? Maybe some of the members feel that, well, Kalihi is deserving of this kind of a treatment. Say that the 13th is deserving of this of a treatment in the senate. I do not feel that we are deserving of this kind of a treatment to have one man trying to fight out the rest of the combinations to get our just share of whatever revenues that is available for capital improvements in Kalihi. Let us find out from them and have the records brought here to find out how much money insofar as capital improvements is concerned is coming in the 11th Representative District. By the vote of the senators from this 5th Senatorial District composition. Let us find out too in this reapportionment question whether all of the senators

from the 5th Senatorial District have stood up to defend the rights of Kalihi. You can find only one senator who's done this. Let us find out also—

CHAIRMAN: That one was for one minute.

DELEGATE KAUHANE: I understand, I saw your finger go up, Mr. Chairman. Let us find out also, Mr. Chairman, in the creation of the sacred Kahala area so that the senators who run in 1968 be protected in the transitional period, that all three senators voted for this proposition. I'm sure maybe only two did because they have to run in 1968. So where do we come out in this whole thing as far as Kalihi is concerned? Behind the eight ball as far as representation from our senators in all of the questions that confront us. Not only here but in the legislative halls. I'm concerned with the problems here in my trying to justify the place of Kalihi and let's look at the votes just recently taken. The stand-up rising vote clearly indicates what Kalihi is expecting to receive. Thank you very much.

CHAIRMAN: Thank you. Any other comments about this senatorial district? Delegate Kawasaki is recognized.

DELEGATE KAWASAKI: Mr. Chairman, I was one of the signatories that signed, "I do not concur in part," so far as the committee report emanating from the Legislative Apportionment Committee was concerned. And in the matter of the reapportionment of the representative districts in the 18th, I was not happy at the final decision that the committee made and I think I made my feelings known very clearly to the committee. And I concur with my fellow delegate on my right here. But now, on the matter of the senate districting decisions that came out of this committee, I am compelled to speak in favor of the committee recommendation. First of all because I am a very strong proponent of the multi-member districting which is in essence what the senatorial districting scheme is. I do appreciate the delegate's inference here that one senator from the 11th District worked out for the district and said the other three did not. I don't think a closer scrutiny, examination of the records would bear this opinion out. I think the four multi-member senators representing the 5th District have worked very well together in looking after the—in trying first of all, ascertaining what the requirements were for our districts, respectively the 11th, 12th, the 13th and the 14th Districts. And I think we have sensibly and rightfully established the list of priorities that we deemed to be rational and we strived to get our share of funds to take care of capital improvements projects and we've basically worked as a team to look after the divergent requirements in the 5th Senatorial District comprising the four representative districts. So I am compelled at this point to disagree somewhat violently with my good friend on the right here. I believe that the four-member senate scheme that we have at least for the 5th Senatorial District has worked out well for the interest of the people in my senatorial district and basically I speak in favor of the retention of the committee recommendation. I just wanted to get on the record as wanting to give due credit to the other three

senators that do serve with me from the 5th Senatorial District looking after the needs of our senatorial district.

CHAIRMAN: Are there any further remarks or comments concerning the 5th Senatorial District? If there is no amendment being offered, the Chair will rule that consideration of that matter is closed and we will go to the 6th Senatorial District on the Island of Oahu. Delegate Schulze is recognized. You want to come to the map?

DELEGATE SCHULZE: Boundaries of the 6th Senatorial District have been changed slightly. The Ewa boundary used to follow precinct lines in approximately this manner and then dropping down to the sea from this point. We have changed this now so that the lines comply with the representative district lines following the freeway to the boundary of the 17th Representative District and following—

DELEGATE YIM: Mr. Chairman, there's no way of understanding the comments made. Is there another way of making the presentation?

DELEGATE SCHULZE: How would the delegate suggest, Mr. Chairman?

CHAIRMAN: I suggest that the committee chairman explain it as clearly as possible and we will take a recess so the delegates may look at the map and if the committee chairman or vice-chairman will stay at the map to explain and answer any questions, I think this will be adequate. Will this help you, Delegate Yim?

DELEGATE SCHULZE: Mr. Chairman, in the past, the lines of the 6th Senatorial District departed from Pensacola Street, ran along the main crest of Punchbowl just below Stevenson School to a precinct line which ran mauka-makai along Alapai Street and at that point parted Alapai Street down to Keawe Street and then to the ocean. This has been changed at this point to follow the line which is shown here in red and the line now follows Pensacola Street to the freeway, follows the freeway, over to, I don't know the name of the street, over to the boundary line between the 17th and the 14th Representative Districts and follows back to the sea. The deviation is minuscule. The matter of fact is to maintain a conformity district line. There's very little shifting except for the small area below Punchbowl at this point and a small area at the other end of the new 14th District. These changes were made, as I said, solely to comply with the representative district lines and to bring the numerical deviations up to the present accuracy.

CHAIRMAN: Would you like to discuss the other boundary of that district?

DELEGATE SCHULZE: Yes, I would. Mr. Chairman, the Diamond Head boundary has been changed in two respects again to comply with district lines and to bring mathematical deviations to an appropriate level. The former line ran to the Diamond Head side of St. Louis Heights down to the point which is now the freeway. That line has been changed to run

to the other side of St. Louis Heights and excludes all of St. Louis Heights from the 6th Representative District that used to be there. At that point, the line presently follows the freeway back to Kapahulu Avenue and goes down Kapahulu Avenue which is the former line also. The next point of deviation, Mr. Chairman, is at Leahi Avenue. Formerly the line followed Kapahulu to the sea. But presently, it follows Leahi Avenue to Monsarrat, and Monsarrat Avenue to Diamond Head and around the base of Diamond Head a half way. This change in the 6th Senatorial District was made to follow the present district line from the 12th Representative District. This line down Kapahulu Avenue which is the same place that the line used to be is the only place in the State where a representative district is split by a senatorial district line. And that is necessary in order to maintain appropriate figures in each so that the deviations do not get too large.

CHAIRMAN: The Chair will declare a brief recess so that the delegates may look at the map.

At 9:27 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:42 o'clock p.m.

CHAIRMAN: Committee of the Whole, please come to order. Before the committee is consideration of the senatorial districts on Oahu, namely the 6th Senatorial District. Are there any further questions? Any comments or any amendments? Delegate Ando.

DELEGATE ANDO: Mr. Chairman, I have an Amendment III (11), Mr. Chairman. But I'm asking that this be withdrawn and that I be given an opportunity later on to submit another amendment if possible, after I get the figures and all the questions answered. So if there are no other amendments for 6th, may I ask that I be given the privilege later on if in fact it's sufficient for me to submit one?

CHAIRMAN: How long will it be, Delegate Ando?

DELEGATE ANDO: It will take another half hour or so, I understand. I don't want to delay the proceedings however.

CHAIRMAN: Will your amendment preclude a reasonable consideration of the 7th?

DELEGATE ANDO: No, it will not require any consideration of the 7th.

CHAIRMAN: Very well. If there's no objection, we will conclude our discussion—

DELEGATE FERNANDES: Mr. Chairman, recess, please.

CHAIRMAN: We just had a recess.

DELEGATE FERNANDES: It's very important, Mr. Chairman. My request for recess is based on the grounds

that—

CHAIRMAN: A recess has been declared.

At 9:45 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:55 o'clock p.m.

CHAIRMAN: Committee of the Whole, please come to order. Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, I move that the proposal just circulated numbered III (26) be approved to amend the redistricting of the 6th Senatorial District into two senatorial districts as noted here. It reads as follows:

“Section 22 of the Transitional Provisions as set forth in Committee Proposal No. 12 is amended by redistricting the Sixth Senatorial District into two senatorial districts as follows:

Sixth Senatorial District A:

That portion of the Island of Oahu consisting of the Thirteenth Representative District and that portion of the Eleventh Representative District lying west of Kapahulu Avenue, two senators;

Sixth Senatorial District B:

That portion of the Island of Oahu consisting of the Twelfth and Fourteenth Representative Districts, two senators.

Explanation:

Senate District 6A:	15,597	R.V. (13 R.D.)
	5,000	R.V. (por. 11 R.D.)
	<u>20,597</u>	

Senate District 6B:	9,800	R.V. (12 R.D.)
	10,155	R.V. (14 R.D.)
	<u>19,955</u>	

CHAIRMAN: Could we reword that to move to amend the committee proposal?

DELEGATE ANDO: I so move, Mr. Chairman.

DELEGATE HO: I second the motion.

CHAIRMAN: Thank you. Delegate Ando.

DELEGATE ANDO: Mr. Chairman, this amendment is in effect, Mr. Chairman, to at least give some form of identity and representation for those people that have been split out from the McCully and Moiliili area into a foreign district, foreign Representative District 12. I think by creating a two-member senatorial district above the freeway and below the freeway in what is now proposed as the 6th Senatorial District, there can be

such an opportunity that there be some representation for those people in that McCully and Moiliili area as well for those of surrounding areas.

When we look at the figures, Mr. Chairman, we find that in the Senate District A which is essentially that district above the freeway in the Manoa-Makiki area with that portion west of Kapahulu Avenue on the 11th Representative District, there's a total of 20,597 registered voters which gives away a plus 1.5 deviation for the senatorial district representation per senator. In 6B which consolidates the 12th Representative District and the 14th Representative District we have a registered voter population of 19,955 registered voters. This gives a minus 1.5 percent deviation per senator. I believe, Mr. Chairman, that this would essentially give an opportunity for better representation in the large 6th Senatorial District that we see now and it will be one in which, in terms of districting, probably more acceptable now that we have this awkward situation where we have trisected the Moiliili-McCully District. Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Delegate Peter Lewis.

DELEGATE PETER LEWIS: Will the previous speaker go up and show us on the blackboard exactly how he is going to break up the 6th Senatorial District so that there is no question.

CHAIRMAN: Delegate Ando. The Chair would offer the information that the 6th Senatorial District as shown on the map will be divided in two at the freeway. Is that correct, Doctor?

DELEGATE ANDO: Mr. Chairman, this is the 6th Senatorial District. Cutting it off at the freeway, coming down on Isenberg Street and on Date Street, back up Kapahulu Avenue and up the freeway and back to the ridge that's been suggested, the new margin, the Diamond Head margin of that Manoa district. For the lower district, it includes all of this area in Diamond Head and Monsarrat and back up Kapahulu Avenue, the freeway would be the lower area, 6th Senatorial District as I am proposing for two.

CHAIRMAN: Are there any other questions? Delegate Ho.

DELEGATE HO: Mr. Chairman, I rise to speak in favor of the proposal. Mr. Chairman, we hear the words "accountability" and "feasibility" used quite frequently. We have heard these words used quite frequently in the Convention, with respect to the relationship between an elected representative and the people. Now, we have set as a tenor of our apportionment scheme a situation which we would reduce the number of house districts so as to, as I gather, increase accountability and feasibility of representatives to the people they serve. I see no reason, Mr. Chairman, why we should not also extend this theory to senatorial districts and as a starting point, we have here the 6th Senatorial District. Mr. Chairman, I suggest that there are sound and valid reasons for splitting the 6th Senatorial District into two senatorial districts having two senators each. Let me say,

first of all, Mr. Chairman, that I am not necessarily in favor of an elective system whereby senators are elected for staggered terms as so as to put one senator declare election every two years. I think it might be more appropriate where this is for another subject, I realize that two senators be elected at one time. We have, Mr. Chairman, heard the chairman of the Apportionment Committee state that the imposition of the Lunalilo Freeway across Honolulu has not been without its peculiar social effect, to wit: the fact that on either side of the freeway, life seems to come up, rise and curl on to either side of the freeway where new patterns begin, new trends begin and life in fact begins like a split on both sides of the South. I suggest that may also be the case in the 6th Senatorial District. We have in the North, Manoa and Makiki, a closely-knit community with a strong sense of community identity, if the sense of community identity will be enhanced, increased by the presence of the Lunalilo Freeway. On the South, you have the communities of lower Punchbowl, Waikiki and now a new district, Diamond Head. I suggest that although socio-economic differences do exist, and I might add McCully, I believe is in the area and part of Moiliili, I might state that although socio-economic differences do exist, on the whole, we can see the trend of a community of interest extending from Diamond Head all the way down to the lower Punchbowl area. We have seen the rapid growth of a new economic plan in Waikiki. We know that an economic plan already exists in the Diamond Head area, it's a silk stocking district, if you will, and we see the developments of that area from roughly the YMCA on Atkinson Boulevard all the way down past the Ward Estate property which will essentially be an area marked by similar buildings, by similar people occupying the building as the Waikiki area. So I suggest to you, Mr. Chairman, that the justification, the valid justification for creating two senatorial districts in the present 6th Senatorial District does exist. This concludes my remarks, Mr. Chairman. Thank you.

CHAIRMAN: Thank you. Is there any other delegate who would like to speak—

PRESIDENT PORTEUS: Yes, Mr. Chairman.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, I'm not going to suggest anything to you. I'm going to give you my opinion. That is, I think this is a very bad plan. It has every defect of a single-member house district. If you have a four-man senate, elected every four years, you have two running each two years. You don't have to be number one every time to return to the senate. My thought one of the things about the senate is that you are supposed to take a rather broad point of view. At least I know that during my service in the senate that I had advocated that the neighbor islands be given consideration and an opportunity to have an extra senator if the Supreme Court of the United States would determine that they were entitled to it. And I took my chances on Oahu that I might not be reelected because of this position but I didn't hide it. I went and told everybody that this was it. I know this issue arose

in 1950. In 1950 had Manoa Valley being made a district where either one senator be elected every two years or where a single representative would be elected every two years, that the issues then were a school in upper Manoa, a park in upper Manoa, the repair of the Woodlawn Road and parking in the vicinity of the University. Every one of these were essentially in those days, county problems. And it would therefore be necessary that if anybody was going to divide out and tell the people the truth of the matter what were county problems and what were state problems to say that these particular issues were county problems but that a person in the legislature might be able to assist the county in having bonds issued that perhaps would then let the county to take certain steps in relation to school buildings or in relation to a park. And therefore, it made a senator, unless he was very foolish, it made it necessary that he therefore campaigned on these very local issues within the valley. If he did not and said that these are issues that should be handled by the county, someone else running against him would say: "Don't worry, I'm concerned about your problems, I don't care whether it's a county, a house of representatives, or senate program, I will make sure that these things are taken care of." Certainly, if you have more than one person to be elected, the person who tells the people who live in Manoa Valley that these are county problems, as soon as the people in Manoa Valley go to Moiliili or to other areas and say: "Look what this man says." The others are going to say that he is right. And therefore I believe that you ought to have a sufficient spread and by that I mean at least two people elected so that a person can take a broad point of view. There are times when I saw it in the dock strike times. I saw it in the times when the lazy unions were being fought against in the districts that I was running from. But I took a different point of view and that point of view was a successful point of view because there was some margin you didn't have to be one every time. It just so happens that if you want to be personal, if you go back and look at the record, I have been fortunate enough to be elected as a person with the greatest number of votes in this district for the last number of years. But that's immaterial. The question is, who may also be running at a later time. Should not that person have the opportunity to say to others, "I believe that this is the right position overall even though it may not be popular with you at the moment." And therefore, I believe that it is good if the people go to the polls and say: "Here is somebody advocating something that we like at the moment, we'll vote for him. But here is a person whom we can trust to look at the overall picture and over a period of years, and we will give him a second vote." The reduction of the senate from four to two is not to give two people to the senate if they're elected on a four-year basis but to require that a person be singled out and run by himself once every two years. I don't believe this is good for the district. I don't believe this is as good for this island. I don't believe this is good for the State and therefore I will vote against it.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I was sitting here listening to the arguments of our good president, and in a sense they do make sense. However, the arguments that he uses go counter to the trend of what the people in this community want. The trend on Oahu, for example, people want one councilman which is comparable to a senator's position. They want one councilman to run for office from their district so that he can be responsive to their needs and if he does not do that job, he will not be reelected and there are people that will seek his office as they will seek a senate seat if you have one senator run for office using the same arguments that our president just spoke about. That is part of the game of plain, plain politics. I say, Mr. Chairman, that to have two senators being directly responsible to the people of upper Manoa, two senators to the lower area would be more responsive to the needs and desire of the people living here. And I believe that the Supreme Court decision indicated that it would be preferable to decentralize at-large districts to lower the number, not make them bigger. We haven't really changed the districts much over the system we have presently. I say that it would be beneficial for the people in our area to have two senators. Let one senator run every two years. And if he hasn't done his job, notwithstanding what a political candidate who would be taking advantage of a county matter whatever it is, not really telling the truth to the people in that area, notwithstanding that, the man who is qualified, the man who has done his job properly as a senator will be elected in a two-man senate district. And I say that this is a better system of the two that's being offered here tonight.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: Well, the time is getting late, so that I will make my remarks very brief and to the point. The previous delegate to the previous delegate had mentioned about the two representation of the senatorial district. Does then he believe that we should go back to the old system of the 4th and 5th Senatorial Districts. If they can get improvement over Delegate Ando's proposal, then we should put in a residence requirement within the proposal of A and B senatorial district and they all run at-large within that respective senatorial district. And I further believe to the outside island delegates here to this Convention, the honorable Fernandes represent the big island of Kauai by himself, then they go to Hawaii, they have three senators to represent a tremendous territory known as the Big Island for which I happen to have come from. Then we have the Valley Island of Maui that have only two senators to represent the whole island. Then why not integrate the whole island of Oahu and put in as many senators as proposed by this proposal from this committee and have them represent the entire island and I think so. When you disintegrated the 11th District to a point where the 11th District no longer even exists in the eyes of the proposal plan, then what happens to those 15,000 voters of the 11th District? I say to you, let this proposal be approved and I think it's a good proposal to modify what has been presented here today. You and I know who are running for office, know the high cost of running for office. It takes the mayor's

race \$100,000. It takes the councilman \$10,000. It can be hoped that you are able to afford it. There are other delegates who will expect to run for office. Even the smallest office or when the party put the assessment there's nothing left for you to consider whether you ought to run for office or not. And these are the conditions, why Delegate Ando's proposal has merit is that by dividing the four senators into two, you reduce the territory and you know when you reduce the senatorial area by two, which you're allowed four, then cutting such a senatorial district in half, you're bound to cut your expenses in half. This is the fundamental economics of campaigning today. And I believe that if you are delegates here who intend to run for office, and after the election you realize what I have been saying amounts to be the truth. And therefore, if we can reduce the cost by cutting up the senatorial district in two, then I say Delegate Ando has started something that is of very interest. It goes to the very root of the people. The more senators you have you might probably think it is easy approach but the smaller the area you create I think this will give a chance for the voters of that respective senatorial district an opportunity to sit down with their senators and their representatives. Why can't we cut down the representative districts to tiny pieces because the people need a voice in the government. And the only way to have a voice in government is to have a representative government by having an area that would fit the locality. And that's what happened to the 11th District. Thank you, Mr. Chairman.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I speak in support of the amendment. One of the previous speakers has mentioned about the election of a senator every two years. I don't think we are talking about elections. We're talking about representation. And with this kind of amendment—and we are going on the assumption that possibly all senators be elected every four years. The past few days have noted the physical cut-up of all the districts of the representatives. And I think this is only proper that we should look at the senators too. And I don't think this Convention should be the society for the preservation of senators. Thank you.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: I just wanted to make some brief remarks in favor of the amendment in view of the remarks of the president concerning the quality of the proposal. And he was speaking, if I understood him correctly, to the issue of multi-member districts rather than smaller districts. Multi-member, I mean, a large district of our as opposed to small districts of two. Now, we've heard that the Supreme Court has taken a position at variance with the U.S. District Court, but I don't think that we really faced what the Supreme Court said which was at variance with the District Court. The District Court, as we recall, said that

they preferred single senatorial districts so that they would approve two-member districts if the legislature can show a reason for it. The Supreme Court said there was no particular reason for single-member districts unless it could be shown that designedly or otherwise the multi-member constituency would operate to minimize or cancel out the voting strength of the ratio political elements of the voting population. Now, the matter of fact then is that the U.S. Supreme Court statement was that they did not feel that the District Court's position in support of single-member districts exclusively with a possible exception of huge governmental districts was right. They do impliedly say that they prefer smaller districts. That's the point I'm making. I can't see how you can read the opinion of that court without coming to the conclusion that they are saying that the smaller the district the better.

CHAIRMAN: Is there any other delegate who wishes to speak?

DELEGATE YOSHINAGA: Yes, Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: When everybody's all through I will have my one-man, one-district amendment but because it's a brand new style, it's taking a long time. But I have a lot of time so I assure you I'll give you a real nice districting program. That's when everybody's through here. I expect to have the same time everybody else has.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, may we have a short recess?

CHAIRMAN: Short recess is called.

At 10:18 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:48 o'clock p.m.

CHAIRMAN: Committee of the Whole, please come to order. The technicians have requested that the delegates check their microphones and turn them off if they're on and that they be a little more careful about turning them off after speaking. Thank you very much. The subject before the committee is Amendment III (26) presented by Delegate Ando. We have discussed it. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, the Committee on Legislative Apportionment and Districting held a meeting, as all delegates know, in the back of the gymnasium. We discussed our position and then we heard from Delegate Goemans who has proposed a similar senatorial district splitting amendment for the next senatorial district. I would like to give the delegates the committee's position. By a vote which was unanimous, with the exception of two kanaluas, the committee wishes to hold firm on its present plan. The

present plan, Mr. Chairman, consists of a carefully worked out scheme for the entire State of Hawaii. We realize that in a bicameral system, there ought to be some difference, if we can make one, between the type of people we're going to elect in terms of who they represent. We have studied the matter with some care. There are two theories of representation which we have given heed to. One is that a certain type of representation comes from smaller districts in which there is a close relationship between the representatives and a fairly homogeneous group of voters. And that another type of representation, Mr. Chairman, comes from much larger districts which are deliberately heterogeneous, which deliberately consist of people from various socio-economic backgrounds, from various other strata, and various other categories of things that make people want different things in their representatives in the legislature. The general feeling is, and I over-simplify it when I say that one who runs from such a large district has of necessity, had to appeal to a wide, disparate variety of people who want different things. The thought is, and we share it, that such a district and such a varied electorate is likely to produce a rather different type of person than will the smaller districts made up relatively speaking of people from the same socio-economic backgrounds. Now, our purpose was to produce a bicameral system which had as much meaning as district design could put into it. And by that we mean, our attempt was to produce a senate with one type of person, one type of representation, and a house that differed somewhat. One can go, where one can get too precise about the type of man which is likely to be elected and I don't intend to do that but I do intend to say that the larger districts do tend to produce a different type of representation, a different type of person who has a broader appeal, who has necessarily had to have a broader appeal, than the smaller districts. A fact recognized by many political scientists and by us. Our whole scheme for apportionment of the State, Mr. Chairman, was to maintain large senatorial districts electing four wherever possible and reducing that number only where we simply couldn't get the districts manufactured in a rational way. Our whole scheme also was to reduce the size of the house of representatives districts and we did that throughout the State. We believe that what we have now is a highly rational, carefully thought out plan. We think it's going to produce a continuation of the same high quality representation we've had in the past and the apportionment committee unanimously, except for the two "kanaluas" I mentioned, asks the delegates to vote with the committee and reject this amendment as well as the next one and all other amendments which will come up, if any of these pass, in trying to split other senatorial districts. Thank you.

CHAIRMAN: Delegate Goemans. Are you going to speak on the amendment?

DELEGATE GOEMANS: No, point of information directed to the committee chairman. As I understood the question as was put to the committee, it was a matter of whether the committee favored a concept of a multi-member district composed of four senators for the Island of Oahu or multi-member districts composed

of less than that, specifically two, in the case of the 6th District in its discussion. Is my understanding correct?

DELEGATE SCHULZE: I'm not sure I understand the thrust of the question. Since—

DELEGATE GOEMANS: Let me rephrase it. As you phrased it, I thought there might be some misunderstanding on my part as to exactly what was put to the committee. It appeared to me that the matter put to the committee is whether the committee favor the concept of having multi-member districts composed of four rather than reducing—

DELEGATE SUTTON: Mr. Chairman, point of order. Point of order.

CHAIRMAN: Delegate Sutton. State your point, please.

DELEGATE SUTTON: This gentleman should address his question to the Chair, not to the individual.

CHAIRMAN: The point is well taken. Delegate Goemans, you may continue.

DELEGATE GOEMANS: Would you ask the chairman if I should rephrase that?

CHAIRMAN: Delegate Schulze, when you have the opportunity, would you answer the question please.

DELEGATE SCHULZE: I shall indeed, Mr. Chairman. Mr. Chairman, the question was put to the committee before Delegate Goemans arrived there and was discussed with the committee before then. Therefore, I can understand why he would not know what precisely what question it was. The question was, "Shall we retain the present structure as we have carefully designed it in committee or shall we go along with this or any other amendments to see four-member senatorial districts split into two and two?" The answer, I've already given you.

CHAIRMAN: Thank you. Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, if I could say a few words in response to the points made by the chairman of the committee. I believe that it would be proper to say that all of the reasoning expressed by the chairman regarding the need for four-member districts also applies to two-member senate districts which are composed of small representative districts. In other words, where the chairman takes the position that it's necessary or desirable to have a multi-member senate district which is larger than its component representative districts, for certain reasons, that those reasons also would apply, although perhaps with somewhat less effect, to having a two-member senate district which was larger than its component representative district. In other words, the constituency of a senator would be a larger constituency whether he had a two-member district or he had a four-member district. What we're doing is getting down to a body judgment as to

whether it is better to have a four-member district or whether to have a two-member district. We're not going to value judgment about whether senators should represent a larger constituency than a representative because under a two-member or four-member district, they will represent a larger constituency. In other words, it boils down to, I think then, what each one of us decides is the optimum size of the constituency for a senator. Assuming that we agree with the committee that a senator should represent a larger area. Now there are arguments and I'm sure we'll hear them. As to why a senator should represent as small an area as is practicable. Maybe the senators are going to feel that it's better for a senator to represent fewer people, represent a smaller district. All this we accept the proposition that a senator should have a larger constituency than a representative. And those who feel that way will be in favor therefore of having two-member senate districts in the 6th or 7th or wherever we're talking about as opposed to four-member districts. In other words, some of us will want to have our cake and eat it too. It's a value judgment. I don't think we're talking about throwing off a well-conceived, well-constructed edifice coming down as a house of cards. It's just a matter of very easy division along existing lines depending on how this body makes its determination of the optimum size of senate districts, granting the fact that perhaps it is desirable to have senators represent a larger constituency than representatives.

CHAIRMAN: Thank you. Delegate Hasegawa.

DELEGATE HASEGAWA: Mr. Chairman, I rise to speak against the amendment. I live in Manoa. I am concerned with this issue. My constituents elected me to this Convention to perform a certain responsibility. This amendment resolves into this issue, whether Manoa district shall be represented by four voices in the senate or two. Or whether because the need of a closer relationship and feasibility and accountability we should reduce that representation of four to two. I feel the constituents will agree with me that it is more important to have four voices in the senate than two. The area is small enough to provide the closer relationship of feasibility and accountability and I can vote no other way but vote for four representatives in the senate. Thank you.

DELEGATE SUWA: Mr. Chairman.

CHAIRMAN: Delegate Suwa.

DELEGATE SUWA: Mr. Chairman, the next vote will be an important vote. I suggest that we should rather be scientific. I suggest that we ought to take a back test, also known as the balloon test. Thank you, Mr. Chairman.

CHAIRMAN: Thank you. If there's no other debate, I believe Delegate Ando wishes to close. One moment.

DELEGATE KAGEYAMA: Before we proceed to vote, I want to ask—

CHAIRMAN: Delegate Kageyama is recognized.

DELEGATE KAGEYAMA: —the chairman of this committee and fortunately he happens to be the attorney in my profession, the president and the vice-chairman. As you stated in your arguments, that Criteria No. 5 is to separate as much as possible that provision to which require social and economic status. Was that provision one of the Supreme Court requirements in making this reapportionment as was stated by the decision of this Supreme Court? And I feel among the delegates there are about 20 or 22 attorneys for which probably their knowledge of the Supreme Court decision supersedes many of the other delegates who are nonprofessionally attorneys. And I am one of those.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I just want to make a slight correction. Twenty-two attorneys do not have superior knowledge of the U.S. Supreme Court's decision. I think it's the other way around.

CHAIRMAN: Thank you for the information. Delegate Kageyama.

DELEGATE KAGEYAMA: Well, I thought I'd give them a little credit where credit was probably due and say that—

DELEGATE YOSHINAGA: Mr. Chairman, I don't mind credit going where it's due but I object to its going where it's undue.

DELEGATE KAGEYAMA: Well, any attorney who does not know his profession should not be qualified.

CHAIRMAN: Gentlemen, the hour is late and I think that we should continue debate and put this question to a vote.

DELEGATE KAGEYAMA: Yes, Mr. Chairman, the question proposed is under a social and economic status. The members—"by a homogeneous group your committee means a group. The members of which are alike in the social and economic status." Continue on the next page: "Where a socio-economic group of people cannot, by reason of number or otherwise, be a district by itself, it should have at least a fighting chance." Are we creating a class under the legislature to be elected by the people? I thought those days were gone but it appears to be the have-nots and have to be elected to the legislature so the have-nots will fight the haves and the haves will fight the have-nots. I think that is one of the craziest types of a criteria and I'd like to have an answer from the chairman of that committee whether that was a major factor in putting up the four-senatorial district as they have done in representative district, Mr. Chairman.

CHAIRMAN: Have you concluded your remarks?

DELEGATE KAGEYAMA: No, that is a question proposed to you to have the chairman of the committee answer this question. Whether that has been the great factor which the Supreme Court did or did not have in its requirement of reapportionment. Delegate Schulze—

DELEGATE FASI: Mr. Chairman, point of information.

CHAIRMAN: State your point.

DELEGATE FASI: I don't believe I caught the question.

CHAIRMAN: I believe the committee chairman did. Perhaps the answer will give you—

DELEGATE KAGEYAMA: I will be happy to repeat the question, Mr. Chairman.

CHAIRMAN: I don't think that would be necessary. Delegate Schulze will be recognized.

DELEGATE SCHULZE: Mr. Chairman, the answer to the question is no.

CHAIRMAN: Thank you.

DELEGATE KAGEYAMA: If the answer is "no," Mr. Chairman, then why was that fifth criteria used? That is the social and economic, whatever the word is here, status. Where did it appear from? Was it the creation of the committee to make that as one of the big factors of criteria?

CHAIRMAN: Delegate Schulze, can you enlighten the body as to why the socio-economic criteria was used?

DELEGATE SCHULZE: Mr. Chairman, most of the efforts by the Supreme Court have been to require a compliance with minimum variances in numbers. The committee went a good deal further and tried to effectuate wherever possible throughout the State effective representation, going further than mere numerical representation. For that reason, it adopted several criteria which are not strictly required by Supreme Court decisions but which are based upon the same type of reason and same type of underlying motive that the Supreme Court had.

DELEGATE KAGEYAMA: Mr. Chairman, although I am not happy with the answer, which I don't understand the answer, therefore for the purpose of saving time, I will sit down and continue the vote. Thank you.

CHAIRMAN: Thank you.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: I would like to ask for a five-minute recess.

CHAIRMAN: A five-minute recess is granted.

At 11:07 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:13 o'clock p.m.

CHAIRMAN: Committee of the Whole, please come to order.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: I was going to sit here and say nothing about this amendment but I'm forced to take a position against the standing committee report and support the amendment proposed by Delegate Ando. I'm concerned with the remarks made by Delegate Kageyama and I turned to page 28 of the standing committee report. And I find the following: "Where a socio-economic group of people cannot, by reason of its number or otherwise, be a district by itself, it should have at least a fighting chance to compete with other socio-economic groups in the same district in selecting a legislator." I believe this is what Kageyama was trying to bring to the attention of the members of this Convention by his illustration of those who have and those who have not. And it seems to me that the statement as contained in page 28 reflects to the very essence with the statement made by Delegate Kageyama, where the have-nots are fighting the haves. It is my understanding, upon reading the statement, the definition, the purpose and intent, that the committee, when the committee starts off saying, "The submergence of small areas of groups within larger districts where substantially different socio-economic interests predominate is to be avoided," it seems to me that they're beginning to double-talk in this area. I mean to the area of the proposal of the senate composition that this stands strong in support of. It seems to me the committee sought to avoid clear cases in one socio-economic grouping disadvantaged by reason of its placement in the district in which another socio-economic class heavily predominate. I'm sure the committee's expressions to be true in intent and purpose, and one of a dedicated purpose. I do not find that the application of this dedicated purpose is a true intent of the committee in justifying their position in support of their proposal of the senate composition. I read further: "Districts may not be so drawn as to unduly favor one person." But my interest is on political faction. Even if a blind person listen to all the particular blind person listening to all the arguments that have been presented, in favor of the amendment and therefore presented arguments in favor of the committee's proposal, can ever deny the fact that this is favoring one political faction as against another. So that it comes right back to the essence of the remark made by Delegate Kageyama where the have-nots are righting those that have plenty. Is this the reflection of the committee in their statement of intended dedicated purpose and the intent in the support of the proposal of the senate composition? If it is so, then the

intention of the committee, as stated by the chairman and those who support the chairman, that the committee is trying to arrive at a reasonable and fair basis in the presentation of the reapportionment plan. I hope that it is true that they are trying to arrive at a reasonable and fair and acceptable plan. But how can they say that their plan is reasonable, fair and acceptable when this statement of contradictory purposes, where a socio-economic group of people cannot, by reason of its number of otherwise be a district of itself and should have at least a fighting chance when they say at least have a fighting chance. I'm sure the proposer of this amendment in his submission of his amendment at least, should have at least a fighting chance. Perhaps these are the have-nots that are trying to have a fair and a just fighting chance against those who have, taking a contradictory or alternative position as against the committee's proposal. If this be true, in a republican form of government, then Lord help us, because the expression as contained in the committee report on page 28 certainly doesn't carry out, to my opinion, to my judgment, a true expression of a fair and reasonable approach to the senate composition. I'm beginning to wonder whether we are trying to work in an area that provides an unhealthy situation here. So that we can begin to look back to the days when everyone was being suspected as trying to create a breakthrough by other ideology system. Perhaps this statement leads me to believe that this is what the committee is trying to do. Therefore, I favor the amendment.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I rise to speak against the amendment, and for the committee proposal. There is no doubt in my mind that one of the reasons for the proposal of this amendment is the belief that in future elections, it will favor the Democratic party. I happen to be a Democrat and—

DELEGATE YOSHINAGA: I agree with Mr. Dodge.

DELEGATE DODGE: I happen to be a Democrat and if I were to vote my partisan persuasion I suppose I should vote for the amendment. But I wasn't elected as a Democrat, I was elected as a nonpartisan and I think it's wrong in principle to vote for what appears today to be something of advantage to one political party over the other.

I was an observer at the 1950 Constitutional Convention and it was my impression that those in the majority in that Convention split the old traditional boundary lines between the two senatorial districts on Oahu which used to run up Nuuanu Valley over the Pali to Makapuu Point. When they split that and moved it up to the Pali and out to Makapuu Point to bring Lanikai and Kailua into the growing Democratic, I think they call it the 5th District, I think one of the reasons of the proponent for that amendment was to favor the Republican party. I think it was in the minds of some of those delegates that the 4th District could lose those Republican votes because it was going to remain Republican anyway. Their crystal ball wasn't very clear

as later developments have shown. I don't think any of us should vote today or on this amendment for what it might do or what it might not do to a political party. I think the principle that ought to guide us is the principle so well pronounced by the chairman of the committee. That there is a very definite reason for large senatorial districts. There is a very definite difference between those reasons and the reasons which prompted the committee to select smaller representative districts, of different characters. And I think that if we vote in favor of this amendment, we'll be doing the people that elected us a disservice. Because I think we'll be voting in a partisan way and not in a nonpartisan way.

CHAIRMAN: Delegate Ando. I'd like to call on Delegate Ando to close the debate. Has anyone else spoken who wants to speak? Thank you. Delegate Ando.

DELEGATE ANDO: Thank you, Mr. Chairman. It was quite illuminating to hear the delegate from Manoa say that they hope to and intend to keep four senators from Manoa. This is one of the problems of the 6th District. The chairman of the committee stated that the senatorial districting plan is a carefully worked out scheme. I do not disagree. That it is a deliberately heterogeneous with the various strata in each of the senatorial districts. And I say, Mr. Chairman, that there is this saying, "heterogeneous characteristics" in the amendment I proposed in the two districts because there is that strata of people in Moiliili and there is that strata of people in Round Top and the upper Manoa group. And there is that strata from McCully and Kakaako and there is that strata from Diamond Head in the group below the freeway. They say that the districting is to be a large senatorial district scheme but the facts are that there are only four of eight senatorial districts with four members. The issue of two or three or four members, Mr. Chairman, is a policy decision that ought to be made by this committee, by this Convention rather than by the committee. It's an issue that we are faced with at this point. So I conclude, Mr. Chairman, with a plea, for the opportunity to have representation in the senate starting in 1970 for the citizens who live below the freeway, the new and distinct socio-economic line of demarcation, as it's been called in certain various ways this evening. So I beg of you, Mr. Chairman, and all the delegates, not merely to vote your commitment but your conscience on an issue that means real representation for the men and women who have long needed representation in the senate. Thank you.

CHAIRMAN: Thank you. The Chair will call for a vote. The question before the house is the amendment proposed by Delegate Ando marked III (26).

DELEGATE ANDO: May I request a roll call vote, sir?

CHAIRMAN: Are there ten people who wish a roll call vote? I believe there are ten. The clerk will please call the roll.

(Roll call having been ordered, the motion to adopt the amendment was put by the Chair and failed to

carry by a vote of 26 ayes and 48 noes, with Delegates Aduja, Ajifu, Alcon, Amaral, Ansai, Ariyoshi, Chang, Donald Ching, Devereux, Dodge, Dyer, Fernandes, Hansen, Hara, Harper, Hasegawa, Hitch, Jaquette, Kage, Kawasaki, Kunimura, Larson, Rhoda Lewis, Frank Loo, George Loo, Lum, Matsumoto, Menor, Morioka, Nakatani, O'Connor, Pyo, Saiki, Schulze, Shügi, Souza, Steiner, Sutton, Taira, Takahashi, Takamine, Ueoka, Ushijima, Wright, Yoshinaga, Young, Mr. President and Mr. Chairman voting no; and 8 excused, with Delegates Amano, Hung Wo Ching, Hidalgo, Kaapu, Kato, Lalakea, Oda and Ozaki being excused.)

CHAIRMAN: The motion has failed.

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Bacon.

DELEGATE BACON: May I ask what the plans are for this evening as the time is getting late and I usually turn into a pumpkin at midnight and I would like to find out.

CHAIRMAN: I believe there may be—is there another amendment on this district? Is there another amendment concerning this senatorial district?

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze is recognized.

DELEGATE SCHULZE: I believe there is not. The other amendment concerning this district was withdrawn. I believe there is only one amendment left before we're finished with the districting of all the islands. And that's with the remaining senate amendment to split the next senatorial district.

CHAIRMAN: Thank you. Delegate Bacon, the Chair will rule that we will see what's before the house as far as the next senatorial district is concerned. If it appears that this issue can be settled this evening we will continue. We will try to be finished before midnight. If there is no further discussion or there are no amendments pertinent to the 6th Senatorial District—Delegate Goemans, do you rise for this purpose, for this 6th Senatorial District?

DELEGATE GOEMANS: No.

CHAIRMAN: There are none, the Chair will rule that consideration of that matter is concluded and we'll open the subject of the 7th Senatorial District. And will recognize Delegate Goemans.

DELEGATE GOEMANS: I have an amendment, Mr. Chairman, the number of which I couldn't find on the desk, the effect of which is to divide the 7th Senatorial District into two double-member senate districts, composed of the existing 10th and that half of the 11th District that is in the 7th as one and the—

CHAIRMAN: Delegate Goemans, would you like to come to the map and point out where the division is,

please?

DELEGATE GOEMANS: Good. The 10th Representative District on this plan, Palolo, this portion of the 11th District composed of Kapahulu and Kaimuki which is now in the 7th District is to be one district. The entire 9th Precinct and the entire 8th Precinct to be one district.

CHAIRMAN: Delegate Goemans, I believe you're referring to representative districts rather than precincts?

DELEGATE GOEMANS: I am. The entire 9th Representative District and the entire 8th Representative District.

Now, my position in submitting this amendment, and I believe I speak for the incumbent representatives of the 16th District which roughly approximate this area is to affect a correction of a possible gross error on our part. I believe that there are arguments in favor of four-man districts, there are arguments in favor of single-member senate districts, arguments in favor of senatorial districts that follow single representative lines, contrary to districts that include more than one representative district. All those arguments notwithstanding, I see the issue here to be unique in that of all the three urban senatorial districts under this plan for the State of Hawaii, this is the largest. Of the three urban senatorial districts presented under this plan, this is the fastest growing area. Of the three urban senatorial districts presented under this plan, this is the only senatorial district that is susceptible of a rational division. And most importantly, of the three urban senatorial districts presented under this plan, this is the district that dictates, indeed, that cries out for division. The reason I say that is because there is, following this line roughly, a clear demarcation as to community interest. And I think we all can see it. We have Palolo, Kapahulu, Kaimuki, the western half of the district. We have Kahala, Maunalani Heights, Wailupe Circle, Hawaii Kai, Niu Valley representing exactly the eastern half of the district. This is a static area. The growth rate is very low. This is an extremely fast growing area. Between the years of 1960 and 1966, this district roughly grew by 45%. There's no reason to suppose it's not going to go by that, between now and 1974. This district grew hardly at all according to registered voters. This district is an old district. Its problems are the problems of an old district. This district is a new district. Its problems are the problems of a burgeoning and a growing district. These figures that we are working on now are based on census figures of 1966 which show that half the vote is on this side, half the vote is on this side. I submit that we're not talking about whether this fast-growing area out here in the future wears off in the submergence of this whole area. We are talking about figures that are presently out of whack. There's a 700-voter increase in this precinct alone. Of the existing senators, only one presently comes from this area. Came in second in the last election winning by only 800 votes. The number-one man who came from this area won by 4,000 votes. Clearly, the growth and population in this area is going to work to the net detriment of the chances of electing

a senator from this area. We're not talking then about submerging socio-economic groups. We're talking about effectively denying the chances of representation to a whole community, indeed three whole communities. Palolo, Kapahulu, Kaimuki. And that's the essence of the problem.

Now then, the committee has recommended that the fair Island of Oahu we must have four-member senatorial districts. Why must we have four-member senatorial districts? They say we must have four-member senatorial districts because a senator must represent a larger constituency than a representative. Why? Why not have a two-member district to represent one and a half in this case? Two in this case, representative districts. We meet the same—we solve the same problems in terms of having a larger constituency. What's magic about the number four? Why should we vote now to deny this area, this unique area relative to this, effective representation just because we have decided in the committee that we be stuck with four-member senatorial districts? I submit and I ask this body to vote on the proposition that there is no magic in four-member senatorial districts. That under certain circumstances, two-member senatorial districts meet the problems that we want to meet and meet the problems of having a different constituency and at the same time can meet the problem of submerging a very large area. I recognize that there are, certainly in these areas where four members are proposed, they're already submerged. That's inevitable. And I'm very sympathetic to that problem. Perhaps we should allow two-member districts. Perhaps not. But I say this is unique in that it is susceptible to a rational division, it is susceptible to division along the lines that will take one socio-economic group, the older, static, largely lower-income area as opposed to the dynamic, newer upper-income area. The line of demarcation is clear. There is no submergency in here. We have had submergency within the two districts here. Diamond Head, for one, will be submerged down here. This part of McCully would be submerged up here. That cannot be said in this case. There is no submergency. This is a rational line. Then, why should we take four members as being doubtful. Why in the world, if it is possible, if we do recognize the fair distinct areas here and here, and it is desirable not to submerge distinct areas, and it is possible to make the rational division, and if possible make the division where there are no submerged minorities within the divided areas, why can we not then ask for two members if we choose? All I'm asking for, then, from this body is that they take a position counter to the position of the committee. That they recognize that the committee's position is essentially illogical when they say we must have four-member senate districts. I'll buy it if they want to take the position that senate districts should be larger than representative districts. There is a considerable amount of logic to that. But to say it has to be four-member senatorial districts just cannot be sustained and there's no logic in it. It is truly arbitrary. Therefore, I request a vote in favor of this amendment.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Same comment.

CHAIRMAN: Any other—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Yes, I have a question to ask. No matter what time we finish, tonight or tomorrow morning, is the Committee on Style meeting at 7:30 a.m. tomorrow?

CHAIRMAN: The committee chairman indicates no.

DELEGATE YOSHINAGA: No? No to what?

CHAIRMAN: Not at 7:30. We'll ask him for an announcement shortly.

DELEGATE YOSHINAGA: Oh, no meeting.

CHAIRMAN: One moment, please. The Chair will recognize Delegate Ando. Would you like to make an announcement about your Style Committee meeting tomorrow morning?

DELEGATE ANDO: Mr. Chairman, we're so close to 12, as I said earlier this afternoon, we will not have a meeting at 7:30. We might have one later in the day.

DELEGATE YOSHINAGA: No meeting. Otherwise, I was going to have a lot of questions to ask of Delegate Goemans but that's all right.

DELEGATE DOI: Mr. Chairman, this may be only one voice, but I'd like to express it. Few days ago, the president of this Convention warned and gave notice to this body that we were to work last night. We did not. I'm from the neighbor islands. We sit around not knowing what to do because this question of districting has not been settled. And I'm not against a full hearing, Mr. Chairman, but the way this has dragged, Mr. Chairman, 12 o'clock is not a magic hour. I think we ought to go on and finish this particular committee recommendation and the proposal tonight. The danger here, Mr. Chairman, if you give until tomorrow morning, we're going to see another five more proposals.

CHAIRMAN: Are there any other delegates who would like to speak on the amendment that is proposed?

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I have nothing really to add for the committee's position. This district is no different from the last ones so far as the committee is concerned. Senatorial districts should be large, should be heterogeneous, should not be cut directly along socio-economic or partisan party lines. We feel this amendment would be equally destructive to the whole scheme as the last one and we ask the delegates to vote

against it.

CHAIRMAN: If the body is ready to rule on this matter—

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: I do concur with the honorable Delegate Doi and if the legality of stopping this clock is in order, then I think it's in order to express my opinion that we should continue till early morning.

CHAIRMAN: I think that the scheduling will be discussed after this present subject has been voted upon. Are we ready for the question? The question before us is the amendment proposed by Delegate Goemans marked III (16), I believe it is, and it reads as follows:

“Section 22 of the transitional provisions as set forth in Committee Proposal No. 12 is amended by: (1) deleting the description of the Seventh Senatorial District and the senators allocated to this district, and substituting in lieu thereof, the following descriptions and allocations of senators:

Seventh Senatorial District:

That portion of the Island of Oahu consisting of the Tenth Representative District and that portion of the Eleventh Representative District lying east of Kapahulu Avenue, two senators;

Eighth Senatorial District:

That portion of the Island of Oahu consisting of the Eighth and Ninth Representative Districts, two senators; (2) redesignating Eighth Senatorial District (Kauai) to read Ninth Senatorial District.”

Will a standing vote suffice? Delegate Goemans, we don't have a motion recorded.

DELEGATE GOEMANS: So move.

CHAIRMAN: Is there anyone to second? Delegate Beppu has seconded the motion. Will a standing vote suffice in the interest of time?

DELEGATE GOEMANS: I moved and seconded it, if you want a show of hands—

CHAIRMAN: No, the question is whether—

DELEGATE GOEMANS: Roll call. My motion was for a roll call.

CHAIRMAN: You want a roll call. Are there ten delegates who wish a roll call? The clerk will call the roll.

(Roll call having been ordered the motion to adopt the amendment offered by Delegate Goemans was put

by the Chair and failed to carry by a vote of 27 ayes and 47 noes, with Delegates Aduja, Ajifu, Alcon, Amaral, Ansai, Ariyoshi, Burgess, Chang, Donald Ching, Devereux, Dodge, Dyer, Hansen, Hara, Harper, Hasegawa, Hitch, Jaquette, Kage, Kunimura, Rhoda Lewis, Frank Loo, George Loo, Lum, Matsumoto, Menor, Morioka, Nakatani, O'Connor, Pyo, Saiki, Schulze, Shiigi, Souza, Steiner, Sutton, Suwa, Taira, Takahashi, Takamine, Ueoka, Ushijima, Wright, Yoshinaga, Young and Mr. President voting no; and 8 excused, with Delegates Amano, Hung Wo Ching, Hidalgo, Kaapu, Kato, Lalakea, Oda and Ozaki being excused.)

CHAIRMAN: The motion is lost. The Chair will declare a very brief recess to discuss the schedule with the president.

At 11:50 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:56 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The Chair will recognize Delegate Schulze for the purpose of renewing his motion to approve Section—or to make a motion to approve Sections 22 and 23 of Article XVI as amended.

DELEGATE SCHULZE: Mr. Chairman, we renew our motion to approve Sections 22 and 23 of Article XVI, the transitional provisions. These sections are the descriptions of the districts.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: I second the motion.

CHAIRMAN: You've heard the motion and the second. Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I'm sure the motion includes the amendments adopted by the Committee of the Whole.

CHAIRMAN: As amended, correct. All those in favor of the question will say “aye.” Opposed, “no.” The motion is carried.

The Chair will recognize Delegate Schulze for the purpose of making a motion to rise and report progress and ask leave to sit again.

DELEGATE SCHULZE: Mr. Chairman, I move that we rise, refer to the Convention our progress and we'll ask leave to sit again.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, I second that motion.

CHAIRMAN: All those in favor of the motion say "aye." Opposed, "no." Motion is carried.

The Committee of the Whole adjourned at 11:58 o'clock p.m.

Saturday, September 14, 1968 • Morning Session

The Committee of the Whole was called to order at 10:06 o'clock a.m.

Delegate Bryan presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order.

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze, I believe the next order of business is the continuance in office of senators, Section I, Article XVI, is that correct?

DELEGATE SCHULZE: Yes, Section 21 of Article XVI, Mr. Chairman. It is the continuance in office of senators who will be elected at the 1968 general elections upon reapportionment. I ask that the Committee of the Whole consider Section 21 as the next order of business. I also ask for a short recess.

CHAIRMAN: A brief recess is granted.

At 10:06 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:55 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order. In view of the large number of proposed amendments in the area of continuance in office of senators, powers of the reapportioning commission and other matters that tie in with this, the Legislative Apportionment Committee has a new position on this. This position will affect several articles that are interdependent or sections that are interdependent and therefore I believe that the committee chairman has a proposal to make which would allow us to determine the will of the body as far as the concept is concerned and the language might be drawn up during the noon hour. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, there are presently existing five amendments which have been proposed cutting across the area of staggered terms. And there are also two transitional provisions and one constitutional provision in Article III, all of which go to the same subject.

As the proposal presently reads, Mr. Chairman, the senators presently in office, the senators elected in the 1968 general election for four-year terms would continue in office and would be allocated in 1970 to the same senatorial districts that they were originally elected from even though in two cases those districts

were changed—actually three cases. The remainder of our proposal, in providing for the future also provides that the commission, when it reapportions, as we have it now, every six years would provide for the retention of incumbent senators in office for the balance of their two years. This was a somewhat troublesome provision to write. It was difficult to give that kind of power to the commission without putting some restrictions on them and yet it was very difficult to put restrictions on them which made a great deal of sense. Nevertheless, we provided in the provisions in Section 4.7 that the commission would have the power to simply determine where incumbent senators would serve out their last two years in the event their districts have been changed.

We've now had a meeting at some length on this question, Mr. Chairman, and I would say that the committee did not consider the topic of holdover senators before at any great length or in depth. The matter was simply disposed of by assuming that that's what was now and there seemed to be no great push for a change. This morning at our meeting, the view was taken by the committee that the problems, I will let others in the committee who advanced these views explain them more thoroughly than I, but the committee has taken the position that the senators elected in the 1968 elections should serve for two years, that in 1970 four-year elections should be held and from that time on, all senators should run at the same time and should be elected for full four-year terms every time they run.

The feeling is that if this is adopted by the Convention, we will then also move to change our reapportionment periods from six years to eight years in order to permit a dovetailing so that every time a reapportionment takes place it will be done just before general election at which all house and senate members will be elected.

Mr. Chairman, I am not going to act as committee advocate of this issue. There are others who advocated it before the committee and I will yield to them to do so. I will say simply that we have asked that the matter be handled as a concept because there are three or four changes required. I would like to handle them all at once without the technical problems of battling out an amendment here, an amendment there. The time-consuming way of doing it would be that way and I think the easier way would be to handle it all in one lump this way and to adjust the provisions accordingly depending upon the vote and the decision of this body. I will say this, the vote of the committee on the position I have just described this morning was fifteen in favor, four kanaluas. Thank you, Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak in favor of the concept. Mr. Chairman, the present situation in the State of Hawaii is one in which the senate is elected on staggered terms, one senator or two senators from a district being elected for four-year terms and two years later two more senators being elected for a four-year term. The reason given for this

type of senatorial election is to provide first of all holdover senators to allow in the senate a continuity of political experience, stability and thought and further, a second reason, to allow a continuation in policy in the body in the legislature which should provide that policy. Mr. Chairman, the majority of your committee now suggest that those historical reasons for providing staggered terms in a senate are no longer valid. And particularly they are no longer valid in the State of Hawaii. Any continuity which is necessary in the legislature as a whole, and we are now and have been talking about a bicameral body in the State of Hawaii, will be provided by allowing longer terms in one of the two chambers as compared to the other chamber. That chamber of course being the senate and it is our proposal they be elected for four years and the house be elected for two years. The necessity for providing continuity in policy has long since evaporated and today we are faced with a modern legislature, a body which is dynamic, changing for the future and has changed in the State of Hawaii since 1954 considerably.

Your committee, when this matter first came up, took as one of its assumptions, and this is the reason this change has come so late to the floor, took as one of its assumptions the fact that staggered terms in the senate would be retained. We did not really even debate the matter. We didn't consider some of the possible ramifications. Some of the ramifications came to light when constitutional language was attempted to be drafted to retain in the future with a districting and reapportionment commission the staggered terms.

And Mr. Chairman, this is the situation we will be faced with in the future Hawaii. We will be faced with a commission constituted as per the decisions that we make today. Districting and apportioning the State and simultaneously someone, if we retain staggered terms, must decide what to do with the incumbent senators who will be retained for a two-year period each time there is redistricting. It is absolutely ridiculous to say that every time the State is reapportioned in the future and we are now advocating, we were advocating six years, I think the committee will advocate eight years if the change on the staggered-term situation is adopted. But if we are to say that every time the State is redistricted and reapportioned there should be a completely new election of both houses, then in essence, Mr. Chairman, we are simply doing what we are advocating here today because we will be re-electing the entire senate every six years. Further, from a very technical standpoint, in order to meet the situation of the incumbent senators, your committee had to adopt language which allowed the commission to decide where the incumbent senators would go on redistricting. And Mr. Chairman, I think this is the hardest thing to swallow because then the future of the senate depends on your redistricting commission and some of the philosophies which we have adopted here in this Convention may not hold in the future. There may someday in Hawaii be a need to change senatorial districts. Maybe some of the arguments which have been advocated here might someday in Hawaii be adopted, might someday in Hawaii be more relevant than they are today and if that be so, then we are putting into

the hands of nine men the ability to redistrict, reapportion, and to physically relocate all of the incumbent senators.

There may be a time, and I hope this does not occur, but there may be a time when a senator may have to be shifted from one of the other islands to Oahu again. And if that be so, this redistricting commission would physically take Senator Smith and move him to represent Waialae-Kahala from Hilo. And I would suggest, Mr. Chairman, that this is a situation which we should not create, we should not be faced with, we should not build into our Constitution. The simple, practical, obvious means of handling this entire situation is to do away with staggered terms in the senate, to elect the senators every four years as a body and allow for continuity in our bicameral legislature by having the senatorial term for four years and the house term for two years.

Therefore, Mr. Chairman, for this and other reasons which will be advocated by other committee speakers, your committee now feels that this concept should be adopted by this body. Thank you.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Mr. Chairman, first of all, I wish to apologize to the members of the Committee on Legislative Apportionment and Districting and to the delegates here for presenting this amendment at this time. I speak only because I have presented the amendment. The only reason I have brought this matter forth at this time is: one, I think it's a matter of conscience for me to present this to this body. Two, because of some of the changes that have taken place by this body since the recommendation of the committee. Also because of the fact that since 1964, changes have taken place besides the acts that we are concerned with here.

Very briefly, in 1964, your Supreme Court determined that there was malapportionment in the several states of the United States. In Hawaii, therefore, in 1965, the legislature felt the senate should be reapportioned and through Act 281 a provisional senate plan was approved which later was approved by all of the official bodies. Then in 1966, the Con-Con call was placed on the ballot and the people agreed to have this Convention, one of the major reasons being for the reapportionment not only of the senate but of the house. However, in 1967, the legislature again re-enacted the same senate plan as provided for in Act 281 in 1965. There was only one difference between the 1965 act and the 1967 act. The 1965 act, Act 281, under which the senate candidates are now running, provided that their terms would be provisional until a constitutional amendment or revision was adopted, which means in effect that those running under the act in this year 1968 face the possibility of a two-year term or a four-year term. However, in the 1967 act, Senate Bill 1102 which is what we have considered here, also because this plan will also go before the people for ratification, that act made one minor amendment, adopted the reapportionment plan except that it

provided the term of those elected would be under permanent plan meaning four years.

But now this is the year 1968, the year that the Convention and many things have happened, so that in my mind, the 1967 plan is not as valid as it was in 1967. For example, we have made drastic changes in the house of representatives which was not true in 1967. New districts have appeared. New candidates will be running in 1970. Old candidates may be left home. I hope not. We are going to ask the voters to grant the 18-year-old the right to vote. We are going to ask the voters to allow the 20-year-old to qualify for the house or the senate. We are going to allow the so-called "illiterate" to vote. We are going to allow the so-called "felon" to vote. With all of this kind of change, it seems to me that we have a responsibility here to provide for a reapportionment and redistricting plan that is 100% reapportionment and redistricting. If we permit those elected in the senate in 1968 to hold over for four years, this will mean that in 1970 those who vote, the 18-year-old, alleged felons, the illiterate and those who run, the 20-year-old, will be in effect participating in a partial reapportionment plan for we have preempted eleven people that the 18-year-old will not be able to vote for, the 20-year-old will not be running for those eleven offices and the other voters will not be voting for an entirely new body of 25 senators and 51 representatives.

The only reason I asked for a change in the committee proposal on the reapportionment period of six years to eight years is to fit in with the senate term of four years, two four-year terms being eight years, as explained by Delegate O'Connor. The major reason I feel is that by doing this, by eliminating the overlapping of terms, staggering of terms, we in effect are disposing of the most difficult problem we have, of what happens with the holdovers. As Delegate O'Connor explained, under the original committee proposal, the holdovers, because the senate districts may be reapportioned, would be or might be representing people who did not vote for them and they would be not representing people who had voted for them.

It seems to me that this is the simplest manner of handling this entire problem so that the voters will determine which senators represent which people and not the commissioners. I think that Delegate O'Connor has adequately, at least more certainly eloquently than I can or am doing, explained the four-year terms, the eight-year reapportionment and the arguments for and against the staggered holdover term.

So before I close, I just want to make it clear, I have malice toward nobody and I apologize if I caused any inconvenience but I do feel that the proposal I made is in the best interest of all of the Convention delegates, all of the people whether they are nonvoters or whether they are voters or are new candidates running for office. Thank you very much for your indulgence.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, may I rise on a point of parliamentary inquiry to the chairman of the committee or either proponent of this plan.

I'm curious as to whether the majority of the committee members agree with the contention that was raised just now that the people, if the provisions that we are proposing to them that the 18-year-old be allowed to vote and the 20-year-olds be allowed to run, whether this proposal was agreed to by the majority of the members of the committee that they should be given the opportunity to participate in the election of all 25 senators or run for a senate seat.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the committee was not asked its reasons for its vote. This reasoning given to you by Delegate Yoshinaga was also given to them. Other reasoning was given to them by other members and they took their vote. We didn't know what caused them to vote as they did.

DELEGATE DONALD CHING: Then, Mr. Chairman, may I raise another question to either proponent of this proposition. If this is carried to the nth degree, then shouldn't we, in our transitional provisions, call for a special election where all 76 legislators, if the two provisions are passed calling for the 18-year-old vote and the 20-year-old qualification to run, call for a special election immediately after this Constitution is adopted by the people in 1968 so that to truly carry out the intent as the proponent has raised that everyone will have a chance to participate immediately after this constitutional amendment is adopted by the people of the State?

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: I think the answer to Delegate Ching's question is that he is putting too much of an undue emphasis on two facets of argument to this overall scheme. The basic reasons are many for this proposal. Those two reasons advocated by Delegate Yoshinaga were his, have not been argued against and he feels are sound ones. These were not the only reasons for which this concept is advocated and I think that you're putting too much emphasis on it and that obviously the committee does not advocate a special election nor was anything ever mentioned along those lines.

DELEGATE DONALD CHING: Then, Mr. Chairman, maybe I have the answer from the wrong proponent.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: Mr. Chairman, I would like to address myself in favor of this concept to no overlapping terms by—

DELEGATE DONALD CHING: Mr. Chairman, point of order. May I then pose a question to the other proponent so that I can get his views as to the proposition that I have raised?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Is that on a point of order?

DELEGATE DONALD CHING: No, my question has not been answered yet. May I have an answer?

CHAIRMAN: I see. I think he is ready to answer your question. Delegate Yoshinaga.

DELEGATE YOSHINAGA: I'm not sure I'm going to answer his questions but I'll offer an answer. The general impression to me is that this Constitutional Convention is in favor of the effective date of reapportionment and redistricting being 1970. I just don't want to quarrel with that so I don't see any compelling necessity for a special election after November 5 when we will have had two elections at that time.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Yes, Mr. Chairman, I wanted to address myself to the origin of the concept of staggered terms and to show that what was anticipated by those who believed in it has just simply not happened.

I think the earliest origin of that concept to staggered terms was in the drafting of the federal Constitution in 1787 when the Senate of the United States was set up on a six-year term with one-third of the Senate being elected each time. There seem to be two reasons for that. One, to prevent what was thought to be a very real possibility of an extreme, abrupt change in the direction of the federal government by a wholesale replacement of the members of the Senate at one time; and two, to reasonably be certain that there would at all times be in the Senate certain experienced legislators.

Now, it seems that each state followed that staggered term idea and that nobody's ever taken a look over their shoulder to see whether that has actually ever happened. And we now have almost two hundred years of history. We have had in Hawaii sixty-eight years of history. It just simply has never happened, either thing. Ever since we have had a House of Representatives we have elected all of the members at one time and there has never been a loss of experience or an abrupt, sudden precipitous change in the policy of the federal government. We have had sixty-eight years of electing a house of representatives in Hawaii all at the same election and while there has been a change in party control, there has not been a precipitous change in the direction, nor have we lost experienced legislators. In the 1954 election which was perhaps the largest shift in political control, we didn't lose the honorable delegate who is our president, we didn't lose Doc Hill, we didn't lose Senator Heen, we didn't lose any number of

experienced legislators nor will we in the future. I might remind the delegates that since statehood, we have twice elected all of the members of the senate at the same election and we have not found in those two instances any change, any abrupt precipitous change either in the policy of the State or in the leadership or the experience in the members of the house. I suggest to you that the ideals that gave birth to the concept two hundred years ago just simply have not been proven correct. And that it's time to reexamine the concept and do in the senate the same thing as we do in the house.

CHAIRMAN: Delegate Takahashi is recognized.

DELEGATE TAKAHASHI: Mr. Chairman, I would like to ask some questions of those who advocated the concept. Either Delegate Yoshinaga or Delegate O'Connor. I am one of those who are personally affected by the proposed amendment. I like the concept but I'd like to have these questions answered. First of all, I would like to know whether under the concept the reapportionment year would be 1973 or I see one of the amendments, the reapportionment year being 1971.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Mr. Chairman, Delegate Takahashi, if you read the committee report, as far as that reapportionment period is concerned is not affected now. For example, in 1970, everybody runs, then by 1974 the reapportionment commission, I don't know what they will call it, will have a new plan so that in 1974 all 25 and all 51 house members will run again. That will tie in with the four-year term.

DELEGATE TAKAHASHI: So those running in 19—

DELEGATE YOSHINAGA: If I'm mistaken, I wish Delegate Schulze or Delegate O'Connor would interrupt at this point so nobody would be confused.

DELEGATE TAKAHASHI: All right. Those running in 1970 then will run in districts established under the reapportionment plan adopted by this Convention?

DELEGATE YOSHINAGA: That's correct as I understand it.

DELEGATE TAKAHASHI: And they all will have four-year terms?

DELEGATE YOSHINAGA: That's correct.

DELEGATE TAKAHASHI: And after the expiration of the four-year term they will then all run again under a new district plan if the district commission decides to establish new district lines?

DELEGATE YOSHINAGA: That's correct.

DELEGATE TAKAHASHI: Okay.

DELEGATE YOSHINAGA: I hope that the other

members like Delegate Dodge and Delegate O'Connor, Delegate Schulze and Delegate Ariyoshi, who are more informed than I am, are watching the questions and answers to see that I'm not giving incorrect answers.

DELEGATE TAKAHASHI: Mr. Chairman, I believe this plan is fair. I think it eliminates a lot of inequities. I think this is going to work well. I support the plan if the plan is written well and written as proposed by those who advocate the concept. Thank you.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Just so nobody will be confused, the amendment that has my name on it is not going to be offered. That is two years off and I'm not going to offer that amendment.

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Perhaps it would help clear up this matter if I announce that a committee amendment is being prepared and will be distributed to the members before the vote is taken. It will provide essentially the same as Amendment No. 10 which has been supplied by Delegate Yoshinaga.

DELEGATE YOSHINAGA: Yes, may I have clarification now? Delegate Schulze, if—

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: If I'm correct, I will withdraw my amendment and you'll propose sort of a comprehensive amendment that will cover the provisions to correct some technical amendments?

DELEGATE SCHULZE: I would request that you do that, delegate.

DELEGATE YOSHINAGA: I think that is very good. Thank you.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I have listened to the very able arguments from the proponents of this new plan as made by Delegates Yoshinaga and Dennis O'Connor. And I listened to Delegate Dodge that the historical and traditional reasons for having overlapping terms in the senate had in fact disappeared.

But also I would like to point out, Mr. Chairman, that the historic and traditional reason for having a four-year term for a senator today has also disappeared. United States Constitution set up the Senate so that the Senators represented states as a body and the House represented the people generally by population. Today the situation is that the Senate body will represent people by population.

Up until recently, a senator with a four-year term served in two general sessions once every two years. One half that senate could be removed in response to the desires of the people who wanted a change and they could make that change in the senate body. By leaving the four-year term today, a senator in effect compared with the old sessions of the Territory of Hawaii has the equivalent of four general sessions or two four-year terms and there is no way, without having overlapping, of an overlapping body where half the senate can be removed for the people to say we want a change in our legislature setup because we are not satisfied with the way the legislature is operating. And the one body the senator who is elected for four years can hold back any change if it so desires. What I'm getting at, Mr. Chairman, that we have completely ignored the idea that the people of this State cannot make a change in the legislative makeup, its thinking, its philosophy for four years because of the fact that we are not allowing them the opportunity every two years to change the composition of the senate. And I say that this is something I believe that the committee has not discussed. The fact that the historical and traditional reason for having the senate in Hawaii really was to represent island senators who were interested in a large area.

Today we have set up, by the amendments in the Constitution that we've already considered two houses of representatives. Our senators today are no different than a member of the house except that he has a four-year term and one more representative district to represent. He is representing people today, not land. And by freezing in a four-year term so that everybody in the senate has to run every four years, there is no opportunity to make a change in between. For example, a governor's election to office until his term ends. It happens even on the national scene, where the President gets elected to office, he comes in with his party, he controls both houses, the House and the Senate. But within two years there's a reaction to what the majority party is doing and the people have an opportunity in the Senate to change at least one-third of that body. Here, the people would have an opportunity to change half the senators if we have overlapping terms. I understand the problem and it appears good at first blush. I don't have the answer, but I think that we are bringing in something that may be a detriment to the needs and wishes of the people of this State.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, I wonder if Delegate Fasi's argument with respect to the senate would not apply equally well with respect to the term of the governor.

CHAIRMAN: Delegate Fasi, would you like to respond?

DELEGATE FASI: Yes, I would. I believe Delegate Hitch is cognizant of the responsibilities and powers of the governor of the State and also the state legislature. But what I am saying is that the governor cannot by himself go in one direction if the people decide, say

within two years, they don't like what he is doing. They can change the house, they can change half the senate and his powers can be curtailed if they don't believe he is going in the right direction.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I don't have any answers to any of the questions raised by Mr. Fasi and I don't necessarily agree with some of those things he presented here. But I do want the delegates here to be clarified on one matter that Delegate Fasi has raised.

He has given the body, at least myself, the impression that the chairman, the vice-chairman, and the Committee on Apportionment and Districting did not consider the matter of island and historical origin of the senate. Although I was the most delinquent member of that 23-member committee, probably I attended fewer meetings than any other member, the few meetings that I attended I realized Delegate Schulze, an Oahuan, and Delegate Ariyoshi, an Oahuan, and many of the members of the committee from here gave tremendous time, tremendous talent, tremendous dedication to this concept, the tradition of the senate based on counties and particularly neighbor islands. So that I know, personally, Mr. Fasi, that they did give this matter a tremendous consideration. It is an injustice to the chairman, vice-chairman and members of this committee for you, Mr. Fasi, as a member of the committee, to tell this body here that they did not do so.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I think that Delegate Yoshinaga is mistaken. I'm not a member of that committee. I never was appointed as a member of the Legislative Apportionment Committee.

DELEGATE YOSHINAGA: I'm not mistaken. You're not a member. I'm saying that you did not attend the meetings to have knowledge that the committee chairman did not present this thing and that the committee did not consider them. I'm not saying you were a member.

CHAIRMAN: Delegate Yoshinaga and Delegate Fasi, I don't think this is the point before the house at the moment. The point at the moment is the proposed amendment and since it has been printed—who has anything further—

DELEGATE FASI: I'm just trying to say, Mr. Chairman, that—I didn't intend this to be argumentative at all. I was just raising a point that I thought that the delegates should be thinking about in the proposal—I think I said that I don't have the answer but—

CHAIRMAN: I think the point has been made. Thank you very much. Delegate Doi.

DELEGATE DOI: Yes, Mr. Chairman. First on a

point of order here and a request. Could we not, Mr. Chairman, in the interest of time, invoke the rule as to number of times we arise to speak and the length of these speeches? I want to get into the question before us, Mr. Chairman. I'm very much impressed by the arguments put forth by the proponents of the idea of a, first a two-year term senate, then a four-year term senate for the entire senate body.

I do however want to bring up one point here that I think the new proposal here is weak on. And that is to say, a holdover senator, because he has two years more remaining in his term is apt to be, is more likely able to resist strong influences brought on by pressure groups. From that standpoint the senate body may gain some balance here against hasty actions, against actions that may go beyond reasonable politics and I think those who first conceived the idea of a holdover group of senators perhaps contemplated also this particular character that might be found in a senate body which is made up of senators who also hold over. Thank you.

CHAIRMAN: Thank you. We have the amendment distributed. I would suggest that the—

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Could the ad hoc committee have equal time in having a caucus to discuss this question? The ad hoc committee, all the members who are not members of this committee?

CHAIRMAN: Delegate Schulze, I think it would be in order to put the amendment before the house properly.

DELEGATE SCHULZE: Yes, Mr. Chairman. The amendment is numbered III-B, and reads as follows:

“(1) Section 4.1 of Article III of the State Constitution as set forth in Committee Proposal No. 12 is amended to read as follows:

“Section 4.1. *Reapportionment Year.* The year 1973 and every eighth year thereafter shall be reapportionment years.”

“(2) Section 4.7 of Article III as set forth in Committee Proposal No. 12 is deleted in its entirety.

“(3) Section 21 of the transitional provisions as set forth in Committee Proposal No. 12 is amended to read as follows:

“Senators elected in the 1968 general election shall serve for two-year terms.”

It has been distributed to everyone and at this time I would move its adoption.

DELEGATE ARIYOSHI: Mr. Chairman, I second the motion.

CHAIRMAN: You have heard the motion and the second to the effect that the committee proposal be amended in accordance with Amendment III-B. Delegate Takahashi, did you wish to speak?

DELEGATE TAKAHASHI: Mr. Chairman, I have one question. I have been studying the committee proposal including the amendment and I haven't been able to find a provision in the proposal nor the amendment providing a four-year term for the senators and I would like to ask the committee chairman whether there is a provision for a four-year term for senators.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, Delegate Takahashi has passed that question on to me just a moment ago. We will either answer it or take care of that problem shortly outside of the scope of this amendment.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: The answer is that that four-year term is contained in the legislative powers and functions committee report.

CHAIRMAN: Thank you. Any other questions?

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching.

DELEGATE DONALD CHING: Mr. Chairman, I rise to speak with mixed feelings. First of all, I, like Senator Takahashi and Senator Ariyoshi, am one of three in this body who is standing for re-election. I think this proposal with its good intentions are, there is some merit to it, I must admit, is perhaps a sort of a challenge to at least myself. And first of all I want to say that I accept that challenge. I'm willing to stand before the people in 1968 and in 1970 if, God willing, I'm running for re-election. However, I think this is beside the point.

The thing I would like to point out is that as to the functions of the legislature and the way in which legislation is passed, I think this was touched on very briefly by the good delegate from the Big Island, I would like to point out that although I have never had the privilege or the luxury of serving on a four-year term and I don't think it would change my action in the legislative halls. I think the fact that half of the body, half of a body or half of one of two bodies, there is that holdover provision where they do not seek re-election in the coming election, has a lot to do with the general overall philosophy that underlies the thinking of that particular body and perhaps of the two bodies collectively. I cannot help but think of what I would do if I were a lobbyist where I had a special interest group with a good number of votes or with a large amount of influence or power in an election to

come in with a new proposition that perhaps might not be for the overall good of the State of Hawaii. I would then build up to the passage of this proposition the fourth year of the four-year term of the senate so that at that time, not only could I influence and influence very heavily the 51 members of the house and usually half of the senate, but I would be able to exert influence good, bad or indifferent on all 76 members of the house.

Now, those of us that have the distinction of serving in the last Territorial session of the legislature can think back and look back and I have heard comments said, off the record, that this was a real rat race. Because all of a sudden in the middle of the session, along about March, statehood came upon us and under the terms of the transitional section of the statehood bill, all 76 members of the legislature were faced with running for re-election in a few months.

Now, I would like for each and every one of you here that were either in the legislature or active among the legislators there to reflect back to the thirty, forty days remaining in the session when this news was brought upon us. All of a sudden, the whole session was either pork barrel or how do I take care of the pressure groups. None of this was, I have said but I dare say that this was in the minds of a good number of the 76 legislators that were serving out their short terms, because along about July, we would all stand for re-election. Now this, as Delegate Dodge did point out, came about again when the senate was reapportioned and all 25 senators had to run for re-election. I think again we had the same type of philosophy that prevailed.

Now, the legislature has been condemned by several groups in this community as being very one-sided in a lot of areas. This may or may not be true and if it is, perhaps I, myself, personally am responsible for this. But I don't stand here today and apologize for any action that we as a legislative body have taken in the last ten years that I've been serving in the legislature. But I do want to point out to the members of this Convention here about some of the possible dangers that could come about with the proposal that is now before us without the holdover senators to supposedly hold firm. Unfortunately, this type of thing is going to become mass hysteria and you might find, and instead of some people who are willing to take their chances and vote their consciences, there may be all 76 of the legislators that are serving, not next year but maybe ten years or fifteen years from now, whether this might not become mass hysteria and where the legislation which would not be for the good for the State of Hawaii might not be hastily and irrationally enacted.

And on that note, I'd like to perhaps ask the committee to reconsider its action. And I would like to close on this point, that all of yesterday and the day before, realizing the work, the hours that the Committee on Reapportionment put into it, my basic stand was that this is a complete package and that we as non-committee members should support the committee members wherever possible. And I think on

that basis, I voted against most of the amendments that were thrown into the thing. All of a sudden, after the district lines have been drawn, we come in with a completely new concept which I think might have changed some of our thinking, some of our votes, if we had known that this were coming into the picture. Thank you.

CHAIRMAN: Delegate Jaquette.

DELEGATE JAQUETTE: Mr. Chairman, I rise to express a concern. I don't know yet how I will vote on this issue. My concern is that this body has made a decision to stick with the bicameral legislature. My concern is that if we adopt this amendment, we are watering down the differences between the house and the senate. Perhaps someone in this body could answer this concern. Are we not, as one of the previous delegates has said, making a two house of representatives system?

CHAIRMAN: Anyone else who wishes to speak on this proposed amendment?

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I asked Mr. Schulze, Delegate Schulze, the chairman of the committee, a question personally. I'm a bit in a maze. Perhaps he can explain the constitutional aspects of the last sentence of Amendment III-B. I know that the legislature has been reapportioned under a temporary plan and has been under court order and so forth and it seems to me that we are doing something unless there is some basis and background for it, something that is *ex post facto* in nature but maybe he can clarify that for me personally.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I think under the circumstances, I will avoid giving a legal opinion to the delegate from Kauai but I will say that we have given consideration to a rewording which would simply terminate all terms as of 1970 rather than attempt to provide perhaps inconsistently that the terms will be for two instead of four years. What I would like to do is turn the matter, if adopted here, over to the attorneys so that any corrections that need be made in this provision can be handled through style or by us on second reading. I believe, Mr. Chairman, that the concept, that our ability to do this in one way or another is there. I think we have the power to do this and I think the question is just how to do it.

CHAIRMAN: Any other questions or comments? If not, all those who are in favor of this amendment will say "aye." All those opposed, "no." We will ask for a division of the house. All those in favor of the amendment please stand. Thank you. The motion has passed. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, one minor matter remains before we have completed our present

districting problems. That is Section 25 of the transitional provisions which provides simply that the reapportionment we have just made will be first enacted in the 1970 general election. This is a technical provision, Mr. Chairman. No substantive effect except to set an effective date for the apportionment that this body has just approved and I would move then the adoption of Section 25.

Excuse me, Mr. Chairman, I apologize. The committee has proposed an amendment to Section 25. The amendment is numbered III (27), and this amendment makes certain very minor technical changes in that section to make it comply with the actual changes that are being made in the Constitution. Again, the effect is the same, Mr. Chairman, it simply sets an effective date for the apportionment. I would move then the adoption of Amendment 27, Amendment III (27) which amends Section 25 of the transitional provisions. The amendment reads as follows:

"Section 25. The senatorial and representative districts and the numbers to be elected from each as set forth in Sections 22 and 23 of this Article shall become effective for the first general election following ratification of amendments to Section 2 of Article III and Sections 22 and 23 of this Article."

CHAIRMAN: Section 25 of Article XVI is before the house and the committee chairman has moved the adoption of Amendment III (27). Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: I second the motion.

CHAIRMAN: You heard the motion and the second. Is there any question, any discussion? Delegate Sutton.

DELEGATE SUTTON: I'd just like to ask one question of the chairman. We are assuming that the ratification is achieved by the appropriate percentages. We have left the percentage at 35%. In the event that we do not achieve the ratification, then what occurs?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, that depends upon a lot of questions, particularly with respect to submission and information. If the present apportionment is not approved, then it has nothing to do with this particular section. If this apportionment is not approved, Mr. Chairman, the court has retained jurisdiction over the apportionment of the State of Hawaii and would, at that time, probably undertake to apportion the State itself. On the other hand, if Section 4 pertaining to the apportionment commission is passed, the courts might very well order the apportionment commission to convene to handle the reapportionment itself. One simply cannot tell what the court will do, but the court has jurisdiction and if the voters don't ratify this, presumably the court will take appropriate action.

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: Anticipating such a problem, Mr. Chairman, I have prepared Amendment III (28) to add to that paragraph if approved.

CHAIRMAN: Delegate Ando, is the substance of these two amendments such that they can be taken up first one and then the other? Delegate Schulze.

DELEGATE SCHULZE: I prefer to handle our amendment at this time, Mr. Chairman, and Delegate Ando's amendment at the end of our work if we could, please. I think it belongs there—

CHAIRMAN: Is this satisfactory, Delegate Ando? Very well. Any further questions? Delegate Hasegawa.

DELEGATE HASEGAWA: Mr. Chairman, this matter under consideration now doesn't include—preclude the consideration of the structure of the reapportionment commission. I have some questions relating to the structure of the reapportionment commission.

CHAIRMAN: Delegate Schulze or Delegate Ariyoshi, would you like to answer that question, please?

DELEGATE SCHULZE: I apologize, Mr. Chairman, I did not hear that question. I was being addressed by another delegate at the time. Could it be repeated please?

DELEGATE HASEGAWA: Does the consideration of this question now preclude the information relating to the structure of the reapportionment commission later?

DELEGATE SCHULZE: The answer is, it does not, Mr. Chairman, we will take up the reapportionment commission next, probably after the lunch break and dispose of it in order this afternoon. We have not taken it up yet.

CHAIRMAN: Thank you. Any other question?

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: Mr. Chairman, inasmuch as 27 and 28 overlap and are interrelated, I would like to have an explanation by Delegate Ando before I take a vote on III (27). And if they pertain to the same Section 25, maybe Delegate Ando here has such a proposal or amendment better than the committee proposal amendment. I would like to have a clear picture from Delegate Ando and an explanation as to his proposal so that before we can take a vote on 27 and not knowing what the contents of 28 would mean, I suggest that of the chairman of this committee that it will not be fair to the nonmembers of the committee. The members of the committee are always huddled

together and discussing things, but the nonmembers of the committee have no idea what the understanding of the committee discussion was all about. And I think in fairness to the nonmembers, we should have an explanation of 27 and 28, where the differences are between the two proposals.

CHAIRMAN: Delegate Kageyama, the Chair has ascertained from both the committee chairman and Delegate Ando that it would be orderly procedure to take up 27 first and then 28. However, if it will help with an understanding, Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, may I assure the Chair and Delegate Kageyama that 28 is merely complementary to 27 and to take care of any contingency of not possibly having a ratification on the other.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: I rise to raise a question to the chairman of the committee as to Amendment III (27). I noticed in comparing the old Section 25 of Committee Proposal No. 12 and this amendment, that Section 3 of Article III is dropped from this new amendment. Is that intentional or unintentional?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, that was intentional. The reason was that we did not propose any change to Section 3 of Article III and therefore, there would be no need to ratify it. It was erroneously placed in the original Section 25.

DELEGATE MIYAKE: Thank you.

CHAIRMAN: Are there any other questions? If not, all those in favor of the Amendment III (27) will say "aye."

DELEGATE MIYAKE: Another point. May I?

CHAIRMAN: One moment. Delegate Miyake rose before we started to vote. Delegate Miyake.

DELEGATE MIYAKE: May I ask then to the chairman, why is Section 3 in Committee Proposal No. 12, if it's not an amendment to the present Constitution?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, Section 3 was simply repeated for purposes of emphasis and to show the difference between Section 2 and 3 to show the provisions we were covering. But an analysis, if you read the present Constitution and that proposal, you will find that there is no change in wording of any kind between the wording in our proposal and the present constitutional wording.

DELEGATE MIYAKE: I wish that in the future, if this procedure is to be followed, that such sections

which are already in the State Constitution and are not an amendment be bracketed.

CHAIRMAN: Thank you. All those in favor of the amendment will say "aye." All those opposed, "no." The amendment has carried.

Delegate Ando is recognized. Excuse me. Delegate Schulze is recognized.

DELEGATE SCHULZE: If Delegate Ando would yield. Mr. Chairman, I wonder if we could, if Delegate Ando would consent to take his amendment at a time after we have considered our changes to Section 4 this afternoon. I would like to discuss it with him before we take it up if I might.

CHAIRMAN: Very well. Does Delegate Ando agree with that?

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: One final matter before we will have concluded our work on the present—

DELEGATE KAGEYAMA: I rise on a point of information.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: Why must this huddle between the delegates occur without the benefit of such a discussion for the benefit of the other delegates? I think if the proposal to amend the Constitution as preferred by Delegate Ando has merit before the floor of this Convention, then the entire delegates should benefit from such a discussion. This idea of huddling into a discussion privately does not give the delegates an understanding for which the delegates who are responsible to sell this Constitution to the public should have. And that discussion between the two delegates must have some merit for the benefit of the rest of the delegates for which we are responsible to give explanation to the public for which I think is—

DELEGATE AJIFU: Mr. Chairman, point of order.

CHAIRMAN: State your point of order, please.

DELEGATE AJIFU: I think the previous speaker, Delegate Schulze, should have the floor. A point of information does not give the right to interrupt the speaker on the floor. A point of order will, but a point of information should not, and therefore that delegate should not be recognized so that Delegate Schulze should have the floor at this stage.

CHAIRMAN: The Chair stands corrected. Thank you very much. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I believe that the last matter we need to take up at this time is the proponents of Amendments No. 1, 4 and 10, that's

Delegate Yoshinaga; Amendment 3, which is Delegate Ando's; and Amendment 5 which is Delegate Dodge's. All of those amendments pertain to the staggered term and I believe that according to appropriate procedure they ought to be withdrawn. I wonder if the delegates would consent to do that?

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: Amendment No. III (5) is withdrawn, Mr. Chairman.

CHAIRMAN: No. III (5) has been withdrawn. Delegate Ando.

DELEGATE ANDO: Amendment III (3) is withdrawn.

CHAIRMAN: No. III (3) has been withdrawn. Are there any other amendments? Delegate Yoshinaga, do you wish to withdraw your amendments?

DELEGATE YOSHINAGA: I thought they were withdrawn.

CHAIRMAN: Thank you. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the next order of business so far as the committee is concerned is to take up the reapportionment commission and since this will take some time, perhaps the Chair would prefer to take a luncheon break. If it does, I would ask consent to make an announcement after the announcement of recess is made, please.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE KAUHANE: Mr. Chairman, I rise to a parliamentary inquiry.

DELEGATE DOI: Hooray for you. Mr. Chairman, may I suggest a one-hour—

DELEGATE KAUHANE: I rise to a parliamentary inquiry.

CHAIRMAN: Delegate Kauhane, would you wait for just a minute. I just recognized Delegate Doi.

DELEGATE KAUHANE: I will yield to Delegate Doi.

DELEGATE DOI: I said it, Mr. Chairman, may I suggest a one-hour lunch so that we can get on to the work.

CHAIRMAN: Delegate Kauhane, state your parliamentary inquiry.

DELEGATE KAUHANE: After I had consulted with attorney Nelson Doi on the matter of how we should proceed, I was given an instruction that perhaps we should proceed without taking a lunch break to finish

up the matter that is before us. For that purpose I rise to seek your recognition of the parliamentary inquiry. We've been called into session to report here at 9:30. In the meantime, the brief moment that we had, the committee had to meet in their secret chamber, the pressure chamber. We sat around here not knowing the product of that pressure chamber, the result of it. So we decided, well, that we'll stick around here doing nothing, that we should continue our work and finish this thing. Maybe some of the delegates feel—

CHAIRMAN: Delegate Kauhane, could you state your point of inquiry, please?

DELEGATE KAUHANE: I feel that we should continue to work rather than take a lunch break. If it is important to finish this product, let's do it. I have an important, very important engagement. Sure we are hungry, but can't we sacrifice? We sacrificed a lot of time for these pressure meetings. Let us do away with this type of pressure meeting and continue to work. If the committee isn't ready, then let us adjourn at an appropriate time. We have some commitments to meet. Why should we be subjected to compulsorily attend this kind of a session when the other committees are not ready to proceed? I certainly don't want to continue to be compelled to attend a meeting just because I have to attend a meeting at the call of the Chair. And then when I do come to attend the meeting at the call of the Chair, there's a long recess taken. The recess is not beneficial to me nor to the other members that sit here ignorant of what is going on in that pressure—

DELEGATE TAIRA: Mr. Chairman, point of order.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Point of order. I still haven't heard the point of parliamentary inquiry that was supposed to have been raised.

CHAIRMAN: The Chair has not heard it either and in view of the fact that if everyone speaks for ten minutes on when we will adjourn, we will not be able to even recess. Therefore taking into account that some people have physical requirements which must be met and other problems, we will stand in recess until 1:00 o'clock.

At 12:00 o'clock noon, the Committee of the Whole stood in recess subject to the call of the Chair.

Afternoon Session

The Committee of the Whole reconvened at 1:22 o'clock p.m.

CHAIRMAN: Will the Committee please come to order. The Chair will recognize Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, at this time, I would ask the Committee of the Whole to consider Section 4.1 of Article III as amended. Now this has already been passed by the body, Mr. Chairman. I'd like simply to bring it up and answer any questions if there

are any. The section now reads: "The year 1973 and every eighth year thereafter shall be reapportionment years." The point here is, we have changed this, Mr. Chairman, from every six years to every eight years, in line with the amendment adopted by the body before lunch providing for an end to the staggered term system. With senatorial elections now coming every four years and everybody being elected at once, it seems more appropriate to have a reapportionment every two elections rather than in the middle sometime, thus confusing the issue all the time.

We do have the first reapportionment as of 1974. This is because the present figures are already two years old, Mr. Chairman. If we waited eight years, they'd be ten years old before we had a reapportionment. We only have two choices, that is do it in four, do it in eight and the decision is to leave it in to have a reapportionment in four years from now. I would answer any questions or anything, any comments.

CHAIRMAN: Does any delegate have any question on this matter? If no questions are—Delegate Sutton.

DELEGATE SUTTON: We will have an opportunity to ask him about the commission later, will we not?

CHAIRMAN: That is correct. If there are no questions on this particular item, we will conclude our consideration thereof and go to Section 4.2. The Chair suggests or rules that we shall postpone consideration on it while Delegate Miyake prepares a new amendment therefor, and therefore go on to Section 4.3 concerning the chief election officer. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, in conjunction with our decision to retain the use of registered voters, and also in connection with our decision to try to make a somewhat organized procedure out of future reapportionments so we needn't disrupt the State every time it has to happen, it came to our attention very forceably during the course of our work that no one at the present time really makes a great effort to maintain appropriate statistics in usable fashion which were available for reapportionment situations. This is particularly true of the house where the districts must be smaller and yet the blocks, the building blocks we have to make districts out of really are quite large. It made working very difficult. Also the lieutenant governor came before us on several occasions and pointed out areas in which the registered voter figures had not really been kept entirely up to date. It was his suggestion that an appropriate provision be entered in the Constitution. The committee debated it and decided it would be in order to do that. We therefore suggested—provided for the naming of a chief elections officer whose duties are prescribed in that article. They are not very specific. It was our intention to allow the legislature to be more specific or to allow the chief elections officer himself to know better precisely what had to be done. The lieutenant governor now holds this function to the extent it is filled and it would be our feeling that very likely the legislature will simply appoint the lieutenant governor as the chief elections officer as well. We left it with a separate title

and a separate name so that in the future, if someday it gets to be a very big job the legislature may wish to appoint a single person to the task, they'd be free to do that. I think that's all the explanation we have at this point.

CHAIRMAN: Any questions? Any amendments? If there are no further questions or no amendments, we will conclude discussion of that item and go to Section 4.4, apportionment among the basic island units. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, Section 4.4 provides for apportionment among basic island units. This is simply a continuation of the provisions of the present Constitution and of Senate Bill No. 1102. For the senate, it adopts the method of equal proportion and provides for the manner in which the twenty-five senators and the fifty-one representatives are to be apportioned among the existing island counties, Kauai, Oahu, Maui and the Big Island. There are no substantive changes from the old provision.

CHAIRMAN: Any questions? Delegate Fernandes.

DELEGATE FERNANDES: Just one point, and that this could be taken up by the Style Committee, is that yesterday we took the problem of Coconut Island into consideration. On the area of Kauai, we've been following the present Constitution that spells out Kauai-Niihau. I just want the committee to look into it that Lehua, an island next to Kauai is also in the whole thing that we might want to expand it out to cover this particular island because the day might come, something might come about that people might be on this island also.

CHAIRMAN: Lehua Island is an appurtenance to the Island of Niihau. Thank you. Any other questions? If not, the Chair will rule that we have concluded our discussion of this particular section and go to Section 4.6 which is the apportionment within the basic island units.

DELEGATE SCHULZE: Mr. Chairman, we'll pass 4.5 at this point, with the permission of the Chair and come back to it very shortly. We have provided in Section 4.4 for the method of allocating the senators and representatives among the island units. This provision provides for the manner in which they will be allocated to the senatorial and representative districts within the counties.

This section has been changed extensively, Mr. Chairman, because of the change in the nature of the ball game. It used to be that our reapportionment provisions in the Constitution provided for six districts and simply the allocation of the numbers to which each district was entitled, really an apportionment without a districting. As I pointed out earlier, now the numbers must be so precise that each time you have a reapportionment you must also have a redistricting. There's no question about this, and no question about the fact that it results in a substantial change. And for that reason, we have eliminated the method of equal

proportion simply because it is no longer relevant where your lines are not fixed. It simply is not usable in such a context.

And we have provided a number of criteria along with instructions that numbers are to be followed as closely as possible. Many of these criteria have been discussed already. To a large extent they are the ones we used for our own districting except that they have been loosened up a little bit. We didn't feel that it was appropriate to hold a future commission to as tight restrictions as those we made and we felt that they should be left free to make a number of policy decisions as they saw fit to fit in with changing times. For that reason, it is not intended that these provisions be as restrictive as those that we had used and they would be free to make those decisions themselves. I have nothing further to add to this section unless there are any questions.

CHAIRMAN: Are there any questions concerning Section 4.6? Any amendments? If not we will conclude discussion—

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: I waited for the signal from the chairman. I think this is the area? Not yet? Thank you very much.

CHAIRMAN: The next item, Item 4.7, has been taken care of by a previous amendment. The next section, 4.8, is the matter of mandamus. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, we have provided in these sections for a reapportionment commission with instructions for that commission on how to behave. This is simply the wrap-up in which we provide for the voters to compel the commission to do its work. If it doesn't do it or to compel anyone else who is supposed to do some appointing or some work in here to do it, we provided a very broad provision for judicial review. Much broader than existed earlier. The wording "or to correct any error made in the reapportionment plan, or it may take such other action to effectuate the purposes of this section as it may deem appropriate" is designed to give the Supreme Court a wide scope of authority to make such decisions and take such actions as are appropriate under the circumstances. It was our feeling that we simply could not foresee all the types of problems that might arise. We wanted to leave them to be handled on a case by case basis in the future. We felt the Supreme Court was an entirely appropriate body to do this.

CHAIRMAN: Are there any questions as far as this section—Delegate Sutton.

DELEGATE SUTTON: When Delegate Mizuha proposed jurisdiction for the Supreme Court in contested elections, the same people who now advocate the Supreme Court jurisdiction for mandamus did not

seem to concur. Is there any specific reason why a contested election jurisdiction for the Supreme Court was different from a mandamus as here sought?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I believe that Delegate Mizuha perhaps could give his own reasons better but one thing is that there is a substantial difference between a reapportionment plan and an election dispute. In an election dispute, there are all sorts of factual matters including evidence that could be only adduced by the testimony of witnesses, cross-examination and that kind of thing that is really not very appropriate to a Supreme Court tribunal. In this area, there's not a great deal of that. We felt that the Supreme Court really could handle the matter much better and much more expeditiously than going to the trial court level.

CHAIRMAN: Any other questions? If not, we will conclude the consideration of Section 4.8. Delegate Schulze, will it be in order to go to Section 4.5, minimums, at this time?

DELEGATE SCHULZE: That's acceptable, Mr. Chairman. I think Mr. Miyake's amendment is not out yet but that would be satisfactory to me.

DELEGATE GEORGE LOO: Mr. Chairman, I have an amendment to offer.

CHAIRMAN: Very well, I think the—we will have a short outline of the section first and then we will accept the amendment. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the committee dwelled at some length on the trend of not only the Supreme Court decisions with respect to apportionment but also population trends on our islands in the State. The advent of very strict, very rigid requirements that you cannot allocate representatives on any basis other than population has become a reality now. By population, I mean actual numbers of registered voters, or actual numbers of whatever you count, has become a reality now. I think there's no real way that we can look forward to its diminishing in strength in the future. It's also true that the population trend in Hawaii very strongly indicates that the population—

DELEGATE BEPPU: Mr. Chairman, point of order.

CHAIRMAN: Delegate Beppu, state your point of order please.

DELEGATE BEPPU: Will the Chairman please note the presence of Delegate Kauhane.

CHAIRMAN: Your point has been noted.

PRESIDENT PORTEUS: Subject to your request to the president, I will note it.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Thank you, Mr. Chairman. It was our feeling that although most of the neighbor island counties have now begun to at least hold their population or even begin growth, this includes Kauai and Maui, the fact of the matter is that the growth rate on Oahu is still very substantially greater than either of those islands and it appears that the growth rate of the Big Island may begin to pick up at a rate also faster than Maui and Kauai. We feel that there's a possibility, a strong one, that representation on the Island of Kauai could go down to one and one in the foreseeable future and the same thing we feel is possible, although the Maui delegation does not like it said, we feel that it is possible that such might happen for the County of Maui as well. Nobody can be sure of what's going to happen in the future. We feel that if you take a look at trends up to this date, you've got to recognize that as a very real danger.

We then considered, Mr. Chairman, what effect this would have upon the effectiveness of the legislative body of our State. We found that Hawaii had the most centralized government in the entire 50 states. But our legislature is responsible for more matters of usually local interest than any other legislature in the country. That our people have no other governmental forms other than those of the county in which to get effective local representation. In virtually every other state there are townships, cities, school boards, sewer boards, all kinds of forms of local government that we simply don't have here. All of these matters or most of them are handled by the central legislature on Oahu.

It was our feeling to cut, without going into great detail, much of the detail as contained in the report put out by the committee. It was our feeling that if the people on Kauai, for example, or Maui, an island unit separated by a substantial body of water and by a number of years of tradition and history as well from its neighbors, did not have effective representation in the legislature, that as a matter of fact, the people in those areas would not really have effective representation either. I hope no one misunderstands me even for a moment as saying that the representatives they have now are not effective. In fact the statement would be rather ludicrous, but the point is that it would be awfully difficult as the testimony before us showed for even one senator to do the job in the legislature. This would even be more true in the house. There are large numbers of committees in both houses and it's necessary to get some coverage of these committees in order to get a county's ideas across, in order to get a county's needs known to the other legislators, in order to get a county's point of view at least exposed so that others can act upon it.

We have had a tradition for a long time of kokua among the neighbor islands and we all hope that that will continue in exactly the same form it now occupies. We also hope that the senators and representatives elected on Oahu will continue to have the same favorable attitude towards the needs of the neighbor islands as they've had in the past. We also believe, Mr. Chairman, that it might be unfortunate if we were to base the effectiveness of our entire system upon such a

guess and such a hope. There are many new voters arriving on Oahu now and many new types of people being elected and they are not all the kind of people who would necessarily maintain this tradition. If it is not maintained, the neighbor islands, as they lose representation in the house and senate, we felt might get to the point where the people simply really had no way to get effective meaningful representation in the house and senate. For that reason, the committee worked at some length to try to devise a plan which would be acceptable as a practical matter and also as a legal matter. The committee's approach to this was not to increase the size of the house and the senate in such a way that the method of equal proportions would permit the neighbor islands to have a certain minimum number. This would result in the house of perhaps 60 or 65 members now, perhaps 90 or 95 members by the next reapportionment, perhaps a thousand by some date, I don't know. Our feeling was that this was not an appropriate approach.

What we have suggested and what we hope will be accepted by this body is a plan whereby the initial 25 senators and 51 representatives are allocated among the basic island counties by the method of equal proportions. If any county receives less than two senators or less than three representatives in that allocation, then the numbers by which they are short will be added to the body temporarily and will be allocated to that county. Let me be more specific. At the present time, if we went through the method of equal proportion, Kauai would receive only one senator instead of two. The approach would be to have the senate then increase temporarily by one senator to 26 and that one senator would be allocated to Kauai. Upon the next reapportionment, Mr. Chairman, the process would begin again and if by that time Kauai's population of registered voters have picked up enough to warrant two senators, the size of the senate would be reduced to 25. This is by no means a permanent thing, it simply takes care of the temporary problem. It's meant to be temporary.

On the next reapportionment, one can easily now anticipate that Kauai will not attain the minimum number of house of representatives members either and so at that time the house provisions would be the same. That is, if the method of equal proportions gave only two representatives to Kauai, the house would be temporarily increased to 52 and that one additional representative would go to Kauai. Of course, the same procedure would take place in the case of Maui, if that ever arises and also, although we are not now foreseeing it, it may well happen in the case of the Big Island.

Mr. Chairman, when this program was designed in the committee and discussed, there was a good deal of resistance to it on the grounds that the courts would not accept such a program, that in fact it gave more voting power to an island unit than it warranted in terms of its number of registered voters. The committee worked on this for a long, long time and hit upon a solution in which we provided for what has probably, unfortunately but at least accurately, been called fractional voting. This situation is that although we will

provide for the allocation to each county of additional people, we will not provide for the allocation to each county of additional votes. The point here is that if the method of equal proportion gives to the county one senatorial vote and two representatives votes, that's what the county will get. Even so, we will allocate to the county two senatorial bodies with all respect and three representative bodies who will share those votes.

It was our feeling, Mr. Chairman, that the use of fractional voting is probably a new concept. Since it's unfamiliar to many people it will probably be met with some resistance in the minds of the delegates here. Nevertheless, we do feel that it is an appropriate method of getting the needs of the county known, getting the committees in the legislature covered, getting enough members from Kauai, Maui, even the Big Island if necessary, to insure that their problems are represented at least in the important committees of the legislature and the fractional voting we felt was necessary if this whole program was to survive a test in the courts.

Fractional voting perhaps should not be faced by the delegates with the trepidation that I have noticed among some of them. There is no indication in any way that the senator or representative would be—would have anything less than all rights and all privileges of his office. They would all be paid equally, equal staff, everything will be equal except that when they cast a vote, that vote would count only one-half or a third, as the case may be in the house of representatives. There are only three fractions that could ever exist. In the senate, you must have either a full vote or a half vote. In the house, you must either have a full vote or one-third or you could have two-thirds or one-third but only those fractions would ever exist.

Mr. Chairman, we recognize that as a matter of fact a half vote in a committee may frequently be of the same effect as the full vote. We know this and we recognize that it may give a county which has been allocated an extra senator some slight advantage in voting power which perhaps its precise number of registered voters doesn't warrant. On the other hand, we feel it's called for in order to maintain the effectiveness and the reality of representation in our State and we feel that if the fractional voting program is adopted we believe that the courts, although it's a brand new case, never been tried before by any state anywhere, obviously no state has any problem anything like ours, we feel that it might be accepted. I ask the body's consideration of this measure and I ask that you adopt it.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: I move for the introduction of Amendment III (19) which reads as follows:

"1) Section 4.5 of Article III of the State Constitution in Committee Proposal No. 12, said Section 4.5 relating to minimum representation for

island units is hereby deleted.

"2) Section 24 of the Transitional Provisions in Committee Proposal No. 12, said Section 24 relating to addition of one senator allocated to the basic island unit of Kauai at the first general election following ratification of Section 4.5 of Article III is hereby deleted."

DELEGATE GEORGE LOO: Second the motion.

DELEGATE FERNANDES: Point of order.

CHAIRMAN: State your point of order.

DELEGATE FERNANDES: Mr. Chairman, III (19) and III (14) are about the same in my opinion. The point that I wish to raise is this, that these amendments delete the entire position of the committee and I recall in the early Committee of the Whole hearing, amendments of this sort were proposed by Delegate Ando and some other delegates and the ruling was made at that time that the question before the house was the committee proposal and that if you have any amendments to add to the committee proposal and not to delete the entire committee proposal. I ask for a ruling on this.

CHAIRMAN: The Chair will rule that the effect of this amendment would be the same as that of voting down the provision before us. Any question about that ruling? Therefore the amendment would be out of order.

DELEGATE FERNANDES: Mr. Chairman, I now submit Amendment No. III (2).

DELEGATE MIYAKE: Mr. Chairman, then I rise to speak against—

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: I rise to speak against Section 4.5 of Article III as set forth in Committee Proposal No. 12.

Mr. Chairman, there is no more important an issue before this Convention than that of representative reapportionment. If we fail to derive adequate solutions to other issues, we must not fail to reapportion on the basis that is likely to be most acceptable to the community and the Supreme Court of the United States. If basic criteria for decisions have been laid down by the court of this nation and this State, one-man, one-vote or equal representation, this is the theory, this is the law, and this must be the practice as best we can make it so. Time and again, in recent events, we have seen this basic democratic premise affirmed by the people of this State. Nevertheless, it is one thing to subscribe to a political theory substantiated by the law and quite another to obtain it in practice, in maintaining equitable representation for each of our citizens.

The proceedings of this Convention have been ample

testimony to this practical problem confronted by the community as unique as this island chain of separate counties. It is precisely the situation that attracts the professional, the legitimate party official, the maneuverers, vested interest groups, the idealists, the academicians, the administrators, and others supporting the status quo however disguised the form may be. From this milieu of efforts, interests, intelligent debates and political maneuvering, inevitably solutions are brought forth that require considerable thought to the ramifications.

The proposal concerning the County of Kauai is just such a situation. This is the fractional voting as mentioned on page 72 of Supplementary Standing Committee Report No. 58 and Sections 4.5 and 24 of Committee Proposal No. 12. This is the proposal, Mr. Chairman, that strikes at the very heart of the one-man, one-vote or equal representation rule. It is not difficult to sympathize with the County of Kauai. Here you have a small island population seeking equal political representation along with its competitive counties in the state legislature. Here we have one senator protecting his constituents' interest in the upper house with all of the political skill at his disposal. He is put to serve those interests because of organization and administrative machinery which is not designed to be coped with by one man operating on his own. The senator cannot be everywhere at one time although from what I have heard and observed, the incumbent Kauai senator is outstanding in representing and protecting his county's interest in the various committees of concern to him. It is obvious that such a situation requires ingenuity, stamina and mental gymnastics of a type rarely matched by the Kauai senator's colleagues. The senator must be kept informed of proceedings on the floor, in committee, in the administration, in the departments and some demonstrated performance in the past and everywhere else he can possibly obtain it. To do this, a one-man office must have a highly organized information system. It might even be called an intelligence system if it is to be current on all the matters before the legislature that affect his county. While the senator from Kauai, I've been told, has developed what is supposed to be the most extensive information system in the legislature, we sympathize with the difficulty and effort required for him to properly represent his county. It is therefore understandable that the senator should propose to split his functions, so to speak, in order to protect his constituents. He wants two, not one, but two senators from Kauai. Further, he wants each of the two senators to have a half vote. In this way, he submits, the County of Kauai can protect its interest in the rough-and-tumble of the legislature. Well, Mr. Chairman, this lustrous gem of a solution wrapped in the cloak of public duty is in my view a clear violation of the one-man, one-vote rule no matter how sympathetic we are to the problems of that county. The proposed solution, it seems to me, is clearly not in line with the court's decision on this matter. The fractional vote plan has never been approved by any court as stated earlier by the chairman of this illustrious committee. For those who tend to disbelieve, let me further explain some of the ramifications of this undemocratic proposal.

It may not be clear to some delegates that under the particular organization of the legislature, one-half vote is as powerful and effective as one full vote, especially in the senate where there are only 25 senators. There are too many situations in our legislative process where one-half vote can be the major determinant of the course of our laws and administration. One-half vote can break a tie in a committee, confirm a judge, appoint a commissioner, sometimes a department head, or pass or kill legislation in committee or on the floor. For example, a twelve-and-a-half vote ayes and a twelve-and-a-half vote nays will kill a bill on the senate floor. Or a five-member senate committee with a one-half vote senator from Kauai can kill or pass a bill by a one-half vote majority plurality. In such a situation, our Kauai senator with one-half vote equals our Oahu senator with one full vote. Is this, I ask you delegates and Mr. Chairman, the true meaning of one-man, one-vote? Is this what the courts want and will approve? Is this what the voters will ratify? Of course, if Kauai is unlucky enough to have one Republican half vote and one Democratic half vote in the senate, then instead of doubling the county's power, the one-half vote senator proposal will of course deny them any power, at least on party questions. In this case, instead of protecting the constituents' interests of Kauai, the one-half vote proposal as effectively eliminates them completely.

There would of course be twice the cost of maintaining one additional senator in office at public expense which is repugnant by any measure. And more to the point, a two-senator, half-a-vote system permits the doubling of a powerful senator's patronage ability. It is doubtful that such a senator would wish to see not only his vote cut in half but also his patronage. A reapportionment alternative consisting of one-half vote representation is not so subtle a play for political power which clearly circumvents the basic reason for this Convention. Reapportionment on the basis of one-man, one-vote representation under the law we all subscribe to, Mr. Chairman, Kauai must lose some power in the senate. This one-half vote proposal is an attempt not only to circumvent the loss of such power but on the contrary an attempt to increase Kauai senatorial power at the expense of the other counties contrary to the law.

Following the same one-half vote logic, as proposed by the illustrious Kauai senator, it will only stand to reason the other single-member representative district in the State should be given equal treatment under the law. The representative districts numbered 1, 3, 4 and 5 in the County of Hawaii, and Representative District No. 21 on Oahu, all with one representative each, should have two one-half vote representatives each for more effective representation for the voters of these districts. In this case, of course, there will be utter chaos in committee or on the floor of the house of representatives.

In closing, Mr. Chairman, the proposal should be rejected by this Convention if we are deeply committed to the one-man, one-vote or equal representation rule. Thank you very much.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: First, if I may, Mr. Chairman, request that I'd like to have a copy of those fine comments because I think some of them have merit and some do not. So that we can get the real meaning of this, Mr. President, Mr. Chairman, I have, my true feeling, and I move the adoption of Amendment No. III (2) at this time which reads as follows:

"Section 4.5 of Article III of the State Constitution as set forth in Committee Proposal No. 12 is amended by deleting in its entirety the second sentence thereof as reads:

"The senators or representatives of any basic island unit so augmented shall exercise a fractional vote wherein the numerator is the number initially allocated and the denominator is the minimum above specified."

DELEGATE GEORGE LOO: Mr. Chairman.

DELEGATE KAWAKAMI: I second the motion, Mr. Chairman.

CHAIRMAN: Delegate Kawakami.

DELEGATE GEORGE LOO: Mr. Chairman, point of order.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Delegate Fernandes brought the same point of order that I'm bringing right now. According to the previous action of the Committee of the Whole, we first voted on the committee proposal and then acted on the amendments. Now, it was with this in mind that you ruled my amendment out of order and I ask you to so rule Delegate Fernandes out of order.

CHAIRMAN: Representative Loo, I do not recall your presenting an amendment on this subject.

DELEGATE FERNANDES: Thank you. May I proceed?

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Well, as the delegate who asked for the floor to move for introduction of amendment to delete the entire Section 4.2, now are you going to approve of a motion to delete one-half of the question—

DELEGATE FERNANDES: Mr. Chairman, point of order. Mr. Chairman, point of order.

CHAIRMAN: Just a minute. Let the man complete his sentence, please.

DELEGATE MIYAKE: I rise on a point of order, Mr. Chairman.

DELEGATE FERNANDES: Thank you.

CHAIRMAN: That is correct. What is your point?

DELEGATE MIYAKE: You refused to allow introduction of an amendment which would delete the entire Section 4.2. Is that correct? In Committee Proposal No. 12?

CHAIRMAN: That's right. The Chair's ruling being that the section could be voted down—

DELEGATE MIYAKE: I would ask for the same ruling on Amendment No. III (2) as proposed by our illustrious delegate from Kauai. He is also deleting and not adding to the section as he stated earlier in requesting your ruling from the Chair. You used the word "deletion," Mr. Chairman, I think the minutes will prove me correct.

CHAIRMAN: The—in order to be consistent, the Chair will have to rule that we will consider this amendment, one sentence at a time.

DELEGATE FERNANDES: Mr. Chairman.

DELEGATE MIYAKE: Mr. Chairman, I challenge the ruling of the Chair.

At 2:02 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:15 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Delegate Miyake is recognized.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Thank you. I don't mind the name of Miyake. This time, Mr. Chairman, for the record that the Amendment III (2) is withdrawn by me.

DELEGATE KAWAKAMI: Mr. Chairman, I withdraw my second.

CHAIRMAN: Thank you. The question for consideration is Section 4.5. I've been informed by the clerk that we do not have a motion covering this particular section. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, on behalf of the committee I move the adoption of Section 4.5 of Article IV—of Article III, excuse me.

DELEGATE ARIYOSHI: Mr. Chairman, I second that motion.

CHAIRMAN: Delegate Ariyoshi. Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak in favor of the committee's proposal on that section.

To give the delegates some background, Mr. Chairman, concerning the work of the committee in this area, I might state very frankly that the section on minimum representation is a compromise of this committee and I would like to say to you, Mr. Chairman, and to my fellow delegates, while the compromise purely from the technical, legal standpoint. As all of you know from the arguments that have been presented here up to this time, we are hemmed in in our apportionment of this State by the one-man, one-vote principle of *Reynolds v. Sims*. If we gave Kauai two senators in a 25-man body, we would be violating that principle and there would be a deviation of representation on Kauai which would be outside the generally recognized rule of that case and the subsequent apportionment cases.

Your committee has done extensive work in this area, Mr. Chairman, and I for the committee, wrote a thirteen, fourteen-page memorandum on this particular problem. For three reasons: first, to justify at all and for any reason minimum representation for the outside islands and to build a case for the State of Hawaii in our committee report as we have to show any reviewing court, or any reviewing body, that Hawaii should have minimum representation in each house of the legislature. And if my fellow delegates will look at our committee report, I think they will see without a shadow of a doubt that we have built such a case. We have shown that historically where there has been representation of a central government from these island groupings, we have shown that geographically these island groupings should be represented and we have shown that we have a type of government, a strongly centralized government in Hawaii, which demands representation, minimum representation. So, immediately you say to yourself what is this minimum representation? And I say to you that minimum representation is that representation which we have provided in a previous section, one senator and one representative. But then comes a further situation, what is effective representation for these island groups?

Your committee heard testimony from the good Kauai delegation, from the people from Maui, and the people from Hawaii and from our own members and from people from Oahu concerning what minimum representation is required in each body to do a decent, not a decent job but a minimum job for each island area. And after hearing all of the testimony, it was the consensus of the majority of the committee that two men sitting on committees in the senate would be required for such minimum effective representation. And three men sitting on committees in the house would be required for such minimum representation. The prime risk then to the legal requirements, your committee determined that the cases growing out of *Reynolds v. Sims* and most particularly two extremely concrete cases of the Supreme Court of the United States came down

with it just last year would prohibit our giving two senators and three representatives, for example, to Kauai now and might prohibit such representation in the future. I would read from the case of *Swann v. Adams*, which was the Florida case in the Supreme Court, in early 1967, where the court said, "The *Reynolds* opinion limited the allowable deviations to those minor variations which are based on legitimate considerations incident to the effectuation of a rational state policy." Thus, that opinion, referring to *Reynolds v. Sims*, went on to indicate that variations from a pure population standard might be justified by such stated policy considerations as the integrity of political subdivision, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines. Likewise, in *Roman v. Simcock*, which was the case which came down in 1966, the court said that the Constitution permits such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination.

Another case came down from the Supreme Court of the United States in 1967 called *Kilgowen v. Hill*, a Texas case. The Supreme Court struck down the Texas plan because population per representative variations ranged from 14.84 above the norm to 11.64 below the norm, which is awfully close, as you all know from wrestling with our plan for the last few days. And the court said of Texas' attempt to justify the deviation because the plan followed existing county lines, the court said, "We are doubtful, however, that the deviations evident here are the kind of minor deviations which *Reynolds v. Sims* indicated might be justified by local policies counseling the maintenance of established political subdivisions in apportionment plans." Now, if you all followed me, in the last two quotes, you can see—and by the way, the Florida case struck down the Florida plan also, the Supreme Court knocked over Florida—you can see that the Supreme Court is going, has gone in 1967, strictly by population and any attempts of Texas and Florida to justify their plans because of geographical boundaries or historical lines were defeated.

We have a different situation in Hawaii. We have a different geographical situation. Our historical situation is quite different and I believe that for Hawaii, and your committee believes, that we can justify a certain amount of difference for our State as compared to Texas and Florida which are, as you all know, Texas is simply a flat wide open area and they can draw their lines almost anywhere without any problem. We have problems. Our problems are open ocean which has been declared by the Ninth Circuit Court of Appeals as international waters in the case of *CAB v. Island Airlines*. We certainly can justify our situation from historical and other geographical reasons.

In summary, to tie all these things into one package, your committee realizes that to give Kauai two senators with equal votes would probably cause our plan to be knocked over. Your committee further realizes that there should be, if we could in any way give representation to the outside islands, there should be

more than one member in each house. Your committee taking all of the factors of Hawaii together decided that the best single compromise was to go to the fractional voting scheme because the fractional voting scheme does not, as a pure idealistic system, give violence to the *Reynolds v. Sims* dogma. It does not as a system take in of itself, take in an isolated situation and away from those matters that Delegate Miyake talked to, all of which by the way I agree with, but take an isolated matter away from those situations that does not give violence to our basic proposition that there should be effective representation for every citizen of this State. And as I said before, Mr. Chairman, this was our compromise. Our compromise was, if Kauai should have two senators, then the only way that we can possibly justify those two senators for the court was to utilize fractional voting.

For one minute to talk to a fractional voting problem even of itself. At this time there has been no United States Supreme Court case which considered the matter of fractional voting and considered the proposition of whether or not two men with half a vote each representing a voter gave that voter more representation than a voter with one man with one vote. This is the problem, I would not be frank with you if I did not say that it was because we have had the same thing come up in the United States in probably six lower court decisions. And it has been knocked over by the lower courts. But none of those cases and none of those states were the problems or the situations, or the locations, or the history which we have in Hawaii evident. In none of those cases were they able to present the same evidence which an attorney can present in the future Hawaii case.

Therefore, Mr. Chairman, I would urge upon this delegation, and I would be less than frank if I said as an individual that I hadn't brought this thing tooth and nail in committee for one reason or another. But I would urge upon this delegation that as the only effective legal compromise for our State, the committee proposal is that compromise. Thank you.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: I would yield to all delegates who wish to speak on this subject.

DELEGATE UEOKA: I have a question, Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: This is to Delegate O'Connor, Mr. Chairman. Now, the problem relating to effective representation you have spoken about, wasn't it compounded because of the fact that we have established multiple representation, multiple senatorial districts?

CHAIRMAN: Delegate O'Connor, will you answer that?

DELEGATE O'CONNOR: Your statement would be,

if we had single-member districts throughout, that something would be different? No, that has nothing to do with the problem between the islands and the counties because here is the situation, Mr. Delegate. Conceivably in the future, if Oahu's population continues to go up as we all expect it to do, Kauai will not even be able to have one senator, and this could happen in the next reapportionment. What do we do then? Do we say, Kauai shall not be represented in the senate? That plus the fact that the committee, the majority of the committee, in deliberation, decided that to effectively represent any county area because of our centralized government system and because the county areas, the island grouping areas had to come to the central government for their financing, for their operational fund and for many other reasons, those reasons predicate for the county, now we're talking about the separate island groupings, differently than they do for the individual senatorial districts on Oahu. And for those reasons it was felt that the county island groupings should have a minimum representation of two. And this has nothing to do with the single-member districts throughout.

CHAIRMAN: Delegate Bob Taira.

DELEGATE TAIRA: Just to clear the record here, I think I heard that there is a possibility that sometime in the future, Kauai may end up without any senator at all. I'd like to ask the question as to whether we do not have incorporated into our Constitution today or proposed changes that there shall be always a minimum of one senator for every county unit.

DELEGATE O'CONNOR: Yes, that's correct. We already adopted that as a—

DELEGATE TAIRA: Well, I'm glad to hear that corrected.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I rise to speak against this. It seems to me that the whole thrust of the United States Supreme Court decision is to give people equal representation in the legislative bodies. Now, if this proposal goes through, it seems to me perfectly plain that the voters on Kauai are going to have an advantage over the voters on the other islands. In the first place, let's say that Kauai's population dropped so that they would have two senators and three representatives and the two senators would each have half a vote and the three representatives each of them would have a two-thirds vote. Well, it seems to me then that every voter on Kauai automatically, when either the house and the senate meet as a body, instead of having one voice to put forth their position, they're going to have three voices and this doesn't seem to me to be right. Further, as Delegate Miyake has already indicated, I believe by virtue of having these extra representatives and senators from Kauai, they're going to have better committee coverage than would be possible to the voters on the other islands because if they're only

entitled to one representative and instead they have three bodies, this doesn't seem to me to be right either. Again you've got a better spread and you've got more voices, more people to present a point of view and it just seems to me that if this thing goes through, we're building right into our Constitution something that is, to me at least, looks like a very questionable thing and very possibly a serious constitutional defect and I intend to vote against this.

CHAIRMAN: Delegate Dyer, in the light of our activities the last few days, the Chair would suggest that the number of people who speak and for how long they speak on an issue is not always overriding. Delegate Fasi.

DELEGATE FASI: I have a question I'd like to ask through the Chair of Delegate O'Connor. The question, Mr. Chairman, is we're leading to a statement that in the future, because of possible—I hope it doesn't happen—but possible lack of growth of population on the Island of Kauai, they would not even be entitled to one senator. Assuming that the proportion of voters on this main island, the other island, is such that if we work the fractional system it would entitle to say 3/8 of a senator, in other words it was really disproportionate, would that mean that the commission on reapportionment would then say Kauai would have two senators but they would have only one-quarter vote each in order to meet the ruling as set up by the Supreme Court, one-man, one-vote?

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: The way this Constitution is drafted, the proposed Constitution that we're now considering, in every case Kauai would have two senators with weighted votes. If the population got so distorted that Oahu, say, had a million registered voters and Kauai had 10,000, and there was still an attempt to follow this particular provision of the Constitution, there would be, my feeling that it would be completely out of line with the U.S. Supreme Court's decision and this Constitution might fail under those circumstances.

DELEGATE FASI: Mr. Chairman, I don't think he answered my question. Maybe he did indirectly. What I was getting at, could you still meet the qualification of the constitutional provision that is now proposed that Kauai would still have two senators but instead of having a half vote that in view of the change in population, this proportionate change, then could the commission then say Kauai senators will have a quarter vote each and the other half vote as a fraction given to either this island or to the neighbor islands?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: May I address myself to that, Mr. Chairman, please. As the constitutional provision is set out, we allocate the voting power among the counties by the method of equal proportion and we have provided that no county is to receive less than one full vote, no matter what their population. This in itself has to be justified but we feel that in light of Hawaii's

unique problems, unique geography, it can be. Certainly it can be justified now and any time in the foreseeable future. Therefore, the vote would never be any fraction other than one-half for the senate, no matter what. And never be any fraction other than one-third or two-thirds for the house, no matter what.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: One last question, Mr. Chairman. The committee chairman and the committee is satisfied that this proposition that they would have one vote no matter if they had 10,000 registered voters on Kauai and we had a million registered voters, that would still in their opinion hold up in court?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, it may do us a bit of an injustice to say that we are satisfied that such would be the result if Oahu had a million and Kauai had 10,000. But if that happens, we got a real problem, Mr. Chairman, and we feel this is the best possible way to try to solve it. I might say that the provision is drawn very carefully, very precisely and in such a way that if it should fail, if the courts should knock it down, which we must recognize as some kind of a chance, it is designed so that it will not affect any other part of the Constitution or any other part of our reapportionment provision. That is, this provision for minimal representation in fractional voting stands or falls all by itself. And I suggest to you that from a legal point we have nothing to lose.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Will the chairman yield to a question on what he just said? The question is this, he says that this provision was designed so that if the court turns this down, we have nothing to lose. Can he guarantee this committee, this Convention that we certainly don't have anything to lose when the court has in the past looked at an apportionment scheme as a whole and if one portion of the apportionment scheme is turned down, then the whole apportionment scheme goes down the drain?

CHAIRMAN: Delegate Schulze. Was that a question or a statement, Delegate Loo?

DELEGATE SCHULZE: Mr. Chairman, such a question from a fellow lawyer is highly loaded as I'm sure he knows no one can ever guarantee what a court will do. In every case, there are at least two lawyers and in every case one of them loses. All I can say to you is that we have done the very best that the legal talent that was available to this committee—and that was considerable—could possibly provide to insure that such would be the result when the court reviewed, when and if the court reviews our scheme. I think that's the best anybody could do.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, from a layman's point of view, in view of the fact that we're holding this Constitutional Convention primarily for carrying out the reapportionment program, I certainly could not envision a court deliberately turning down the whole reapportionment plan because one paragraph was not agreeable to them if that one paragraph could be deleted. Now, it is possible that they could do this but I would have more faith in the courts than this, Mr. Chairman. And I should urge everybody to vote for this amendment.

It seems to me that if we wish to give our smallest populated island unit the basic minimum effective representation, if we truly are concerned that their people have the best chance they can have to be effectively represented in the senate and in the house, that if there is a chance that the court will approve this in view of all of our peculiar circumstances here in Hawaii, and I'm thinking more particularly now the fact that the state government has taken away more and more responsibility from the individual counties and more and more the counties are having to come to the State for approval of this, approval of that, a handout here, and a handout there, begging all the time for more help to assist them, that this is the time and years ahead will be the time when our counties will need more and more opportunities to be heard in the state legislative body. I would urge us to adopt this amendment with the full knowledge that we may have everything to gain and nothing to lose. And I do have faith in the courts that they would not throw out our total plan in the event this one paragraph is unsatisfactory to them.

CHAIRMAN: Thank you. Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I would like to speak of fractional vote in favor of the committee proposal. I am firmly convinced that Hawaii is substantially different from any other state with the possible exception of Delaware which has three counties and we have four. But we're different from Delaware because we're separated by international waters and Delaware is relatively contiguous and compact. So that is where I begin, we're different. We're also different, as the chairman pointed out, in the concentration of power at the state level. I also believe that it's impossible to effectively represent a political entity such as an island or a group of islands by a single person. I think that a minimum of two in the senate and three in the house is rational and reasonable. If those three conclusions that I have reached are correct, the only way that we can possibly achieve it is by the use of fractional voting.

I perhaps have lived with reapportionment more than any other delegate, and I did have the privilege of arguing the case on behalf of the Richardson of *Burns v. Richardson* in the Supreme Court. And it may be that I am persuaded a little bit more by what the court said in oral argument than the questions that it asked and the answers that it got, than I am by the detailed written decision. And maybe I should not be. But on the basis of the oral argument, it seemed to me that

the court recognized, as it did in approving registered voters, that Hawaii was somewhat different from the other states. I also believe that two persons having a fractional vote may in fact exercise somewhat more power than one person with one vote. But I think that causes a deviation that is minor and not material from a legal standpoint. So all I can do is urge the delegates that even if there is a question, I think Hawaii should stand up and say this is what we as a State want, this is a rational state policy, we are prepared to defend it and go out and defend it. I think we will win.

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: I rise in support of the committee proposal. I think it is an honest and forthright attempt to solve a problem which is indeed peculiar to Hawaii. In the committee, we had many arguments, perhaps we had too many lawyers on the committee, but when we finally resolved our problem by adding a provision for fractional voting, those who had most vigorously fought the question of the minimum representation provision felt satisfied. I personally don't see the significance in the fact that the water that separates the islands is international. To me, the most significant point is it is very expensive to get around in our State. A person who is vitally interested cannot get into his car and drive to the state capital. He must depend necessarily upon his senators and representatives. We are not talking about the Island of Oahu. We all know that it will never fall into the category of meeting its minimum. We're talking about communities which are isolated by oceans from the seat of our government. By providing for fractional voting, we may find ourselves the first case before the United States Supreme Court on the subject and I cannot think of a better case that could be presented than that of Hawaii. Thank you.

DELEGATE ADUJA: Mr. Chairman.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: I rise to speak against the amendment. I think we're taking a backward step when we consider Kauai as being disadvantaged by the other islands. I always considered Kauai as a growing community where there's wine, where there's song, and where there's women and where there's cockfighting. I cannot see how Kauai will ever be disenfranchised by lack of population. It will grow and perhaps in the not too distant future, it will have more population than the Island of Maui. And if those people who want to gamble with our finances by fighting this thing into court, I want you to know this, that if your reason is correct then let us consider Molokai. Let us consider Lanai. If they deserve the same reasoning that you have then let us consider them. I think that fractional voting has no place in this State of ours. Thank you.

DELEGATE MEDEIROS: Mr. Chairman.

CHAIRMAN: Delegate Medeiros.

DELEGATE MEDEIROS: Mr. Chairman, may I

direct this question to the chairman of the committee, Delegate Schulze.

CHAIRMAN: Please address your question to the Chair.

DELEGATE MEDEIROS: Mr. Chairman, I was just wondering here what type of representation the Island of Kauai would have had, would have rather, supposing that each senator gets a one-half vote and if you have one Republican senator and one Democratic senator and they split on a vote, will there be any representation at all for the island?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Fair question, Mr. Chairman. The result would be no different from the result they would obtain if the island had two senators and both of them had a full vote and one was a Republican and one was a Democrat, they'd cancel each other out in the same way. There is no difference between a half vote and a full vote except that the half vote is only worth a half.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I have a question to ask the Chair and he can direct it to the proper person. Am I to assume that this particular provision will make it impossible for the County of Maui to have less than two warm bodies?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: In the senate?

DELEGATE LUM: I think it presently has two now and the population is 19,029 and if this registered voters per senator should be changed at eight to twelve thousand and the ratio did not work out to justify two, can we be assured that maybe a fractional application will be made there?

DELEGATE SCHULZE: That is correct. Now they would never have less than two warm bodies in the senate.

DELEGATE LUM: My next question is related to page 54 in the committee report which talks about the registered voters per legislator. What would be the effect of having this particular average averaged out if we were to have this senator put into this particular ratio? Would the deviation be any greater or is this of any importance to the Supreme Court?

DELEGATE SCHULZE: Mr. Chairman, I'm not positive I understand the question but I think it perhaps goes to this point. We would first allocate the existing senators by the method of equal proportion among the island units. That means that you apply this fairly complicated formula to determine at which point the island goes from one senator to two. But that

application is entirely independent of this minimum. That's done first. And if the island unit gets two senators by the method of equal proportion, that's the end of it. Minimums only come into existence when by the method of equal proportion the island unit only gets one. Then we apply the minimum situation. So the deviation situation would not change in the initial go around at all. They'd be the same as they would be without the minimum.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo, you have spoken two or three times on this subject.

DELEGATE GEORGE LOO: Mr. Chairman, I have not spoken. I have asked a question but I have not spoken on this subject. May I be—

CHAIRMAN: It's hard to tell the difference sometimes. Will you proceed, please.

DELEGATE GEORGE LOO: Mr. Chairman, I rise to speak in opposition to this proposal. Not out of malice but out of genuine concern that the million and a half dollars spent for this Constitutional Convention will go down the drain.

DELEGATE FERNANDES: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE FERNANDES: Is Delegate Loo a member of this reapportionment committee?

DELEGATE GEORGE LOO: I am.

DELEGATE FERNANDES: Thank you.

CHAIRMAN: Proceed, Delegate Loo.

DELEGATE GEORGE LOO: As I was saying, not out of malice but out of genuine concern that the million and a half dollars spent for this Convention may go down the drain if we are, as some of my fellow committee members want to be and as Delegate Jack Mizuha wants to be, bold. I feel, as the court said in the Maryland case, "In reviewing the state legislative apportionment plan, courts must of necessity consider the challenged scheme as a whole in determining whether the particular state apportionment plan in its entirety meets federal constitutional requisites."

I fear, Mr. Chairman, that this plan we've been working on for the last several months may go down the drain because we want to be bold. The Supreme Court has said in other cases that apportionment must be based on population. They go on the principle of equal representation. In *Reynolds v. Sims*, the court said, "An individual's right to vote for state legislature is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with those of citizens living in other parts of the state." In *Lukas v. Colorado General Assembly*, the court said, "An

individual's constitutional protective right to pass on equally weighted vote cannot be denied by a vote of a majority of the state electorate if the apportionment scheme adopted by the voters fails to measure up to the requirements of the equal protection clause." Now in Colorado we had a similar problem. In Colorado they don't have waters but they have mountains.

Now, I feel that with this fractional voting, what in effect we are doing is giving Kauai two senators. For example, assuming you have a committee of seven members and a Kauai senator has half a vote, the committee was evenly divided, a half vote is equivalent to one vote, Mr. Chairman. Now, if you take this premise that it's equivalent to one vote, the deviation would be about minus 76.5%. As you heard Delegate O'Connor say that the court would allow a minor deviation if it were backed by rational state policy. The question is, is this a minor deviation? I would like the delegates to know that this proposal, according to the committee report, is severable from the rest of the committee report so that if you do vote it down, all the voting that—all the work that we have done previously will not be wasted. I ask you all to vote against this proposal.

DELEGATE DYER: Mr. Chairman.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: I yield to Mr. Dyer.

CHAIRMAN: Delegate Dyer is recognized.

DELEGATE DYER: Mr. Chairman, I'd like the body to look ahead a few years. Kauai is entitled to one senator, Kauai is entitled to one representative, that senator is William Fernandes, that representative is Jack Mizuha. Is there anybody here that doesn't think Kauai wouldn't have effective representation? I would.

CHAIRMAN: You're very kind.

DELEGATE DYER: And Mr. Chairman, with Kauai being entitled to one senator and one representative, if we had two Billy Fernandes and three Jack Mizuhas in the legislature, I think it would be more than all the rest of us could handle.

DELEGATE ANSAI: Mr. Chairman.

CHAIRMAN: Delegate Ansai.

DELEGATE ANSAI: At the outset, I would like to say that I appreciate very much the remarks of some of the delegates here concerning the condition existing on Maui.

Maui County, as I said when the membership of the house was discussed here a couple of days ago, lost one representative and therefore we tried our very best by using any one of the criteria or combination of criteria in trying to justify that we should have a representative

from Maui and Molokai—Lanai and Molokai. But the three members that we have on the Apportionment Committee, despite all the efforts and every argument they have put forth, could not justify this. The reason that Delegate O'Connor brought out I thought can well be applied to our case also. We have a peculiar condition in that we have three separate islands, much more peculiar than any other part of the State, and by having only two senators, we cannot give them minimum representation or effective representation. But how we can justify this by applying to any of the criteria or a combination criteria. We could not. And therefore, I'd like to speak in behalf of supporting the proposal of the committee.

CHAIRMAN: Thank you. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, inasmuch as Delegate Loo had referred to the *Colorado* case, I want to ask a question so that we have the air cleared.

CHAIRMAN: Proceed.

DELEGATE MIZUHA: What was the percentage of deviation in the senatorial districts and the representative districts in the State of Colorado when the Supreme Court struck down the reapportionment system, Mr. Loo?

CHAIRMAN: Delegate Loo, do you care to respond?

DELEGATE GEORGE LOO: I would yield to Delegate O'Connor. He has more of the information than I have.

DELEGATE MIZUHA: Mr. Chairman, I asked the delegate this question. Now, he used that to speak to this body in support of his position against the committee proposal. Now, he must be able to defend himself as a lawyer, not just to say something from the bottom of his ... I'll stop there.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I think there's been some confusion on discussion of committee proceedings. If there are twelve committees in the senate and Billy Fernandes sits on all twelve of them, he has a full vote on all twelve. If there are two senators from Kauai and each sits on six different ones, I don't care whether they have a half a vote or a full vote, and that's all we're talking about. We're talking about manpower to cover all the bases. It is the half vote for each on final passage of legislation that the only thing that counts.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: I'd just like to point out to this Convention that maybe we're kidding ourselves talking about half a vote, two senators. If we're going to accept the principle of minimum effective representation for an island or basic island senatorial

unit like Kauai plus the Islands of Lehua, Niihau and we're going to say that the minimum effective representation is two senators, then let's go the way we take, the way we conclude and give each of these two senators a vote each. Because regardless of what has been said here I believe that if you accept that philosophy of minimum island unit representation, this has to be tied in to the voting power of that delegation. If that minimum is going to be two, then I say that we should give them a vote each. And that is why I say we are kidding ourselves when we talk about two senators with half a vote each. And to me the issue is that if we're going to give them two votes with two senators with a vote each and not the idea of two bodies with half a vote each, maybe half salary, half per diem, half allowances. Let's call a spade a spade and decide on the real issue that's before us here today.

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: I think for the record it should be shown that testimony before the committee in behalf of this proposal was based on the fact that one senator finds it very difficult to cover all the bases in the senate. It wasn't based on a vote or two votes or the voting strength or the voting power. It was based on the need for more warm bodies. And I think if you will recall, our chairman of the Apportionment Committee called our attention to the fact that these two senators, we're not proposing that they be given half salary, half privileges. We're proposing that they're given full privileges with the exception of half votes.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I have a question to my colleague from the 15th District. That's the reason we have a bicameral legislature. There are also representatives from the lower house who also represent the island. So representation shouldn't be judged upon body but on what the individual county or district can bring out as far as representatives.

CHAIRMAN: Are you ready for the question?

DELEGATE DEVEREUX: What was the question?

CHAIRMAN: The question is whether we vote on this or not.

DELEGATE DEVEREUX: No, the delegate said he wanted to pose a question to me and I ask what was the question.

CHAIRMAN: I understand he made a statement, and did not make a question.

DELEGATE MIYAKE: Mr. Chairman.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, I yield to Delegate Kauhane. I have already spoken once, and I don't think Delegate Kauhane has spoken once yet.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I sit here somewhat confused with the method as propounded by the committee chairman and possibly some of its members. When they speak about the method of equal proportion and equal protection and yet in this general type or method of equal proportion and equal protection they begin to deviate by saying that Kauai should be afforded the two senate members with fractional vote. I see nowhere in the reading of the Supreme Court decisions by any one of the learned attorneys in this Convention who have supported the position one way or the other, make any reference that special consideration should be given to the Island of Kauai in the application of the method of equal proportion or equal protection. That I do not find in there, reference to the Supreme Court decisions as they have stated make this distinction of a special granting of special method of equal proportion, equal protection only for the Island of Kauai. I say this because I am not as learned as they are in the legal techniques. I'm only trying to ascertain in my mind the method of the application of these legal statements that are being made, legal interpretations. I cannot sit here to be the judge and jury as to who is right in the legal interpretations because all of them say the matter has to be settled by court. All of them seem to say that this is only the first attempt. That Hawaii should move forward in this area providing fractional voting rights. They even go so far as to express some concern as to whether or not this will be approved by the court. I don't say all of them but some of them have.

I'm looking at the method of equal proportion as they have stated and equal protection. If this method is to be applied only to Kauai, how and why can't this method be applied to the districts on Oahu who suffer the similar problem as the senator or representative from the Island of Kauai. Take the representative district that Delegate Miyake spoke about and made reference to, Waianae, with one representative. Should we deny them the right of, the method of equal proportion or equal protection? Should we say that this right of equal proportion and equal protection should be extended only to Kauai and not to Waianae? I don't know, Mr. Chairman, whether you are included in the district of Waianae. I hope you are. And if you are, then you should be concerned that this policy or method of equal proportion and equal protection should be extended to the constituents of Ewa including Waianae which comprises a new representative district.

I look at the reapportionment question as to its application to all the districts in the State of Hawaii. I do not look at the method of apportionment to apply only to one specific area.

I just asked a question, Mr. Chairman, around here a

few minutes ago as to the number of standing committees in the house of representatives. I received this answer. There are 19 operating committees, 3 housekeeping committees, a total of 22 committees. How can you, Mr. Chairman, with the one representative you have from your representative district, rightfully say that your one representative can take care of all the problems confronting the 22 committees so that he can adequately and with equal concern give due credit to the constituents of this Waianae district, this new representative district? I can't see how this theory of looking only at Kauai and forgetting Waianae.

Okay, let us look at the case of the former 11th Representative District which is now the 18th Representative District. We have lost all representatives with this reapportionment fiasco, so that we have only two representatives now to take care of the problems of the people of Kalihi within the 22 standing committees. So that our problems of concern, your problem of concern with your district, my problems are concerned with the people of Kalihi, the 18th Representative District. It's the same as the problem presented by the honorable representative from Kauai in the committee here, that he cannot cover all the bases. For which coverage he cannot make, some of the delegates here are feeling sorry for him and are ready to say, "We'll give you two senators but with fractional votes." As the delegate from the 14th District said, if we mean what we say that we want to give you two senators, then give you two senators with equal votes, not a fractional vote. We are talking of bodies here, not so much the effect of votes. Kauai will have two senators, sort of a standby senator receiving pay, getting all the benefits and privileges of a full-time senator from any one of the senatorial districts from Oahu or from the Islands of Hawaii and Maui. The only time I feel that we can become useful to the Island of Kauai, the Garden Island, when it comes to the matter of voting, where fractional vote is needed. This is the contention of the committee that this is a trial situation.

CHAIRMAN: Delegate Kauhane, you have one minute.

DELEGATE KAUHANE: Thank you very much. Every time I get up to speak the timepiece begins to move faster. But that's all right, Mr. Chairman, I like to abide by the rules and I hope all others do.

But the main point that I'm trying to raise here, Mr. Chairman, is that I cannot see in my conscience to buy the recommendation of the committee and that's why I'd like to vote against the proposal as submitted by the committee.

Thank you for the opportunity.

CHAIRMAN: Are you ready for the—Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: I'll be very brief, Mr. Chairman. If I thought for one minute that this provision could invalidate our whole apportionment plan, I would be fighting it. I feel absolutely confident

that this is a separable provision. It is so written and the debates of this Convention will make it perfectly clear what our intention is.

CHAIRMAN: Thank you. Delegate Miyake.

DELEGATE MIYAKE: I have already spoken once. I don't think Delegate Yoshinaga has spoken on this matter yet.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I'm not going to speak on the matter, Mr. Chairman, but just so the record will be fair to you, Mr. Chairman of this committee, I just wanted to say this; Delegate Kauhane has made inference that you are not properly representing the Waianae district on this matter and I wanted to point out to Delegate Kauhane that you were not elected from the Waianae area but you were elected from the subdistrict of Ewa Beach-Waipahu. So at least the record will be fair to you, Mr. Chairman.

CHAIRMAN: Yes, you're very thoughtful, thank you. Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, if there are no other first-time speakers, may I speak for the second time?

DELEGATE WRIGHT: Mr. Chairman, I wish to speak if I may.

CHAIRMAN: Delegate Wright.

DELEGATE WRIGHT: I rise in support of the committee proposal. I would like to stress first that I agree with Delegate O'Connor, as he made his presentation earlier. I too don't agree with power playing, especially in our legislature. However, I do agree greatly with the best representation of and for the people. Now, Mr. Chairman, on the Island of Kauai, because of the geographic makeup, by nature and because Kauai as mentioned has light population at present, because I know one man cannot represent his people in the legislature and most important I know that one man cannot represent the total Island of Kauai, I believe, Mr. Chairman, what the committee has done justifies and substantially will represent the people's voice that makes good government. Thank you.

CHAIRMAN: Thank you. Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, as a representative of Waianae, I wish to make a few statements. Waianae has one representative. But we must not forget that Waianae participates in electing four senators. Thank you.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Thank you. Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, I rise to rebut a few of the arguments raised by the proponents

of this amendment. First, I'd like to take up the arguments raised by our honorable Delegate Dodge and Delegate Dorothy who stated that Kauai should have two senators with half votes so they can adequately cover all the bases in the senate where the committees are involved. The senate has fewer committees than the house and the house in the state legislature has 22 committees. And this honorable Committee on Apportionment and Districting has made the representatives in the house less effective by reducing the number of representatives in each representative district from multiples of four to two in most of the districts. So when you talk about effective representation you have reduced effective representation as far as the districts, representative districts are concerned for those on Oahu.

In answer to Delegate Burgess's question that Waianae has four senators, well, we might also apply the same logic to Kauai. Kauai also is effectively represented in the house with three representatives and they over-represent Kauai in the house. This leads me, Mr. Chairman, into the arguments raised by Delegate O'Connor and may I remind the members of the Apportionment Committee of their own language in Supplementary Standing Committee Report No. 58 on page 44 which reads as to representation as to figures and deviations, and I quote from page 44, "The over-representation in the house for the basic island unit of Kauai by -16.1% resulted when, by the method of equal proportions, the last representative seat was assigned to that basic island unit. Its under-representation in the senate by +23.5% is caused by the inability of the island unit's 12,510 registered voters to command a second senate seat. Kauai's over-representation in the house compensates to a large extent the unit's under-representation in the senate."

Now I'd like to also rebut another argument raised by Delegate Taira. Delegate Taira raised the issue that one-man, one-vote rule could be ignored here, that other factors are far more important. The very reason we are gathered here today in the State Convention, Mr. Chairman, is because of the law established in *Reynolds v. Sims* which sets the law for one-man, one-vote rule equal representation in the state legislature for the voters of each respective state. Other factors do not count.

Next, as far as the arguments raised by the honorable chairman of the Apportionment and Districting Committee, as to the ruling of any court, may I read to you and I quote from Chapter XI of the *Hawaii Constitutional Convention Studies* by the Legislative Reference Bureau on page 54. It reads and I quote: "Fractional voting has been held by a three-judge federal district court to be violative of the 14th Amendment." And it quotes the case, *W. M. C. A. Inc. v. Lomenzo* 238 F. Supp. 916, (1965): "There, the legislature proposed four alternate plans. Two of them, Plans C and D, provided for fractional voting." And I further read, "Plan D called for an assembly of 174, casting a total of 150 votes. One hundred twenty-seven members have a full vote and 47 have fractions of a vote ranging from 3/4 to 1/6." Said the court, and I

read from the quotation from the court statement, "If voting were the only important function of a legislator, the scheme of fractional voting in Plans D and C would probably not offend the basic standard of equality among districts. But legislators have numerous important functions that have nothing directly to do with voting but participation in the work of legislative committees and party caucuses, debating on the floor of the legislature, discussing measures with other legislators and executive agencies and the like. The Assemblyman who represents only one-sixth of a district can theoretically give each constituent six times as much representation in these respects as the Assemblyman who represents a full district."

CHAIRMAN: Delegate Miyake, your time is almost up.

DELEGATE MIYAKE: Thank you. "This disparity of representation persists even if the state is right in arguing that the Assemblyman with only one-sixth of a vote will carry only one-sixth as much political weight when he engages in these activities." There are other lower court decisions and I quote to you these federal district courts, *Bannister v. Davis* (1966), *Swann v. Adams*, Southern District of Florida (1967); state courts, *Jackman v. Bodine*, New Jersey Supreme Court, (1964), *Morris v. Board of Supervisors of Herkimer Co.*, New York State Supreme Court. So all of these courts have voted down fractional voting as a reapportionment plan.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Point of information directed to Delegate Taira. May I proceed?

CHAIRMAN: What is your point of information, Delegate Kato?

DELEGATE KATO: I was a little confused by his statement and I think the remarks of Delegate Miyake indicate the same confusion. Were you speaking for or against the committee's position on minimum representation?

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I'm glad my colleague is confused because I was confused also at the time I spoke, but now I have come to a decision and I am going to be against this proposal.

CHAIRMAN: Thank you.

DELEGATE YIM: Mr. Chairman.

CHAIRMAN: Delegate Yim.

DELEGATE YIM: Somehow it's rather peculiar that this side of the hall seems to be so confused because I'm also confused. I think that nearly all the delegates here are somewhat sympathetic to the basic problem that is state representation on the neighbor islands. But the problem here is that we're trying to do a good job

but we want to do a job that is constitutionally acceptable. I have noted that the States of New York, California, and in all other large states having only two Senators to Congress, representing millions of people have not asked fractional votes and bodies so that they can represent all the people as a Senator from a smaller state. Put it another way. I have not seen any movement by the State of Hawaii in asking fractional votes for our U.S. Congressman and Congresswoman, now representing us, to cover all the bases in Congress. The problems in Congress represented by two from Hawaii are far greater than the problems facing the Island of Kauai in the state legislature. And one last observation, in the State of California, the state house of representatives runs in a single district and each represents 250,000 voters. So with all this in mind, I am not too clear as to the validity of the argument as set forth by those who favor the proposition that there is a definite need for more bodies to cover the bases.

CHAIRMAN: Are there many others who wish to speak on this because we should have a break shortly. Okay, Delegate O'Connor, and then the committee chairman will have to wind it up and that should be it.

DELEGATE O'CONNOR: Very briefly, Mr. Chairman, the committee proposal has been put forward to this body in an attempt to give the island groups, the county island groups, representation in the senate two men and in the house three men. If in the minds of those people in this committee, when they vote, they feel that these counties should not be so represented, then they should vote against this proposal. On the other hand, if they agree with the committee and with the evidence that has been presented by the committee, that to effectively represent a county in a centralized government system of ours, an island group needs two men in the senate and three men in the house, then they should vote in favor of this proposal. That's what it boils down to and if Delegate Yim is unclear, I think that is the simple basic issue before this body.

We have attempted today in argument and in the committee report to justify this basic proposition legally, to justify it from an evidential standpoint and to lay it before you in as plain and simple and concise a manner as we can and if you feel as the committee does that that type of representation is required, not simply today, but in the future because today we can justify two senators and three representatives, or rather one senator, one vote in the senate, and three votes in the house for Kauai, but by the time the next districting commission meets, we may not be able to justify those votes. Today, this matter is much simpler than it will be ten years from now, maybe. That basically is the situation.

In reply to Delegate Miyake briefly, the situation on Oahu has nothing to do with what we're proposing because we're proposing representation here by counties, by island groups and not by individual representative districts. Because the representative district on Oahu has two or three does not mean that Oahu is under-represented by any matter of means in the legislature. And in our centralized system of

government, all funding and the ability for taxation and all of the hardcore responsibilities and rights of the local governments go through the legislature one way or another.

The simple question is, do you want to give two in the senate, two bodies and three bodies in the house, or not.

CHAIRMAN: Are you ready to vote? Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, briefly to summarize for the committee and in favor of the committee's proposal, I ask the delegates not to be misled by talk of comparing a single-representative district on the Island of Oahu with the problems faced by a county unit many miles away over open ocean. It is clear I think to all of us, that as Delegate Burgess pointed out, Waianae or any other representative district in this island participates in the election of a number of senators and a number of people representing them. They also can travel very readily to the capitol building and testify. All of these things are quite untrue for people who reside on Kauai and on Maui. The problems are enormously different, totally different, Mr. Chairman. We are adjusting ourselves to the problems of the neighbor islands at this point.

Secondly, I urge the delegates, do not set yourself up as judges of a legal case. You're not called upon to do that. You have some of the best, most respected and honored legal minds in this State right here in this Convention. Many of them have spoken to you and told you that they believe that this plan has a very good chance of success in the courts, and they have also told you that even if by some chance it should fail it would probably not hurt anything else that we've done. In fact they've gone more strongly than that.

I ask you to make the policy decision which is what you and I are here for. And the policy decision is to decide whether in order to have effective and realistic representation in our highly centralized government system, do the people of the neighbor islands need some minimum number of representatives to get their problems across in the legislature. You must decide yes or no, but please don't be confused about legal questions and other questions that really don't have anything to do with our policy decisions.

One final matter, Mr. Chairman, I know that the concept is a new one. I know that the concept is an unusual one and I know it's very easy to talk yourself into saying "no." It's very easy to do nothing, Mr. Chairman. But it's our job to look not at today, but at tomorrow and the day after tomorrow. That is what we are here for. And the fact of the matter is that even though the situation may not be drastic right now, it's certainly going to become very serious in the future. I urge you to plan for that future now before it's too late to do anything about it. That's why we're asking for you to implement this plan at this time. Thank you.

DELEGATE KAUHANE: Mr. Chairman, I rise to

ask a question here, Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I direct my question to you for the last speaker, wherein in trying to support the statement made by Delegate Burgess, there's a statement that Delegate Burgess reflects that the people of Kauai do not vote for their senator when he says that Waianae votes for four senators. And because of this statement, the committee explained that it is to provide for Kauai a senator for which the people do not vote. Is this true or false?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I hate to ask that the question be repeated, Mr. Chairman, but I just don't understand it.

DELEGATE KAUHANE: Mr. Chairman, did the delegate, the chairman of the committee, in summarizing his case, make reference to the statement made by Delegate Burgess? The statement made by Delegate Burgess in my judgment reflects that the people of Waianae vote for four senators which would clearly indicate that the people of Kauai do not vote for their senator and because of this statement of Burgess, the committee's plan projected so that the committee's plan provide this need of a senator for the County of Kauai. I'd like to know whether the statement made by Burgess is a true statement that the people of Kauai do not vote for senators as the people of Waianae vote for four senators?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I think the answer to that is very clear, Mr. Chairman, the people of Kauai vote for one senator, the people of Waianae vote for four. That's the point Delegate Burgess was making, I think.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: Mr. Chairman, I would just like to ask one short question to the committee chairman that I was wondering by his recommendation in support of this proposal, he is insinuating here that those of us who are members of the state legislature do not have the interest of the neighbor islands here at heart, that we are not concerned with their problems and that because of this fact they are trying to get more representation for the neighbor islands. I'd like to know whether the committee is making this insinuation that those of us who are state legislators here are not taking the neighbor islands' concerns to heart.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I don't think that anyone who knows me or knows the other members of my committee could seriously suggest such a thing.

CHAIRMAN: Thank you. Delegate Lum.

DELEGATE LUM: I sat here for the last hour or so and I am wondering what kind of precedence—I'm going to ask a question. I was wondering how this would affect our laws when a person has half a position, being given a full salary, collecting a full retirement. Would this have any effect on the general laws of the State?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Not at all, Mr. Chairman. The fallacy I think in Delegate Lum's original thought was that this is half a position. It's not half a position, it's a full position. The man is a full senator and a full representative. The only difference between him and anybody else is that he exercises a fractional vote.

CHAIRMAN: Thank you. I believe we're ready to vote? A roll call? Right. The Chair will order roll call. Those who vote "aye" will be voting to support the committee report on Section 4.5, Article III. Those voting "no" will be voting to delete that section.

DELEGATE MIYAKE: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: The motion is, if you vote "aye," you are in favor of fractional voting. Is that right? If you vote "no," you are not in favor of fractional voting.

CHAIRMAN: If you vote "aye," you are in favor of minimum representation and fractional voting.

DELEGATE MIYAKE: If you vote "aye," right? If you vote "no," you are against.

CHAIRMAN: If you vote "no" you are against it. Is there any other question about the vote? The clerk will please call the roll.

(Roll call having been ordered, the motion to adopt Section 4.5 of Committee Proposal No. 12 was put by the Chair and carried by a vote of 50 ayes and 24 noes, with Delegates Aduja, Ando, Chang, Donald Ching, Doi, Dyer, Hitch, Kaapu, Kato, Kauhane, Kudo, Larson, Frank Loo, George Loo, Lum, Menor, Minn, Miyake, Noguchi, Pyo, Steiner, Taira, Uechi and Yim voting no; and 8 excused, with Delegates Amano, Hung Wo Ching, Goemans, Kamaka, Kawasaki, Lalakea, Sutton and Takahashi being excused.)

CHAIRMAN: The motion is carried. A brief recess.

DELEGATE MIZUHA: The delegate referred to me as being bold but he didn't refer to the correct quotation and I believe in justice to me and to all the delegates who voted on behalf of the proposal, I should read the entire quotation. And this is the quotation from Justice Van Dyke, one of the great justices of our Supreme Court.

CHAIRMAN: Delegate Mizuha, is that the quotation

that everyone has a copy of?

DELEGATE MIZUHA: But I want to read that portion that refers to what he had said about me. "But in the exercise of this high power, we must be ever on our guard lest we elect our prejudices into legal principles. If we would guide by the light of reason we must let our minds be bold." And I'm happy that all of the delegates here are bold.

CHAIRMAN: A brief recess is declared.

At 3:35 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:50 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Schulze is recognized. The matter before us is Section 4.2, the subject of the reapportioning commission. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the next section is 4.2 as you have said, which is the reapportionment commission. I would move adoption of this section, after the second and ask that the Chair accept Mr. Miyake's Amendment No. 29 before I make the committee's presentation of the section, please.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, I second that motion.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, if it's in order then to the satisfaction of the chairman of the Apportionment and Districting Committee, I move for the adoption of Amendment III (29) which reads as follows:

"The first paragraph of Section 4.2 as set forth in Committee Proposal No. 12 is amended to read as follows:

"Section 4.2. *Reapportionment Commission.* On or before March 1 of each reapportionment year and whenever reapportionment is required by court order a legislative reapportionment commission shall be constituted. The commission shall consist of nine members. The president of the senate and the speaker of the house of representatives shall each select two members. Members of each house belonging to the party or parties different from that of the president or the speaker shall select one of their number for each house and the two so selected each shall designate two members of the commission. The eight members so selected shall, promptly after selection, be certified by the selecting authorities to the chief election officer and shall within 30 days thereafter select, by a vote of six members, and promptly certify to the chief election officer

the ninth member who shall serve as chairman of the commission.

"No member of the reapportionment commission or an apportionment advisory council shall be eligible to become a candidate for election to either house of the legislature in either of the first two elections under any such reapportionment plan. Each of the four officials designated above as appointing authorities for the eight members of the commission shall, at the time of the commission appointments, also appoint one person from each basic island unit to an apportionment advisory council for that island unit. Such council shall remain in existence during the life of the commission and shall serve in an advisory capacity to the commission for matters affecting its island unit."

DELEGATE KAUHANE: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: I second the motion for its adoption.

CHAIRMAN: Thank you. Would Delegate Miyake yield?

DELEGATE SCHULZE: Mr. Chairman, I'd like to make the committee's presentation if I might.

DELEGATE MIYAKE: I yield to the honorable delegate.

CHAIRMAN: Thank you. Delegate Schulze.

DELEGATE SCHULZE: Thank you, Mr. Chairman. The world has changed a little bit in the field of reapportionment. As I have suggested to the delegates before, because of court decisions in the recent past, it is now necessary to redraw lines everytime you reapportion. With this in mind, Mr. Chairman, it becomes a rather more elaborate, rather more pressure-filled procedure as everyone has noted incidentally in the last few days; and we have therefore undertaken to provide a systematic method of handling future reapportionment and redistricting.

Mr. Chairman, we felt that the job was so difficult, so complex, and obviously so full of perils no matter how carefully the job is done, we believe that there would always have to be some people who are dissatisfied. We felt that the job should be given to a commission which is rather carefully and specially chosen for the task. We considered the possibility of finding some nonpartisan commission and concluded that in an area like reapportionment, there probably just isn't any such thing. Therefore, we searched through all the provisions of constitutions of other states, those that have been adopted, those that have been subjected, and we went through a number of written material before we put together the plan that we present to you here.

Essentially that is this. We suggest that a nine-member commission be appointed, eight of those people will be strictly bipartisan, two will be selected by the president of the senate, two will be selected by the minority of the senate, two by the speaker of the house, two by the minority of the house. The purpose here, Mr. Chairman, is to make sure that both parties are represented on the commission, and to make sure that people familiar with the legislature and the legislative problems are also on the commission. The eight will choose the ninth together and those nine people will make up the reapportionment commission. In the event the eight cannot select the ninth, cannot decide on one, the Supreme Court will take that job for them, will appoint the ninth man.

In addition to the commission, Mr. Chairman, there will be advisory councils for each neighbor island. These will consist of four members each and their purpose will be to assist and advise the commission with respect to problems centering on the neighbor islands. The commission is to be established once every eight years. The first time will be in 1973, on or before March 1; obviously it has to be a time when the legislature is in session, if possible. It will also provide the delegates to be established whenever and if ever a court orders a reapportionment for the State of Hawaii.

We have left much of the procedure which is to be followed by the commission, that is the question of public hearings, where the hearings are to be held and that sort of thing to the commission itself or to the legislature. We felt that it wasn't really appropriate for us to get every tiny little detail down pat. So that we provided that whatever the legislature or the commission itself shall provide in the way of procedures and operating rules will prevail. We specified in the report that we hoped that the legislature would provide for public hearings and would provide for other procedures which would make sure that the public has been heard, and make sure, as we have found, that it's most important that everybody gets a chance to look at the plan, criticize it, comment on it, and say their piece about it. Many people are very interested in this and we found it very helpful to allow them to look and allow them to talk.

The commission's work is to be completed, published and it then becomes law, Mr. Chairman. This is in keeping with the—there are a number of other states which have adopted approximately equivalent plans to this one and they have apparently worked quite well. We see no reason why in the order of things, this plan should not also work well. We have provided that members of the commission and the amendment provided by Mr. Miyake changes it slightly to include members of the council will not be permitted to run for the legislature for two elections after they reapportion the State.

Now, I think I might comment on this just a moment, Mr. Chairman, the purpose here is just this. People can't help but feel that when you're doing something that affects your own self too closely, you're just not likely to do a real fair job about it. It's

awfully hard to be impartial when what you're doing just is too close to home. So we tried to avoid conflicts of interest insofar as possible by providing that the people who reapportion cannot then go out and be affected individually by that reapportionment. The purpose really is to make effective appropriate public acceptance of this and to make sure that the people in a district who have been hurt, whose districts have been carved up a little bit, at least don't feel that somebody else from that district sat on the commission and did it to them. The purpose of any commission, of any governmental institution of any kind is to try to make it as impartial and fair as possible and that is the thrust of the provisions we have given here for the reapportionment commission.

The committee has met this morning, consulted with Mr. Miyake on the amendment he has proposed, and one of those amendments, as I said, included within the scope of this prohibition, the ninth member of the commission and the advisory council members. That is to say, none of them will be eligible to run for the legislature during two elections after the reapportionment. This was acceptable to the committee fully and we therefore endorse Mr. Miyake's amendment to our proposal and ask that the proposal as amended, Section 4.2, be adopted by the Convention.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: I rise on a point of information. Question directed to the chairman of the committee. The way I read the language here, I'd like to know if my interpretation is correct. First of all, we have a presiding officer of each body, he shall personally select two of the commission members. Then the members of the opposite party from the presiding officer will get together and designate one of their members who shall then act in the same capacity for their numbers, is that correct?

DELEGATE SCHULZE: Yes, that is correct. I'd like to explain that. The committee first considered simply making the minority leader the appointing authority but we felt that the minority leader is a job that might be changed, there might in some given year not be one, or it might be called by some other name, or there might be two or three minority parties. We felt that one way to take care of all those problems that might arise was to make the procedure that you have just outlined.

DELEGATE DONALD CHING: Mr. Chairman, one further question. Just in case, I can't see it but maybe somebody else can, just in case the presiding officer of a particular house would not just come from the majority party of that particular house, let's say there was a coalition and by a coalition vote he was elected a presiding officer, is there any possibility that the commission could be weighted six votes one way and then which would amount to seven votes one way and two the other?

DELEGATE SCHULZE: No, Mr. Chairman, I'm

happy to say we thought of that too. We have provided that the appointment will be made by the president and the other appointment will be made by the members of the other party, that is the party other than the president. So there can never be, we think, an unequal weighting on the commission.

CHAIRMAN: Are there any other questions?

DELEGATE HITCH: Mr. Chairman.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Just a point of information. In Amendment III (29), reference is made with respect to the apportionment advisory councils, that the members will be appointed from, it says "each basic island unit." Perhaps that's a more common phrase to other people than it is to me. Is it meant by each county? Is county a basic island unit? Wouldn't it be better to say county?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, the term "basic island unit" has been utilized throughout the reapportionment provisions for a rather technical reason which is explained in the committee report that has to do with some legal problems. We felt that if we use the term "basic island unit" we could better justify the apportionment that we have used to the neighbor islands because the legislature—only the Constitution can change what a "basic island unit" is. The legislature can change what a "county" is. It was a fairly technical thing but it is the term used throughout Section 4 of the Constitution, Mr. Chairman.

CHAIRMAN: The Chair might offer also that we have two counties on Maui. Delegate Lum.

DELEGATE LUM: Mr. Chairman, just a point of information. I see here on line 4 of page 2, they mention "the first two elections under any such reapportionment plan." I take it this means two general elections?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, this is our language and that is our intent. Yes, that only general elections may be termed that.

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, I have a question of the chairman of the Reapportionment Committee.

CHAIRMAN: Proceed.

DELEGATE STEINER: Mr. Chairman, my question is this. Suppose that the number in the minority party or parties in a given house is an even number and it became deadlocked. Is there any machinery whereby a commissioner can be appointed?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Yes, Mr. Chairman, I'm happy to say we even thought of that. The provisions specify that if the appointments are not made within the time specified for whatever reasons, those appointments will be made by the Supreme Court from the same party as the appointing authority, same political party.

CHAIRMAN: Thank you. Delegate Steiner.

DELEGATE STEINER: I have another question and I think it's—Mr. Chairman, again this is to Delegate Schulze that the machinery for this is under Section 4.8.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: One moment please.

DELEGATE STEINER: Where the machinery for the Supreme Court to act. My question is where is that machinery set forth in the proposal?

DELEGATE SCHULZE: That's on page 3 of Committee Proposal 12. The first full paragraph, which is a short paragraph near the bottom of the page. It says, "Council and commission members not appointed within the time specified shall be appointed promptly thereafter by the supreme court."

DELEGATE STEINER: Thank you.

CHAIRMAN: Delegate Mizuha. Delegate Mizuha is recognized. You were standing up and I thought you wanted to be recognized.

No other questions? The first vote will be taken on the amendment marked III (29). All those in favor of this amendment will say "aye." Opposed, "no." The amendment is carried.

The motion before us now is for the passage of Section 4.2 of the committee proposal as amended. All those in favor will say "aye." All those opposed, "no." The motion is carried.

There's no other matter before us. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I believe there are two. The committee's proposal has now been completed except for Section 24 of Article XVI, which is the transitional provisions. This is the implementation provision, Mr. Chairman, for the additional senator for the Island of Kauai. For reasons peculiar to the method of constructing the minimum in our plan, it is necessary to have a transitional provision put in the plan into effect as of 1970 and that is what this section is designed to do. We also have one other section in the transitional provisions which must be adopted by the body and one amendment, Delegate Ando's amendment remaining outstanding, Mr. Chairman.

I would move for adoption now of Section 24 of

Article XVI, the transitional provisions.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Second the motion.

CHAIRMAN: You heard the motion and second. Any questions? If not, all those in favor of the motion say "aye." Opposed, "no." The motion is carried.

DELEGATE SCHULZE: Mr. Chairman, Section 26 of Article XVI, that is the transitional provisions, is a technical amendment designed to protect the State in case the voters ratify both the reapportionment so overwhelmingly approved here yesterday and the senate reapportionment plan contained in Senate Bill 1102, which will appear on the next general ballot. The problem arises, Mr. Chairman, if the electorate should ratify both at the same election, which one would prevail. Section 26 is drawn in compliance with an opinion of the attorney general which stated that the Constitutional Convention could itself provide which was to prevail, and therefore we provided that in the event both of them should be passed, the apportionment plan of this body would be the prevailing one.

I therefore move for the adoption of Section 26 of Article XVI, Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Point of information. Assuming that Senate Bill 1102 receives a higher vote than this constitutional proposal, which takes precedence?

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: According to the ruling of the attorney general and our understanding, notwithstanding the number of votes received by each if both are passed with the minimum percentage necessary, this one will prevail.

CHAIRMAN: Thank you. Any other questions? You heard the motion, the discussion. All those in favor say "aye." Opposed, "no." Motion is carried. I believe—Delegate Schulze.

DELEGATE SCHULZE: I will yield to Delegate Ando, Mr. Chairman.

CHAIRMAN: The matter before us now—Delegate Ando.

DELEGATE ANDO: Mr. Chairman, I have prepared an amendment to Section 25 of this transitional provision which would effectuate and bring into action

the reapportionment commission on or before March 1, 1969, should the reapportionment—

CHAIRMAN: Delegate Ando, will you identify your amendment, please?

DELEGATE ANDO: It's III (28). I would like to seek the advice of the chairman of the Apportionment Committee whether he feels this is necessary or not before I would submit this.

CHAIRMAN: I see. Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, some of us did discuss this. We felt that it was very likely that in the event the reapportionment was not accepted, the courts would probably activate the reapportionment commission in any event but we feel that this is the frosting on the cake, that it certainly can't hurt, it may well help and therefore we favor the addition of the amendment.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: Thank you, Mr. Chairman. With that advice, Mr. Chairman, may I submit this proposal numbered III (28) for adoption as part of our transitional provisions. The amendment reads as follows:

"Section 25 of the transitional provisions as set forth in Committee Proposal No. 12 is amended by adding a sentence at the end thereof to read as follows:

"Anything in this Constitution to the contrary notwithstanding, if the senatorial and representative districts and the members to be elected from each as set forth in Section 22 and Section 23 of this article are not ratified, the reapportionment commission shall be constituted on or before March 1, 1969, and thereafter in the reapportionment years as set forth in Section 4.1 and Section 4.2 of Article III."

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: I second that motion.

CHAIRMAN: Thank you. Delegate Loo.

DELEGATE GEORGE LOO: Mr. Chairman, point of inquiry. If Senate Bill No. 1102 is approved, what would be the effect of this amendment?

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: If that is approved and our reapportionment provision is defeated, I would think that that would be the reapportionment of the State, but I would prefer that the Chairman Schulze answer that one.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, if Senate Bill 1102 should be ratified and our plan should fail, the reapportionment commission would be activated.

CHAIRMAN: Thank you.

DELEGATE RHODA LEWIS: Mr. Chairman, a point of information.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: Is Submission and Information going to so submit to the voters that the provisions of the apportionment commission could be ratified and yet the districting plan set out in Sections 22 and 23 could fail?

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I apologize to the body. I intended to cover that in my statement. This amendment presupposes that Article III and their transitional provisions and Article IV and its transitional provisions will be submitted separately. I think the delegate was quite correct to call this to our attention. This amendment would only be meaningful if this were adopted and the other failed.

CHAIRMAN: Any other questions? All those in favor of the amendment to add the paragraph as described in III (28) will say "aye." All opposed, "no." The amendment is carried.

I believe for the record we—Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, may I withdraw the following amendments introduced by me, III (23), III (24), and III (25) and also III (20). May I raise a question with the chairman of the Apportionment and Districting Committee to the subject matter of III (20) which I have just withdrawn. This refers to compensation reimbursements for commission members and apportionment advisory council members in Section 4.2. The question is, was the intent of the committee chaired by Delegate Schulze to compensate and reimburse the apportionment advisory council members equally with the commission members or not?

DELEGATE SCHULZE: Mr. Chairman, the intent of the body—of the commission and the intent of the provision is not to straight-jacket the legislature in any way. Our feeling was that the advisory council members on the neighbor islands would not be called upon for anything like the duties of the commission and therefore the pay might well be very nominal for them and yet realistic for the commission. We thought we'd leave that to the legislature who could get a better view of just what the duties of each would be but we certainly didn't intend that it would be equal for both.

DELEGATE MIYAKE: Then I might understand as a legislator that the legislature has the discretion in

determining how much and for what the commission members and the apportionment advisory council members shall be paid. Is that right?

DELEGATE SCHULZE: That is correct, Mr. Chairman.

DELEGATE MIYAKE: Thank you.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Mr. Chairman, I would like to withdraw my amendments, III (14), III (19).

CHAIRMAN: So noted. Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: May we have a short recess, Mr. Chairman?

CHAIRMAN: Short recess is declared.

At 4:15 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:16 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Delegate Schulze, is there any further business?

DELEGATE SCHULZE: The only remaining business, Mr. Chairman, is to renew our motion to adopt Standing Committee Report No. 58 along with Supplementary Standing Committee Report No. 58, as amended, by this Committee of the Whole.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Second the motion.

CHAIRMAN: Motion has been seconded—

PRESIDENT PORTEUS: Mr. Chairman, I think with the adoption of the committee proposal, your report was adopted previously in the plenary session.

DELEGATE SCHULZE: I'm sorry, I just rose to ask that question. Thank you. May I inquire if the motion to adopt the committee proposal is already in?

CHAIRMAN: I believe—

DELEGATE SCHULZE: Let's be sure. Mr. Chairman, I move that we adopt Committee Proposal No. 12 as amended.

DELEGATE ARIYOSHI: Mr. Chairman, second the motion.

CHAIRMAN: Delegate Ariyoshi. Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, I rise on a point

of information. I'm sorry I haven't raised this parliamentary question in the past. I'm not trying to cause any problem here now, the point is, for the record and for the minutes of the journal of this Convention whether our motions have been correct in the past on adoption of the standing committee reports on first reading because I think the language is incorrect, and if the language is incorrect, I think we should adjust all of the motions on adoption on first reading of all of the standing committee reports. I think the attorneys—

CHAIRMAN: When this committee rises, we will report to the Convention and move for the adoption of the committee report.

PRESIDENT PORTEUS: Pardon me, Mr. Chairman. Mr. Chairman, may I be recognized?

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: The committee proposals have not been adopted except on second reading and have been adopted on first reading by the adoption of the committee report. The Chair has watched the journals carefully on this point of view and in this body the committee report has been referred to the Committee of the Whole for information. The committee reports themselves have previously been adopted thereby carrying the proposal on first reading.

DELEGATE MIYAKE: That's the very point I'm raising, Mr. Chairman, also Mr. President, that we have adopted on first reading in the Convention itself the committee report which is now amended too. Is that amended?

PRESIDENT PORTEUS: Pardon me, the committee report is not amended at all. It's only the committee proposal. The Committee of the Whole has no right to amend the committee report.

DELEGATE MIYAKE: All right. I stand corrected. Thank you.

CHAIRMAN: Very well, you've heard the motion. All those in favor would say "aye." Opposed, "no." The motion is carried.

DELEGATE SCHULZE: Mr. Chairman.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: I move that we rise and report to the Convention.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, I second the motion.

CHAIRMAN: You've heard the motion and second. All those in favor say "aye." Opposed, "no." The motion is carried.

The Committee of the Whole adjourned at 4:19 o'clock p.m.

Debates in Committee of the Whole on **THE EXECUTIVE**

(Article IV)

Chairman: DELEGATE WILLIAM E. FERNANDES

Thursday, August 29, 1968 • Morning Session

The Committee of the Whole was called to order at 11:48 o'clock a.m.

Delegate Fernandes presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order.

Before us at this time we have Standing Committee Report No. 38 and Committee Proposal No. 2. The Chair, before proceeding with the hearing, would want to concur with the rules set down by the previous chairman, Delegate Kage, and would want to set some time as to how long this committee will meet so that we will know where we are during the periods of break.

As informed by the president, we will meet until 12:00 o'clock, recess until 1:00 o'clock, reconvene at 1:00 o'clock, recess at 2:00 o'clock to give the Committee on Reapportionment the opportunity to continue its hearing, back at 4:00 o'clock, recess at 6:00 o'clock, reconvene at 7:30. This is the time schedule that's been set by your Chairman. Is there any question concerning this time schedule?

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka is recognized.

DELEGATE UEOKA: The only problem is that we have a meeting scheduled for 7:30 tonight and we are getting very close to the end where the decisions will be made and any—well, we'll play it by ear as to whether or not this Committee of the Whole will adjourn in time so that we could hold the meeting.

CHAIRMAN: The Chair will take your remarks into consideration and at that time we'll inform the delegates as to the problem that's facing us.

Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: Mr. Chairman, I just talked to Mr. Schulze, chairman of the Reapportionment Committee, and I spoke also to the president of the Convention and I wish to announce that we'll go ahead with our public hearing at 1:30 this afternoon. The president has assured me that delegates who wish to be excused from the Committee of the Whole proceedings at 1:30 could be excused so that the Apportionment Committee will go ahead with its hearing at 1:30 this afternoon.

CHAIRMAN: Thank you, Delegate Ariyoshi.

At this time, the Chair would want to take a very short recess to inquire as to whether the amendments that are before us have been printed and whether there are other amendments that will be submitted to us for consideration.

At 11:51 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:54 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. The Chair will entertain a motion at this time. Delegate Devereux.

DELEGATE DEVEREUX: Point of information, Mr. Chairman. Do I understand now that the Apportionment Committee is going to be working this afternoon while this Committee of the Whole continues its work?

CHAIRMAN: I will yield to the president.

PRESIDENT PORTEUS: Mr. Chairman, the schedule as discussed with the chairman of the Committee on Legislative Apportionment and Districting the other day to my best recollection was that today and this afternoon we're proceeding with the Committee of the Whole. It was said, however, that they would be given at least a two-hour period in which they must conduct their deliberations. In order that we may proceed, we want to start on the Committee of the Whole at 1:00 o'clock. We will go until 2:00 o'clock. From 2:00 to 4:00 the Committee on Legislative Apportionment and Districting has a period where the Convention will not be meeting in Committee of the Whole. If the chairman and the members of the Committee of Apportionment wish to start their hearing at 1:30, they will be excused at 1:30. No determinative vote will be taken during the absence of those members. If there is a vote that is up, it will be deferred until the members are able to come back from that committee, say till after 4:00 o'clock for a vote, so that you will not lose the opportunity to vote if you choose to be excused as a member of that committee at 1:30.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: May I address this question to the president?

CHAIRMAN: Proceed.

DELEGATE DEVEREUX: Mr. President, the thing that concerns me is the fact that any one of us who is attending the meeting of the Reapportionment Committee which is important because we have a public hearing scheduled this afternoon, will miss some of the testimony, some of the statements made by fellow delegates and regardless of whether the votes will not be taken until after 4:00 o'clock or not, we will not have the opportunity to have a full discussion which is presented here on the floor pro and con for these amendments.

PRESIDENT PORTEUS: The Chair informed you that it is not necessary that you excuse yourself at 1:30. We are accommodating the committee from 2:00 o'clock to 4:00 o'clock. But if your committee wants to meet at 1:30, then some of you who want to meet at 1:30 will just have to miss part of that and you'll have to make your choice. If you don't want to go over to legislative apportionment at 1:30, stay here until 2:00 and from 2:00 to 4:00 you can go over to the other committee and from 1:30 to 2:00 you can hear this, I'm sure, very enlightening debate.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Following your instruction, will it be appropriate at this time to take a recess to reconvene at 1:00 o'clock?

CHAIRMAN: You're in order for a motion.

DELEGATE KAUHANE: I so move that we stand at recess.

DELEGATE SUTTON: I second that motion.

CHAIRMAN: All in favor signify by saying "aye." Opposed say "no." We stand at recess until 1:00 o'clock this afternoon.

At 12:00 o'clock p.m., the Committee of the Whole stood in recess until 1:00 o'clock this afternoon.

Afternoon Session

The Committee of the Whole reconvened at 1:05 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

At this time, the Chair would wish to pass on to the delegation somewhat of a guideline concerning Committee Proposal No. 2 before us. The committee chairman, Delegate Doi, met with the president, vice-presidents and the secretary and informed the leadership that he was very interested in presenting a type of a concept concerning action that could be taken pertaining to the committee's report. The leadership was in agreement with this concept and this concept approach will come about when we're talking about Section 6. At that time, the committee chairman will

reveal the position of a concept and we're hoping at that time we'll understand it and the Chair asks if there's any question before we move, concerning when we get to Section 6.

At this time, the Chair will recognize the chairman of the committee, Delegate Doi.

DELEGATE DOI: Mr. Chairman, we're in Section 1 of the Article I, aren't we? Article IV, Section 1?

CHAIRMAN: Yes.

DELEGATE DOI: There's no amendment in the first paragraph, none in the second paragraph, none in the third paragraph and there are two amendments in the fourth paragraph. I consider them very minor. We would like to take them up separately, Mr. Chairman. First, the age of the candidate for governor has been changed from 35 to 30. I move the adoption of the age 30.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I second the motion.

CHAIRMAN: There's been a motion and a second that we're now for the adoption of the committee report which states 30 years of age for the governor's office. Is there any question? If not, the Chair will entertain the motion requesting that all those in favor signify by raising your right hand. Opposed. One opposed, please note for the record, that Delegate Sutton has cast a "no" vote. Delegate Doi.

DELEGATE DOI: Mr. Chairman, I now move that the requirement for—of 20 years as a citizen of the United States of America for the candidate for governor be deleted and only require that he be a U.S. citizen be retained.

CHAIRMAN: Motion is in order. Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I second the motion.

CHAIRMAN: There's been a motion and second—Delegate Amaral will be recognized.

DELEGATE AMARAL: I'd like to question, if I may, the chairman of this committee, as to why the removal of the 20-years rule there, and yet the retaining of the five years as a resident of the State of Hawaii. Here we are taking away this 20 years of being a citizen of the United States and still retaining the fact that the person must be a resident of the State of Hawaii for five years. Are we afraid that somebody may come in from the State of Texas? A person that may be retiring and now come here to run for the governor or the state senate. Wouldn't he then be qualified to be a representative of ours? I think if we're going to be removing some of these clauses, why don't we be consistent? He doesn't need to be a citizen of the United States for 20 years and I don't think he should

be then a citizen of the State of Hawaii. He can become a naturalized citizen in one day then and run for office the next day.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, the answers are as follows: No. 1, it's because the committee so decided; No. 2, because we did not feel that a naturalized citizen should be discriminated against. The trend in the United States is in this direction. The older constitutions do require a number of years as a citizen of the United States. The third reason, in response to the question made especially, there was a feeling in the—amongst the members of the committee that the candidate for governor should know Hawaii and the best way to assure that was the residence requirement. And this is the decision of the committee. Now, whether the figure 5 is magic or not I don't know but this is the decision of the committee.

CHAIRMAN: Is there any other comment? Being none, the Chair will put the motion to the body. All those in favor of adopting the committee report as stated pertaining to residence, signify by raising your right hand. Opposed. Is there any opposition? Will the record note that Delegates Taira, Amaral, Sutton and Aduja have opposed. Said amendment to the Constitution is carried. Delegate Doi.

The Chair would like to ask Delegate Doi when he proceeds with the next area if he would explain as to what the committee did so that the questions might be easily done, if there is any explanation.

PRESIDENT PORTEUS: Mr. Chairman, could I interrupt for just one moment. May I ascertain whether there was an amendment pending with respect to being a citizen of the State?

DELEGATE DOI: Mr. Chairman, the answer is yes, proposed by Mrs. Rhoda Lewis and the committee here is happy to accept her language. We will get to that later. Is that correct, Mr. Chairman?

CHAIRMAN: I think what we want to emphasize here that what we're doing, if we're trying to get down to that no railroading thinking is that we're accepting these areas and if it becomes language amendments, the language to determine the residence will be spelled out and at that time we can even take a vote into this area if needed. But it's been unanimously the feeling that as far as the language is concerned the word change in *the* and *or the* can be worked out. I hope we understand. Delegate Doi.

DELEGATE DOI: Thank you. I just want to say that in the amendment proposed by Rhoda Lewis there was no change in substance.

Now we move on to Section 2, the lieutenant governor. The committee did study this particular section and felt that there was no need for change, that it has worked rather well to date.

Section 3 relates to the compensation of the governor and lieutenant governor and the thought of our present provision is to put a floor below which the legislature cannot fix or reduce the salary. The reason for that being that the legislature should not have this undue power of influence or interference with the governor and lieutenant governor's office.

All we did here was to change the figures and upped it to what the present salaries are. That's all we did. The present salary of the governor is \$33,500; and the lieutenant governor is \$27,500. We did not change anything else.

Mr. Chairman, I move the adoption of the amendment.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I second the motion.

CHAIRMAN: There's been a motion and a second. Delegate Hitch.

DELEGATE HITCH: It seems to me perhaps that this objective could be achieved on a more permanent basis if there were some working to the effect that the salaries of the governor and the—compensations of the governor and the lieutenant governor shall not be—shall be prescribed by law but shall not be lowered. I can visualize the possibility that these dollar figures might look very much out of date in a period of five or ten or fifteen or twenty years.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: We did discuss this matter and I think we'd like to leave this question to Style and be consistent with other provisions also found in the Constitution where salaries are assigned. I understand that Judiciary would indicate a valid figure or a language which would preserve the present salary. And I think this would be for Style to work out.

CHAIRMAN: Delegate Hitch, has that satisfied your question? Are there any other questions? Delegate Devereux.

DELEGATE DEVEREUX: Will the chairman of the committee yield to a question, please.

CHAIRMAN: Will you state your question to the Chair first.

DELEGATE DEVEREUX: Mr. Chairman, my question is an interpretation of the existing section relating to the statement: "Such compensation shall not be increased or diminished for their respective terms, unless by general law applying to all salaried officers of the State."

CHAIRMAN: Delegate Doi, do you wish to answer

that question?

DELEGATE DOI: What is the question?

DELEGATE DEVEREUX: The question is what is your interpretation of this one sentence?

DELEGATE DOI: In regards to what particular question?

DELEGATE DEVEREUX: To the salaries of the governor and the lieutenant governor. Would this mean that the salaries could not be changed by the legislature in the future unless salaries of all salaried officers of the State were also increased?

DELEGATE DOI: That is correct.

DELEGATE DEVEREUX: In your opinion, is this a good provision?

DELEGATE DOI: I think so.

DELEGATE DEVEREUX: Thank you.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Mr. Chairman, I have a question as to what this particular phrase covers then: "...all salaried officers of the State." Will you please have that defined.

CHAIRMAN: Delegate Doi.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President is recognized.

PRESIDENT PORTEUS: May I refer to the question of the lady delegate. This was discussed, as I'm sure the chairman of the committee will tell you, in 1950. The idea of being able to diminish by general law would be that in case you ever hit a depression, you would be able to make changes provided that what you did is by general law and it went across the board. And I think the same situation is to be found in the article on judiciary.

CHAIRMAN: Delegate Lum, you're recognized.

DELEGATE LUM: Now my—

CHAIRMAN: Delegate Lum, will you yield?

DELEGATE DEVEREUX: Mr. Chairman, a question to Mr. President. You mention "diminish" in the event that it is necessary to diminish, the same would apply in increasing salary. Would it mean all appointed officials would have to have their salaries increased at the same time as the governor or lieutenant governor, regardless of circumstance?

PRESIDENT PORTEUS: That's right. That was decided at that time that the thing is to—if you elected a Democrat or Republican you shouldn't increase the

salary five or ten thousand dollars when you found out your particular person had been elected. It ought to be a salary that was paid in relation to the office and not the man. And this is the way of giving to be sure that what you're not going to do is to reward the particular man for his election.

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Mr. Chairman, for the record, could you clarify what "all salaried officers of the State" refers to.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: It would refer to all officers receiving a monthly pay, a fixed emolument here.

DELEGATE LUM: All appointed officers only?

DELEGATE DOI: You mean cabinet members? More than that. Deputies—I would think this definition would include right through the civil service employees, I think.

DELEGATE LUM: Could that be clarified, Mr. Chairman?

DELEGATE DOI: What is the purpose for this clarification?

CHAIRMAN: May I ask the delegate who is raising the question as to what the delegate is trying to arrive at.

DELEGATE LUM: I want to know if this concerns only those appointed or concerns all others.

DELEGATE DOI: Well, the term "office" is a very broad term and I think it runs through quite a few positions. Do the attorneys have an opinion on this?

CHAIRMAN: I'm sure they're going to say that I think it's relative to all salary basis that you're increasing the salaries of people working for the State involved. This will be effective as to this particular area. Delegate Bryan.

DELEGATE BRYAN: Returning for a moment to the question raised by Delegate Devereux, I notice the words "shall not be increased or diminished for their respective terms." Now, I understand this to mean that the legislature could provide for an increase in the lieutenant governor and the governor's salary only provided it became effective some time in the future. The only existing term. Is that correct or not?

CHAIRMAN: Delegate Doi.

DELEGATE DOI: The answer I think is yes. If it went beyond the term. If it's, let's say, six years from now, it's going to be effective.

DELEGATE BRYAN: This would not affect all other officers of the State, necessarily. Is that right?

CHAIRMAN: The question before us is to accept the committee proposal on Section 3 concerning the dollar amounts for the officers. All those in favor signify by raising your right hand. Opposed. Delegates Bryan, Miyake and Wright were opposed. Motion carried.

DELEGATE DOI: Mr. Chairman, may we have a short recess?

CHAIRMAN: Before we take a short recess, the Chair would like to inform the delegation here, realizing that there has been a request for permission to leave to attend the Committee on Apportionment at 1:30, the Chair would like at this minute to take a brief recess to consult with the chairman of the committee as to whether we could declare a recess at this time and be subject to call at 4:00 o'clock. So the Chair will ask for just a short recess so I'll be able to consult with the chairman and the president.

At 1:20 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 1:21 o'clock p.m.

CHAIRMAN: Committee of the Whole please come to order. At this time it's been agreed and we're hoping that the rest of the delegation is in agreement also. I realize that the fifteen minutes lunch was pretty tough to take but it's been agreed that we will recess now until 4:00 o'clock to give the Committee on Apportionment the opportunity to listen to the witnesses that have come from the different islands and reconvene here at 4:00 o'clock. The Chair will entertain a motion from Delegate Kauhane.

DELEGATE KAUHANE: I so move, Mr. Chairman.

DELEGATE SUTTON: Second.

CHAIRMAN: All those in favor to recess until 4:00 o'clock, signify by saying "aye." Opposed. Carried.

At 1:22 o'clock p.m., the Committee of the Whole stood in recess until 4:00 o'clock p.m. this afternoon.

The Committee of the Whole reconvened at 4:00 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. It's been requested by the sergeant at arms that our delegates are now walking over from the apportionment committee, so with your kind permission, the Chair will declare a very short recess until the rest of the delegates come forth.

At 4:01 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

At 4:05 o'clock p.m., the Committee of the Whole reconvened.

CHAIRMAN: If I may, may I call the Committee

of the Whole back into session. Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, we're on Section 6. As to the first paragraph, there has been no change recommended. The principal recommendation for amendment of the Constitution comes in the next two paragraphs. Were we to ask you to consider the proposal on the basis of the language recommended in Committee Proposal No. 2, we're afraid that it may lead to confusion, and therefore we got together and met with the officers of this Convention, the president, vice-presidents, secretary and then this noon met with all those who had proposed amendments to the executive article and we have arrived at an understanding. The Chairman of the Committee of the Whole has labeled it an approach by concept. I'd like to explain it so that the issues can be simplified and we can vote on the simplified issues and once they have been decided we could move on. We assure you that after the simplified issues have been voted on, you will be allowed to look at the final draft to vote on it again. We'd like to break down the principal questions into four major parts with a sub-part to each. The first question that we would like to pose to you is to delete the provision providing for senate confirmation of the single executives of—as heads of departments, with the exception of the legal officer for the State of Hawaii. Now as to the acceptance, I want to make it clear that you're not bound by your vote. We would further, if the principal motion carries, we will further get into the question of what exceptions should be allowed. Because this is the form in which it came from committee, we are posing it to you in that form. So the first question would be to delete the provision providing for senate confirmation of single executives as heads of departments. We're going to run through these propositions and then come back to the first. The next question would be to delete the confirmation of appointees to boards and commissions. And of course here you have the exceptions that run through the Board of Regents, the Board of Education and the Hawaiian Homes Commission. The third question is removal of single executives without senate approval. And then the fourth question is removal of board members by the governor without senate approval. So may we go back to the first, Mr. Chairman.

Therefore, Mr. Chairman, I would like to move that we delete the provision providing for senate confirmation of single executives as heads of departments with the exception of the chief legal officer. May I have a second on this?

CHAIRMAN: The Chair recognizes Delegate Kamaka.

DELEGATE KAMAKA: I second the motion.

DELEGATE DOI: I'd like to, Mr. Chairman, first yield to Delegate Ho who is the protagonist, you might say, of this concept.

CHAIRMAN: Delegate Ho.

DELEGATE HO: Thank you, Mr. Chairman. Mr. Chairman, I suggest that the best way in which we can approach this issue of whether the confirmation power now vested in the senate should be eliminated, that is to say, the confirmation power as it relates to single-member executives, would be to ask ourselves two questions. The first question is, would the removal of the senate confirmation power substantially upset the traditional balance of power between the legislative and the executive branches of government. And the second question I suggest to you, Mr. Chairman, is does the confirmation power materially aid in selecting the right administrator for the right job.

As to the first question, whether the removal of the senate confirmation power would upset this balance between the executive and the legislature, let me say that we should get something straight from the very beginning. The balance of power we strike in this sentence, in this section, is as between the senate and the governor and not as between the legislature and the governor. The senate does not now, nor has it ever, spoken for the house of representatives. And I think this will be true in the future. This is regardless of the fact that the same political party may constitute the majority in both houses.

Secondly, even if the house of representatives were to share the confirmation power, Mr. Chairman, I suggest to you the balance between the legislature and the executive would not be impaired. The general broad balance of power conferred to the legislature and to the governor allow plenty of room for wheeling and dealing on both sides. And I suggest to you that wheeling and dealing, in the sense I mean, is not bad. It is the essence of the political process. And I suggest to you also, Mr. Chairman, that the abundant senatorial talent we have here represented in this Convention is ample evidence that the governor has more than he can handle on his hands.

The second question, Mr. Chairman, does the confirmation power add or aid in selecting the right administrator for the right job. I suggest here that the answer is absolutely no. Requiring confirmations and removal of department heads by the senate restricts the governor to the extent that he only appoints people he feels will be confirmed by influential senators. Thus, in many instances, the best person for an office may not be chosen. As one author on the subject has stated (this is Professor McDonald, I believe): "This requirement of confirmation is a part of a system of checks and balances in which the American people have placed or misplaced so much confidence. It is based on a fear that the governor may make wrong appointments and the hope that the members of the senate will keep him on the straight and narrow path and also the path of wisdom. Unfortunately, its principal result has been to force the governor along the path of least resistance. Faced with the necessity of winning support for his legislative programs, many of our governors have purchased that support by appointing into office the friends of influential senators. Thus members of the senate have come to enjoy the selection of administrative officers as one of their inalienable rights,

to unite an open hostility to the occasional governor who dares to flirt with their wishes by appointing men to office solely on the basis of merit." He continues, "This vicious arrangement should be destroyed. The governor should be given the right to appoint his subordinates free from senate interference not because the appointments will necessarily be good but because under existing conditions they are much more likely to be bad."

Another point, Mr. Chairman, under the— the governor as responsible head of the administration should have as indicated by the professor I just referred to, should have the unencumbered power to select, and when necessary remove, the heads of all administrative departments. Public officials at the level of department heads are not only administrators but also policy-makers and should be directly and personally responsible to the governor.

Another point, requiring confirmation and removal of department heads from the senate restricts the governor to the extent that he appoints only people he feels will be confirmed by influential senators, and this point I've made before.

A third point. Under the power of confirmation and removal, senators might be able to exert considerable influence in selecting executive officials but half are—which officials may have no responsibility—but the senators in this case may not have any responsibility for the result. The executive cannot be held responsible unless he chooses his own subordinates. In this particular instance, Mr. Chairman, I fear for the day when we may have a weak governor. We've been very fortunate in having two strong governors, Governor Quinn and Governor Burns, at the head of administrations. And I believe that their appointments have been good. But someday, not today, maybe ten years, twenty years from now, we may get that weak governor in there to sit in Iolani Palace and it is the possibility that strikes me, that the danger does exist, that the cabinet might be appointed by the senate and not by the governor in that event. Now, Mr. Chairman, I would like to make a further point and that is this, the views that I have expressed are not novel. They are not new and they have been considered elsewhere in the State. I hardly feel alone in this. A model state constitution drafted by the National Municipal League adopts this approach and the National Governor's Committee of Constitutional Revisions adopts this approach and the constitutional conventions of both Maryland and Alaska endorsed this approach.

Mr. Chairman, we get what we deserve. We have heard testimony in committee from several senators that the confirmation device is not just used to pass on the confidence of executive nominee. Rather, we have been told, it is used at times to politically deal with the governor. Mr. Chairman, as I have indicated to you, political dealing is precisely the business of the governor and the legislature. And the wheels of the State could not move without it. But by the very nature of process, Mr. Chairman, I suggest that one must give in order to receive. I suggest, Mr. Chairman, that when what may

be given away is an opportunity for an executive appointment to be headed by an otherwise competent administrator, then no one has gained out of a bargain and least of all, Mr. Chairman, the people of Hawaii.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, first of all I would like the Chair to rule whether there's a conflict of interest for me to speak on this subject, being an incumbent senator.

CHAIRMAN: The Chair will rule that you are a delegate of this Constitutional Convention.

DELEGATE DONALD CHING: Thank you. Mr. Chairman, I don't intend to belabor the point. I just want to point out some of the practical aspects of the passage of this proposed amendment. I don't profess to be an expert in this field. I think there are many others in this hall here today that have been through the wars much longer and much more extensively than me. I don't claim to be one of the influential senators that the prior speaker has alluded to. However, I would like to—and I would say the same thing, I think, if I were an incumbent member of the house or even John Doe, citizen. I think that this proposed amendment would lead to perhaps a stronger governor or a strong governor being made stronger. I think it would again weigh the scales a little heavier in favor of the governor and those of us in the legislative area know that he certainly doesn't need help in this area.

The prior speaker also alluded to the fact that the senate acts alone in this action. I'd like to contest that statement because being a bicameral legislature the senators cannot act alone in that they often get and sometimes seek the advice and help of their colleagues especially from the same district from which they come—colleagues from the house. There is much allusion to wheeling and dealing, not only in this particular area but in the judicial article which this conference will be taking up very shortly—selection of the judiciary. And if there is to be wheeling and dealing, if it is the right kind of wheeling and dealing, and when I allude to this I'm speaking of the meetings with the governor where he seeks our advice, the hearings where the nominees are screened and members of the public are given a chance to come in and testify for or on behalf of the nominee, I think that this is part of our political process where John Doe, citizen, has a chance to participate either directly or through his representatives.

Let's look at the kind of situation we would have where the governor were to make his appointments without any confirmation powers. It's true the incumbent or his predecessor may not have taken this route, but I can see where a weaker type of man in the governor's office could knuckle under to the kind of pressure that you and I would not agree to, the kitchen cabinet if you will, the influential forces if you will. Not of the body politic. The governor would make his appointment without any say-so from any other elected body or elected person. There would be no hearing at all on his appointee. You have to take his cabinet lock,

stock and barrel. The public would not be in on it in any way, shape or form, directly or indirectly. Now, there is also some talk about responsibility as far as the governor's appointments are concerned. Let me point out this one simple fact. That even though we have confirmation by the senate at the present time, no governor that I know of has come in and said these were not his appointments. He is still directly responsible for the act of his department head. He is responsible. He should continue to be responsible for the appointments because these are his appointments and nobody else's. It's true there is the matter of confirmation but it's only confirming his positive act.

Before I go any further, I would like to separate this question so that no one in this hall is confused by the confirmation and the removal power. The removal power will be taken up later on as the third alternative or the third proposition by the chairman of the Committee on Executive. Now, I want to state here clearly that I am for the committee's proposal as far as the removal of the legislative action on the governor removing any appointee that he has made. I think by doing this we give the governor the free hand that is alluded to both in the committee report and by the prior speaker.

The last point that I would like to make is this. I realize that this point has been maybe overemphasized. But I think that if this were to come in as a proposal and the wrong connotation was to be put to it in presenting it to the people as one of the propositions, I think a lot could be written or read into this proposal so that again we're adding to the overall confusion that may come about when the entire proposal is submitted to the electorate in the coming general election and I say, although this is a small argument, I think that where it is not a telling point, I think we ought to leave it out as a change to our present Constitution. Thank you.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Will Delegate Ching yield to a question?

CHAIRMAN: State your question, Delegate Loo.

DELEGATE GEORGE LOO: I was wondering if Delegate Ching could tell us what would most likely happen if the senate happens to be of a different party from the governor.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: May I refer Delegate Loo to what happened in the period 19—let's see, there was one period where we had a governor of one party and a senate of another party—then I can only guess. I think his guess would be just as good as mine.

CHAIRMAN: The question before the house has been stated by the chairman of the committee. We will be voting at this time on the confirmation powers removed from the senate based on the single-department

head. Let me repeat again so that nobody gets confused. And the Chair will recognize Delegate Kamaka as soon as this is done. The question here and the reason we've taken this concept is that if we vote in favor of the committee's proposal in this section and then if there is any amendment, we'll be taking part as far as language is concerned. If it's not approved, then we can move on and the amendments that are coming to this section would not be needed because of the fact that the Convention already has decided by one vote on this particular issue—this particular concept. Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I will speak rather briefly on this subject. I speak in support of the amendment. Mr. Chairman, let us look at the issue rather clearly. It is quite simple, a proposition which merely provides that the governor be given the free choice of selecting as we go along less than all of his full cabinet. We may provide, if you don't permit the governor to appoint the attorney general without the senate's confirmation, provide other things. If we get back to the basic tenet that when a man runs for office and he seeks the office of governor, he does so on the basis of a program that he espouses. Upon his election, it would be my observation that this governor, having been given the respect and confidence of the people, should likewise be given the trust and confidence of the people in the selection of his cabinet officers. I would believe that it would help every governor, whether he is weak or he is strong, whether he is a Republican or a Democrat, that he be able to pick those, select those whom he believes best reflect his own thinking, those whom he believes best qualified to implement his program, those in whom he believes and has the greatest trust and confidence, without having these individuals subjected to the often politically-motivated conservative review of the senate. If we are going to insist upon gubernatorial responsibility, then I believe that the governor should not be subjected to the control of the senate in the selection of his cabinet alone but rather the legislature. It appears the legislature then could exercise this check and balance against the governor. However, if this is not sufficient, let's recall that there is a Supreme Court and this body sits over all elected officials whether in administration or in the legislature. It is not as though the proposal denies checks and balances against the administration. Our system of checks and balances does not rely solely, I hope, upon the confirmatory powers of the senate. If it is, then we may be in trouble. I recall, Mr. Chairman, that in past years, in the matter of confirmation of the governor's appointees that has come up before the senate there has been some interpretation given to the words "by and with the advice and consent of the senate." It seems to me, and if my observation is a proper one, it has been interpreted to be more the advice than the consent of the senate.

Now, whom are we talking about? Are we talking about a cabinet that is going to serve the senate? We are not. Obviously it is not a cabinet to serve the house of representatives and the senators. Rather it is a cabinet to serve the people of Hawaii and their chief executive. If this man is going to be able to carry his

programs forward, then I believe whether or not but what we suspect may not happen in the future could be very easily resolved if we permit the governor to have his free choice. Obviously if he makes wrong choices, that will be brought up. I don't think the senate or the house is going to overlook this. And I don't think the opposition party, whichever it is, is going to overlook this. I'm positive that the newspapers will not let it get by. It seems to me, Mr. Chairman, that any opposition to this proposition here that the great argument has been made that there must be a check and balance against the kind of people that the governor is going to select. Obviously, there are certain minimum qualifications that have to be met. They're not going to be crooks. They're not going to be people from the opposition necessarily, and if we have senators from one party and an administrator from another party, I think that's sufficient enough check. If we are going to propose that the governor be able to carry out his program, Mr. Chairman, then I think that we are overplaying this matter of checks and balances. As Delegate Doi mentioned earlier this morning on the matter of checks and balances, it appears as though we may have too many checks and not enough balances. There's only one person who has put it a little better than even Delegate Doi. Some of us have our money in Chinese banks. My banker says, "Too much checks, no more balance."

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Point of information, Mr. Chairman. Will the chairman of the committee yield to a question?

CHAIRMAN: State your question.

DELEGATE DEVEREUX: My question is do you know of any other state in the nation which has no confirmation powers by the senate such as proposed here?

DELEGATE DOI: The answer is yes, but I can't give it to you now. There are some. And let me say this, that the Committee on Economic Development recommends it, the Model State Constitution recommends it, and many of the authorities who write on this subject, as you have heard Delegate Ho quote from Mr. McDonald, they all urge the kind of provision that we are urging in Committee Proposal No. 2.

DELEGATE DEVEREUX: But we do not know how many states.

DELEGATE DOI: We can get the information. Offhand I don't have the information here.

DELEGATE DEVEREUX: Thank you.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, I'd like to speak on the question. I'd like to speak in favor of Committee Proposal No. 2. You know, Mr. Chairman,

when I first became aware of this proposal, I must admit I was a little taken aback. I think because I too am a man of habit, I too am a man of tradition, and I am also from the senate and I've been off and on a critic of the administration. And therefore, it wasn't very easy for me to come to the point where I am today, this afternoon, to urge the adoption of this particular proposal. I had my staff look into this question and when they came out with their studies, I was more than half convinced that this was good for our government. I had to stay up to work on the question because necessarily I had to participate in urging the adoption of this proposal. When I got through with that, I am now 100% convinced that this is a good proposal.

You see, Mr. Chairman, what we are talking about here is to allow another body, the senate to pass its approval on positions and people who occupy these positions and to work for another branch, the governor's office actually. We're not talking about passing approval on appointees for the judiciary. We're passing approval of those people roughly speaking who are employees of the government. Now what is this check we talk about? At best, Mr. Chairman, this is a negative check. Some of the authorities say this is to prevent him, meaning the governor, from making bad appointments. Now if this be truly a negative one, and I think it is, as it is practiced in the State of Hawaii, then I think if the senators are to do their jobs properly, we must exercise this negative power with great restraint. They must give all the benefits of a doubt in favor of the governor's appointment, and all the assumptions also must be exercised in favor of the governor. If this be the case, this is a very small, meaningless kind of power. Truly a negative one. Can you imagine, Mr. Chairman, where the governor would pass approval on the employment of a chief clerk for the senate for the State of Hawaii. This in effect is what we are doing when we say we insist that the senate pass approval on department heads who are part of his family, part of his team at the top level. It's been said, however, by some that this is not only a negative power, this is not only a power by the senate to reject, but that this is a positive power. That we could participate with the governor in helping him select the best. Mr. Chairman, if that be one facet of this power, then certainly the senators can exercise this without this provision in the Constitution. This can be done by invitation of the governor, to sit with him, provide him with a list of names, give him criteria, give him suggestions so that he may go through the process of selecting the best for positions. Further, if we do not have this in the Constitution, Mr. Chairman, it will appear that the governor would not have to take, for example, to send out a blanket invitation to all house members and ask them to also submit a list so that he may also be helped by the house members in selecting the best. But this he cannot do. This he must hold back from doing because if he does that he will certainly kick up the ire of the senators.

I have been in the senate from 1955 and I want to relate to this group as objectively as I can how I have seen it work. Well, to begin with, I think we must

admit that this power to reject is very seldom used. But I think the senators have wanted to use this power more often than we have seen it used. The reason which has prevented them from using it as often is largely because the necessary number of votes could not be mustered to make a good case in the rejection of a particular nominee. Now when this power has been used, in one instance for example I recall, a rather sad one, and I was part of the team who worked hard to bring this about; but because we wanted to impress upon the governor that he was not to ignore the senators in the selection of the members of his cabinet, that session we rejected two nominees for the cabinet. Mind you, the cabinet. And I want to say today that they were not rejected because they lacked competence. They were competent men. Sometimes this power to reject is compromised. It comes about in this manner, it's always the situation where in the operation of any legislative body you would like to keep your team together. The Democratic majority or the Democratic minority or the Republican majority or the senate Republican minority. In your attempts to keep the team together there may be a situation where several of the members of the team may be very strongly against a particular nominee, don't you see, Mr. Chairman, and these several senators who cannot be placated by anything. And therefore, because the group has to be together so that they could move together on other legislation, the whole group may get involved and then the poor nominee may be rejected. And, therefore, when that happens, we do not find this power to advise the governor that maybe this nominee is not the best, used with restraint. Rather, it's used for another purpose. But the thing that bothers me the most and this happens every session practically, it happens quite often rather, maybe not in every session maybe but it happens quite often, when we have important nominations come down from the governor's office to the senate, especially people on the cabinet, it happens that the confirmation is postponed and postponed right up to the end of the session if possible. Why is this done? So that when it gets to the very close—the very end of the session, you find many bills just before the point of passage. All the business of the senate is then waiting to be acted upon. And this is the time when you must get your vote to pass a particular measure or confirm a particular nominee. And what happens here? You exchange the vote for a nominee for a bill. You exchange the vote for a special legislation for a vote on the nominee and this is what happens. Mr. Chairman, I am compelled here to tell the story and this I believe is the truth. This happens almost every time we have big nominees coming down from the governor's office. And if this be true, then we are abusing this power of confirmation. Then what the writers say about confirmation is true. Mr. Chairman, I say, therefore, there's so little good to be gained by retaining the confirmation power, there are more disadvantages and the saddest thing here, Mr. Chairman, is that we are not able to measure the disadvantage that our government is suffering because of this particular power. But I want to say this, don't listen to me all the way. But there are many authorities such as been quoted by Delegate Ho, who speak poorly of the confirmation provision. As I said earlier, the model of State Constitution and several

other studies made here all recommend the deletion of the confirmation power. And I have a list of authorities I wanted to read, but my time is up so I want to say, I urge that we approve the proposed amendment.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Before the Chair recognizes Delegate Kauhane, the Chair has used the procedure, instead of interrupting the speaker when it's close to his time, the Chair will give notice that you have one minute. Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I sat here and listened to the arguments pro and con with respect to the confirmation powers of the governor. I don't mind saying openly that I am for the status quo position. I'd like to have the governor continue with the right of appointment and to have the senate confirm these appointments.

But, Mr. Chairman, in reading over Standing Committee Report No. 38, on page 9, I feel that the expression made regarding this confirmation power of the senate, the pros and cons, the committee report, on page 9, reads as follows: "Therefore, the committee recommends placing all principal departments under a single executive with the following exceptions: Hawaiian Homes, University of Hawaii and the Department of Education." What about the Department of Land and Natural Resources, Mr. Chairman? Will this department be placed under the single executive as provided for and recommended by the committee report? As you read further, the committee recommends that Article X—

DELEGATE DOI: Point of order, Mr. Chairman. That's not the question on the floor.

CHAIRMAN: Delegate Kauhane, the Chair would want to get back to the concept and go to the concept of first whether you are in favor of eliminating the confirmation powers to the single executive head, the department head.

DELEGATE KAUHANE: I started off saying, Mr. Chairman, that my position is status quo. I still vote against the committee report, but what I'm concerned about when speaking of Section 6 of Article IV. I think the committee report as stated on page 9 is relevant to the subject matter under discussion as to the confirmation to be made by the senate, whether it should be eliminated. I also feel that under the recommendation of the committee, under Section 6, Article IV, that it does include in their recommendation a single executive which also need not be approved by, need not be confirmed by the senate and I am wondering whether the Department of Land and Natural Resources comes under the same category. And the committee further reports that Article X should be amended to implement the change of single executive. Once we adopt Section 6 of Article IV, this in my information will go through.

CHAIRMAN: Delegate Kauhane, your question is well put. The question is put to Delegate Doi, if he

cares to answer the question asked by Delegate Kauhane.

DELEGATE DOI: Mr. Chairman, I still think the delegate is out of order. We are not concerned with the question of what departments will be headed by single executives. That question was wrestled with when the report from the Lands Committee came out. We're all through with it. We're saying whatever single executives there might be, they should be—the senate confirmation as to them should not be required. That's what we're saying.

DELEGATE KAUHANE: Mr. Chairman, I ask that we take a short recess to consult with the attorneys of the Convention to find out whether this recommendation, as contained on page 9, should be included in the committee report.

CHAIRMAN: The Chair will declare a short recess for dual purposes. One is to give the steno here a chance to rest and the other purpose is to look into the question as raised by Delegate Kauhane.

At 4:45 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:53 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, so that it would quiet any fears that may be entertained by any of the delegates here, I want to state for the record that in this Committee of the Whole to consider Committee Proposal No. 2, there's no recommendation by the Committee on Executive to suggest any action that would change any of the present departments headed by boards or commissions into single executives. That is not the course of action that the committee is recommending. The immediate question before us is as to those present departments headed by single executives, we are recommending that the confirmation by the senate be deleted.

CHAIRMAN: Delegate Kauhane, are you satisfied with the comments made by Delegate Doi?

DELEGATE KAUHANE: Yes I am, because it's a matter of record now in case any problem comes up we can look at the journal, the proceedings of this Committee of the Whole meeting.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: The president is recognized.

PRESIDENT PORTEUS: Mr. Chairman, I too have been a member of the senate and never have I exchanged a vote for a bill or for a department head either for confirmation or non-confirmation. Not only have I not done it but I have never been approached to do so. And as far as I know, my associates have neither

done it, to my knowledge at least, nor have I known of an approach to them to do it.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: I wish to, Mr. Chairman, may I come back to the question raised by Delegate Kauhane? Do I understand page 3 of Committee Proposal 2, paragraph beginning with "each principal department shall be under the supervision of the governor and, unless otherwise provided in this Constitution or by law, shall be headed by a single executive." That this provision, if adopted, has no effect on the present Land Department or the Agriculture Department or any department not specifically exempted by this committee proposal?

CHAIRMAN: The Chair is aware that this has been answered by the record by the delegate from the committee that this does not affect these areas.

DELEGATE YOSHINAGA: I'm not asking the opinion of the delegate. I'm asking for a legal opinion or constitutional opinion.

CHAIRMAN: The Chair will just have to look over at counsel and have the counsel nod as to whether the question raised by Delegate Yoshinaga concerns this area.

The Chair will declare a short recess to have the legal opinions checked.

At 4:55 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:00 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Yoshinaga, have you been properly answered as to your question?

DELEGATE YOSHINAGA: Yes, sir.

CHAIRMAN: This time the Chair will recognize Delegate Hasegawa and I'm moving down toward this section.

DELEGATE HASEGAWA: Mr. Chairman, I want to speak against the amendment. I'll be concise and to the point.

CHAIRMAN: Proceed.

DELEGATE HASEGAWA: I believe in the concept of accountability but in order to have accountability, we must have visibility. And the medium for which this visibility is provided is the senate confirmation. The governor will think twice about sending the names of his appointees downstairs to have such names confirmed. I think this medium is a healthy thing. It provides the public with visibility, and I strongly recommend its retention.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, it was not my intention to speak this afternoon but because I have been asked by so many people about how the system has been working out, I felt compelled this afternoon to get up and say a few words. First of all, I'd like to say that I've been in the legislature now for fourteen years. The first four years in the house of representatives and thereafter the last ten years in the senate.

I want to state, Mr. Chairman, categorically that I have never entered into a deal for the trading of a vote for a confirmation. I feel also that, as the president has indicated, I know of no instance where this was done during the time at least that I have served in the senate. I feel that the senators have exercised a great deal of restraint in advising and confirming to a nominee on a cabinet level. And I think this kind of leeway has been granted to the governor. I speak from my personal experience, Mr. Chairman, that even when I served as a minority member, where the governor was of the opposite party, I exercised this kind of restraint in the confirmation of the governor's nominee. I think that what is important and the retention of the power to advise and consent to the governor's nominee is the opportunity that is granted to review and go over the various nominees. The governor is one man. By conferring with the senators and by being required to get the consent of the senate, what happens is that more people who represent people on a smaller level are able to point out to the governor of things that may be very helpful to the governor in his decision as to whether or not a particular name should be sent down. I want to say, Mr. Chairman, that with respect to the present administration, when this governor was first elected governor of the State of Hawaii, all of the names that he wanted to send down were sent down and all of his nominees on the cabinet level were confirmed. During the second term of the governor, there were names that were sent down and there were names that were nominees that were reported to be trouble by the newspapers. But in a sense, Mr. Chairman, I feel that this was a good thing because it afforded the people of this State a chance to express their feelings about the conduct of the incumbents whose names were sent down and I think that what it did was to point out to some of the cabinet officials that some of the people were not completely happy with their conduct. And I feel that this kind of opportunity for the people to be heard through the senate should be continued.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I speak in favor of Section 6 of the standing committee report. I would like to point to the delegates here who come from our neighbor islands and the Island of Oahu, that it appears that the charter commissioners who drafted the charter of the City and County of Honolulu, those who drafted the charters for the neighbor islands, seem to be a little more progressive in their thinking and seem to entrust great faith and confidence in the chief executives of the respective counties in the City and County of Honolulu.

In that they have removed in almost all cases the confirmation powers of the respective boards of supervisors and also the city council of Honolulu, with the exception of two or three sensitive positions like the corporation counsel, for example, who advises the city council as well as the mayor. Now from personal, practical experience, the charter commissioners did a service to the people of this community. They entrusted to the mayor, the chief executive, responsibilities of administration and in effect said, "You select people who you want to be surrounded with to reach the goal set by your administration." There are some that have been appointed by the present mayor that, had I a chance as a councilman to confirm or reject, I would have rejected. But for the most part the reception of any administration or any executive should be his problem. And I say that you in effect if you turn down Section 6 as written in the committee report, those of you, and those of you who represent your people in the neighbor islands especially, are in effect saying, "We can trust a mayor of a county of the City and County of Honolulu to appoint top administrators but we can't trust the governor because we've got to look over his shoulder and make certain that the people are well-qualified to do their job." I say that this is unfair to whoever happens to be the chief executive, Republican or Democrat. I feel that anybody elected governor of this State should have the responsibility to pick the top administrators of his official family and then let him answer directly to the electorate as to whether or not they are doing the proper job in their positions. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, may I correct the record here? Earlier, in response to a question I said that there may be some states who have this provision. I thought I read this. My staff came up to me in recess and told me there's no state that has removed the confirmation power of the senate. I want to correct the record.

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Mr. Chairman, I have a question and I don't know whether—

CHAIRMAN: State the question.

DELEGATE O'CONNOR: I was going to say first, I don't know whether it would be best answered by Delegate Hung Wo Ching from the Legislative Powers and Functions Committee or Delegate Doi. My question has to do with Section 20 of Article III, impeachment. The other major legislative check on the executive is, of course, impeachment. Section 20 now reads, "The governor and lieutenant governor, and any appointive officer for whose removal the consent of the senate is required, may be removed from office upon conviction of impeachment. . . ." As I understand the present proposal the entire cabinet, except for the attorney general, would be removed from the—

CHAIRMAN: Delegate O'Connor, the Chair would like to interrupt you. The question before the house at

this time is the appointive confirmation power by the senate and the area, as Delegate Doi has broken it down—

DELEGATE O'CONNOR: I'll save my question, Mr. Chairman.

CHAIRMAN: Thank you. Delegate Dodge had his hand up.

DELEGATE DODGE: Mr. Chairman, Delegate Fasi covered something that I was going to say. I'll add to what he said. When we were sitting on the charter commission we were also reviewing some history of the City and County of Honolulu from 1907 until 1958. About 51 years. During all of which time the board of supervisors of the City and County has had confirmation power over all the mayor's appointments. We were told by supervisors who were then in office that there had been a good job done for 51 years, that there had never been any interference at all in the mayor's appointments and that if we were to take this out, this would suddenly destroy the checks and balances that were necessary for good civic government.

We looked into all the arguments, we looked into the recommendations of leading political scientists, the National Municipal League. Many other cities in their charters did away with this confirmation power, and we concluded that it simply didn't make sense if you were going to hold the executive responsible for executing the laws, and we took it out. The board of supervisors proposed an alternative to put it back in. Those two things were voted on and I don't need to remind the people on Oahu what happened but by an overwhelming majority, the people adopted their city charter provision against the protest of the recommendation made by the board of supervisors. And no one can say that it hasn't worked well in the last ten years.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching, before recognizing you I would like to recognize Delegate Lum who had not had the opportunity to be so. Delegate Lum.

DELEGATE LUM: Mr. Chairman, I sat here all this morning, I sat in committees for the last couple of weeks, I sit here today listening to this move again to make a stronger executive than we presently have.

I rise to speak against this particular amendment. I hear arguments about a chief clerk being appointed and no confirmation made by the executive. Let me remind you, the chief clerk serves this body and does not face the public and he does not serve the public as these other officials do. I hear arguments about us being not progressive because we don't adopt things that the city does adopt. Let me remind you that we're two different animals. We're a bicameral legislature. We meet only for a short period of time. We do not have the opportunity to meet week after week and decide whether a particular department head has made the right decision or not, as the council does. Therefore, they're two different bodies. I hear arguments about why the senate and not the house. Well, let's face it, if the size of the

legislature was small enough so it will be manageable, I'm sure the legislature would make the decision and not just the senate. I hear the idea about "back-scratching." I understand that if this is accepted the other people will vote against having the removal of the confirmation on the attorney general and on the judges. Well, I ask you, if there's going to be back-scratching on those particular positions, why not this too, if there is any such back-scratching.

CHAIRMAN: Delegate Goemans is recognized.

DELEGATE GOEMANS: I just want to make one point against the committee proposal and in favor of the retention of the status quo. I don't think it's germane to analogize the state government to the city government. I think if we are going to use the guideline, use the federal government. We have a Constitution, a federal Constitution which sets up a time-honored system of checks and balances. Now I haven't heard anybody here who can distinguish why that system of checks and balances should not continue to apply to our State. If I heard some satisfactory distinguishing characteristics I would change my position but until I do, I intend to vote against the proposal.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: The Chair would like to question the delegate that rises. Does the delegate rise to speak again for the bill or for the proposal?

DELEGATE KAUHANE: I'm speaking against the amendment.

CHAIRMAN: The Chair will then ask the delegate if the delegate would yield first if there's anybody else that hasn't spoken who wishes to say something at this time first. Being none, Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I speak against the amendment and the committee proposal. Mr. Chairman, I believe we all are concerned with the matter of confirmation by the senate. Mr. Chairman, I think we all know as well as the other senate members who serve as delegates of this Convention that this practice of confirmation by the senate has been an acceptable practice by the citizenry of the State of Hawaii for almost sixty years. And this practice of confirmation by the senate has not had the ill effects although maybe each of us individually may not like the system and the practice so we argue against the system and the practice. We argue against the system and the practice because maybe the system and practice were not favorable to all individuals' recommendations. But it seems to me that by taking away the power of confirmation by the senate and the labelling that the governor should be given the free hand, I'm sure everyone feels that the governor should be given the free hand. I'm sure he exercises the free hand by submitting names for appointments and confirmation by the senate and the only time the people have some concern with the list of names to be appointed by the governor after some fifty-two years the change has been made so that the public now is fully aware of the

nominees that are to be confirmed by the senate. I don't see any great hurry for a change to delete the confirmation powers by the senate at this time because we are moving into something new that may have its ill effects in trying to put this concept into being and disturb the whole operation of our state government.

Anyway the individual who runs for public office certainly has made some commitments, commitments to his political machine that he will name certain individuals to certain cabinet posts, or boards or commissions. It's common knowledge that these commitments are made during political seasons. Even some of the senators may make some of these political commitments, try to say, "Well, I'll try to get you on the board or commission." So is it wrong for someone to make such political commitments in order to be elected to public office and in the final stages try to get his commitments to become a reality by sitting in with the governor and recommending that certain individual of his select choice be named to a board or commission.

Then comes the matter of supporting your recommendation that any political candidate makes by particular senate level having the power to confirm. This is a true check and balance when the senate has the power to confirm. This is the only means by which the citizenry of the State of Hawaii have a check and balance as to the nominees named by the governor, and to place the responsibility also on the senate in that confirmation power.

Certainly this matter has been accepted for the past sixty years, fifty-two of which we have enjoyed without any quarrels whatsoever. We're beginning to enjoy seven years of bliss, evidently this is not being fully realized by some of us. We come in and say we don't want to have the power of confirmation.

Mr. Chairman, I stand for the present provision, language of the Constitution, that we vote against the amendment including the committee's proposal.

CHAIRMAN: The question has been asked. The Chair will entertain the same motion that all in favor signify by raising your right hand. All those in favor of a roll call vote please rise. Mr. Clerk, will you call the roll.

(Roll call having been ordered, the motion to adopt Section 6 of Article IV of Committee Proposal No. 2 failed to carry by a vote of 25 ayes and 45 noes, with Delegates Aduja, Ajifu, Amaral, Ando, Andrade, Ariyoshi, Bacon, Bryan, Burgess, Chang, Donald Ching, Devereux, Goemans, Hansen, Hara, Harper, Hasegawa, Hidalgo, Kage, Kageyama, Kato, Kauhane, Kawasaki, Kunimura, Lalakea, Rhoda Lewis, Frank Loo, Lum, Matsumoto, Miyake, Nakatani, Oda, Pyo, Saiki, Shiigi, Souza, Sutton, Suwa, Taira, Takamine, Ushijima, Yoshinaga, Young, Mr. President and Chairman Fernandes voting no; and 12 excused, with Delegates Akizaki, Alcon, Beppu, Kawakami, Kudo, Minn, Mizuha,

Morioka, Nakama, Schulze, Takahashi and Uechi being excused.)

CHAIRMAN: The motion has failed to carry. A short recess is granted by the Chairman.

At 5:23 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:30 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole come to order. Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, the next question we had intended to pose, which we are not going to pose because of the vote that we just took on the first question, was the deletion of senate confirmation of appointees of boards and commissions. We're going to abandon that. We have a feeling here that the result would be the same. I would like to get on to the next question, Mr. Chairman.

CHAIRMAN: Delegate Doi, just one moment. Are there any questions pertaining to that statement made? None? Continue, Delegate Doi.

DELEGATE DOI: The next question we would like to pose to the group is that we move that the provision providing for senate action on the removal of single executive heads of departments be deleted.

DELEGATE DONALD CHING: Mr. Chairman, I second the motion.

CHAIRMAN: The motion is made, seconded by Delegate Ching. Delegate Doi.

DELEGATE DOI: Mr. Chairman, I'm not going to be long. The arguments are about the same as that which was presented for the removal of the confirmation power. Only, I think the argument here is stronger in favor of the deletion of the provision that requires the governor to seek the approval of the senate whenever he desires to remove a single executive who, in his opinion, is not working in the best interest.

Here also the Committee of Economic Development, in 1967, under modernizing state government, has expressed itself in favor of the deletion of such a provision. The model constitution is the same, the statement read by Delegate Ho from Mr. McDonald is the same, the Model State Executive, Governor's Committee on Constitutional Revision and General Government Organization, as recent as July 24, 1968, Mr. Chairman, all recommend deletion of such an approval provision. I think I said all I need to say. I urge the adoption of the particular motion.

DELEGATE BRYAN: Mr. Chairman.

CHAIRMAN: Delegate Bryan is recognized.

DELEGATE BRYAN: I have a very brief question. Looking at the language, I noticed that it does not say "for cause." I assume that this is removal with or without cause, is that correct?

CHAIRMAN: Senator Doi.

DELEGATE DOI: That is correct. Even without cause.

CHAIRMAN: Delegate Ching is recognized, followed by Delegate O'Connor.

DELEGATE DONALD CHING: Just a brief statement. As I said in my statement earlier on the confirmation argument, I think that these are two separate concepts. Once the protection or the check, if you want to call it that, of senate investigation and confirmation has been looked into, then the employer-employee relationship enters into the picture and it's a complete one at that point. And if the employee breaks that relationship, I think the employer should have the right to fire at will. So I don't think the arguments are exactly the same but I think they are very similar. Thank you.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, the Chair will recall I started to ask a question a while ago—

CHAIRMAN: The question is in order.

DELEGATE O'CONNOR: Referring to Section 20 of Article III, it now reads that "the governor and lieutenant governor, and any appointive officer for whose removal the consent of the senate is required, may be removed from office" by impeachment. I would suggest—first of all, may I ask a question of Delegate Hung Wo Ching, whether or not this matter has been brought to the attention of the Legislative Powers Committee?

DELEGATE HUNG WO CHING: Mr. Chairman, there were no proposals in this area so we did not discuss it.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Making a brief statement, then, Mr. Chairman, I am in favor of the proposal. However, I would also favor a change to Section 20 if the proposal passes, making any executive—head of an executive department subject to impeachment, thereby retaining in the legislature a check on heads of executive departments which should not be removed from the legislature.

CHAIRMAN: Delegate O'Connor, you raised a question on another section and the matter before us is another section. I would at this time ask the chairman of the Style Committee whether action that we take by one will be able to iron out by his committee is pertaining to this section.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Just one minute. Delegate Ando.

DELEGATE ANDO: Mr. Chairman, it's preferable that the committee whose subject matter concerns such factors that involve conflict, iron it out before they report it out as such a report is not in yet.

CHAIRMAN: Thank you. Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: Mr. Chairman, I wasn't here in 1950, eighteen years ago, but it seems to me that when this particular paragraph of the Constitution was adopted, it involved the principle of separation of power, and it also involved a little matter of principle of checks and balances. It seems to me that it was the intent of that body at that time to provide that the governor, for an appointment, would seek the advice and consent of the senate and that upon removal, the same advice and consent would be required. Because it seems to me, not having been there, I'm not sure, it seems to me some people thought that there may be a situation where the governor may appoint with the advice and consent of the senate and on the very next day, the next week or the next month remove someone that he was not particularly pleased with and that if we are to retain the advice and consent on the initial appointment, that this provision is necessary in this particular Constitution.

CHAIRMAN: I'm sure that the delegates are aware of what's before us so the motion is in order. All those—Delegate Lewis, excuse me.

DELEGATE RHODA LEWIS: A point of information. Is it my understanding that we will take up exceptions to this principle if it's approved? I have an amendment that the attorney general would—

CHAIRMAN: Delegate Lewis, that has been—

DELEGATE DOI: Mr. Chairman, we will add the exceptions later.

CHAIRMAN: Exceptions are not involved at this time. All right, shall we call the roll? Delegate Sutton, are you requesting a roll call? So ordered.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, will you please, just for the information of the delegates, clearly state the motion that they are voting on and if they vote one way or the other what the result would be.

CHAIRMAN: Delegate Doi, will you state the motion so that the Chair won't get confused with your motion.

DELEGATE DOI: The motion is to delete the provision requiring senate action on removal of single

executives as department heads by the governor.

CHAIRMAN: Call the roll, Mr. Clerk.

(Roll call having been ordered, the motion to adopt Section 6 of Article IV of Committee Proposal No. 2 by deleting the provision requiring senate action on removal of single executives as department heads was carried by a vote of 52 ayes and 21 noes, with Delegates Amaral, Burgess, Hara, Kage, Kauhane, Kunimura, Lum, Matsumoto, Miyake, Mizuha, Nakatani, Ozaki, Sutton, Taira, Takamine, Ushijima, Yamamoto, Yoshinaga, Young, Mr. President and Chairman Fernandes voting no; and 9 excused, with Delegates Akizaki, Alcon, Beppu, Kudo, Minn, Morioka, Nakama, Schulze and Takahashi being excused.)

CHAIRMAN: Said amendment has passed. Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, now we're ready to consider the exceptions to this. I believe Miss Rhoda Lewis had one.

CHAIRMAN: Delegate Doi, would you state the committee's exceptions and then the Chair will permit any amendments to the—

DELEGATE DOI: The committee has no exceptions.

CHAIRMAN: No exceptions. Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I propose that the attorney general be an exception and that removal be by advice and consent of the senate as under the present Constitution.

CHAIRMAN: Delegate Lewis, may I interrupt? Is there an amendment on the clerk's desk?

DELEGATE RHODA LEWIS: Yes, there is an amendment but it is not appropriate under the action heretofore taken.

CHAIRMAN: Could the Chair ask for a short recess so that the amendment could be looked over by the legal staff so that we won't get confused as to the amendment which you seek to move on?

DELEGATE RHODA LEWIS: Well, it is No. 4, Mr. Chairman, and reads as follows:

“Section 6 of Article IV, of the State Constitution as set forth in Committee Proposal No. 2 is amended by amending the proviso at the end of the second paragraph to read as follows:

“‘provided that the appointment and removal of the chief legal officer of the State shall be subject to the advice and consent of the senate.’”

I think that I could—

CHAIRMAN: The Chair will declare a short recess.

At 5:44 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:49 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

The question before us is the matter of concept as a request by Delegate Lewis concerning exceptions and if you take your Amendment No. 4 before you and if the legal staff has said that if you delete the words "appointment and." Follow me? Amendment No. 4. The legal advisors said that if we want to consult the amendment that's before us, if you delete the words, provided that the "appointment and," delete those two words and it will be "provided that the removal of the chief legal officer of the State of Hawaii shall be subject to the advice and consent of the senate."

So the question before us is in the exception area and Delegate Doi is proposing that the attorney general's office be exempt from the action that we took. Delegate Lewis, am I correct?

DELEGATE RHODA LEWIS: You're correct, Mr. Chairman. My reasoning just as stated—

CHAIRMAN: Would you make a motion to that effect so we can get it on the desk?

DELEGATE RHODA LEWIS: I move that we put in a proviso that the phrase indicated in the committee proposal having to do with the single executive so that the proposal would continue as follows. We have approved the language, "...unless sooner removed by the governor," but we and then continue, "provided that the removal of the chief legal officer of the State shall be subject to the advice and consent of the senate." That would then be an exception to the absolute removal power of the governor.

DELEGATE SUTTON: I second the motion.

DELEGATE RHODA LEWIS: My reason is in continuation of the explanation set out in the committee report. I felt that it did not go far enough. It was recognized there that since the attorney general advises the legislature, the senate should retain confirmatory power in that area. I feel the same that is applicable to the question of removal. Suppose we have a governor and a legislature of different parties. The duty of the attorney general is to call the shots on a very controversial issue. If he upheld the legislature against the governor, what would happen? Surely a traditional constitutional provision that the advice and consent of the senate is required for removal should be obtained.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: I speak in support of the

amendment. Like Madame Lewis, I too served as an attorney general under the Territory and the State and I speak from personal experience. At the time I accepted the post of attorney general of the Territory, I had the understanding with then the last governor of the Territory that I would call my shots, as Madame Lewis said, as I saw fit. And any time the governor didn't like it to let me know and I'll go home to Kauai. And there are still members in the senate and the legislature sitting right here who knew of that fact. But that doesn't happen too often in the life of the Territory and the State because we don't have too many people with that kind of idea serving in our government. If you're not wanted, always turn in your resignation. And sometimes when you do call your shots as an attorney general, it might not come out the way the governor wanted it.

So under our provision that we have just voted upon and passed in this Constitution which makes mockery of the advice and consent power of the senate, the governor now can remove his attorney general if the attorney general doesn't want to do something which the governor wants him to do; I don't see anything in the Constitution about electing the attorney general. I think that is the finest thing that could happen to a new state like Hawaii but the committee that had charge of this section of the Constitution did not report such a proposal out. But if you are going to have an attorney general, my fellow delegates, in the State, who will sit out there and worry about continuing in office, you won't get the kind of counsel that you should get from the chief legal officer of this State. And if there is anything that you want to salvage, I believe you should give the senate the power to say whether or not the attorney general is doing a good job because he is only removed, under present provisions of the Constitution, by the governor if he isn't doing a good job. And let the senate decide that. I'm surprised that the delegates didn't have the removal clause provided by law for our department heads. We have one in our judiciary article for judges.

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak in favor of Delegate Lewis' amendment. I suggest that all the arguments made by Delegate Mizuha and Delegate Lewis have much weight.

I was an advocate of the elected attorney general and the committee saw fit to report out otherwise. I would suggest that the retention in the Constitution of this provision, as far as the attorney general goes, would make that office a much stronger one, that would make the man in it a much more independent one.

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson is recognized.

DELEGATE LARSON: I have a question. Perhaps the proponent—

CHAIRMAN: State your question.

DELEGATE LARSON: All right. To whom is the attorney general responsible and how does he serve the legislature first of all? Secondly, if he does serve the legislature, if he is somewhat in a limbo between the legislature and, the legislative branch and the executive branch, shouldn't then the house have a say in his removal also?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I'd love to answer that question. The attorney general is primarily responsible to the people and nobody else. He is the defender of the faith, he is the one that should see that the laws are enforced impartially and anyone in this State gets the benefits of what the government can provide for himself as an individual first and then there come all the other duties, not as important, in my opinion, as serving the people. That is why he should not be subject to removal by the governor.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I don't think the question has been answered. You have mentioned that he is responsible for serving the people. We're responsible for serving the people here indirectly. So are the other heads of departments. I'd like to know what his responsibilities are and as to the office of the executive branch, the office of the governor, how does he serve the executive branch and in what fashion does he serve the legislature and why does he deserve such a distinguished position separate from all other appointed officers in the executive branch?

DELEGATE MIZUHA: As one who has served in that office, I will try to answer—

CHAIRMAN: Delegate Mizuha, will you please answer.

DELEGATE MIZUHA: That is right. I will try to answer the job—what you want to know is what does the attorney general do.

First of all, one of his main duties is to see that the laws are enforced. In other words, he is the chief public prosecutor of this State. Secondly, he is the legal officer for every department of government in Hawaii, beginning with the land office down to the Hawaiian Homes Commission. He does all the legal work. Thirdly, he prepares the bills for the governor's office that he submits to the legislature whenever it meets. He then serves the legislature, both the house and the senate, and at times if he belongs to the opposite party he doesn't serve them at all.

Just like my position was in 1959. I gave them a little help but they didn't listen to me because I was a Republican and we had a Democratic legislature. So that is one incidence when he cannot serve the legislature. The attorney general's office was placed on the side like Lieutenant Governor Gill did to me with reference to the reorganization bill for the first special session. But the attorneys of the house and senate also serve the

legislature. But whatever the attorneys can't do, then they run to the attorney general's office for help.

He advises the governor whether or not the bills are constitutional or not and sometimes although he gives the governor proper advice, the governor still signs the bill. Then the Supreme Court brings the law out. That is in substance what the attorney general does.

DELEGATE LARSON: Thank you, delegate. Also, the second part of my question was, Mr. Chairman, if the attorney general does serve both the legislative branch of government and the executive branch, as well as the people of Hawaii, then why does the senate only, why should the senate only have a say in his removal? Shouldn't the house be included?

DELEGATE MIZUHA: Mr. Delegate, you have to be consistent in this matter. You gave the senate the power of advice and consent. I understand the mynah birds were shot out and they dropped to the ground with reference to appointments. And now they have this other provision in the executive article and they gave the governor the power to remove as he sees fit so we thought, and naturally Madame Lewis who sits right next to you thinks that maybe with this special character, the attorney general, we should protect him a little bit more than other department heads because of his primary responsibility to the people. And if he is going to serve the people first and foremost instead of serving the governor, maybe some of the things he might do in behalf of the people may not find favor with the governor and the governor might remove him. And we will have that great body of legislators, the senate of Hawaii, God almighty they are now, they can say, "No, Mr. Governor, you're not doing the right thing. That attorney general you appointed and we confirmed, he's doing the right thing and he's serving the people."

CHAIRMAN: Delegate Mizuha, the Chair informed you before you rose here and the rest of the delegation, when the Chair uses this one finger it means your ten minutes are pretty well up so—

DELEGATE MIZUHA: Thank you.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: Mr. Chairman, then if I understand correctly, the reason that this honorable delegate from Kauai mentioned for the senate being responsible and the senate only for the removal of the attorney general, is to be consistent. Have I understood this correctly? To be consistent with the other provision?

CHAIRMAN: I think what's understood is your understanding of what he said. I'm still lost yet but we understand that the attorney general does serve, as far as I'm concerned, serve all the people. The attorney general, as far as the ruling made by the last Constitutional Convention, invoked that provision that the senate would have the only power to remove him, and I think the reason is that they felt maybe the

senate was "it." I don't know.

DELEGATE LARSON: Thank you, Mr. Chairman.

DELEGATE BRYAN: Mr. Chairman, point of information.

CHAIRMAN: Delegate Bryan is recognized.

DELEGATE BRYAN: Mr. Chairman, we might save some time if we could hear from the chairman of the committee on this subject.

CHAIRMAN: Delegate Goemans is recognized at this time.

DELEGATE GOEMANS: I may be confused and perhaps Delegate Mizuha can straighten this out. We, as I understand it, have now voted in favor of the deletion in the committee report of the phrase, "The governor may, by and with the advice and consent of the senate, remove such single executive."

CHAIRMAN: Delegate Goemans, the question before the house is whether we will accept the exception of the attorney general being deleted from what we have taken action on. And the Chair would ask you to confine yourself to that.

DELEGATE GOEMANS: My question is, Mr. Chairman, Delegate Mizuha has made the statement that the governor's power of removal is unlimited. But as I would interpret that previous action of this body, there is no provision as yet for any removal power in the governor for any single executive. It may be that single executives would fall under the provision that has to do with "as provided by law," and public law now prescribes that single executives shall be removed by and with the advice and consent of the senate which I assume would continue to apply. So the statement that there is no restriction on the governor's removal power seems to be erroneous. Perhaps the delegate could—

CHAIRMAN: The Chair will accept your statement. Delegate Lewis is recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, under the format we've been following, as I understand it, but I think maybe the chairman of the committee would rather speak on this matter, the vote on sustaining the committee in its recommendation that the governor be given the power of removal of the single executive, with deletion of the language requiring advice and consent of the senate, if the vote was favorable to the committee and that proposition. Before the vote was taken there was clarification that we would afterwards take up exceptions, that we were not voting that this was an absolutely blanket change. Am I correct, Mr. Chairman?

CHAIRMAN: Chairman Doi.

DELEGATE DOI: That is correct.

DELEGATE RHODA LEWIS: So now taking up exceptions, my proposal is as stated that we adhere to

the present language of the Constitution in the matter of the attorney general. That the power of removal there be by the governor by and with the advice and consent of the senate.

CHAIRMAN: Delegate Sutton is recognized.

DELEGATE SUTTON: Mr. Chairman, I was the seconder of Miss Lewis' motion.

CHAIRMAN: I'm well aware of that, delegate. Do you rise on what purpose? To speak for the amendment or against the amendment?

DELEGATE SUTTON: I speak for the amendment. We have had in this Constitutional Convention brought to our attention the role of attorney general. We have had two attorney generals' opinions which have aided us considerably in the Bill of Rights Committee. In the Revision and Amendment Committee we have had three attorney generals' opinions. These opinions also are known as attorney generals' opinions that are filed and have almost the force of law until reversed by a court. If you have an attorney general who is to make a decision of that nature and who has almost the effect of creating law, subject to the whim of a governor whom he temporarily offended by his decision, we have lost all effectiveness in these particular opinions.

I therefore recommend to this body that the exception to what we have just passed is highly appropriate. Thank you.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha, for what purpose do you rise?

DELEGATE MIZUHA: I believe Delegate Goemans expressed himself with reference to a statement that I made and he is confused.

CHAIRMAN: Are you rising on a point of personal privilege?

DELEGATE MIZUHA: That is correct.

CHAIRMAN: Proceed.

DELEGATE MIZUHA: With reference to the statement made by Delegate Goemans, I'm absolutely right in what I have said that this body, by voting for the amendment to give the power by voting for the motion made by Delegate Doi to accept the committee report, to give the governor the power of absolute removal of single executives made mockery of the previous amendment where they said that the senate must advise and consent to all appointees. And I believe Delegate Goemans didn't know what he was voting for. I may reconsider his vote.

CHAIRMAN: Mr. President is recognized.

PRESIDENT PORTEUS: Mr. Chairman, it was the will of this body that we proceed with some votes. The

issue is very clear on this situation. I'm neither speaking for nor against it but I'm asking you, since you do know what you want to vote on, and you do probably know your position, cannot we move to a vote on this? The next issue that the chairman of the committee has is as clear-cut as the last and if you will vote on these matters we can finish. You don't have to come back until 7:30 tonight. If we keep going at this rate, we will not only be here at 6:30 but will be here at 7:30 or 8:00 or 9:00 or 10:00 o'clock tonight. So I do hope that you will allow the Chair to get this matter to a question so a determination may be made.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: I'm not in such a rush that I have to vote and not know what I'm voting on, just to get home at 7:00 or 8:00 o'clock at night. I think Delegate Mizuha and Delegate Goemans are entitled to talk this thing over in their minds because the vote we took prior to this is going to be related to this vote we are about to take. Delegate Mizuha is right. First instance we said that we wanted some checks. And we did not want to have the governor have the right to appoint any fool to run our public affairs. Therefore, we retain a provision for the advice and consent of the senate in the Constitution of the State of Hawaii, and in the next breath we say the governor can fire the guy the next day. A person has no protection. Now in the next breath we're saying all the appointments of the governor that can be removed the next day are not so important. But in the case of the attorney general, he's such a vital person that he or she has to be singled out for special protection. I think that's an insult to all department heads. The attorney general is no more important than any other public officer appointed by the governor. So that in this case, by voting for the amendment, we're giving special treatment to a person because that person happens to be an attorney, a lawyer and the attorney general. So although I was in favor of senatorial advice and consent for everybody, I intend to vote against this amendment on the grounds that this discriminates in favor of one office and one person only.

CHAIRMAN: The Chair will at this time, would wish to inform the members that the Chair had made a commitment that at 6:00 o'clock we were going to recess for dinner and the Chair felt that if this thing could have been brought to an early end. But we feel that this matter needs other areas of amendment, so therefore the Chair will accept a motion to recess until 6:30 this evening. Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, I move that we recess and reconvene at 7:30 tonight.

DELEGATE AMANO: Mr. Chairman, I second the motion.

CHAIRMAN: The Chair would have to report to the Convention its report as to the progress of where we are today.

All those in favor signify by saying "aye." Opposed. Carried.

At 6:15 o'clock p.m., the committee stood in recess until 7:30 o'clock this evening.

Evening Session

The Committee of the Whole reconvened at 7:38 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Mr. Clerk, where were we before the recess?

CLERK: Mr. Chairman, we have before us a motion made by Delegate Rhoda Lewis, seconded by Delegate Sutton, to make the attorney general an exception to the removal power of the governor which was passed just previous to this motion.

CHAIRMAN: Are we in a position at this time, Delegate Doi?

DELEGATE DOI: Yes, Mr. Chairman, may I restate the question and the situation on the question?

CHAIRMAN: Proceed, Delegate Doi.

DELEGATE DOI: The present status of the question is that we have adopted a proposal here to allow the governor to remove single executives of departments and that at this moment to that proposition is added an exception and the exception as suggested by the amendment is the attorney general's office.

CHAIRMAN: Correct. Call the roll, Mr. Clerk.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: I rise to speak against the amendment.

CHAIRMAN: Proceed.

DELEGATE DODGE: I agree with what Delegate Yoshinaga said. I see no reason to single out one administrative executive officer and provide special treatment. Delegate Mizuha told us what the responsibilities of the attorney general's office were. Primarily they are to represent the people of the State in the enforcement of the laws. He is an advisor for the governor and the governor doesn't need to take his advice. He may be an advisor to the legislature but the legislature need not take his advice, nor need any department head. But if he does not do his job and it is possible that he might not, in the areas of representing the people of Hawaii and in the enforcement of the laws, the consumer protection or anti-trust, no matter what the gamut is, if he doesn't do his job, there is no more reason to prevent him to stay in office until the senate convenes than there is to keep

the head of any other department. And I urge the delegates not to be persuaded by the section that this may be a more sensitive position than some other in state government and to vote against the amendment.

CHAIRMAN: Delegate Dyer is recognized.

DELEGATE DYER: May I ask Delegate Dodge a question?

CHAIRMAN: Proceed.

DELEGATE DYER: What happens in a situation then where you have an attorney general and the governor thinks that he is not doing his job and the legislature thinks he is doing his job? Shouldn't you have some say by the legislature as to whether or not he should be removed?

DELEGATE DODGE: To answer that question, I don't think that the legislature should have any say outside of confirming his appointments. As Delegate Mizuha who has been an attorney general pointed out, the legislature frequently does not even call on the attorney general for advice. They're not required to by law, they can seek their own individual attorneys' opinions. Both houses of the legislature have attorneys on their staff. I happen to have been one when Delegate Mizuha was attorney general and we didn't take his advice, they took mine more often than they did his but that's quite beside the point. The relationship between the attorney general and the legislature is not a necessary relationship. It is purely advisory and only if the legislature wants his advice. And as I say, they do not have to take it. I would not elevate this person any higher than any other department head in the administration.

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I did vote for the amendment providing for removal without the advice and consent of the senate, believing that the ordinary executive department is carrying out the governor's policy. Therefore, he should have expeditious removal power. Now, in the case of the attorney general, it definitely is not his duty to carry out the governor's policy. His duty is to interpret the law.

I served in the attorney general's office for some twenty-two years and I do not remember any department that did not take the advice of the attorney general. An attorney general's opinion is quasi-judicial. It means that the citizen who does not agree with the opinion has to bear the expense of going to court to upset the opinion and they do of course, and they should, but there is where the expenses fall. Now, I cite you an example: before the State could be admitted, we had to obtain a determination from the Supreme Court as to whether there should be an immediate reapportionment along the lines of the Congressional act or no reapportionment until after the State was admitted and until the time arrived under the Constitution.

Now, it's no secret that Governor Quinn felt that there should be an immediate reapportionment. Judge Mizuha was attorney general and he felt that it was not the intention of the Constitution. It was a proposition where Windward Oahu wanted an immediate reapportionment and the neighbor islands did not. The governor was guided by the advice of the attorney general in submitting the case to the court although it did not express his views, but he allowed the attorney general to go into court and take the side of the neighbor islanders and the expense of attacking that decision fell upon the Windward Oahu people and a few other districts that were involved.

Now, I hope this will illustrate what I mean when I say it is not the function of the attorney general to carry out the governor's policies. In many, many states the attorney general is elected precisely for the reason that this would give him some independence in interpreting the law so that he will not be merely a servant of the governor in interpreting the law. This position has been rejected by the committee. I'm not urging that we have an elected attorney general but on the other hand, I cannot conceive of a provision which would still further take away from the independence of the attorney general, as to say that he may be removed at the will of the governor.

CHAIRMAN: Delegate Schulze.

DELEGATE SCHULZE: Mr. Chairman, I rise to speak in favor of the amendment. I agree with Delegate Rhoda Lewis that the attorney general has duties which are not entirely involved in carrying out the policy of the governor. Frequently, he makes statements and decisions which have the force and effect of law and sometimes they cannot be tested adequately in the courts either quickly enough or thoroughly enough to overcome that status. Therefore as I see it, he has a duty to the people to be impartial and to give legal decisions that are correct and do not necessarily reflect the opinion of people superior to him. This is not always true but it is true on occasions and in order to do this the attorney general needs a measure of independence.

Mr. Chairman, I don't see senate consent to his removal as elevating him at all. But I do see it as giving him a small measure of independence which I think he must have in order to carry out his job properly. Thank you.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, I too want to speak in favor of the amendment. I, along with the delegate from Kauai, too desired a system whereby the attorney general would be elected to office but falling short of accomplishing this, inasmuch as the committee did not report out this proposal to be acted upon, I think, as the previous delegate just now stated, that in order to give a semblance of independence to the attorney general's position, I think there is much to say about the amendment.

I beg to differ violently with the position of the opinion expressed by Delegate Dodge here that the legislature does not rely too heavily on the attorney general's office for opinions, for judgments. I think in my two sessions in the legislature, I've seen demonstrated the great value of independent legal judgment rendered by the attorney general's office. We have had to rely on the attorney general's office for this kind of independent legal opinions. We will continue to require this kind of judgment and I believe that the statement made by the delegate that the legislature doesn't necessarily have to depend on the attorney general is somewhat erroneous from the practical standpoint, from the practical operation of the legislature and committees in the legislature.

I do want to maintain this independence to the best extent we possibly can and I think this amendment accomplishes this in a very limited fashion. Be that as it may, we have no alternative right at the moment. As I said, falling short of the elected attorney general, and I do want to speak in favor of the amendment.

CHAIRMAN: If there is no other question, I presume roll call is needed in this case if ten want roll call, or do we go by hand. The Chair recommends that we—

DELEGATE BACON: Before taking the vote, would you clarify what we're voting on, please.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: The basic proposition is that the governor may remove a single executive without approval of the senate. And the exception we're voting on now is the attorney general's office, which would mean that if you vote "aye," you would require the consent of the senate to remove the attorney general. If you vote "no," you would not require the consent of the senate.

CHAIRMAN: Are there ten members that wish roll call? Roll call. Call the roll, Mr. Clerk.

(Roll call having been ordered, the motion to adopt the amendment offered by Delegate Rhoda Lewis that the senate retain removal power of the attorney general was carried by a vote of 41 ayes and 22 noes, with Delegates Ajifu, Ando, Bacon, Dodge, Doi, Hara, Harper, Ho, Kageyama, Kamaka, Kauhane, Peter Lewis, George Loo, Lum, Nakatani, Oda, Ozaki, Suwa, Taira, Wright, Yamamoto and Yoshinaga voting no; and 19 excused, with Delegates Akizaki, Amano, Beppu, Chang, Hung Wo Ching, Fasi, Hidalgo, Kaapu, Kudo, Frank Loo, Minn, Miyake, Mizuha, Morioka, O'Connor, Saiki, Takahashi, Takamine and Ushijima being excused.)

DELEGATE YOSHINAGA: Mr. Chairman, how many excused?

CHAIRMAN: Nineteen.

DELEGATE YOSHINAGA: Nineteen? Thank you.

CHAIRMAN: That amendment has passed.

DELEGATE RHODA LEWIS: Mr. Chairman, may we have a short recess?

CHAIRMAN: A short recess is requested and granted, subject to call of the Chair.

At 7:55 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 7:59 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole come to order. Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, I would like to state the next proposition. The next proposition which I move is that the governor may remove appointees to boards and commissions which are heads of departments without senate approval. May I have a second on this?

DELEGATE DODGE: I second the motion.

DELEGATE DOI: I want to explain that the present Constitution provides for removal as prescribed by law. The effect of this motion would be so that the Board of Education and the Hawaiian Homes Commission would be outside of the motion. That is to say, the governor cannot remove the members of the Board of Education or the Hawaiian Homes Commission because of the way in which our Constitution is written and structured.

Now, we want it also clearly understood that after this principle—the idea in this motion is voted on and should it pass, again exceptions will be considered separately. Is that the understanding, Mr. Chairman?

CHAIRMAN: That is the understanding.

DELEGATE DOI: Thank you. I do not want to repeat the arguments given today and therefore I'm going to sit down, but this is the committee's proposal and I urge the adoption.

CHAIRMAN: The president is recognized.

PRESIDENT PORTEUS: Mr. Chairman, I would like to be informed by the chairman of the committee, if the result of passing this amendment would be that having chosen various members of the Land Board, if the bare majority refuse to dispose of some lands in accordance to the governor's wishes or if they refuse to negotiate a deal with a single developer, whether the governor the next day could notify them that they are being removed and that they would thereby be out immediately.

DELEGATE DOI: The answer is yes, if the Land Board is not made an exception later.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I have a question too for Delegate Doi.

CHAIRMAN: State your question.

DELEGATE DYER: Delegate Doi, could you tell us exactly what boards are involved?

DELEGATE DOI: The boards involved are the Land Board, Board of Agriculture and the Board of Regents.

CHAIRMAN: Does that answer your question? Delegate Goemans is recognized.

DELEGATE GOEMANS: Could I have a statement as to what the wording of this amendment is and where it falls, only because of the fact that I'm thoroughly confused in this area as well as earlier.

CHAIRMAN: Delegate Goemans, when we started out, we went into various sections. When we came to Section 6, the concepts that we are speaking about were divided into four areas. The question was put to the members to vote on this concept and that if the concept was lost, that there was no need for amendments in this area because the Convention has more or less given its views. In this case, we're down to the concept now of giving the governor full authority of removing any member from any board or commission, excluding those stated by Delegate Doi. And as far as language is concerned, if this concept has been accepted, then the language of the committee will be put in and in that event Style will fit it in to carry out the views as expressed by vote by this Convention.

DELEGATE GOEMANS: In point of fact, we're not voting on amendments, we're voting on concepts, is that it?

CHAIRMAN: You're actually voting on the concept submitted to us on proposal by the committee.

DELEGATE GOEMANS: In other words, we're not actually voting to get the sense of the body regarding specific wording in the committee report. We're getting the sense of the body as to this idea. So that the ordinary rules regarding amendments being in writing and so forth don't apply.

CHAIRMAN: It does apply.

DELEGATE GOEMANS: It does apply?

DELEGATE DOI: Mr. Chairman, might I explain that we had experienced earlier in the session that when we go word by word many times there's much confusion, and therefore in the meeting with the leadership which included the president, vice-presidents and secretary, we divided the question in the manner we did which we think simplified it so that the issues are clear. That is why we are taking this approach. But that we are actually voting on the proposals of the committee as recommended here on the floor.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I'd like to speak against the proposed amendment. It seems to me, and I think this became obvious from the questions of our president, that any such amendment would absolutely destroy the independence of the Land Board, the Board of Agriculture and the Board of Regents because as the president indicated by a question, if the governor did not like the way any of these boards were handling the matters charged them, he could immediately remove any or all the members as he saw fit. And it seems to me that earlier today when we took our vote on the Land Board, for example, there was at least a majority at that time that wanted to preserve the independence of the Land Board and I certainly have a feeling that the independence of the Board of Regents should be preserved. And I don't see any reason at the moment to make any exception for the Board of Agriculture so that I'm, to put it blankly—not blankly, but to put it as straight as I can—I am horrified by this proposed amendment.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, a point of information. I am concerned as to the Hawaiian Homes Commission. I am not able to find anywhere where this board would be excepted out of the amendment which would read, "The governor may remove any member." Now under Article XI, Hawaiian Home Lands, it says that certain provisions relating to administration may be amended in the Constitution. I will confess that I have not had an opportunity to restudy the Hawaiian Homes Commission Act for some time. I know the others are more experts, but I had assumed that the composition, the appointment and removal of the board could be controlled without going to congress. If that is so, I cannot understand why this amendment would be inapplicable to the Hawaiian Homes Commission board.

DELEGATE DOI: Mr. Chairman, we have at length conferred with the attorneys and I admit here that there is some cloud, there is some confusion, the best advice that we could get is that the Hawaiian Homes Commission is not affected by this particular provision. In response to Delegate Dyer, I do want to say that if any of these boards, you would like to later make an exception, you may do so at the time of the consideration of exceptions.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Is the intent of this proposal applicable to only the Board of Agriculture, Board of Land and Natural Resources and the Board of Regents?

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, it applies only to boards and commissions which are heads of

departments. Therefore, under the present constitutional provision, it will apply to the Land Board, to the Board of Agriculture and the Board of Regents. The Board of Education is outside of this because it is an elected board, it doesn't apply. And then because of the interpretation by the attorneys about the Hawaiian Homes Commission, it happens to be outside. They won't be affected there.

CHAIRMAN: I presume the roll call will be asked and I presume there are ten members standing for the roll call, so Mr. Clerk, call the roll.

(Roll call having been ordered, the motion to adopt Committee Proposal No. 2, relating to the removal power of confirmation by the senate of executive boards and commissions failed to carry by a vote of 23 ayes and 43 noes, with Delegates Aduja, Alcon, Amaral, Andrade, Ariyoshi, Bacon, Bryan, Burgess, Devereux, Dyer, Hansen, Hara, Hasegawa, Hitch, Jaquette, Kage, Kageyama, Kato, Kauhane, Kunimura, Lalakea, Rhoda Lewis, Frank Loo, Lum, Matsumoto, Nakatani, Oda, Pyo, Schulze, Shiigi, Souza, Steiner, Sutton, Suwa, Taira, Takamine, Uechi, Ueoka, Yamamoto, Yoshinaga, Young, Mr. President and Chairman Fernandes voting no; and 16 excused, with Delegates Akizaki, Beppu, Chang, Hung Wo Ching, Fasi, Hidalgo, Kaapu, Kudo, Minn, Miyake, Mizuha, Morioka, O'Connor, Saiki, Takahashi and Ushijima being excused.)

CHAIRMAN: It failed to pass. Delegate Doi.

DELEGATE DOI: Mr. Chairman, we'd like to move on to the next question. I would like to ask the delegates to turn to page 7 of Standing Committee Report No. 38. I think it's set out there. The last paragraph from the bottom which starts with, "The governor shall nominate. . . ." We're not voting by concepts anymore because this is a matter which is rather direct and simple.

CHAIRMAN: Delegate Doi, before we move into the last section of—

DELEGATE DOI: Section 6, paragraph—fourth paragraph.

CHAIRMAN: May I ascertain at this time before we move into this section whether there are any amendments before the clerk concerning the sections, the paragraph we took place before this area.

DELEGATE DOI: I think the action of the body has taken care of, except one proposed by Delegate Ando and I have discussed this matter with him and the thought here of this amendment was that he would want to add in the third paragraph which begins with, "Whenever a board, commission or other body shall be the head of a principal department of the state government, the members thereof shall be nominated and, by and with the advice and consent of the senate, appointed by the governor," he desires to add the words "unless otherwise provided in this Constitution" and the amendment is evidently No. IV-6. My discussion with Delegate Ando indicated that if I express it on the

floor, even without acting on this amendment, the Department of—Board of Education, would be satisfied with it.

CHAIRMAN: Delegate Ando, have you—what's your position on this?

DELEGATE ANDO: Yes, Mr. Chairman, and therefore I withdraw the amendment proposed.

CHAIRMAN: Thank you. Mr. Clerk, is there any other amendment before us pertaining to the areas that have been discussed?

CLERK: Mr. Chairman, we have an Amendment No. IV-7 which was submitted by Delegate Rhoda Lewis.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, that amendment is withdrawn due to the previous vote.

CHAIRMAN: Thank you. Are there any other amendments?

CLERK: We have an amendment, numbered IV-2, by Delegate Ando.

DELEGATE ANDO: That's been withdrawn, Mr. Chairman.

CHAIRMAN: Thank you.

CLERK: Mr. Chairman, we have another amendment, numbered IV-5, submitted by Delegate Rhoda Lewis.

CHAIRMAN: I think this has been taken care of.

DELEGATE RHODA LEWIS: Mr. Chairman, that amendment was superseded when the confirmation powers were retained.

CHAIRMAN: Are you withdrawing the amendment? Delegate Doi.

DELEGATE DOI: Mr. Chairman, then may we proceed to paragraph 4 of Section 6?

CHAIRMAN: Proceed.

DELEGATE DOI: The proposal is evidenced on page 7 of Standing Committee Report No. 38. Mr. Chairman, may I explain that provision first?

The present Constitution in paragraph 4 is intended to accommodate officers who are less than the heads of departments, either single executives or boards. What it does here is to say that as to those other officers, if the legislature does not on its own act to provide for a method of confirmation, then the advice and consent confirming procedure shall apply. That's the first sentence. We have retained that.

The second sentence of that paragraph, the

committee proposal deletes and in lieu thereof proposes this language: "The removal of officers not otherwise provided herein shall be as prescribed by law." The reason for that is that second sentence is rather confusing. The attorney for the committee did check with the 1950 Constitutional Convention minutes and the particular second sentence seems to refer also to heads of departments when this paragraph was intended to apply to positions other than heads of departments. We thought that the recommended language that "The removal of officers not otherwise provided herein shall be as prescribed by law," will retain the present method in effect and would simplify it. Actually it does only clarify it. Because the present statutes provide that the governor may for example remove for a cause. We've already adopted such a statute. I would be happy to answer questions. May I have a second on the adoption of the—

CHAIRMAN: Delegate Kamaka is recognized for the purpose of seconding—

DELEGATE KAMAKA: I second that motion.

DELEGATE GOEMANS: What is the amendment?

CHAIRMAN: Delegate Doi.

DELEGATE DOI: The amendment is to delete the second sentence of the fourth paragraph and in lieu thereof add the words, "The removal of officers not otherwise provided herein shall be as prescribed by law."

CHAIRMAN: Call the roll, Mr. Clerk.

(Roll call having been ordered, the motion to adopt Section 6 of Article IV, paragraph 4, second sentence, relating to removal of officers was carried by a vote of 66 ayes and 16 excused, with Delegates Akizaki, Beppu, Chang, Hung Wo Ching, Fasi, Hidalgo, Kaapu, Kudo, Minn, Miyake, Mizuha, Morioka, O'Connor, Saiki, Takahashi and Ushijima being excused.)

CHAIRMAN: Congratulations, it passed. Delegate Doi.

DELEGATE DOI: Mr. Chairman, the next paragraph, the fifth paragraph and the sixth, there are no changes. And those you will find on page 8 of Standing Committee Report No. 38. The last paragraph of the section, which is the seventh paragraph, will make two changes. The thought here is that all officers appointed by the governor under this section, which includes heads of departments and members of boards and commissions, the present Constitution requires that they have a three-year residence before such appointment. We have changed it to a one-year residence requirement and we have also excepted from any residence requirement the office of the president of the University of Hawaii. Now the committee's desire was also to except the superintendent of education, but we have been advised by the attorneys that clearly the superintendent of education is already excepted. Therefore, that was not included. Mr. Chairman, I move

for the adoption of the amendment.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Mr. Chairman, I second the motion.

CHAIRMAN: Do you have questions pertaining to the area? If not, Mr. Clerk, call the roll.

(Roll call having been ordered, the motion to adopt the last sentence of Committee Proposal No. 2 relating to residence requirements was carried by a vote of 60 ayes and 6 noes, with Delegates Kato, Kunimura, Larson, Nakatani, Wright and Yoshinaga voting no; and 16 excused, with Delegates Akizaki, Beppu, Chang, Hung Wo Ching, Fasi, Hidalgo, Kaapu, Kudo, Minn, Miyake, Mizuha, Morioka, O'Connor, Saiki, Takahashi and Ushijima being excused.)

CHAIRMAN: Said proposal passed. Delegate Doi.

DELEGATE DOI: Mr. Chairman, we are through with the consideration of Committee Proposal No. 2 and therefore I move—

CHAIRMAN: Delegate Doi, before the motion is set, will the Chair ascertain from the clerk if there are any amendments on the clerk's desk? If none, we will entertain your motion.

DELEGATE GOEMANS: Point of information, Mr. Chairman. It appears there that we have voted on two questions there and I think that's part of the confusion, at least my confusion, throughout this matter, that we're voting on more than one matter at a time. Here the amendment of this committee report is to strike the word "three" and insert the word "one." That's one separate question, Mr. Chairman. My second question is then the clarification to residence requirement shall not apply to the university president. We've voted on two questions at once. I think we've done that throughout. We cannot do that as I understand parliamentary procedure.

CHAIRMAN: The Chair will say that the question was put before the delegation by Delegate Doi emphasizing these two questions. The Chair then asked if there were any views concerning delegates. Being none at the time, the Chair called for the roll and roll stands as is taken.

Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, I move that the committee rise and report that we have completed consideration of Committee Proposal No. 2 and Standing Committee Report No. 38 and beg leave to file a written report later.

CHAIRMAN: And that will include the language and so forth.

DELEGATE DOI: That is correct.

CHAIRMAN: Motion is in order.

DELEGATE BRYAN: May I request a brief recess?

At 8:30 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:35 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. There's a motion on the floor that we report progress to the—. All in favor signify by saying "aye." Opposed say "no." Carried.

The Committee of the Whole adjourned at 8:37 o'clock p.m.

Debates in Committee of the Whole on **THE JUDICIARY**

(Article V)

Chairman: DELEGATE ED C. BRYAN

Wednesday, September 4, 1968 • Afternoon Session

The Committee of the Whole was called to order at 3:47 o'clock p.m.

Delegate Bryan presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order.

The business of the committee today is to consider the Standing Committee Report No. 40 which carries with it Committee Proposal No. 3 on the judiciary. For the purpose of getting this business off to a flying start, I'd like to set forth, I think, one rule, that is that the Chair will make whatever rulings are necessary in order to expeditiously and fairly determine the will of the body. With those few comments I call upon Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, after nearly 45 days your Committee on the Judiciary has come out with a committee proposal and a committee report.

The curtain now rises on the final scene. I wish to say at this time that Delegate Fernandes on my left remarked just a moment ago that though I am retired officially, I am unofficially resting. We have had a considerable number of editorials written about the proposed merit system and I want to inform my fellow delegates at this time that the number of editorials and advertisements has taken its toll. I have physical evidence of this bruise on my forehead from the shock of that Monday's editorial.

Now to get down to the business of this Committee of the Whole, Mr. Chairman, the Judiciary Committee reports no change to Section 1 of the judiciary article, Article V. Hence, if there is any member of the committee who wishes to amend that article, an amendment of that section, rather, an amendment is proper at this time.

CHAIRMAN: Are there any amendments? Is there any delegate who wishes to propose an amendment to Section 1 of Article V?

DELEGATE NOGUCHI: Mr. Chairman.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: I would like to propose an amendment here on Article V. It's Amendment No. 3.

CHAIRMAN: Is that to Section 1?

DELEGATE MIZUHA: Mr. Chairman, I rise to a point of order. We are now on Section 1.

CHAIRMAN: One moment, please. Is your amendment to Section 1?

DELEGATE NOGUCHI: No, I'm sorry.

CHAIRMAN: Thank you. There will be ample opportunity later. Is there anyone who wishes to propose an amendment to Section 1? If not, the committee chairman is in order to proceed to Section 2.

DELEGATE MIZUHA: Mr. Chairman, the committee has proposed an amendment to Section 2. If all of the delegates will look at their committee proposal, they will note that in Section 2 there is a proposed amendment underlined after the second sentence in Section 2.

I move at this time, Mr. Chairman, for the adoption of the amendment to Section 2 after the second sentence in Section 2 which reads as follows:

"As prescribed by law, retired justices of the supreme court may also be recalled by the chief justice to serve temporarily on the supreme court."

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Second the motion.

CHAIRMAN: You have heard the motion and the second. Is there any discussion?

DELEGATE MIZUHA: Mr. Chairman, may I speak briefly?

CHAIRMAN: You may.

DELEGATE MIZUHA: This amendment—

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of information here.

CHAIRMAN: State your point, please.

DELEGATE KAUHANE: I'd like to pose a question and have a clarification.

CHAIRMAN: Concerning the—

DELEGATE KAUHANE: Concerning the amended words.

CHAIRMAN: Delegate Kauhane, the committee chairman was just going to explain the change. Perhaps if we wait for his explanation, it may answer some of the questions.

DELEGATE KAUHANE: Okay.

CHAIRMAN: Thank you.

DELEGATE MIZUHA: I presume that you have the language before you. It starts out with four words, "as prescribed by law." The legislature will determine the conditions under which a retired justice of the supreme court may serve on the supreme court at the call of the chief justice. The committee report, if you will look at it, says on page 3 thereof, in the third paragraph, "Your committee therefore recommends that Section 2 be amended to include the power of the chief justice to call upon retired justices, in addition to circuit court judges, to serve on a temporary basis."

There were many questions raised in the judiciary committee as to how long this service shall be; who of the retired justices may be called by the chief justice to serve on the court; and it was finally decided that the legislature shall prescribe those conditions. It was, I think, unanimously agreed although not written up in this proposal, that retired justices who are actively engaged in the practice of law may not be called to serve. But a retired justice like our sister delegate, Rhoda Lewis, who is not engaged in the practice of law may be called upon to serve. Likewise, it was clearly stated in the committee that when the legislature prescribed the conditions under which a retired justice may serve upon call of the chief justice, that there would be a time limit. As you all know, I have been retired now for two months and according to the newspapers, the incumbent governor says that there will be no appointment to the supreme court until he has some direction from this body when it comes out with its amended Constitution. As a result, if the legislature did not prescribe the length of service upon which a temporary retired justice may be called upon to serve, there was a fear on the part of some of the delegates that the chief justice may call only on one particular retired justice to serve for three, four or five months. However, the legislature in its wisdom, I am certain, will prescribe conditions that may provide for alternate retired justices to serve on the courts.

At the present time, we have three other retired justices. Namely, Charles Cassidy, Cable A. Wirtz and Rhoda Lewis, and myself. Although now Rhoda Lewis and Charles Cassidy are not engaged in the active practice of law, I understand from brother Ueoka here that Cable Wirtz will be opening an office on Maui soon. Hence, both Cable Wirtz and myself are disqualified from serving in any capacity as a temporary justice on the court because we are in the active practice of law.

I will be happy, Mr. Chairman, to answer any other question if I can; if not, some other member of my committee may be able to answer the questions in the minds of the delegates.

CHAIRMAN: Thank you. I believe you have adequately covered the ground. Delegate Kauhane, does that answer your question?

DELEGATE ADUJA: Mr. Chairman.

DELEGATE KAUHANE: Well, it does in a way, Mr. Chairman, because in listening to the chairman of the committee, he kept repeating that the supreme court, chief justice may recall, and I note in the amended language that the words, "as prescribed by law, retired justices of the supreme court may also be recalled..." But that this word "also" should be included or should he just say that "the supreme court may recall"; retired justices of the supreme court may be, "may be recalled" instead of "may also be recalled."

DELEGATE MIZUHA: Mr. Chairman, that is a matter for the Style Committee.

CHAIRMAN: I should expect so, yes.

DELEGATE MIZUHA: It is not a question of substance and this language was adopted very hurriedly when it was pointed out that the legislature would have the responsibility for the service of any retired justice on the supreme court.

CHAIRMAN: Thank you very much. Delegate Aduja.

DELEGATE ADUJA: May I raise a question?

CHAIRMAN: You may.

DELEGATE ADUJA: The question I'd like to raise, and it's bothering me, is the definition of the word "retired." Does this mean retired under the retirement system or retired because of not being reappointed to the position?

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: The legislature shall define the term "retired."

CHAIRMAN: Thank you. Any other questions? All those in favor of—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Yes, Delegate Yoshinaga.

DELEGATE YOSHINAGA: May I ask one question? Does this section authorize the legislature to limit or define the term "necessary" in the sentence before now? You see, the sentence before says, "When

necessary, the chief justice shall assign a judge or judges of a circuit court to serve temporarily on the supreme court." Then the following sentence, which is the amendment, provides that, "As prescribed by law, retired justices of the supreme court may also be recalled by the chief justice to serve temporarily on the supreme court." Now, what I am trying to understand is, what would be the procedure that the chief justice would follow, looking at Section 2? Would he call first on a circuit judge or if the legislature provided, for example, so that whenever there is a vacancy the chief justice shall first call upon a retired justice?

CHAIRMAN: Delegate Yoshinaga.

DELEGATE MIZUHA: Mr. Chairman, I will endeavor to answer that question. This particular amendment applies only to supreme court justices who are retired. The legislature shall prescribe those terms. It does not affect any other provision in the second section of the judiciary article.

DELEGATE YOSHINAGA: So, if I understand correctly, then, the legislature may prescribe that in the event of a vacancy or a temporary absence, that the chief justice shall first call upon a retired justice then, before calling on a circuit judge.

DELEGATE MIZUHA: That is not my understanding, Mr. Delegate.

CHAIRMAN: Mr. Yoshinaga.

DELEGATE MIZUHA: My understanding is this. At present under the Constitution, the chief justice has the privilege of calling on any circuit court judge to fill a vacancy on the supreme court. If he wants to call only on one circuit court judge to sit regularly for the next six months, he may do so. However, I believe in the discussions in the committee, it was felt that this was well and fine and good. But the suspicion was cast upon retired justices being called back so they wanted to lay down the conditions by law under which a retired justice may be recalled to serve.

DELEGATE YOSHINAGA: Sir, you haven't answered my question but I am very well satisfied.

DELEGATE MIZUHA: I don't know what his question means.

CHAIRMAN: Will the delegates please address the questions to the Chair. Delegate Hitch is recognized.

DELEGATE HITCH: Mr. Chairman, having served in the armed forces and having held reserve commissions in both the army and navy, I look at this word "recall" in perhaps a somewhat different light than others. Do the general laws of the State, or does this proposed amendment imply mutual consent, or is this a matter of order by the chief justice irrespective of the wishes of the retired member of the court?

CHAIRMAN: I think your question is a very valid one. Will the committee chairman—

DELEGATE MIZUHA: Mr. Chairman, it does imply mutual consent.

CHAIRMAN: Mutual consent.

DELEGATE MIZUHA: In other words, service as a member of the judiciary and after retirement does not subject you to duty upon call of the President as you do in the armed services.

CHAIRMAN: Thank you very much. The record will so state. Are there any further questions?

DELEGATE MIZUHA: Mr. Chairman, there might be one more question.

CHAIRMAN: Well, let's wait for the question before we answer it.

DELEGATE MIZUHA: Explanation. Some members of the committee were worried that the retired justices who may be called to serve temporarily were looking for some additional pay. They're retired, they are getting their maximum pay, they are not interested in pay.

CHAIRMAN: Thank you very much.

Are we ready for the question? All those in favor of the question will say "aye," and those opposed will say "no." The question is, shall Section 2 of Article V be amended to include the words, "As prescribed by law, retired justices of the supreme court may also be recalled by the chief justice to serve temporarily on the supreme court." All those in favor say "aye"; opposed, "no." The motion is carried.

CHAIRMAN: The next section, Section 3. The Chair recognizes the committee chairman, Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, we come now to the most crucial of all articles in our Constitution except for the reapportionment article. The committee as you will note in its committee report recommends no changes. I believe at this time it is appropriate for those who desire to amend the present provisions of Section 3 with reference to the first paragraph, the appointment of judges, to offer their amendments.

CHAIRMAN: The Chair recognizes Delegate Steiner. One question before you do that.

Delegate Mizuha, would you like to present the majority rationale or the status quo before we go into the minority report?

DELEGATE MIZUHA: Mr. Chairman, I believe an amendment is in order at this time by anyone who wishes to amend the first paragraph of Section 3, and we will debate the merits of that amendment. However, Mr. Chairman, in examining the amendments that have been proposed and are on my desk as well as on the desks of the other delegates, are all similar, and I think we will save a lot of time if they can get together and

decide which amendments will be offered for debate.

CHAIRMAN: Thank you. There has been a minority report from this committee and I recognize Delegate Steiner who is a spokesman for the minority group.

DELEGATE STEINER: Mr. Chairman, can we take a short recess?

CHAIRMAN: So ordered.

At 4:05 o'clock p.m., the Committee of the Whole stood in recess.

The Committee of the Whole reconvened at 4:10 o'clock p.m.

CHAIRMAN: Delegate Steiner is recognized.

DELEGATE STEINER: Mr. Chairman, I yield to Delegate Noguchi.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: Mr. Chairman, I'd like to propose an amendment to the first sentence of Section 3, Article V of the State Constitution as proposed by this amendment as circulated, as follows:

"The first sentence of Section 3, Article V of the State Constitution, in Committee Proposal No. 3 is amended to read as follows:

"Section 3. The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts from a list of qualified persons submitted by a commission.

"The commission shall consist of nine members who shall be appointed or elected in such manner and serve for such terms as provided by law. The membership of the commission shall include at least one member from each county and no more than three elected members who shall be persons admitted to practice law before the Supreme Court of this State."

I will so move.

CHAIRMAN: What is the number of your amendment?

DELEGATE NOGUCHI: It is No. 3.

CHAIRMAN: Delegate Chang.

DELEGATE CHANG: Mr. Chairman, I second that motion.

CHAIRMAN: Thank you. Would you give a short—

DELEGATE NOGUCHI: Mr. Chairman, because this particular amendment was made with the report as outlined by the minority report, I would like to yield

right now to Delegate Steiner who is one of the authors of the minority report.

CHAIRMAN: Delegate Steiner is recognized.

DELEGATE STEINER: Mr. Chairman, I rise to speak in favor of the amendment and in support of the minority report on file with this committee.

Mr. Chairman, it's the position of the minority that we presently have a good system, but that the system can be improved. Under the language of the present system as set forth in Article V, Section 3, the basic mechanics, and I am simplifying now, are that the governor nominates and thereafter the senate in effect confirms. Those who signed the minority report and those who support the amendment on the floor seek an amendment to the Constitution which will fit within the present system. Mr. Chairman, we urge no radical departure from the system which we in Hawaii are used to. Further, and so there will be no misunderstanding, we do not propose that system which has previously and initially been suggested by the Bar Association of Hawaii. In fact, what is proposed, Mr. Chairman, in my estimation, differs substantially from such proposal which was introduced, incidentally, by me initially and solely—and I repeat, Mr. Chairman—solely for the purpose of having a starting point—I repeat—a starting point from which this matter which many of us consider to be important could be discussed.

Mr. Chairman, basically, the approach proposed by your minority, those signing the minority report, calls for adding an additional step so that first there would be a commission through which nominees would be processed. Secondly, second step would be the governor would select from a list of nominees submitted by the commission. I would like to add at this point, that the number of names or the number of list of names can be left flexible. Thirdly, that the person nominated for a particular position would be subject to senate confirmation. It is an area in my belief of determining who should be on the commission that we find the greatest concern. Accordingly, it has been the feeling of a group of those who feel there should be an amendment that such matters as structuring the commission as well as the other deals, other details, pardon me, such as the number of names to be submitted to the governor at any one time, the terms of office of the commissioners, prohibitions from seeking judicial or appointing office, appointive office and other matters could be left up to the legislature to work out. Reason supports this position in that first, this Convention wishes to get on with its business and our general approach has been to keep our Constitution as flexible as possible.

Secondly, and upon deliberation, I feel most important, is that provisions regarding who would be commissioners which might be appropriate for one era or period of time might not be for a subsequent era or period of time.

However, it is the thinking of your minority that there should be certain guidelines for the purpose of

our consideration of this matter in the Committee of the Whole, or as a suggestion to the legislature if it is the will of this body that there be added a commission into the selection process. These guidelines as I conceive them as follows, this is my conception only. I throw it out for consideration, as a matter to be thoroughly considered, are as follows: (1) that the commission be composed of nine members; (2) there be at least, and I say at least, four of those nine members who would not be lawyers; (3) that at least three of those members be lawyers who will be licensed to practice in Hawaii. These members would be elected by all resident attorneys in an election conducted as provided by law. This could be done by the state attorney general or through some other agency. I wish to stress, Mr. Chairman, this election should not be conducted by the Bar Association or any other purely voluntary association; the Bar Association does not include all practicing attorneys. Regarding the other two members of the commission, this I feel should be left up to the discretion of the legislature. Again, these are only my thoughts on how a commission might be structured. I feel, however, that each county should be represented on the commission. There should be a representative from the Counties of Kauai, Maui, Hawaii, as well as the City and County of Honolulu.

And, Mr. Chairman, I would like now to pass on to the question as to why a commission would be an improvement. First, it would be an official body for the purpose of considering a selection of candidates for judicial office. No such official body exists at this time. How does the public know to whom a governor turns to initially? Certainly, applications can be made by those desiring appointments. However, are these prospective nominees, those desiring office, interviewed by the governor's friends? His political party? The Bar Association or some other group? The minority, Mr. Chairman, feels the public should have some say in who participates in the review in this initial stage. Also, in addition, after the governor confers with those whom he feels should have a say in the matter, we pass to the criteria that the governor must look to. As it is now, Mr. Chairman, these criteria are left up to the governor. A commission could set forth some criteria. By training and temperament, I submit, the emphasis could be one thing in the case of a governor who is a lawyer and another in the case of a governor who is not a lawyer.

Mr. Chairman, we are looking to the future now, but I submit that the person who practices law may have one way of looking at a candidate for judicial office and one who is not might look at it differently. Secondly, your minority feels that a commission would enhance the independence of the judicial branch. We feel the public deserves the best and anything which would assist to this will be an improvement. We feel a commission would assure that there would be selection from the most qualified persons who represent themselves for consideration. It seems obvious to me that the office of the governor and the senate should welcome such assistance. If nothing else, it would help to avoid any possibility at any time in the future of any suspicion on any segment of the public that there was pressure or favoritism at the stage of initial

consideration.

Since there are no criteria at present, the present language leaves it open for the possibility in the future of a mediocre or lesser qualified person to get on the bench. This point, Mr. Chairman, I'd like to add that I am not criticizing, and I am not intending any criticism to be leveled at any person previously considered or appointed at any time since statehood. I feel our task here is to propose to the Convention meaningful amendments which will improve a good system and I say it's good because as a matter of fact, we have a system which I feel is better than that in thirty other states.

Lastly, Mr. Chairman, the final reason, we feel that a commission will add real accountability to the present system. No governor or senator has, to my knowledge, made any real campaign issue over any particular person or persons appointed or rejected for judicial position. The public would be watching a commission. The commission members would be aware of this. They would realize their reputations are involved. It has been said that all this only involves a transfer of politics in the selection process from the governor to a commission. However, the experience with a system as used elsewhere speaks for the contrary, and I feel the fears presented are mere speculation. However, the true argument—

CHAIRMAN: Delegate Steiner, your time is up.

DELEGATE STEINER: May I just finish this?

CHAIRMAN: Can you finish with a sentence, please?

DELEGATE STEINER: I just have one final point at this time, Mr. Chairman. I feel the true argument here is that there would not be a transfer but only a diffusion, for under the commission proposed, the governor still nominates and the senate still confirms of any saying, there are more people to see if that is necessary. It should make the impact of politics less. As an additional check, the legislature could provide that the governor could call for additional names if he felt he was not satisfied with the list first presented. Finally, Mr. Chairman, your Committee on Judiciary is going to propose that the tenure of judges be increased to ten years, and this in itself, Mr. Chairman, serves as ample reason that the matter of initial selection be carefully considered.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I rise to a point of inquiry. Your reminding Delegate Steiner about his time being up brought an intriguing thought to me. Could we under our rules allow for a delegate who desires to speak and who fully intends to speak to relinquish a portion of his ten minutes to any prior speakers so that he may have additional time? This is a question to you.

CHAIRMAN: I'm sorry but I didn't hear the question.

DELEGATE KAWASAKI: I said, could the rules of the Convention here, and this is not specified in the rules as I recall, could a delegate who fully intended to use a portion of a time allotted to him, ordinarily, could he relinquish his time and give a few minutes of his time to a delegate that's on the floor and who has exceeded his ten-minute limitation?

CHAIRMAN: No, I think it would be much better to have the other delegate speak for himself.

DELEGATE KAWASAKI: Well, it appears to me that Mr. Steiner is not quite through with his presentation. I think some of the points that he wanted to make were cogent arguments and I just inquired whether we could relinquish our time for that purpose.

CHAIRMAN: I think in fairness to all we should recognize that there were many delegates signatory to the minority position and they can each have ten minutes.

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: Is that fair enough? Delegate Ando is recognized.

DELEGATE ANDO: May I suggest the answer to Delegate Kawasaki's question, that Delegate Kawasaki can ask a very pertinent question of Delegate Steiner and he can speak during Delegate Kawasaki's ten minutes on the question that Kawasaki asks.

CHAIRMAN: The Chair will rule that that would be a subterfuge. I'd rather give Delegate Steiner a few more minutes to finish.

DELEGATE KAWASAKI: That's right. I will agree to that.

CHAIRMAN: If there's no objection that's the way we'll go.

DELEGATE KAWASAKI: I would hate to resort to stuff like this.

CHAIRMAN: Delegate Steiner, go ahead.

DELEGATE STEINER: Mr. Chairman, due to my lack of experience in legislative halls, I made the error of not properly timing my speech; therefore, may I ask for a short recess?

DELEGATE BEPPU: Mr. Chairman, point of order.

CHAIRMAN: State your point of order, please.

DELEGATE BEPPU: Since there is a minority report, why can't the other members relate the points that Delegate Steiner is trying to put across?

CHAIRMAN: This is what the Chair suggested and I

was informed that there was just a small amount of additional material, that he had it prepared and I thought in the interest of time, we would let him give it and that would be the end of it.

DELEGATE BEPPU: Mr. Chairman, may I ask how long is the committee report? I haven't got a copy of it and I would like to know how long it is.

CHAIRMAN: We will provide you a copy.

DELEGATE BEPPU: Thank you.

DELEGATE MIYAKE: Mr. Chairman, point of inquiry.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: How many more minutes does the good Delegate Steiner require to finish his argument?

CHAIRMAN: We have taken about three minutes discussing it; perhaps if we give him three minutes to finish it, that will make it even.

Delegate Steiner, will you please proceed? Your limit is three minutes.

DELEGATE STEINER: I will do my best, Mr. Chairman. I have another reason I would like to add to the ones previously put forth. Mr. Chairman, there has been an emotional issue raised here. There may be some concern that a commission would lead us back to the pre-statehood days. Now, Mr. Chairman, I first would like to point out that this is impossible. Before statehood, judges were appointed by the President of the United States with Senate confirmation, United States Senate confirmation. In other words, appointments were controlled in Washington. This can never happen now that we have statehood. It is my belief the commission can help to insure that those persons coming on the bench will have a well-grounded understanding of our local situation and not be merely technically proficient. We have suggested, for example, the neighbor islands have definite representation. These counties are presently less populated and have particular problems which a representative member should be aware of. Secondly, the attorney members being elected from all attorneys should help serve the legislature. Representatives of the people will determine how the remaining members should be chosen.

Mr. Chairman, finally, why make a change now? Well, first, we are in a Constitutional Convention which was called to consider any changes felt to be necessary. Secondly, our growing population means that there will be a greater call for the courts. There will have to be more judges and therefore a greater need for assistance to the governor and the senators in the initial selection process. The present system relies pretty much on the integrity and knowledge of the incumbent governor. Hawaii has been fortunate in the caliber of the persons occupying this position. However, it is the purpose of the Constitution to provide the machinery for checks

and balances so as to guard against any possible future problems. A constitution is actually composed for the most part of such checks and balances. I notice that in other debates, such as removal of senate confirmation, the debate of these issues appall any abstracts upon whether such checks and balances are necessary. This issue should be looked upon in the same manner. In other words, let us look to the future.

Closing, I would like to quote in part from the statement by a former United States Supreme Court Justice, Tom Clark, detached from one of the newspaper editorials to the minority report.

"Justice is everybody's business... It affects every man's fireside; it passes on his property, his reputation, his liberty, his life; yes, his all!

"Courts sit to determine cases on stormy as well as calm days. We must therefore build them on solid ground, for if the judicial power fails, good government is at an end."

Thank you, Mr. Chairman and fellow delegates, for indulging me the extra time.

DELEGATE BEPPU: Mr. Chairman, I rise on a point of parliamentary inquiry.

CHAIRMAN: State your point of inquiry.

DELEGATE BEPPU: This is not directed to the previous speaker, but since we have the rules, I would hope the Chair would stick to the rules as to time. I think in the interest of brevity most of us have restricted ourselves to maybe three minutes or five minutes. I hope the Chair will take this into consideration.

CHAIRMAN: I certainly will. The exception was made in this case because the speaker was speaking in behalf of the minority report to which several delegates were signatory.

DELEGATE BEPPU: Well, Mr. Chairman, since you have many delegates who signed this committee report, I am certain they can bring up the same point.

CHAIRMAN: Your point is well taken.

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Bacon.

DELEGATE BACON: Are you signalling the speaker when he has one minute left? Delegate Fernandes followed that practice and I felt it was very helpful.

CHAIRMAN: I signalled the speaker twice. Apparently he didn't see me. Are there any other delegates who would like to speak on the subject?

DELEGATE JAQUETTE: Mr. Chairman.

CHAIRMAN: Are you speaking for or against the

question?

DELEGATE JAQUETTE: I rise to speak in favor of the amendment and the concept of an approved plan for judicial selection.

CHAIRMAN: Delegate Jaquette is recognized.

DELEGATE JAQUETTE: I am a director of the Citizens' Administration of Justice Foundation and I have associated myself with them in their attempt to strengthen Hawaii's judiciary. How did I get interested in this topic? I was invited by Governor Burns and Chief Justice Richardson to attend a three-day conference on the judiciary held at the Ilikai. As a result of that conference, there was a consensus statement unanimously supporting a commission form of judicial selection. The Citizens' Administration of Justice Foundation arose out of that conference. We have been told that Hawaii's two state governors have selected good judges. I won't dispute that but I would like to say that the proposed commission plan is something like the Civil Service Commission. We have a screening, we have a selection. I would like to say also that my experience at Sears, Roebuck where I had merchandising training at the Beretania Street store, they always had a good, a better, and a best. We have a better system. I call on the delegates to act for the best system.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, I don't have a prepared speech but I do want to rise to speak against the committee recommendation. But before I do so, I want to assure the chairman of the committee here, my heart runs out to him because his vice-chairman stood up and opposed him. But I want to assure the chairman that Delegate Steiner harbors no personal malice, that he does this because moved by the issue before us. I love that delegate from Kauai and I want to assure him also that I do not arise with any personal animosity or malice, but that the issue compels me to speak this afternoon.

Mr. Chairman, the other day when we were considering the executive article, the question of whether we should have confirmation of a single executive whose task was to administer and to bend his own will if necessary to that of the governor to carry out the governor's views to administer the government of the State of Hawaii. At that time, proposal was made that because of this, perhaps the governor should have a free hand. This Convention went on record to require confirmation. This afternoon, on the judicial article, when we are selecting men first who are knowledgeable in the law and able in its application, and men who would be fair and who should be independent of the governor's office and the legislature, we recommend the same system of selection. Mr. Chairman, it bothers me that we would select this method of selecting a nominee for the judiciary when the rationale, the purpose for the judiciary, is entirely different from that of the single executive who serves under the governor. It's true, no matter what system we select you cannot entirely remove politics from

operating, but I think we are here as has been already stated, to do the best we can to structure it the best way we know how. The danger I think here is that if we should structure it in such a way and should those positions, responsible positions be occupied by people who would assert it in that direction, these people can extend their political influence over the judiciary. By these people I mean the governor's office and the senate. This is the danger we would have to watch for; that is, the setting up of a commission in the first step in the selection of men who are able and men who might be fair would dilute the possible danger of finding ourselves in a situation or at a time when the aligning, the political alignment, and I don't mean partisan politics, I mean political alignment as we have it today. For example, Mr. Chairman, coalition government. By joining hands, Mr. Chairman, they may be able to exercise influence over the judiciary. This is the danger we have to watch for. The test of whether a judiciary system is fair or not is not determined by the number of Republicans that you appoint and an equal number of Democrats, but rather this channel through which political influence is exercised can be exercised effectively because there is no other way to dilute it. It is my personal feeling that the setting up of a commission would dilute this danger; would make it better because the commission, and I do not say the commission would be entirely non-political or entirely fair either, but because they are human beings, because they have been assigned the task of selecting the best man and the fair man for the job, they will be moved by that public service to a large degree and when they are so moved, Mr. Chairman, I am hopeful that they will select a better nominee for the job; a better group of nominees for which the governor can appoint and the senate can confirm.

Mr. Chairman, this is my concern and I think it should be the concern of all the people of Hawaii. It is my deep feeling, Mr. Chairman, that if this question was submitted to the people of Hawaii they will select the commission form.

CHAIRMAN: Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak in favor of Delegate Noguchi's amendment and against the committee report.

I am the first speaker this afternoon who isn't on this committee. And I have been carefully through that committee report, and I have been carefully through the minority report. And first, by way of some introduction, let me tell you, Mr. Chairman, that I am a consumer personally in this area. I make my bread and butter as a trial lawyer. I go down to the courthouse and I stand in front of judges. I do this day in and day out throughout every year; and therefore, I think I speak with some background. Let me first tell you, Mr. Chairman, a small story.

Approximately three or four years ago, I went to court and the attorney on the other side was a member of the state senate and the case was being tried before a judge. It was a difficult case. The judge had a

difficult decision to make and he ruled against my client. My client and I left the courtroom and after we left the courtroom my client turned to me and said, "We lost because the attorney on the other side was a senator." Now, I knew that that wasn't true. I knew why the judge had ruled against us but I couldn't convince my client that the reason we lost was not political. Now let me tell you, Mr. Chairman, what we are faced with here is an issue of whether or not we can give a better system to our State—not whether or not the system we have now is good, but can it be better? And I tell you, Mr. Chairman, it can be better. It can be better because we can remove from the present system all semblance of any sort of political—and I use that word "political" and I'll come back to it in a few minutes—influence, because we can remove from our present system a situation where it may look to the public as though a judge might be kowtowing to the governor. Not that he is. But remember that the other consumer, other than the trial lawyers, the other consumer is the public. And what the public sees in a situation like this is what we're striving to make best and most equitable. I speak for Delegate Noguchi's amendment because it would remove from the political arena the appointment of judges. And I am very unhappy—

DELEGATE GOEMANS: Point of information, Mr. Chairman. Is the speaker speaking to the point of judicial commission versus gubernatorial appointment, or is he speaking to the proposition of whether the advice and consent of the senate is an advisable provision in the Constitution?

CHAIRMAN: I think the speaker is in order. Will you continue?

DELEGATE O'CONNOR: I will tie it up, Mr. Chairman.

If the amendment is accepted, Mr. Chairman, a system will be adopted for the appointment of judges in the State of Hawaii which will provide adequate investigation and inquiry prior to selection, which will provide a system that will insure to a certain degree impartiality, and hopefully will remove the aura of political influence from such appointments. Now, the majority report that we have states as one of the primary reasons for the non-adoption of a commission system of appointment, the fact that the political situation would be transferred from one party to another. But I might point out, Mr. Chairman, that our committee never went into the situation of trying to determine if a commission could be appointed which would completely remove politics from the commission area. As I understand it, the committee simply voted initially whether or not the present system should be retained and did not go on to determine whether or not a commission could be made up to divorce this second political sphere or this second political arena from an appointment situation. And I would suggest then it's not argument that you throw the politics from one arena to another political arena if there hasn't been an attempt to devise a commission which could be nonpartisan or bipartisan or apolitical.

Mr. Chairman, in our drafting of this Constitution, we are attempting to do for the people of Hawaii what we consider to be the best. I would suggest that the present system of appointing judges is good. It's much better than an elective system which puts judges in a situation where they must run for office and therefore might think of tailoring decisions in order to make them more appealing to an electorate. But by the same token, Mr. Chairman, there is a better method. And I would suggest, Mr. Chairman, heartily to all the members of this committee that they vote in favor of Delegate Noguchi's amendment.

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I'm speaking in favor of the retention of the present plan and against the amendment. I am also an attorney practicing law representing many clients, and all I look for is a fair and impartial judge whether he is a Republican or whether he is a Democrat. I came to this Convention very open-minded to listen to all the facts as the experts might testify. I am a member of the committee. And I think we were very fortunate to have had with us the Executive Secretary of the American Judicature Society, Glenn Winters. One of the things that struck me, which he said, "The making of a good judge is merely a stance no matter under what system a judge is appointed." Secondly, under cross-examination he testified that you can't remove politics from the judicial commission. We also had with us Dr. Watson, professor at the University of Missouri, who was visiting professor at the University of Hawaii, who also received a J. D. degree from the University of Michigan. He stated that even under the Missouri Plan there is politics. That, in addition to that, he said that there is a different kind of politics—a politics involving plaintiffs' attorneys and defendants' attorneys. In addition to that, he stated that the judges who serve on the commission likewise would choose persons of like background.

As an attorney, I certainly would hate to go into court knowing that a judge is partial because the members of the commission once were defendants' attorneys or plaintiffs' attorneys. If the Missouri Plan, members of the delegation, is so good, why is it that they have the Missouri Plan only in St. Louis and Kansas City? Why is it that they don't have the Missouri Plan in the 39 other counties if the Missouri Plan were so good? Mr. Chairman, we all talk about politics. We think it's bad. Can the judicial commission remove politics? I don't think so. The other feature as I stated is that you are going to involve some other area which is so vital in obtaining justice for the people throughout the State of Hawaii. I would like to urge the members of this Convention to let your conscience dictate you. No matter what kind of pressure that has been applied on you, as it had appeared in the newspaper and over television and radio, we all are in agreement that we want a good judicial system. And I might also state, Mr. Chairman, that we are in an era hoping that the future of Hawaii will grow and along with that growth that the judiciary will play an

important part in our lives. Thank you very much.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes, did you wish to be recognized? Excuse me. Delegate Sutton.

DELEGATE SUTTON: I would like to ask a question, please, of the last speaker.

CHAIRMAN: You may address the Chair.

DELEGATE SUTTON: The last speaker has stated that he feels that there has been pressure. I am a member of the minority that signed this particular report; I am a member of the American Judicature Society from which Mr. Glenn Winters came and—

DELEGATE FERNANDES: Point of order, Mr. Chairman.

CHAIRMAN: I don't think your point of order is necessary. The delegate who is speaking is already out of order. The question of pressure on members of this delegation is not the question before the house. The question before the house is the amendment proposed for Section 3 of Article V and unless you want to speak to that, I don't think that your comments are justified.

DELEGATE SUTTON: I am speaking to that. I would like to point out that no speaker so far, and I am speaking in favor of Mr. Noguchi's amendment and I speak against the report of the committee. Mr. Noguchi's amendment would permit a magnificent opportunity here in Hawaii to remove politics from the judiciary. When I got out of law school I became the law clerk for federal Judge Delbert Metzger. At that particular time, he was up for retention. The same basic proposition as renominations; the same problem and the problem which this commission will attend to: namely, once you have had a judge in office then the question when his term is up, shall he be retained? And I saw the tremendous preoccupation of this particular judge with the question of what would occur next. And I feel that a commission would remove that tremendous political preoccupation. I feel that we should have a commission which would serve to represent the public. It is the public, not the practicing attorneys, who are really involved in this. It is the man who comes before the bench with a problem concerning his property, his reputation, his life, maybe his entire future, and that individual is to be judged. We have all seen the scales of justice represented by a crossbar and then evenly balanced. And this balancing proposition must be done by an individual who is qualified to be a supreme type of individual above and beyond a normal human being for the time that he is on that bench. When he gets off the bench in the evening, he becomes a human being. But when he puts that cloak on, he is making the type of decisions which affect the entire future of an individual or a person's whole family. And therefore I want the delegates here assembled to concentrate on the very individual who put them here in this assembly. The single voter. The single individual. The man without

influence. The man who cannot in any way, shape or manner be heard at the present time. What we are trying with this commission is to have some balance so that there is a means of insuring the highest type of individual who would be selected on that bench. A man whose qualities would be one of tremendous judicial capacity. The commission would be in a position to select the finest type of individual. He would be able to select through this process a man who would give the common man the highest type of judicial feeling that he cannot be discriminated against. As we go through a jury trial, the jury is the trier of fact. The judge is still the applier of law and the judge has a tremendous influence on what the jury's final actions will be as he goes along and rules what would be the appropriate means of applying the law and how the law shall be applied. And therefore, even when you have a jury the judge is still by far the most dominating influence in the courtroom.

It is appropriate, I think, in the amendment presented by Delegate Noguchi that we seek here some compromise with the concept of allowing our senate to come in and confirm. We are still giving the governor the selection ultimately between the five nominees, but the five nominees will come from a commission mixed between bar and laity and will be evenly balanced. The fears that this particular commission might be dominated by the attorneys are ill-founded because they will not have the majority on the commission. And the fears that this particular commission will have a politics within itself which would be just as bad as the system we are trying to replace is ill-founded because the selection of the individual who will go on to this will be an individual who shall not have any elected or appointed office and who shall for all intents and purposes be a type of individual who is summa Olympus.

What we are trying to accomplish is a basic concept that the American judicial system will progress. We have seen fourteen states adopt plans somewhat similar to this known as the Merit Plan or the Missouri Plan. In this particular plan, we have the basic concept of removing from politics, from partisan politics, the selection of the man who is going to determine the life and liberty and future of one individual. I submit to you delegates that the amendment that Mr. Noguchi has presented to you is an excellent idea for the future of Hawaii. And that gives us a golden opportunity here in the Constitutional Convention to see that the small man who elected us and put us in this Constitutional Convention will see the most sacred sacrament of democracy, namely justice.

CHAIRMAN: Delegate Sutton, your remarks will be punctuated by a short, brief recess.

At 4:58 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:07 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole

please come to order.

It was called to the Chair's attention during the recess that some delegates who are moving around during debate are being so inconsiderate as to walk in front of the speaker. I am sure that this won't happen again.

The Chair recognizes Delegate Ushijima.

DELEGATE USHIJIMA: Mr. Chairman, fellow delegates. I rise to speak on behalf of the committee report thereby retaining Section 3, Article V as it presently reads.

Now in our deliberations here today, there is no denying that in the background there looms a specter or the fact that much effort, time and money had been expended by the advocates of the so-called commission plan of judicial appointment to sell and urge the members of this Convention to amend the present provision insofar as judicial appointment is concerned. And it is easy to be swayed and even be coerced by public opinion. But let us look at the whole picture. I feel, and it is my considered opinion, that in spite of all the publicity that had been given by the advocates of the so-called commission plan that they had not proven their case, and that they had failed to satisfy the majority of the members of the committee that their system is a better system as it presently exists.

I start off with a basic premise and I agree with all of the students of government that in some jurisdictions where political abuses had been manifested, that it is only good and necessary that reforms should be made. But I ask you, the delegates here, do we have such a situation here in Hawaii? Is this change necessary? Now I sat as a member of the Judiciary Committee and as I recall the spokesmen and the statements that had been presented to the committee, they all started with the basic premise that insofar as Hawaii is concerned we had one of the better systems of judicial appointments; that the system has worked well here, and that there has been no abuse. Why then I ask, fellow delegates, should we venture into a change, into a method of judicial appointment when the system has worked reasonably well for the past ten years? I agree that whenever there is a need of change, there is a necessity that abuses and changes should be made in order that this new system would be of a better method of selection insofar as judicial appointment is concerned. Advocates for a change merely say that this is a new procedure of appointment with an improvement over our present system. But improvements, as I stated, are basically necessitated throughout corrupt shortcomings and abuses. I again ask, as I asked some of the witnesses who testified before the committee, what are the shortcomings and abuses? The lack of answers to these questions confounded me a great deal and as a member of the Judiciary Committee, I therefore support the majority report to retain the present system of judicial appointment as is because the system is good. The system has worked well. There have been no shortcomings as I can recall and there have been no abuses whatsoever. Why venture forth from the political

arena into an unknown political arena? Again I repeat, what has been good is good and should be good until abuses and shortcomings can be set forth before the members of this Constitutional Convention. Thank you very much.

DELEGATE O'CONNOR: Mr. Chairman. Will the last speaker yield to a question?

CHAIRMAN: Do you wish to ask a question of the speaker?

DELEGATE O'CONNOR: Yes, I would like to ask a question of the last speaker.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: The last speaker referred to certain pressures in advertising and I would ask the last speaker as a member of the committee whether or not he has. . . .

CHAIRMAN: Delegate O'Connor, I don't think that this is the question before the committee at this time. I asked Delegate Sutton not to refer to that kind of thing. I don't think that's the problem we face here at the moment.

DELEGATE O'CONNOR: Well, Mr. Chairman, I think it is very germane since every speaker so far—

CHAIRMAN: In what way is it germane, delegate?

DELEGATE O'CONNOR: Every speaker so far speaking in favor of the present system has alluded to certain advertising and pressure, and I think that that should be placed out on the table here so that everyone knows what they're talking about.

CHAIRMAN: Well, Delegate O'Connor, the reason for my ruling is that it should be placed out of this arena entirely. It's not pertinent.

DELEGATE O'CONNOR: I will abide by the Chair's ruling.

CHAIRMAN: Thank you. Delegate Ching, did you wish to be recognized?

Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, I would like to give the shortest speech of the afternoon in favor of the amendment. Probably unlike any other delegate in this Convention, I was a registered voter in the State of Missouri in 1940. I was in favor of a merit system of judicial selection at that time; I voted for the Missouri Plan at that time; and in the succeeding twenty-eight years I have become more and more strongly convinced that this is the right approach for this Convention to take. Thank you.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Donald Ching.

DELEGATE DONALD CHING: Mr. Chairman, I do not have a prepared talk to make this afternoon but I'd like to bring out some of the points or what I would feel answer some of the points brought forth by the proponents of the amendment. Therefore, I rise to speak against the amendment.

First of all, as to the Missouri Plan or any of the so-called merit plans, I think none of the proponents of this amendment pointed out the fact that the merit plans were instituted in the thirteen or fourteen states that have them from an elective system of selecting judges. From that type of system anything would be a big improvement.

Secondly, I think the main reason for the strong movement to get into the Convention a change in the method of the selection of judges, if I may politely put it, is the failure of the Bar Association to implement what is now in the Constitution as our method of selecting judges. I say this because I think I can speak from actual experience. Although I am not in the active practice of law, I have been active in the Bar Association, and I have seen the inner workings, the politics of the Bar Association for the last fifteen years. Prior to statehood, the appointment of judges came from Washington. And as one of the conditions for appointment as a judge or a reappointment as a judge, you had to pass an endorsement by the members of the Bar Association. This was nothing but a big, fat farce! Because all it amounted to was a popularity contest as to who could make the most telephone calls whether they'd be plaintiffs' attorneys or defense attorneys. It was such a farce that one who served as president of the Bar Association, about one or two years later when he came up for endorsement by the Bar Association, the same Bar Association that had elected him president, he could not get the endorsement of the Bar Association.

CHAIRMAN: Delegate Ching, are you sure that your comments are pertinent to this question. I don't see anything about the Bar Association in the amendment or in the section to be amended.

DELEGATE DONALD CHING: Mr. Chairman, I am giving the background as to why the amendment that's being proposed is being proposed here today in the Convention.

CHAIRMAN: Proceed.

DELEGATE DONALD CHING: Now, the Bar Association, as I have started out to say, did not have a system prior to statehood. And with the attainment of statehood and the calling into play of the constitutional provisions calling for selection by the governor and the senate of this State, confirmation by the senate, the Bar Association then embarked on a system very similar to what is being proposed here in that there would be a commission, except that this commission was a self-imposed commission selected by the people that ran the Bar Association, and their meetings were completely off the record; completely off the record. And because the Bar Association in its wisdom chose this method of

recommending judges or nominees to the governor for appointment this system has fallen flat on its face also. Now the Bar Association comes before us in Convention here, and came up with a plan referred to as the Bar Plan which was thoroughly discussed in the Judiciary Committee. The proponents of this plan saw to it—

DELEGATE NOGUCHI: Point of order, Mr. Chairman.

CHAIRMAN: Please state your point of order.

DELEGATE NOGUCHI: This particular amendment has no reference to the Bar Association plan. It is simply another merit type of plan. I wish the delegate would make his comments—

DELEGATE DONALD CHING: Mr. Chairman, I didn't say that.

DELEGATE NOGUCHI: —to this particular point and not to—

CHAIRMAN: Let the man speak, please.

DELEGATE NOGUCHI: —the Bar Association plan for which I myself am opposed.

CHAIRMAN: Thank you very much. The Chair is inclined to agree. Delegate Ching, will you please confine your remarks to the amendment that we are discussing?

DELEGATE DONALD CHING: If I may be within my ten minutes allotted, I am leading up to that very point, Mr. Chairman.

CHAIRMAN: Very good, very good.

DELEGATE DONALD CHING: Now the members of the committee and the proponents of this plan saw that they could not get the support of the majority of the members in the committee and therefore came up with an alternative plan which I think is a large, a big improvement over the plan as first proposed by the Bar Association.

However, I would like to call the attention of the members of this Convention to several points in the proposed plan. First of all, that there shall be three licensed attorneys to sit on this proposed commission. And in testimony by experts who are familiar with the Missouri Plan or the so-called merit plan, I think all the experts there testified that although we do not have a majority of the commission members as licensed attorneys, eventually the lay people on the commission will tend to lean and favor the opinions expressed by the members of the bar because they were the ones that were knowledgeable and well-versed in the background and the merits and demerits of the nominees. So whether it is a three-man minority or four-man minority in a nine-man commission, these three or four people will ultimately become very influential and will come around to perhaps dominating the commission.

The cry here is to remove the selection of the judiciary from politics. How have they removed the selection of the judiciary from politics? The governor is still in the picture. The senate is still in the picture. All politicians! Then you have this third body added on to it, the judicial commission. And again they are a creature of politics whichever way the legislature decides that they shall be selected or appointed.

There is a point made that now with the tenure as proposed by the committee, the tenure of the judges being increased from six and seven years to ten years, we've got to watch out about the appointment of the judiciary. Let me tell the members of this Convention here that this was decided on after the committee had decided to stay with the present system of the selection of the judges. So let not this be an argument against the retention of the present system.

To my colleague from the senate, the delegate from the Big Island, his argument that there is a correlation between the executive article and the judiciary article, and the arguments should be the same. Let me point out that in the final Convention action of the judiciary, excuse me, it should be the executive article, we did change the system slightly. Ever so slightly but I think with tremendous impact and this is that the governor can, if this is to be approved by the Convention in its final form and ratified by the people, the governor can now remove his cabinet members as single executives without anybody else acquiescing in that action. Now later on in the judiciary article we will come upon a revision of the present removal section which changes it completely even from the present system as it is now called on.

Mr. Chairman—

CHAIRMAN: You have one minute.

DELEGATE DONALD CHING: Thank you.

Mr. Chairman, I think that no system that anyone can devise will be perfect and I am not saying that we should stay with the status quo just for the sake of status quo. But I say that better we stay with this system that has proven to be rather sound than jump into an area where accountability and responsibility may be lacking. Thank you very much.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer is recognized. Before you speak, have you read the amendment that we're talking about?

DELEGATE DYER: Yes, I have.

CHAIRMAN: Thank you.

DELEGATE DYER: Mr. Chairman, I rise in support of the amendment and also I rise for the purpose of attempting to answer some of the arguments that have been made this afternoon. I'd like to tackle first of all, the argument that having a commission will simply

transfer politics from the gubernatorial arena into the arena of a commission.

Now, I think it's important that the delegates realize what we are trying to do. We are not trying to structure something that's completely new. All that we wish to do is to add to the present system of the governor appointing, and the senate confirming, this commission. Now as I see it—let me take this approach. I think we can all agree that we want good judges on the bench. I think we can all agree that we don't want people on the bench who are not qualified for that position. Now as I see it, having a commission built into the system is going to act as an additional check against people becoming judges for reasons that most of us would consider to be not sound reason. We're going to have, if this amendment is adopted, this system. Before a man can become a judge, he's actually going to have to pass through the commission where he will be screened, and then if he passes that screening he still has to be selected by the governor from among the list of names presented by the governor, and then if he passes that point, too, he still must gain senate confirmation.

In the language that was used by Delegate Ariyoshi, when he argued unicameralism against bicameralism, he spoke of a bill being put through the wringer in a two-house system, and I am suggesting that if this amendment is adopted and that the effect of it is that an applicant for a judgeship is going to be put through the wringer, too. And I think this is a good thing. I think that the ultimate and net effect of it is going to be that you're going to get the best type of judge that you can possibly get considering all the human failings that we all have.

Now the argument has been made that this commission is going to be politically motivated. I'd like to suggest three answers to that. In the first place, this has not been the experience of the states that have this commission system. The second point that I would ask the delegates to recognize is this. If you have a commission of nine members as is proposed by Delegate Noguchi, you are going to have to get the vote of five before there can be any shenanigans. And this looks to me like a highly unlikely eventuality. And the third reason why I believe there will be no politics in this commission in the sense of bad politics, is the reason that was assigned by Glenn Winters when he spoke in favor of the merit system. Mr. Winters pointed out that what happens is that you build into these commissions opposing forces. Now, delegates, for example, in a commission that could be structured for our own State of Hawaii, it would be possible to structure it with three lawyers and six laymen. These are opposing forces. It would be possible to structure it with those appointed by the governor, and I am speaking now of the laymen, and those, say, named by the speaker of the house or elected by the house. These are opposing forces. Another opposing force might be the representatives from the neighbor island counties which representation would be constitutionally guaranteed under the proposal suggested by Delegate Noguchi. The point that I want to make is that where you have these

opposing forces, they operate, according to Mr. Winters and this seems to be a matter of logic too, they operate to counterbalance one another. And they operate as a check against any name getting through that commission that should not get through.

Now I want to answer some other arguments as well. Delegate Ching expressed the fear that the lay members of the commission would be dominated by the lawyers. Now I want to read some language from this book entitled *Selected Readings, Judicial Selection and Tenure*, edited by Glenn R. Winters, and I am reading from page 45, and this is an article by a judge who serves on a Missouri nominating commission. He said, "In our state from time to time, the question has been raised usually by lawyers, as to why laymen should be included as members of a judicial commission whose purpose is to select those from whom judges are to be appointed. The discussion usually runs along the line that laymen are not personally acquainted with the bar generally, and are not in position to know the individual qualifications of the members of the bar. I confess to having shared that type of thinking until I became a member of a judicial nominating commission. Then the experience of seeing first hand how the commission actually works quickly demonstrated to me the real need and great value of having laymen on a nomination commission. Usually, the laymen on the judicial commission have had some previous experience in panel selection. But whether they have or not, it is true that as the nominating commission first commences to study potential nominees, the laymen tend to be listeners. As the list of names begins to narrow and the discussion becomes more detailed, the laymen," Mr. Chairman, "find themselves somewhat in the position of jurors. They carefully listen to how each lawyer member evaluates the potential selectee, and in turn they evaluate what the lawyer members are saying. If a lawyer member in discussing the relative merits of one potential nominee over another puts forth weak, immaterial, ill-informed or prejudiced views, the laymen quickly discern this." Now, just as an aside, I think that our own experience here in this Convention proves this. The lawyers here are certainly no better than anyone else and no brighter than anyone else. And when we have attempted, not deliberately but simply because we make human errors, when we put forward a point and it's not a proper point, I am sure that there have been many instances in this Convention up to this point, where the lay members of this Convention have quickly picked this up. Now, the lay members ask quite pertinent questions. They make some independent investigations. They are determined that the lay public get the best judges possible, and they quickly cast aside improper or detracting considerations. They avoid the purely personal antipathies that occasionally arise among lawyers. By the time the vote is taken, the laymen members are as well informed as the lawyer members. The laymen keep the entire selection process objective. They help remind the other commission members that the courts are not just to serve lawyers and their interests but truly and ultimately belong to people who are entitled to the best.

CHAIRMAN: You have one minute more.

DELEGATE DYER: Thank you. I have other arguments that I will answer later using the five minutes that I believe is my privilege later on. We are concerned not only about legal skills but also about character. I am convinced as this judge who sits on the Missouri commission, that the laymen do have a very important function to serve in the work of a judicial selection commission and that their very participation promotes objectivity and care in selection, and finally, instills public confidence in the results reached. Thank you, Mr. Chairman.

DELEGATE HANSEN: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Hansen.

DELEGATE GOEMANS: Mr. Chairman, point of information.

CHAIRMAN: Yes.

DELEGATE GOEMANS: Would the previous speaker answer a question.

DELEGATE DYER: Yes, absolutely.

DELEGATE GOEMANS: I've read that book and found in it no correspondence which were adverse to the merit plan. But on reading it I didn't find an answer to this question and it continues to puzzle me. Of the thirteen states that have some form of the merit system, eight of those states do not include the highest court of those states under the merit system and I wonder why it is that the merit system in those states applies to the lower court and not to the highest court.

CHAIRMAN: Delegate Dyer, do you care to answer that question?

DELEGATE DYER: I would care to answer it but I cannot. I don't know the answer.

CHAIRMAN: Thank you very much. Delegate Hansen? Delegate Hansen, have you read the amendment that we are talking about?

DELEGATE HANSEN: Yes.

CHAIRMAN: Thank you.

DELEGATE HANSEN: I wish to speak in favor of the committee report and against the amendment by Delegate Noguchi.

I think that you can't go around just improving things right off the bat just because they look great on paper. I think we should clear away this sort of emotionalism that surrounds the issue here and look at some of the realities of this question.

When Glenn Winters came to testify before our committee, I asked him what he considered to be the downfall or the bad part of this system. What he would use against it if he were arguing on the other side. And he said, and I quote: "The Achilles heel of this plan is

the commission; structuring it to get the least possible politics." In other words, he admitted that there were downfalls and pitfalls in this plan, and the plan was in the commission. And I submit to you that this is the weakness of this whole plan.

Secondly, I'd just like to toss out some questions and show to you several inconsistencies that have not been answered in any of the debates or any of the arguments presented in testimony, or the readings I've done or the research, that I think are pertinent to the question today.

First of all, I think retaining the present system fixes the responsibility directly on the shoulders of one man who is accountable to the electorate and only the electorate. With the commission, there is no control by the people and then Delegate Sutton's little man who comes into the picture that we are all supposed to remember, where is he? How do we get rid of the commission? I mean this is provided by law, but I can see here the evolution with no electorate control of a powerful, central committee that controls the third branch of government. And I don't see how any potential abuse of this could be prevented. We heard great testimony in great detail from Dr. Watson about the politics of the bar in the State of Missouri. The rivalry, the campaigning between the lawyers for the positions of importance on the committee. I think this would not happen here. I don't think Hawaii is exempt from this. I think we are jumping from one end to the other, but others have taken care of this point very well.

And then Delegate O'Connor's sad story about the client of his who thought that the judge had ruled against their case because the opposing lawyer was a senator. I maintain that this problem posed by Delegate O'Connor was not going to be solved in any way by the amendment of Delegate Noguchi. In fact, perhaps this problem could be solved by making sure that the lawyers who do practice were not senators or something of this nature. The problem does not rest with the judge of the judiciary but rests with the person who is practicing law. Adopting the commission's plan now was not even going to help this because, or better the public image of the judiciary because, what if the situation occurred where the judge had been appointed by the lawyer who was on the opposite side of Delegate O'Connor. Take for instance, that he was up for renomination. Would the judge be so inclined to rule in favor of the person that was on the commission that was practicing before him? And when we say "no," he wouldn't bow to that sort of pressure, that sort of politics, then you would have to say also "no" that he would not bow to the kind of politics that might occur under a gubernatorial appointment.

You say we are going to make them more independent if we adopt the commission plan. But I say that you'll probably make them more independent on a different type of political pressure than you would under the gubernatorial system. I think that we should divorce the courts from the people and from the lawyers. In a ball game, you never get a chance to

choose your own referee if you're playing. And jockeys riding in a horse race never get a chance to choose their own judge. Likewise, lawyers in a courtroom should not have the chance to choose their judge and I think this is a conflict of interest that is basically and potentially dangerous. I think that in fact, this would—we have seen Delegate Sutton propound the great need for a betterment of public image, but I think the commission plan would not better the public image. And in effect, that need is the only real basic need they have submitted here today. And I again repeat, that this is not a conclusive or even a logical or consistent need. I campaigned on the issue that we should remove the judicial appointment from the governor and that we should adopt a form of merit plan. By sitting as a completely lay member in this committee, I am firmly convinced that this is not the answer. I see a power here in the commission that overrides the power of the governor. Not in the fact that they can nominate the fifteen or twenty people that are best qualified for judges, but in the fact that they can narrow down the list from the fifteen or twenty to the three or four. I see in this lies the inherent power of the inherent Achilles heel in the commission that Glenn Winters talked about.

Delegate Steiner had said, "We must look to the future." And I say, yes, let's look to the future because to change a system such as we have now, you either have to present a need showing present abuse or you have to look to the future and present a potential abuse. And this they have not done. This they have shown us has not been—they have shown a small potential abuse into the present system, but as I see it, looking to the future we see a greater potential abuse under the proposed plan.

Thirteen states have this and the delegate to the right of me has said only a few have this in a lower court and in small counties, and that sort of thing. This is the main reason I think that they have adopted under the merit plan because they have been moving from the elected form of judges to the appointive form. And we are not moving in this direction. We have, in fact, the appointive system of judiciary here in Hawaii today and in effect, by adopting this we will be moving backwards one step. So I think that in conclusion, there is no real logical reason why we should adopt this. There is no need and it is not logical to move backwards. Too many people today in this Convention are jumping in a parade without knowing where it's going. And I say, let's not be guilty of this; adopting something blindly without these serious arguments and inconsistencies which cannot be answered by the proponents of this amendment. Thank you.

CHAIRMAN: Thank you. Delegate Goemans? I presume you have read the committee report?

DELEGATE GOEMANS: I have.

DELEGATE DYER: May I ask the last speaker a question?

CHAIRMAN: Proceed.

DELEGATE DYER: The delegate made the statement that this commission system would make judges more dependent on politics. And I'd appreciate it if you would spell that out.

DELEGATE HANSEN: Well, okay. Say, take for example the case of court "x" where you have attorney "y" and attorney "z." Attorney "y," and this is the case propounded by Delegate O'Connor, attorney "y" is on the commission and the judge "x" is up for reappointment in, say, two weeks. They come into the courtroom and you see a dependence on this sort of politics more than you would see if this was the case under Delegate O'Connor's plan more than that. And I think this is where the dependence lies. The dependence lies on relying on the people and on the lawyers and not the interdependence between the three branches of government like it was originally said to be. The checks and balances are between the three branches and not between the judiciary and the lawyers, or the judiciary and the people. This is not the case, I don't believe.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, I rise to speak against the amendment to Standing Committee Report No. 40, I believe it is. I don't want to labor the fields that have been covered in previous comments and will confine myself only to an area which I think has been neglected heretofore.

The minority report and a number of the speeches today in favor of the minority position, talked about a system of checks and balances. To quote the minority report, "A commission along the lines suggested by the minority of the committee would provide obvious checks and balances against the possibility of any hold by the other two branches on the judiciary." Now it seems to me, Mr. Chairman, that that statement is entirely erroneous if we consider the system of checks and balances to be that which we have been taught through the years concerning our government. The system established by the founding fathers which had to do with the checks and balances between the co-equal branches of government, not checks and balances between the bar and the bench. The system, not to labor a point, is that each branch of the government has certain controls over each other branch, and certain powers over each other branch. Therefore, when we talk in terms of removing one of the controls, one of the powers, one of the influences of the executive branch over the judicial branch, I think we are striking at what was alluded to by Delegate Hansen, the Achilles heel of the system, of this proposal. Because that is in effect what is done by the minority position. We remove from the governor, from the executive branch, that power, that check, that balance over the judiciary which has been a part of our judicial system in our federal government since its inception.

Now, I would just say, after making that point, that to a large degree I feel that this issue is a tempest in a teapot. We have before us the president of the bar, who in his prepared statement said that the governor is unlimited in his choice as to who shall be a judge.

Now, I don't think that is actually the case. And point of fact, the governor's considerably limited in his choice, and this goes to the issue of accountability which we have heard about to some degree tonight. For one thing, organized groups, the power of the senate, the recommendations of the bar, the effective particular appointment on the press, and ultimately on public opinion. So the choice of the governor in his selection process is not unlimited. His choice in a selection process is as it should be, I think, akin to the limits that are placed upon the executive in our federal system. And as has been brought out in the material submitted to us, the executive does look to the Bar Association for his recommendations, for recommendations regarding all appointments. And seldom does he make an appointment that does not meet the approval of the Bar Association. I feel that to a large degree, if the local bar had a selection committee that's merited respect and was considered effective, it could do a considerable job in placing the limits on the governor that this minority report feels should be written into the Constitution. In other words, I think we can accomplish the same thing if that is the interest, and at the same time stick to our time-honored and respected system of checks and balances. Thank you.

DELEGATE WRIGHT: Mr. Chairman, I rise to—

CHAIRMAN: Delegate Wright is recognized.

DELEGATE WRIGHT: I rise to ask a question of Delegate Noguchi. Now, the reason I am doing this is I did not—because we don't have the best P. A. system here—hear Delegate Noguchi when he rose in order to correct something which was stated by Delegate Ching. Because I have not made up my mind if I had heard, which I am in doubt, that which Delegate Noguchi had stated, I believe I can make up my mind when voting on this section.

CHAIRMAN: Would you repeat your question, please?

DELEGATE WRIGHT: Well, what I want to know is, what Delegate Noguchi stated to the delegation here in rising on a point of order when Delegate Ching spoke. This was regarding the Bar Association.

CHAIRMAN: Delegate Noguchi, would you like to—

DELEGATE NOGUCHI: Mr. Chairman, at that time, I believe Delegate Ching was referring to a plan other than this one here. It was a merit plan but it was the Bar Association plan of which this amendment, certainly I hope, is not misconstrued to be the Bar Association plan. It is not, and like I said, I too am opposed to the Bar Association plan.

CHAIRMAN: That's correct. Delegate Ching was reciting history and outlining very briefly a large number of plans, none of which were this plan.

DELEGATE NOGUCHI: At the same time, Mr. Chairman, may I have this opportunity to point out a typographical error that was pointed out to me during

the recess. In the second paragraph, the second sentence, "or elected," I do hope the delegates would just ignore those and delete that. And in the fourth sentence, the word "elected" should not be there. Thank you.

DELEGATE WRIGHT: Then, Mr. Chairman, at this time, may I rise to speak against this amendment as presented by Delegate Noguchi?

CHAIRMAN: You may.

DELEGATE WRIGHT: It has been stated by those pro of this amendment, it is to remove partisan politics. However, because Delegate Noguchi spoke in behalf of his amendment, I would like to elaborate in the very near future of this, has near future of this Constitution, the consensus of Delegate Noguchi when he presented a proposal to the judicial commission. He asked as the same, a nine-member commission. However, you break it down, two shall be elected from the senate of its membership; two shall be elected by the house from its membership; three shall be chosen by the governor.

DELEGATE NOGUCHI: Point of order, Mr. Chairman. That is not this particular amendment. It is a proposal that I introduced during the session.

CHAIRMAN: Your point is well taken. Delegate Wright, the amendment we're considering is the one marked V(3) at the top of the page.

DELEGATE WRIGHT: I understand it, Mr. Chairman. What I was trying to do was point out a consensus of a person who has presented an amendment here today. And I would like to state to the fellow delegates here, if this is the means of consensus that we can follow for the fact that most of the people, most of the delegates here that spoke, pro for this amendment, have given examples of other states, of other commissions that we don't have here. And I believe, in giving the consensus that my time is germane if a person presents something as this, "as shall be prescribed by law." I will go further to say, Mr. Chairman, thus far I have heard many delegates speak against. I think the two main subjects here are the selection of good judges—yet I believe, and I know that not one has convinced me that there is a bad judge on our benches now. I would like to also state that we have three delegates here, at one time sat on the bench, and I look at them very highly, with much respect, and much integrity.

They say a commission is to remove politics or political influence, maybe political pressure. Regardless of what has been stated thus far, it cannot be proven that this will be done.

Mr. Chairman, because our geographic makeup of the State of Hawaii, because again a judge, a bad judge cannot be defined as a bad judge except for individuals or groups who may express themselves as such—I cannot see also the responsibility taken away from our elected officials who are duly responsible and directly accountable to the public, and convey to a body that is

not responsible and that is not accountable.

Mr. Chairman, I would like to state here and now that I am an employee of the state civil service for the Family Court, Juvenile Detention Home. And I have two judges that are my bosses. One is Judge Corbett, the honorable Judge Corbett, and the honorable Judge King. I have not yet seen them to be bad judges. I am very proud to be sailing on the same ship with them, and I will continue to be proud to serve under them.

I would like to state here and now that to encourage the delegates to weigh the pros and cons that have been presented to them this day, and to keep in their minds of facts and not of dreams. Thank you.

DELEGATE NOGUCHI: Mr. Chairman.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Thank you. One moment, delegates. The Chair would like to determine approximately how many more delegates wish to speak on this matter before we take a vote. Would you have a show of hands, please? About a two-minute recess is called.

At 5:53 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:57 o'clock p.m.

CHAIRMAN: We tried to determine this in an informal manner but it got to a point where people wanted to take an accurate vote. Maybe we can do it this way best. The first proposition is that we continue now for approximately an hour or an hour and fifteen minutes with the hope of arriving at a vote, at least on this section by about 7:15 in which case we would adjourn for the evening.

The second proposition would be that we would adjourn, or recess now and come back at 7:30 or 8:00 o'clock. Okay, all those in favor of the first proposition, will you please rise? Second proposition?

The Chair will declare a recess until 7:30.

At 6:00 o'clock p.m., the Committee of the Whole stood in recess until 7:30 o'clock p.m.

Evening Session

The Committee of the Whole reconvened at 8:08 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order?

Delegates, the Chair has a few suggestions. One, almost everything of substance that has to be said on this subject has probably been said, not necessarily but probably, and therefore, if in your speech you wish to refer to the speech made by some other delegate and then sit down, this would be in order.

Number two, I'd like to set a tentative deadline of 11:15. There are quite a few of us who would like to leave at that time in order to file our papers. Now with these ground rules, I believe we can commence. Delegate George Loo is recognized.

DELEGATE GEORGE LOO: Mr. Chairman, will the movant of this amendment yield to a question?

CHAIRMAN: You may address your question to the Chair. If it's in order I may ask the movant.

DELEGATE GEORGE LOO: Mr. Chairman, I see this amendment before me. I was wondering, is this amendment based on any of the constitutions or statutes of the various merit states?

CHAIRMAN: I believe Delegate Noguchi will be willing to answer that question.

DELEGATE NOGUCHI: Mr. Chairman, the answer to that is that although we have taken into consideration the Missouri Plan and the other merit plans, we do not feel that we were bound by such plans used in other states. We just felt that perhaps the merit plan that's acceptable to the most delegates here and that will minimize politics. We thought we'd come up with such a plan here and let the legislature also have some say-so in its composition.

CHAIRMAN: Thank you very much. Delegate Kage is recognized.

DELEGATE KAGE: Mr. Chairman, I speak in favor of the minority report advocating a commission plan. To speak to a minority report may have its obvious result and maybe it's founded on an unpopular point of view, but sincerely, I believe that our judiciary system can be improved upon. The accusation of pressure and the undue influence of the press have been mentioned. To keep silent will not bring me peace of mind and a satisfaction that will ease my conscience.

It seems that our judiciary has too long been an exclusive concern of the legal fraternity. We, the people, who are the clients of the courts have had too little to say, and through our own fault, placed the courts and our judges on a pedestal and have not involved ourselves enough in the structure of our judiciary.

If the most I can say in court is, "Not guilty," I want to be assured that I will get a fair shake in an event that may change the very course of my life. I am not so naive as to believe that personal politics and party politics can be eliminated from our judiciary. It is a question of how far and to what extent we can remove politics from our courts. I will be the first to admit that politics is a part of our form of government and it is that element of politics that makes our form of government, though it is not perfect, the best form of government ever created by man.

Historically, our form of government has three distinct branches: the executive, judiciary and legislative; each independent in itself and not accountable to the

other.

Our present method of selecting judges is appointive. Judges being human have a tendency to become grateful to the executive branch that appointed them. This is only natural.

The judiciary, I am told, is beginning to get into the field of legislation. The legislature, on the other hand, if it so desires, can withhold the confirmation requested by the executive.

As a layman, I feel that our present judiciary is the product of a grand merry-go-round.

Let us take the Fortas case as an example. This may be an isolated case, which I doubt, but according to newspaper reports, it is one of the most vicious and petty, politically-motivated crucifixions of a distinguished and capable jurist whose only desire, mind you, whose only desire is to serve his country. The embarrassment, the scrutiny and the castigation that is being heaped upon this man is uncalled for and unnecessary.

One of the questions most frequently asked is, "What's wrong with our present appointive system?" The most frequent answer has been, "The present system has worked well." Generally speaking, I tend to go along with the answer because we, in Hawaii, have had some very good judicial appointments. But I would rather paraphrase it. We have had good judges in spite of the system and that much of the credit for our good judges should go to Governors Quinn and Burns. It was a case of men rising above a system.

The question of accountability here has been raised many times, but I have yet to become convinced that a governor or a president was defeated in an election because of a very bad judicial appointment. Americans, by nature, forget and forgive too fast. Just in passing, may I refer to accountability in a different light. I say that it is more difficult to account directly to a commission, let us say, of nine people than it is to account to a single person.

The Hawaii Bar Association somehow, and very unfortunately, got into the act very prominently when the question of a judicial commission plan was introduced. From all reports and indications, the Bar Association, I understand, has politics running rampant and that its decisions are minority decisions. The vote taken on recommending the commission plan is a good example. While I cannot buy the Bar Association version of the makeup of the commission, the method of commission selection in the minority report has considerable merit. With the installation of the commission plan, the Hawaii Bar Association is completely out of the picture, for I understand that under our present system, the governor requests a list from the Hawaii Bar Association.

Speaking on the question of abuse and the potential for abuse under the two methods, we have seen the abuse and we know that the potential for abuse is there

under the appointive system. Under the commission plan we can only assume that there will be abuses, and I grant that there will be some, but if logic and tolerance prevail the potential for abuse under the present system will be greatly minimized under the commission plan. This assumption stands to reason because the opportunities for abuse are diluted under the commission plan.

The public can become emotional and hysterical and cry, "Do something!" but I am reminded of that great American, Thomas Jefferson. "The individual should be called on to give up the fewest number of liberties in order to obtain the greatest good." If I, as an individual, have to give up some of my liberties in order to obtain a group good and realizing that the judiciary may decide the very course of my life, I want to feel confident that if and when I stand before a judge and say, "Not guilty," my case is being presided over by the most competent judge available and one who is beholden to no man, and that justice will be served.

Mr. Chairman and delegates, in humility and in all sincerity, I urge you to consider the minority report. Thank you.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Thank you. Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I'd like to speak against the amendment and in support of the standing committee report and its proposal.

Mr. Chairman, I am only sad that we do not have the newspapers called the "Kuukoa," or the "Aloha Aina," because certainly my remarks would be carried out in both newspapers and the people that I am attempting to speak to will read about my comments in support of the present system.

CHAIRMAN: Delegate Kauhane, it is the Chair's wish that you speak to the people who are here present this evening who are going to vote on the amendment.

DELEGATE KAUHANE: I realize that, Mr. Chairman, but I am also concerned about the, you know, the mediocrity of the press in the publications of statements in support—

Mr. Chairman,—during this—

CHAIRMAN: Delegate Kauhane, we can arrange to have your remarks put on the record after the vote is taken if you wish to speak to these other people.

DELEGATE KAUHANE: No, I'd like to take my opportunity right now, Mr. Chairman. Mr. Chairman, during this symposium—

CHAIRMAN: Well, if you will confine your remarks to those that are pertinent to the question and to the delegates.

DELEGATE KAUHANE: I will, sir. The preamble was made in good spirit and in the aloha spirit, Mr. Chairman.

CHAIRMAN: Very good.

DELEGATE KAUHANE: Now, Mr. Chairman, during this symposium when we were called to attend a briefing at the University of Hawaii, I was one of the very few laymen that attended this symposium. I listened to the arguments that were submitted with respect to the proposal of the merit system and listened carefully to the experts who came to the meeting to tell us about their plan. At the time during the question and answer period, I made my position very clear that at the time I would support the present system. I felt that in making my position clear, that during the course of this Constitutional Convention, I would be somewhat taken over by the expression of the learned attorneys and delegates of this Convention so that I may be able to re-evaluate my present, my earlier position, and be guided by the—I would say the influence of the proposal of the merit system. But sitting here this afternoon, Mr. Chairman, I have not been fully convinced about the proposed plan that has been submitted as contained in the minority report. Because of this confusion, Mr. Chairman, I am—as I stated—will support the standing committee report.

At the outset of this phase of the discussion, it should be noted that in most states where a commission nominating system has been urged, it has because of the reaction to a system which provided for the partisan political election of judges. The present method of judicial selection in practice traditionally has been essentially one based on executive appointment. This is not denied by those supporting the proposed amended plan. In fact, it is the basis of their complaint. The adoption of the proposed new plan would only compound the political problems inherent in judicial selection. Introducing new, complicated and undesirable political influences into the new process and by shifting the play of traditionally political forces to a different, unprepared and unappropriated field. The appointing authority, the governor, undoubtedly, under the present system, is influenced, Mr. Chairman and members of the Constitutional Convention, is influenced politically in the selection of judges. There is no doubt about it. His own political ideas influence his choice of judges as do those of his advisors. But such political ideas have been before the electorate and to the majority extent at least have been approved by the electorate, by the continuous election and re-election of the responsible appointing authority presently and in the past.

You talk about partisan politics? We have them! You are always going to have them. There is nothing better than the two-party system in this area. They balance each other and over the long run it has worked very well, and it has worked very well on the appointments to the judiciary. And I will illustrate this method of working very well. We have had fifty-two years of a political merit system. Nobody complained. Even those who were outside of the practice or the system have accepted this system, have not complained that I was

left out. But we find under the ten-year period that those who have not been reappointed are the ones who are complaining that the system is wrong, that we need a new type of system. If one system is wrong, then, Mr. Chairman, as a layman, I say that the other system is totally wrong. It has never been put into effect so that we can really say that the proposed system is better than the old system. I'm for the old system, Mr. Chairman.

The proposed plan by contrast would distribute the appointing power to the members of the commission. It takes away this appointive power from the governor, the person who is fully responsible and accountable to the electorate in the State of Hawaii. If he has made a wrong selection there is a time that this error can be corrected. October 1st is just around the corner. It just so happens that the appointing authority is not a candidate for public office in this election, but the opportune time when he comes, Mr. Chairman, before the electorate, there is the opportunity for the electorate to say to him, "You have done a wrong service to all of us and therefore we will not send you back to continue doing anything that is wrong." Can we say this of the commission?

Mr. Chairman, I'm sure that the—as I stand here to speak against the proposed amendment, that I speak with sincerity and with a purpose at heart and with the interest of the people who have elected me to serve them in this Constitutional Convention, that in my conscience that what I feel is right—and it is this right in my conscience that is for the betterment of the people who elected me to serve them in this Constitutional Convention, I am duty bound to exercise this right.

Therefore, Mr. Chairman, I ask the delegates to vote for the approval of the standing committee report against the proposed amendment.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, as one of the signatories to the minority report emanating from the Judiciary Committee, I speak in favor of the amendment. I had not intended speaking as I was of the opinion that three or four of the proponents of the amendment covered the issue very well, but I am compelled to respond to some of the statements made subsequent to their presentation.

It has been said here over and over, "What's wrong with the system? The status quo proposition is wonderful. It's working fine and why should we propose any other system to improve upon it?" Well, I happen to be one of those that don't quite agree that the present system is working well, that it could not be improved upon. And I think that this recent interest, the great vigorous interest in establishing this merit principle in the selection of judges, stems from this same feeling that I have that perhaps the status quo system greatly needs improvement; that there is abuse in

the present system. As a matter of fact, I felt this so strongly that I had to indulge, as a member of the confirmation body in the legislature confirming judges, that I had to indulge in what is normally a very unpleasant task for us. That is, to vote no on a confirmation of certain judge candidates. And I must say that senators generally do not like to withhold confirmation of any appointee presented to their body. We do this very reluctantly. We generally lean over backwards to give a man coming up for confirmation the benefit of the doubt.

I felt that the present system is abused to a point where I was one of seven senators voting no on a confirmation of an appointee. And as I said, we did this very reluctantly. I did this with the full realization that every man coming up for a confirmation has friends, and supporters, and people who are very much biased in his behalf, rightly or wrongly. But I felt that I had no alternative but to vote no because I felt very strongly that this was a clear case of an abuse of the present system.

Now, in the matter of confirmation of judges, we sitting as senators feel that there is a great responsibility imposed upon us, because this is, this one position—well, first of all, the tenure is not four years as normally is the tenure for cabinet appointees, appointees to commissions and boards. The tenure in the existing system is for six years for the circuit court judges and seven years for the judges on the supreme court. This is almost double the tenure of the regular cabinet appointees. And it is recommended in the judiciary committee report here that the tenure be lengthened to ten years. This is bad enough. This imposes a considerable responsibility, a man being confirmed for this long a tenure. But aside from this, the position of a judge, and the man sitting on the bench has a great responsibility, and his actions, his judgments, his decisions have a profound effect upon cases and issues and individuals coming before him for judgment. This is something I think we senators take very seriously. This is a profoundly important position, imposing profoundly important judgments on people's lives and important issues. Consequently, we try to deliberate to a considerable degree before we vote yes or no on a confirmation. In the case where we acted almost in unison, seven of us voting not to confirm the man, I think almost every one of us felt that this was clearly a case of a misuse or an abuse of the present system. And sitting as one of the senators there, I would infinitely be of a feeling of greater confidence if I know that the man that I have to confirm or not to confirm has been screened by a competent, unbiased screening committee that's referred to of recent weeks as a judicial commission.

I think the proposal made in this amendment is a very reasonable and a very sensible compromise. I was one of those on the minority side that insisted vigorously that senate confirmation be a part of our proposal. Now there have been allusions made to, or inference made, that the proposal put forth here is a Bar Association proposal, and this is far from the truth. I think what came out of this minority group in no

way resembles what the Bar Association wanted. Certainly the Bar Association is very much opposed to senate confirmation. I think that I don't quite share the pessimism that is shared by Delegate Ching in saying that the commission makeup is dangerous. I think by leaving the formula as to how the commission should be appointed and how the commission should be made up, leaving this to the legislature, I think was a good judgment on our part. And I have every confidence that the members of the legislature will exercise discretion and good judgment insofar as their formula of appointing these commission members is concerned.

I think it is unfortunate that in retrospect when you look back at the number of years of some of our judges that've been appointed in the last decade or decade and a half, it just happens that many of these appointments were politically-motivated appointments, whether you want to face the fact or not. If you want to scrutinize almost every name that has been appointed to a judgeship, there is some political implication. And I think, in certain instances, some of these people, in spite of the fact that these appointments were politically motivated, are competent people who turned out to be rather good judges. And I think it is only fair to have a screening committee like the judicial commission passing judgment on their qualifications, making their recommendations to the appointing official, the governor, because then the stigma to a man that is competent, who is active politically, the stigma that this may possibly be a political appointment is removed. Because I think an objective commission, passing judgment on his qualifications and to be submitted to the appointing authority, to a certain extent removes this stigma. The fact that he was active politically had nothing to do with it. The screening committee passed judgment on this man's qualifications and submitted his name to the governor. This is one advantage, I think, that we would enjoy on having a judicial commission system of appointment.

Now, I am a little perplexed to understand why so much emotionalism and the human cry against this judicial commission exist. Because it seems to me basically what is proposed here is practically the status quo except that we think nine heads selected judiciously, nine people screening appointees to the bench, would improve the method of selection. Now I think if I were the governor and if I were the appointing authority, I would like to be relieved of the burden of having to say no to many, many people approaching me to appoint individuals of their choice. I know the governor is subjected to this kind of pressure and I think it would relieve him to a considerable degree to be able to say to these people, "I appreciate your interest, but I will leave it up to a screening committee that I deem competent to judge and pass judgment on candidates for the bar. And much as I appreciate your interest, the man that you have submitted to me for consideration was not considered by a screening committee or was not ultimately said to be a competent appointee or a possible candidate to that position." I would think the governor or the appointing authority would be relieved to know that he can rely on a body such as the judicial commission to pass judgment on

possible appointees that come before him. And I see no reason why the opponents are not willing to accept this one change to our present system of appointing judges. The one change being, the initial screening be done not by one man relying on his cronies or his political associates, but a competent group to pass judgment on people to be appointed to the high position of judge.

CHAIRMAN: Thank you very much. Delegate Schulze is recognized.

DELEGATE SCHULZE: Mr. Chairman, I am, it's true, a little naive and that is perhaps why I can't figure out what it is that is actually motivating many of those who oppose a form of merit selection plan. I have listened very carefully to the arguments that were given this evening and this afternoon. I have listened very carefully to many arguments given to me by these same people and others for weeks and even months before tonight.

Mr. Chairman, for example, the esteemed delegate from Hilo, whose judgment I greatly admire, suggested that the American Judicature Society and the Citizens' Committee had failed to make its case. They had not, he suggested, pointed out or proved that there were shortcomings in the existing plan. And he said there is no point in improving anything until you can show that there are shortcomings. Now, Mr. Chairman, I doubt very sincerely that anybody would really suggest that you wouldn't change the braking system in your car until after you had an accident. And I doubt very sincerely, too, that this progressive and forward-looking gentleman would be sounding quite so conservative on any other issue.

The vivacious delegate from the 8th District, for example, suggested that we might create a centralized commission that would control the third branch of government. Mr. Chairman, we're talking about a commission of nine people, all of whom are selected or elected in a manner decided by the legislature and the governor. Are we really talking about the same thing? In any event, it seems to me that we might point out to the delegate that it is a third branch of government and there is no more reason for the governor to have unfettered control over its selection than there would be for a commission to do so.

Then, Mr. Chairman, there was the delegate who simply couldn't stop talking about the Bar Association. Now, the Chair suggested at one point that perhaps what he was saying was not relevant because none—none of the amendments suggested even mentioned the Bar Association. But what he was saying wasn't irrelevant, Mr. Chairman. What he was saying is what many, many others are saying. The only reason I have been able to get out of many of these people who oppose the merit plan is that they don't trust the Bar Association. I don't understand what the Bar Association has to do with this anyway. Nothing, so far as I can see. Certainly it has nothing to do with controlling the panel. Certainly it has nothing to do with selecting judges under this new system. In fact, it has a great deal more to do with selecting judges now than it would have

under the commission system which is suggested in the amendment. Many of those, Mr. Chairman, who say they fear the Bar Association also say that they don't need a merit plan now. Mr. Chairman, we most assuredly do need a merit plan now. As I am sure all of you know, the Bar Association now provides screening and recommending functions for the governor. Many of the opponents of the merit plan have suggested that the Bar Association is not to be trusted and therefore, I take it, that this particular screening method is not at all reliable. Well, if that's the case, Mr. Chairman, then the governor has no help at all. None! And certainly he needs some.

The judiciary is a separate and an independent branch of our government. It has equal stature, and equal power with the legislature and the executive. But the creation of judges is different from the creation of governors and the creation of legislators. Because long ago people found out that the technicality and the entirely different nature of the tasks the judges had, rendered the electorate really unable to evaluate them. And elected judges, we found, were not at all very good judges. So we don't elect them. Does this mean, Mr. Chairman, that because we don't elect them that we should give entirely to some other branch of government a free and unfettered hand in selecting the officers who will guide and direct this third branch? It's not an easily answered question. And I don't pretend to know the answer entirely. But I do know this, I do know that in the system of separation of powers, there is no rule that says the governor has some sort of inborn authority or power to appoint judges. As a matter of fact, if one were determining and designing an ideal separation of power system, surely the selection of judges would be removed from both the legislature and the governor, so that the judiciary would be truly independent. One must remember that independence is one of the single most important characteristics in a judiciary that truly acts to protect freedom for the individuals who are subject to it.

It seems to me that judges are sufficiently important in our State, and in our lives—not to lawyers, Mr. Chairman, but to people. Judges, after all, are there to make sure that justice is done. And that after all is perhaps as important as anything that's ever done in our government. It seems to me that they deserve a most elaborate screening process and a thoroughly elaborate selection method if it will help us produce better judges.

Mr. Chairman, many people have suggested that the present system needn't be changed because no one has been able to prove that anybody has appointed bad judges. Well, Mr. Chairman, you really can't prove a thing like that. And I'm not going to try. But I defy anybody here to tell me that the present system hasn't produced mediocre judges. Now, I'm not saying a new system won't. But I am saying that a screening system, a merit selection plan that works properly, one in which the board actually screens the candidates and actively seeks out the best people. By best people, Mr. Chairman, I don't mean as some people seem to think, that you've got to go into the big law firms and select

the most popular trial attorneys or defense attorneys. As a matter of fact, most of us know that those are not necessarily the qualities that make a good judge. He needs all sorts of things, including heart, including humility, including wisdom; and also legal understanding and training.

Now, Mr. Chairman, nothing could be broader, I think, than the amendment offered here which gives the legislature complete freedom to work out the commission, to change it if it finds that the commission is not working, and to experiment with it. And it seems to me that a plan of this sort can only lead us to the good. It can only provide for a screening and selection method which would help in the selection of the best judges.

Now, Mr. Chairman, I still haven't figured out what it is that bothers many people about any sort of merit plan. I kind of think that some people are harkening back to an old day when the Bar Association may once have had a hand in selecting judges who perhaps reflected its political opinions. But I suggest to you that lots of bad things used to happen in Hawaii in those days and the rest of you haven't put your blinders on and refused to look forward and act progressively in every case where bad things used to happen. In any event, that's ancient history now, gentlemen. Don't, please don't let emotionalism and some blind, nameless fear of old, long-past things make you look backward. If the merit plan can help, if it can produce a better selection method for Hawaii, and if the legislature is given freedom to adjust it and amend it as experience proves necessary, I think we do a real disservice if we don't adopt it. If you absolutely insist that we have some abuses in the present system before you'll do anything to improve it, just wait. The day is going to come; it always does—when we don't have a Quinn or a Burns—when mediocrity is not the greatest sin of the judge selected. But when that happens, ladies and gentlemen, you're not going to be able to do anything about it. That's what we are here for right now. That is to improve the present system in any way that we can and not to wait until disaster strikes and there isn't any Constitutional Convention and we are wandering around wondering why we didn't do something now. Thank you.

DELEGATE GOEMANS: Point of information, Mr. Chairman.

CHAIRMAN: What is your point of information?

DELEGATE GOEMANS: Will the delegate yield to a question at this time?

CHAIRMAN: You may address the question to the Chair.

DELEGATE GOEMANS: My question has to do with the delegate's views regarding separation of powers. Would the delegate, in view of his statements tonight, be in favor of an amendment to Article II, Section 2 of the federal Constitution having to do with the appointment of judges by the President?

CHAIRMAN: Delegate Schulze?

DELEGATE SCHULZE: I don't know whether the rest of the delegates would really be interested in my views on amending the federal Constitution, but I am flattered. It's true, Mr. Chairman, that the federal government does use a selection method for federal judges in which the President does the selecting, although virtually every president has made extensive use of the American Bar Association screening and selection methods which are quite extensive and for the most part followed fairly thoroughly.

I don't think that it really helps us to point to some other system and say, "Well, they do it, why shouldn't we?" There are plenty of states, Mr. Chairman, in which the governor makes the appointment and if that's good enough for us then we really don't have to look any further at all.

CHAIRMAN: Thank you.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I had not really intended to speak on this because I had hoped that the sentiment of the delegates would be overwhelmingly in favor of the amendment. There seems to be some question and because I didn't believe I was going to talk, it's going to take a little longer than if I had intended to, for which I will apologize too, for the plan.

CHAIRMAN: Delegate Dodge, would you like to let someone else speak while you prepare your presentation?

DELEGATE DODGE: No, I have a note or two. Thank you, Mr. Chairman.

CHAIRMAN: You have the floor.

DELEGATE DODGE: I speak in favor of the amendment not because we don't have a reasonably good method of selecting judges now, but because I firmly believe this is a better method. And I think we should be searching for a better method.

I am in favor of the amendment not because it will necessarily assure us of getting a better judge in any particular appointment, but because it provides us reasonable assurance that we will not get a judge that turns out not to be a good judge. I am not sure that those of us lawyers, as delegates here today, have been entirely fair with those of us who are not lawyers. I don't think we have been frank and honest, those of us at least who favor the amendment, in telling you what I think is one of the basic reasons we don't want judges that aren't good. We've all had personal experiences, those of us who have been in trial practice, and I have for almost twenty years, I have been up against judges and I say that in an adversary manner, because they were adversaries to my cause, they were not impartial

judges.

I remember I appeared before a judge who was appointed by the President of the United States, confirmed by the Senate of the United States after endorsement by the Attorney General's Office in Washington, D.C., and it was a probate case, this was in the Territorial days, and an appraisal had to be made. The appraisal was made. I had recommended to the court that he appoint somebody who was a member of the A.I.A. because we were headed for a federal tax controversy. Instead of appointing a member of the A.I.A., that particular presidentially-appointed judge appointed a very close buddy of his who had never had any appraisal experience in his life. The appraisal was completed. After the report was filed, the appraiser called me up—and I use the word appraiser in quotes—and he said, "When do I get my check?" And I said, "How much do you want?" and he said, "Fifteen thousand dollars." And I said, "That's a little high," and he said, "The judge has already approved it." And I said, "Well, we're going to have a hearing before the judge," and we did. And the fee was reduced, the fee that the judge had already approved, was reduced to \$7,500. Another appraiser on personal property was appointed by the same judge. The other appraiser called me and said he wanted his \$6,000 fee and I said, "For doing what?" And he told me that the judge had already approved the fee—this was another buddy of the judge—and I said, "We will have a hearing." The judge declared a recess after the hearing showed how many hours this man had been out at the particular place to do the appraisal of the personal property. And the judge called a recess and he said, "Bob," he said, "I've got to give him more. What do you think it's worth?" And I said, "I think \$400 is absolutely tops and that's overpaying him." He said, "I'll make it a thousand." And I said, "You're a ——" Well, I expressed myself better than I can on the floor of the Convention. I said, "You know I can't take an appeal to the supreme court for \$600. Okay."

I have appeared before a judge who was appointed by a Territorial governor, who refused to interpret a statute passed by the legislature, the committee report for which had specifically said it was intended to overrule and change a rule of interpretation of a previous supreme court opinion. He had such little knowledge of the law that he said it was not his function to interpret a legislative act, it was up to the supreme court. It cost my client quite a bit of money to get the supreme court to overturn that decision and—

DELEGATE DONALD CHING: Mr. Chairman, I rise on a point of order. Same basis—

CHAIRMAN: State your point of order, please.

DELEGATE DONALD CHING: Same basis which you called me down.

CHAIRMAN: Pardon?

DELEGATE DONALD CHING: Same basis. The discussion is not germane to the issue before us. The

amendment as I recall it—

CHAIRMAN: Your point is probably well taken; Bob, could you—

DELEGATE DODGE: Mr. Chairman, I don't think it's well taken at all. I am giving examples of people who have been appointed by the President of the United States, confirmed by the United States Senate, appointed by the governor, confirmed by the state senate, and who would not have passed the preview of a judicial commission. These individuals would not have gotten to first base. Their names wouldn't have been on the—

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of order.

DELEGATE DONALD CHING: Mr. Chairman, I would like to have my point of order ruled on.

CHAIRMAN: I think your point of order is well taken, but the speaker has come to the point.

Delegate Kauhane, did you have another point of order?

DELEGATE KAUHANE: I was just going to raise the point of order. You have ruled that the first point of order was well taken and—

CHAIRMAN: That is correct.

DELEGATE KAUHANE: —and you permitted the delegate to continue without enforcing your rule.

CHAIRMAN: Well, the delegate has continued and made his previous discussion pertinent and—

DELEGATE DODGE: Well, I apologized in advance for not having written this out. As Lincoln said, "I am sorry I didn't have time to write you a short letter."

CHAIRMAN: Delegate Dodge, I am sure that if you can—with the background you have laid, make this relevant to the amendment that we are considering now. Everyone will be very happy.

DELEGATE DODGE: My point is this in referring to these personal incidents—merely that many of the delegates here who are not lawyers, and I believe that every person here who is a lawyer has experienced something along this line—I wanted to make it clear that we have had appointments of judges who have turned out not to be good judges—judges who would not have passed the screening of a judicial commission because their personal values, their personal knowledge of the law, their personal outlook on their job would not have gotten them through a preliminary examination.

As I said at the outset, I am not for this plan because it will assure us of the best judge in any particular case. I am for it because I am certain that it gives us reasonable assurance that we will not get a

judge who is not a good judge. And I would urge all of you who have not had these experiences—and those of you who are lawyers will continue to have them—I would urge you to vote for this amendment.

CHAIRMAN: Are you ready for the—

DELEGATE NOGUCHI: Mr. Chairman.

CHAIRMAN: Before you speak, are there any other delegates who would like to speak on this amendment before Delegate Noguchi speaks on it to close the debate?

DELEGATE JAQUETTE: Mr. Chairman, I would like to speak just very briefly on a point of personal privilege. The point is that my name has appeared in advertisements in the newspapers which have been held as unreasonable pressure or something similar to it.

DELEGATE MIYAKE: Mr. Chairman, I rise to a point of order, please.

CHAIRMAN: What is your point of order?

DELEGATE MIYAKE: Are we going to grant this man his personal privilege in the Committee of the Whole?

CHAIRMAN: I think this point is well taken. There is no personal privilege in the Committee of the Whole.

DELEGATE MIYAKE: Can we be consistent because I raised the same point the other day on Delegate Kawasaki.

DELEGATE JAQUETTE: May I change that then to speaking my second turn?

CHAIRMAN: Let's see if everyone has spoken his first turn. You may speak your second turn.

DELEGATE JAQUETTE: These advertisements which contain my name had been represented as somehow sinister. And the inference has been that it's been sponsored by the large law firms. I wish to set the record straight. These advertisements were sponsored by the Citizens' Administration of Justice Foundation. They were paid for by many small contributions from laymen solicited by a mail campaign.

DELEGATE NOGUCHI: Mr. Chairman.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: May I speak in behalf of my amendment, please?

CHAIRMAN: You may.

DELEGATE NOGUCHI: The proponents of status quo seem to argue that the present system has worked well and therefore it should be left alone. Delegate Schulze has made a very good presentation along this line so I will just go briefly, skim past it. I know many

of the points I will hit upon have been hit upon previously, but I believe that it does merit one more emphasis in the fact that—like Delegate Schulze so emphatically pointed out, that if a braking system is working properly, does that mean that we have to wait until it fails before we change the system or the braking system? He later on pointed out that perhaps, perhaps sometime in the future, our State will not be fortunate enough to have the kind of governor with the wisdom and the foresight of previous and the present governor in selecting judges.

One should not wait for an abuse before we try and change the system. If an educational institution adhered to such a theory it would soon find itself far behind its quest for educational excellence. And so would a businessman find himself falling behind in his profit.

Now, in school I learned that there were three branches of government. We also learned that these branches of government, legislative, executive and judicial, were separate but equal. Now under the present system that Hawaii operates under, I ask you to take a look again. Under this present system, a governor nominates and sends the name to the senate, then the advice and consent of the senate; then he appoints. Now you say, what's wrong with a system like that? Well, the wrong here is that perhaps, sometime in the future, this particular system as it exists right now has a great potential for some sort of abuse. And let's face the facts here. A governor, the governor's office has awesome powers. He has the power to release funds that have been authorized by the legislature. He's been authorized to release funds from the C.I.P. which involve certain senatorial districts. And then he finds some kind of hesitance on the part of the senators to approve a governor's man, and so some kind of deal, perhaps, can be made. And let's face it. The promises can be as such. An example, I am not saying this has happened before, in the past, perhaps it has. I say this can happen in the future. A governor says, "My dear senator, why do you oppose my man here? I will release your funds for your work project here in your district if you go along with my man here." And the senator says, "Oh, fine, governor. That's exactly what I wanted. I really have no objections to you governor, I mean, to your appointee." And this sets just one example. Another example is perhaps the long party service. Because of this, he is rewarded with such a position. He is nominated and asked by the senate to confirm. And then on the other side this man who has given long party service can be eminently qualified, one of the very best in the state to be a judge, and yet because of his long party service, people in the community will gossip and say, "It was just a political appointment. He's just a political hack." I say to you this is unfair to that man, because of his long party service he's appointed as a judge when his other qualifications are overlooked by the public. For the public image is very important here in a judicial system. And I would like to also mention that it has been mentioned here by some of the proponents of status quo that the commission itself will indulge in the kind of politics—and I use that word "politics" loosely, in quotes—the politics we are referring to here is the

backroom type of wheeling and dealing where you make concessions here and there so you get what you want in the end. And I say to you that the commission plan is one that will minimize politics. I say that for one to think that we're going to do away with politics altogether in one form or the other, they are badly mistaken. So why are we proposing a judicial commission? I say we do this because we feel, those of us who support his plan, that it will help to minimize the backroom type of politics. The wheeling and dealing that is potentially there in the present system as it exists today.

DELEGATE YOSHINAGA: Mr. Chairman, I rise to a point of order.

CHAIRMAN: Will you state your point of order.

DELEGATE YOSHINAGA: I think I rise to a point of information.

Can the speaker cite for me one instance in Hawaii where there was all this backdoor wheeling, dealing and all that nonsense he's talking about? Just for the fun of it.

CHAIRMAN: Delegate Yoshinaga, if he can cite an instance I would rule it out of order.

DELEGATE NOGUCHI: Mr. Chairman, I just say that this can happen. I did not say that it has happened.

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: May I answer the question?

CHAIRMAN: I don't think it's necessary, please.

DELEGATE YOSHINAGA: Yes, go right ahead. Answer the question.

DELEGATE DEVEREUX: Mr. Chairman, I'd like very much to answer the question.

CHAIRMAN: I would like to have Delegate Noguchi complete his statement, and then you may make a statement if you wish.

DELEGATE NOGUCHI: I see that the dander has risen up of some of the delegates here who are also members of the senate. And so perhaps my speech here seems to be taking a wrong light on the section. I am not, my dear fellow delegates, referring to the present senator who sits here today, that he had indulged in such practices. I have no intention of giving that impression to this body. I merely say that this system as it exists today will, and in some time in the future, perhaps be used as such. That's all.

And we're not saying that the present system is a wrong system. We are saying here that the present

system can be improved. That's all that we are merely saying here. And reference also has been made here that perhaps the pressure by the news media has made us all stirred up and that's why we offer this merit plan. Well, if that's the way they take it, then perhaps, I'm sorry. But I think that the news media here has been pushing this particular issue, not because they are trying to pressure us, but because there is much concern in the community on our judicial system. Whether it can be improved or not. And this is not pressure; this is concern. A concern for a better judicial system. So I have to say I think Delegate Schulze has covered many of my points that I wanted to bring up and I think he's done it very eloquently and very fine. So I will close here, Mr. Chairman.

CHAIRMAN: Thank you.

DELEGATE ADUJA: Mr. Chairman.

CHAIRMAN: Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I had not intended to speak on this issue, but fortunately or unfortunately, tonight when I went home to dinner, I had the opportunity to spend just a few minutes watching the TV film, *Profiles in Courage*.

It was very interesting to note that the subject tonight was President Wilson, and his presidential appointment of Justice Brandeis, one of the most controversial appointments that has ever been made in American history.

However, although I had an idea of how I felt about the subject before us in this amendment, I wasn't entirely certain and I wanted to hear the rest of the arguments tonight. But after watching even a portion of this film, I am firmly convinced that I do not wish our governor or any governor we may ever have in the future, to have to stoop to the length that President Wilson had to in order to get the Senate confirmation for Justice Brandeis.

One example to the delegate that raised a question a few moments ago, although it is a President of the United States, it still could apply to a governor of a state, for the situation is very similar. The appointive powers for the President for the justice as well as the appointive powers for the governor of a state. One example was a Senator who wanted the President—

DELEGATE ARIYOSHI: Mr. Chairman, I rise on a point of order, here.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: I want to inquire whether or not the speaker is speaking on the amendment here. Because apparently the speaker is referring to the relationship between the President and the Senate and in its exercise of the power of confirmation. And as I read the amendment, there is nothing here that takes away the power of confirmation from the senate.

CHAIRMAN: Delegate Devereux, could you relate this—

DELEGATE DEVEREUX: Yes, Mr. Chairman.

DELEGATE GOEMANS: Point of order, point of order, point of order.

CHAIRMAN: What is your point of order?

DELEGATE GOEMANS: Mr. Chairman, much as I—and I do enjoy hearing Delegate Devereux speak, I've enjoyed hearing her speak in the legislature; but I think we establish bad practice if we do as we've done tonight which is to have the proposer of the motion close debate and then we have more discussion and more debate thereafter. Now, it was explicitly stated that the proposer of the amendment would close debate. If we'd like to hear Delegate Devereux out, it's fine with me, as I say, but I don't think we should establish this as a practice.

CHAIRMAN: I think your point is well taken. Delegate Devereux rose in response to a question from another delegate and if you feel that you have completed answering the question—

DELEGATE DEVEREUX: Mr. Chairman, may I remind the Chairman that in other Committee of the Whole meetings, we have had other speakers after the supposed close of debate.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: I realize that, but we made an exception—

DELEGATE DEVEREUX: May I complete my statement? It's very brief.

CHAIRMAN: I think you can complete your statement if there is no—

DELEGATE DEVEREUX: I would like to relate it to this present amendment which I am speaking in favor of.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Mr. Chairman, now I think you made it very clear before Delegate Jaquette was allowed his second round, anybody desiring to speak the first round would let you know. And nobody said they were going to speak any more. So you allowed Delegate Jaquette to finish his second round. I understood you were going to let Delegate Noguchi to finish up. I thought Mrs. Devereux was going to give me an example of all that backroom wheeling, dealing and all that other stuff that was mentioned so we can expose the present senate or any senate in the history of the Territory, or the State of Hawaii. Maybe that would be the best argument for this so-called merit plan or commission plan or whatever they call it.

Now, I'm going to hear Dorothy out as far as I am concerned, but I think Delegate Goemans has a point. What's the sense of you asking if anybody's going to talk? By the way, I'll speak after Mrs. Devereux.

DELEGATE DEVEREUX: Mr. Chairman, may I call attention to the Chair and the delegate that the question posed by the delegate is the one that prompted me to rise.

CHAIRMAN: I realize that.

DELEGATE DEVEREUX: And I would like to finish the answer and relate it to the amendment, if I may.

CHAIRMAN: I will ask the delegate to complete her statement, and if no one else will interrupt I think this would be in order.

DELEGATE DEVEREUX: The incident I would like to relate is the fact that one individual Senator, and this is just one of the many incidents, wished to have the President speak in his hometown enroute to another town. The President—

DELEGATE SUWA: Point of order.

DELEGATE DEVEREUX: —was not prepared to speak but—

DELEGATE SUWA: Mr. Chairman, point of order.

DELEGATE DEVEREUX: —in answer to—

DELEGATE SUWA: Mr. Chairman.

CHAIRMAN: Delegate Suwa.

DELEGATE SUWA: I love Lady Devereux there, but somehow, I know that ladies can change their minds. In spite of that, my point of order is this, that the wheeling and dealing was mentioned, maybe in this Hawaii State. Now she is talking about somewhere in the past years in the United States and this is not germane to our subject this evening.

DELEGATE DEVEREUX: Mr. Chairman, you gave me permission to finish my statement.

CHAIRMAN: I did. Please continue.

DELEGATE DEVEREUX: Thank you.

DELEGATE SUWA: Is that your ruling, Mr. Chairman?

CHAIRMAN: I think that the delegate should at least have an opportunity to finish her sentence just as a matter of common courtesies.

DELEGATE SUWA: That I know, Mr. Chairman, but it's not germane to the subject as far as wheeling and dealing. The subject has come up as wheeling and dealing in Hawaii.

CHAIRMAN: If you wish an interpretation from the Chair, I'll give it to you.

The question was whether there had been wheeling and dealing between an appointive authority and a confirming authority. And she is citing a case in history in which the example she related in her citation—

DELEGATE YOSHINAGA: Mr. Chairman, you forgot two words, "in Hawaii." If you will listen to what I am trying to—

CHAIRMAN: The Chair is talking to Delegate Suwa at the moment. She related this as an example—

DELEGATE YOSHINAGA: Yes, that's the reason why I said—

CHAIRMAN: That is correct.

DELEGATE YOSHINAGA: —in the State of Hawaii. There was wheeling and dealing going on.

DELEGATE GOEMANS: Mr. Chairman, if the delegate would like to challenge your ruling, then we can have a vote on it. But otherwise, we should have Delegate Devereux finish her remarks.

CHAIRMAN: That's right. Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, this particular Senator wished the President to speak in his hometown enroute to another town. Both men were traveling on the same train. In order to get the President to speak in his hometown, he had to give the vote to Justice Brandeis. Now I relate this to our present amendment. If the President, at that time way back in history, had had such a screening committee as we are proposing in this amendment or has been proposed in this amendment, the President would not have been subject to such pressures, would not have been—

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of order. Mr. Chairman.

CHAIRMAN: Please state your point of order.

DELEGATE KAUHANE: How can we truthfully say that the movie which Delegate Devereux reviewed on the screen is an approved and certified documented program?

DELEGATE DEVEREUX: Mr. Chairman, I would challenge anybody to question former President Kennedy's *Profiles in Courage* as not being documentary.

CHAIRMAN: Will you continue with your statement, please?

DELEGATE DEVEREUX: I wish to support the proposed amendment—

DELEGATE KAUHANE: Mr. Chairman, are you

ruling against my point of order?

DELEGATE DEVEREUX: —and Mr. Chairman, I have completed my statement.

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: The Chair will declare a brief recess for the reporter.

At 9:14 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:20 o'clock p.m.

CHAIRMAN: The subject before the committee is the amendment to the committee report on committee proposal, the amendment being the one marked No. 3 offered by Delegate Noguchi.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Is it appropriate at this time to ask one question?

CHAIRMAN: You may ask the question.

DELEGATE MIYAKE: This will decide how I vote on this amendment.

CHAIRMAN: I beg your pardon?

DELEGATE MIYAKE: The answer that I receive will determine how I will vote on this amendment. So I would like to have it answered.

The question is, as to the first paragraph of amendment V (3), which reads:

"The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts from"—

And these are the pertinent words,

"a list of qualified persons submitted by a commission."

The particular words I am interested in are "a list of qualified persons." Now, what does "a list of qualified persons" mean? Does it mean—since the word "persons" is in the plural, I gather it could be two names. Now, does this satisfy the constitutional provision if this is adopted by this Convention that the commission may report to the governor "a list of qualified persons," including just two names? If this is so, then I will vote against this amendment.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: Mr. Chairman, I'd like to

clarify that in that the list itself, like it reads, "a list of persons," we left at best as the previous being in the sentence, "as provided by law." And as far as "a list of persons," it could mean like you said, two or fifty, or twenty-five; whatever the commission might feel whatever is prescribed by law.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Yes.

DELEGATE MIYAKE: I don't believe the provision with the words "as provided by law" refers to the first sentence. I think the phrase, "as provided by law," is restricted and confined to the second paragraph as to the manner and the term of office of the commission composed of nine members.

CHAIRMAN: Delegate Noguchi.

DELEGATE NOGUCHI: Mr. Chairman, the intention here is, for the record, that the legislature would determine how large a list it really should be. If they deem that three names—

DELEGATE UEOKA: Mr. Chairman.

DELEGATE NOGUCHI: —are sufficient, or five names, or twenty-five, then we felt that it was best to leave it up to the legislature.

DELEGATE DEVEREUX: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, I am not satisfied with the answer.

DELEGATE DEVEREUX: Mr. Chairman, point of information. May I ask Delegate Steiner if he did not refer to the committee report—

DELEGATE MIYAKE: Mr. Chairman, do I still have the floor?

DELEGATE DEVEREUX: —in response to—

CHAIRMAN: Are you answering the question raised by Delegate Miyake?

DELEGATE DEVEREUX: I'm confused. Delegate Steiner in his opening remarks referred to the minority report which says, "at least five members."

DELEGATE MIYAKE: Mr. Chairman, I haven't yielded the floor yet.

CHAIRMAN: That's right.

DELEGATE MIYAKE: I'd like to have a satisfactory answer.

CHAIRMAN: Delegate Miyake has the floor.

DELEGATE MIYAKE: And I am sure this is in the minds of other delegates here tonight. Because I think the words, "as provided by law," are confined to the second paragraph as to the appointment and the tenure of the commission members. Maybe Delegate Steiner could answer the question—

CHAIRMAN: Delegate Steiner?

DELEGATE MIYAKE: —since he is an attorney.

DELEGATE STEINER: Mr. Chairman, in order to decide—

DELEGATE FASI: Mr. Chairman, point of information.

CHAIRMAN: Yes.

DELEGATE FASI: Do our rules provide that when the introducer of the amendment or resolution has finally completed his last talk that we would end debate and then take a vote?

I could understand Delegate Devereux was allowed to finish her question so that we could continue with the vote.

Now, Delegate Miyake has asked a very pertinent question, and I don't dispute that it should be answered. But my point is, now that we have opened the gates, are we going to continue asking questions and open debate again?

CHAIRMAN: No, we are not. However, the—

DELEGATE MIYAKE: Mr. Chairman, under the Convention rules debate is still open until you call for a vote on the motion.

CHAIRMAN: That is correct; and further—

DELEGATE MIYAKE: And under our Convention rules—

CHAIRMAN: —further—

DELEGATE MIYAKE: —we can even make an amendment. Under *Robert's Rules* which is contrary, different and varies from our Convention rules—under *Robert's Rules* you can even interrupt before the negative vote is taken.

CHAIRMAN: The Chair will rule that the important consideration is clarification of what the will of the body is. In order to do that, we have to be certain that there is understanding as to what the amendment is. For that purpose I would recognize Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, in order to assist in the clarification, can I call for a short recess?

CHAIRMAN: A short recess is called.

At 9:30 o'clock p.m., the Committee of the Whole

stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:33 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order?

When we recessed, Delegate Miyake had a question and Delegate Noguchi was preparing an answer for it. Do you have an answer?

DELEGATE NOGUCHI: Mr. Chairman, in order to meet the objections of Delegate Miyake, if there is no objection from the Chair, we would like to amend it in the fourth sentence after "persons," with the following words, "as provided by law and submitted by a commission."

DELEGATE MIYAKE: Thank you, Mr. Chairman.

CHAIRMAN: I think all the delegates should realize that the Chair is accepting a further amendment without printing. Is there anyone who insists that this be printed before we vote on the matter? If not, the matter to be voted upon is the amendment that we have been discussing to Section 3 of Article V, which amendment provides for a commission to provide a qualified list of persons to the governor for appointment to various judgeships.

DELEGATE MIYAKE: Mr. Chairman, could you read the first paragraph as amended orally, please?

CHAIRMAN: Yes. I will read the first paragraph.

"Section 3. The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts from a list of qualified persons as provided by law and submitted by a commission."

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: Can we have the roll call be given loud and clear so we don't have to interrupt the roll call? I envision the vote to be very close.

CHAIRMAN: Your point is very well taken. Will each delegate please use the microphone in voting and turn it off immediately thereafter.

The clerk will call the roll.

(Roll call having been ordered, the clerk proceeded to call the roll and the motion to amend the first sentence of Section 3, Article V of the Constitution (Amendment No. V (3)) failed to carry by a vote of 26 ayes, 51 noes and 5 excused, with Delegates Aduja, Akizaki, Alcon, Amano, Amaral, Ando, Andrade, Ansai, Ariyoshi, Bacon, Beppu, Burgess, Donald Ching,

Fernandes, Goemans, Hansen, Hara, Hasegawa, Hidalgo, Kamaka, Kato, Kauhane, Kawakami, Kunimura, Frank Loo, George Loo, Matsumoto, Medeiros, Menor, Minn, Mizuha, Morioka, Nakatani, Oda, Ozaki, Pyo, Saiki, Shiigi, Suwa, Taira, Takahashi, Takamine, Uechi, Ueoka, Ushijima, Wright, Yamamoto, Yoshinaga, Young, Mr. President and Chairman Bryan voting no; and Delegates Ajifu, Hung Wo Ching, Kaapu, Lum and Souza being excused.)

CHAIRMAN: The amendment has been lost.

DELEGATE DYER: Mr. Chairman, I request a brief recess.

CHAIRMAN: Request is granted.

At 9:40 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:45 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order?

The business before the committee is Section 3 of Article V as set forth in Committee Proposal No. 3.

The Chair will recognize Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, the other printed amendments to this particular section are withdrawn.

DELEGATE LALAKEA: Mr. Chairman.

CHAIRMAN: Delegate Lalakea.

DELEGATE LALAKEA: Mr. Chairman, I have a printed amendment numbered No. 1 which I would also like to withdraw.

CHAIRMAN: Thank you. Delegate Steiner?

DELEGATE STEINER: Mr. Chairman, I seek permission to withdraw Amendment V (2).

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: In view of the withdrawal of all of the amendments with reference to—

CHAIRMAN: Will you turn your microphone on, please? This is the first time we haven't been able to hear you.

DELEGATE MIZUHA: A very appropriate remark, Mr. Chairman. But you will recall if you look back that I didn't say a word with reference to Section 3 on Article V.

The next order of business, Mr. Chairman, in view of the withdrawal of all the amendments on the table, is the consideration of the second paragraph of Section 3,

Article V on qualifications.

The Judiciary Committee recommends no change with reference to this particular paragraph. If there are any amendments to be offered, they should be offered now.

CHAIRMAN: Will you proceed? I hear no request for amendment.

DELEGATE MIZUHA: The next paragraph to be considered by this Committee of the Whole is the third paragraph of Section 3, "Tenure; Compensation; Retirement; Removal."

Your judiciary committee has several amendments to offer with reference to this paragraph and it is appropriate that we consider them separately.

If this delegation will turn to page 2 of Committee Proposal No. 3, they will note the change in the first sentence of this paragraph.

Mr. Chairman, I move for the adoption of the following amendment of the third paragraph, first sentence of Section 3, to read as follows:

"The term of office of a justice shall be ten years and that of a judge of a circuit court shall be ten years."

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Second the motion.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, the delegates will note that this is a little bit verbose, but we left it in this fashion for the Style Committee to rearrange, inasmuch as previously circuit judges had only a term of six years and supreme court justices had a term of seven years.

DELEGATE GOEMANS: Mr. Chairman, could I ask for a brief recess, please?

CHAIRMAN: You may. A brief recess. Delegates may remain seated. It may be very helpful.

At 9:49 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:50 o'clock p.m.

CHAIRMAN: Committee of the Whole will please come to order?

Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I do not see any amendments on the table with reference to this particular committee proposal or this sentence of the committee proposal on Section 3, third paragraph. As I

will recall at this time, if there is anyone and if the Chair wishes to ask if anyone desires to speak on this subject; if not, I will call for a vote.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: In view of the fact that fifty-one members of this Convention have thought so highly of the manner of judicial appointment, I wonder if it might be appropriate to offer an oral amendment to sentence one to suggest lifetime terms for justices of the supreme court and the circuit court.

DELEGATE MIZUHA: Mr. Chairman, we have certain recognized rules of procedure. I don't know whether the delegate is being facetious or not. I believe if he wishes to amend the committee proposal, he should do so in the proper manner.

CHAIRMAN: I think your point is very well taken. Are there any amendments being offered to this section? If not, all those in favor of the—

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Yes, Delegate Kawasaki.

DELEGATE KAWASAKI: To be consistent in my position taken in the Judiciary Committee, that is to say I oppose lengthening the tenure of the judges to ten years from seven and six, I am rising to speak against the amendment, and in this case, for the maintenance of the status quo.

It's been said by the proponents who advocate this amendment that in order to attract qualified people to accept judgeships, that they had to lengthen the tenure. And I don't quite buy this argument because my experience in the last occasion where appointments were being considered, I think there was no lack of qualified people who were quite willing to accept positions to the judgeships on the basis of the present tenure, seven and six years; and on the basis of the present salary of \$27,000 and \$26,000 per year. So, I don't quite buy this argument that in order to attract good people we've got to make it ten years. It seems to me by providing this one single category of government employees if you will, the judges, that these people are put in an exalted position of having a tenure that is longer than the governor of Hawaii whose tenure is for four years, the cabinet officials—four years, and the members of the senate, four years, or the members of the house of representatives for that matter. The difference being that these people don't have election expenses to contend with. And yet, they are advocating tenure of ten years, primarily on the argument that this is the only way to attract qualified candidates. I just don't buy this argument and for this reason I speak against the amendment.

DELEGATE WRIGHT: Mr. Chairman.

CHAIRMAN: Delegate Wright.

DELEGATE WRIGHT: I rise in speaking for the amendment. I'll state briefly as this was discussed in the committee meeting as much as such that tenure was to give incentive to proposition a greater variety of lawyers, not per se, more qualified lawyers. Today money is not based on everyday expenditures. However, given to retirement and wants and desires, when a person or when a judge then retires at a future date, a lawyer seeking the position may not be looking at the compensation. However, again, at a good retirement with a comparable position a lawyer may want to acquire the experience, the prestige, as to the mere fact of compensation, and we felt that tenure would be an answer to that. It may be a preventive, as some have argued earlier of political pressure, and it may be and I think it will give greater independency.

Mr. Chairman, I would like to stress much that—one, that I don't think lawyers are compensated as they should be. So I feel that in giving tenure such as ten years, is sufficient and adequate for our judges in the State of Hawaii. Thank you.

CHAIRMAN: Thank you.

DELEGATE TAIRA: Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: May I ask a question for the record? Under this proposed tenure of ten years, what happens to the tenure of the present judges in the supreme court and the circuit courts?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, if I recall the committee deliberations correctly, when their terms expire they will be up for reappointment for a term of ten years. It does not mean that current justices and judges will have an automatic extension of their terms for four years. There is no saving clause in this particular amendment and I think it was the intent of the committee that there shouldn't be one.

CHAIRMAN: Thank you.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Does the chairman of the committee know the average age of appointment of the judges referred to in this particular case?

CHAIRMAN: I will have to ask him.

DELEGATE MIZUHA: Mr. Chairman, I may hazard a guess since I am personally familiar with the background of most of the judges and justices. I think the average age of the judges and justices is approximately 52 or 53 years of age.

CHAIRMAN: Thank you.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: I rise to support the committee's proposal on this amendment to extend the term of office of the supreme court justices and the judges of the circuit court.

I was one of those who voted for the commission plan, and the proponents of the commission plan talked about providing a sound judiciary system for our State of Hawaii. I think the same arguments hold true here. What this amendment will do is to provide the judges and justices ten years of tenure, whereby they will then qualify for retirement if they so desire at that time, and not request reappointment. By giving them this tenure of ten years, this will provide a climate and environment, and a propensity for sound judicial decisions without any consideration to whether he will be appointed or reappointed with a shorter term of office and not qualify for retirement. Ten years of tenure will provide him with retirement. Ten years of tenure will provide him with retirement therefore contributing to independent judicial decisions free of any consideration of whether he should be up for appointment, or reappointment, or not. This is sound and I ask all those who supported the commission plan to vote for this amendment.

CHAIRMAN: Thank you. Any other remarks? If not—

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I did not support the so-called commission plan but I will vote against this proposal. I listened to my colleague, my good friend, Delegate Kawasaki, in his excellent presentation to support the commission plan; the essence of his argument being that we needed qualified candidates for the judiciary. Now, his argument is that since he's been serving in the senate, we have had more than many qualified candidates under six- and seven-year terms. Therefore, ten-year terms are not necessary. But my position against this is somewhat different.

I am getting a little tired of this Convention spending so much time for lawyers who are prospective judges. I am a lawyer but I am not a prospective judge. There are more important things in the State of Hawaii than judiciary, judiciary, judiciary. We have great responsibilities in health. We have great responsibilities in education. We have great responsibilities in labor, industrial relations. We have many, many other more important things than judges. Judges are important but they are not the most important people in the State of Hawaii, nor in the United States or any place else in the world. And why do we have to give all this attention to judges? Especially supreme court judges and now we come down to circuit court judges. Why do we have to give them such guaranteed provisions in the Constitution of the State of Hawaii? Why do we have

to give them ten years tenure when teachers who are more important to the people of Hawaii, especially to the children, don't even get tenure. Why do we have to spend all this space, this time in the Constitution when we have grave problems down at Hale Mohalu, Kalaupapa and many other places. This is the worst kind of discrimination we can show to the people of Hawaii. This provision is a disgrace to this Convention. I hope I am the only one who votes against it.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I think it probably was an oversight but Delegate Yoshinaga forgot to add to his list the office of mayor of Honolulu. Thank you.

CHAIRMAN: All right. We will consider it to be added.

DELEGATE YOSHINAGA: Well, I have no objection to a Republican mayor.

CHAIRMAN: Are we ready to vote on this question? If there is no objection, I will call for a voice vote.

DELEGATE GOEMANS: Mr. Chairman, could you read the question?

CHAIRMAN: All those in favor of the amendments as proposed by the committee—

DELEGATE YOSHINAGA: Mr. Chairman, may I have a roll call vote? I may be wrong, there may be ten.

CHAIRMAN: Are there nine other delegates who request a roll call?

DELEGATE LUM: Roll call.

CHAIRMAN: Very well. Those voting "aye" will be voting in favor of the amendments shown in Committee Proposal No. 3; those voting "no" will be voting against the amendments.

Mr. Clerk will call the roll.

DELEGATE GOEMANS: Mr. Chairman, is this—we are voting "aye" on the amendments in the Section 3 entitled "Tenure; Compensation; Retirement"?

CHAIRMAN: We are voting "aye" on the two changes in the first sentence of that paragraph in the middle of page 2 of the committee proposal, which says, "The term of office of a justice of the supreme court shall be..." and the "seven" has been removed and "ten" has been placed in its stead, "years and that of a judge of a circuit court shall be..." and "six" has been removed and "ten" has been put in its stead, "...years."

Are there any other questions about what we're

voting on?

DELEGATE HARA: Yes, Mr. Chairman.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: Following that sentence, there is also an amendment being proposed here which is worded, "provided however, such compensation shall not be less than that presently in effect."

CHAIRMAN: That is not in the motion.

DELEGATE HARA: That is not in the motion?

CHAIRMAN: That is not in the motion. It's the first sentence only.

DELEGATE HARA: Thank you.

CHAIRMAN: Any other questions? The clerk will call the roll.

(Roll call having been ordered, the clerk proceeded to call the roll.)

DELEGATE BEPPU: Mr. Chairman, point of order.

CHAIRMAN: State your point of order.

DELEGATE BEPPU: May we have the roll call repeated? We couldn't hear about five names.

CHAIRMAN: Mr. Clerk, could you hear all of the names?

CLERK: Yes, I have—

CHAIRMAN: All right. Let's repeat the roll call and will the delegates be so kind as to speak clearly in the microphone and turn the microphone off when you're finished.

CLERK: Mr. Chairman, maybe I can announce the vote up to Delegate Burgess.

(At this time, the clerk announced the votes as previously given.)

DELEGATE FASI: Aduja voted "no."

CHAIRMAN: I believe it would be more accurate if we were to repeat the roll call.

(Roll call having been ordered, the clerk proceeded to call the roll.)

DELEGATE MIYAKE: Mr. Clerk, how did Delegate Fernandes vote?

CLERK: Delegate Fernandes, Mr. Chairman, voted "aye."

DELEGATE FERNANDES: Mr. Chairman, before the announcement, there is a delegate who wishes to

change his vote.

DELEGATE KAWAKAMI: I would like to change my vote from "no" to "aye."

CHAIRMAN: Delegate Kawakami changes his vote from "no" to "aye."

(The motion to adopt the first sentence of the third paragraph of Section 3, Article V of Committee Proposal No. 3 carried by a vote of 45 ayes, 31 noes and 6 excused; with Delegates Aduja, Alcon, Ando, Andrade, Beppu, Burgess, Donald Ching, Devereux, Doi, Hara, Hitch, Kamaka, Kato, Kawasaki, Kudo, Frank Loo, George Loo, Lum, Matsumoto, Medeiros, Menor, Minn, Morioka, Nakatani, Noguchi, Oda, Pyo, Shiigi, Yim, Yoshinaga and Young voting no; and Delegates Akizaki, Hung Wo Ching, Kaapu, Kageyama, Souza and Takahashi being excused.)

CHAIRMAN: The motion is carried.

Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, the next amendment that the committee proposes is in the second sentence of paragraph 3 of Section 3, of Article V. If you have the committee proposal before you, on page 2 on the paragraph on "Tenure; Compensation; Retirement; Removal"; in the second sentence there is underlined the amendment.

Mr. Chairman, I move for the adoption of this amendment which reads as follows:

"They shall receive for their services such compensation as may be prescribed by law, provided however, such compensation shall not be less than that presently in effect, and which shall not be diminished during their respective terms of office, unless by general law applying to all salaried officers of the State."

CHAIRMAN: Delegate Steiner is recognized.

DELEGATE STEINER: Second the motion.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: In explanation of this amendment, the members of the committee sought to set a minimum to the judges' and justices' salaries in the Constitution.

I believe this is what has been done with reference to the executive article, but in the executive article they had a specific salary amount in dollars. I believe this is a matter for the Style Committee to decide which form it shall be presented in the final draft to the people. If there is no discussion on this matter, perhaps we can proceed with the vote.

CHAIRMAN: Is there any discussion on this

amendment? If not, is there any question as to the content of the amendment? If not, all those in favor will say "aye"; opposed, "no." The ayes have it. The motion is carried.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, the next amendment refers to the last sentence of the third paragraph of Section 3, Article V. If you have the committee proposal before you, you will note that the last sentence has been deleted and the language in Section 4, "Retirement for Incapacity and Removal," there is an additional sentence inserted with several phrases as underlined in the committee proposal.

In order to expedite matters, Mr. Chairman, I am going to incorporate both of these amendments into one motion.

CHAIRMAN: I think that will be highly in order.

DELEGATE MIZUHA: Therefore, Mr. Chairman, I move for the adoption of Committee Proposal No. 3 which deletes the last sentence of Section 3, paragraph 3, and adds a new sentence in Section 4, or phrase of a new sentence, a long phrase, in Section 4 which is underlined in the committee proposal and adds several phrases with reference to "as provided by law" or "remove" in the last sentence.

I shall read in the entirety Section 4 as amended.

"Section 4. Whenever a commission or agency, authorized by law for such purpose, shall certify to the governor that any justice of the supreme court or judge of a circuit court appears to be so incapacitated as substantially to prevent him from performing his judicial duties or has acted in such a manner as to constitute wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, the governor shall appoint a board of three persons, as provided by law, to inquire into the circumstances and on their recommendation the governor shall retire or remove the justice or judge from office."

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Second the motion.

CHAIRMAN: Is there any further discussion?

DELEGATE MIZUHA: May I explain this amendment?

CHAIRMAN: You certainly may.

DELEGATE MIZUHA: The last sentence in the third paragraph of Section 3 was deleted by the committee because of the fact that it was the consensus of the members that the language therein which provided for removal from office of the judge or justice

upon the concurrence of two-thirds of the membership of each house of the legislature sitting in joint session was a cumbersome method and one that serves no practical purpose because it was almost an impossible situation for the members of the legislature to meet in joint session to remove a judge. However, the committee thought that they would instead incorporate in Section 4 a commission or an agency to be authorized by law not only to certify to the governor persons who are so incapacitated that they could not perform the judicial duties, or persons who had acted in a manner as to constitute wilful misconduct in office and other types of conduct which therefore are thought might be prejudicial to the administration of justice and who when certified must go before a board of three persons who shall recommend to the governor for his retirement or removal.

I wish to state at this time that this was concurred to by all of the members of our committee, that it was thoroughly discussed and it was felt that the legislature will come up with a practical commission or agency that will take care of the retirement for incapacity or removal of judges and would be in furtherance of the administration of justice in this State. I shall be happy to answer any question if it is possible for me to do so at this time. If I can't answer the question, I know Delegate Doi will.

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Mr. Chairman, I have two questions. As a non-attorney, I don't understand what the meaning of "wilful misconduct" is. I know what misconduct is, but I don't know what "wilful" means and then also "wilful and persistent failure."

DELEGATE MIZUHA: I refer it to Delegate Doi.

CHAIRMAN: Delegate Doi, would you be so kind?

DELEGATE DOI: Like Delegate Mizuha, I'm only human and I can only try. This language was taken from the California Constitution. Am I right, Delegate Dyer? And the word wilful would indicate that this is intentional, knowingly doing it, not just a misconduct that just happens. Rather it is something that occurs with the concurrence of the mind. I think I've said too much already.

CHAIRMAN: Thank you very much. Any other questions?

Delegate Dodge.

DELEGATE DODGE: Yes, Mr. Chairman. I would like to ask a question of the committee chairman or of the Chair, whether this commission or agency might have within its function the enforcement of the canons of judicial ethics if the legislature permits the supreme court to adopt those canons as its code of ethics.

CHAIRMAN: Delegate Mizuha, would you be so kind?

DELEGATE MIZUHA: You will recall, Mr. Chairman, that three of us stood up when we decided to separate the canons of ethics, the judicial canons of ethics and the professional canons of ethics for judges and justices. But the amendment had only three votes so I don't know where we're going with reference to the other provision in the Constitution as adopted by the members of this Convention. However, with reference to this proposal for retirement, for incapacity, and removal, I believe that the legislature will prescribe by law all of the machinery with reference to the removal or retirement of the judges.

Delegate Doi, that able and wise delegate from Hawaii, was a proponent of this amendment. I believe he can offer something more with reference to the real meaning and intent of this amendment. Delegate Doi, will you help out on this situation?

CHAIRMAN: Does that answer your question, Delegate Dodge?

DELEGATE DODGE: Yes, it does.

CHAIRMAN: Thank you very much.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, as a layman I'm a little bit confused with the intent of the amendment.

I note that the amendment reads for "in a manner as to constitute wilful misconduct in office," that the person can be removed. But at the end, almost at the end of the line it reads, "as provided by law, to inquire into the circumstances and on their recommendation the governor shall retire or remove the justice or judge from office." Does this mean to say that a judge's wilful misconduct is a sacred cow, and then upon the recommendation of the committee that the governor shall retire if given the opportunity to retire him and receive all the benefits that he is entitled to, or the governor may remove him. And to me this is creating such a confusion that I do not feel that, Mr. Chairman, if a man is charged for misconduct in office, and I'd like to pose a question to the committee, that if a man is charged with misconduct in office, that he shall be retired and provide him a sacred cow. Is this the intent of the committee to provide such protective measure for a misconduct judge?

CHAIRMAN: Delegate Kauhane, without commenting on the merit of the proposal, it's quite clear that the committee proposal says that the governor shall retire or remove. "May" has been stricken.

DELEGATE YOSHINAGA: Mr. Chairman.

DELEGATE KAUHANE: Well, that is the point I raise, Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I object to Delegate Kauhane raising any objections on this provision because he voted against me and he wanted to give them ten years. Now, if there's hidden secretly in this paragraph some provisions to extend the terms beyond ten years and to guarantee the pay beyond the one the person is receiving and besides that—

DELEGATE KAUHANE: I rise to a point of order, Mr. Chairman.

CHAIRMAN: Will you state your point of order, please?

Delegate Yoshinaga, while we're listening to his point of order, can you get another microphone. We can't hear you with that one.

DELEGATE YOSHINAGA: This is my second microphone.

CHAIRMAN: What is your point of order, Delegate Kauhane?

DELEGATE KAUHANE: I understand that the delegate is challenging my vote previously when I voted for tenure of office. Just because I voted for the tenure of office, I'm not entitled to raise an objection to this particular section or word in the—

CHAIRMAN: I wasn't sure because I couldn't hear him. Would you please continue with your business?

DELEGATE KAUHANE: I raise the point here that I do not feel, Mr. Chairman—I'd like to ask a question.

Is this permissive to the governor "shall" retire or remove when a man is found guilty of misconduct in office? Is the judge who is responsible of misconduct in office being given a protective shield because of this misconduct? The governor has two choices. Either to retire or remove—

DELEGATE DOI: Mr. Chairman, I don't think it's necessary to repeat a spiel at this time.

DELEGATE KAUHANE: —that he should be given this sacred protection.

DELEGATE DOI: I have heard the question, Mr. Chairman.

CHAIRMAN: Delegate Doi. For what purpose do you rise, Delegate Doi?

DELEGATE DOI: To answer the question.

CHAIRMAN: Let Delegate Kauhane finish the question, please.

DELEGATE DOI: I've heard it three or four times already.

DELEGATE KAUHANE: I'm happy to let Nelson Doi, Delegate Doi—

CHAIRMAN: Delegate Doi, will you answer the question, please?

DELEGATE DOI: Yes. The answer is yes, it's mandatory on the governor. The reason why we have "retire or remove" is so that justice can be tempered if removal is too harsh.

DELEGATE KAUHANE: And now I raise another question, Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Are we assuming the Constitution is going to protect the rights of salaried employees of other offices of the state government for misconduct in office, that they would receive all their retirement benefits? Are these considerations to be extended to other salaried officers of the state government?

CHAIRMAN: I'm afraid I can't answer your question but when those particular—

DELEGATE KAUHANE: Mr. Chairman, the committee can answer that question.

CHAIRMAN: One moment, please. When those particular items come up for consideration, this body can provide for them.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Since you cannot furnish the answer, I shall be very happy to furnish the answer. Now this goes back to the previous question in which I was soundly outvoted. This is preferential treatment. This is discrimination, Mr. Kauhane. I tried to point that out! It's ten years to judges. What do we give to the schoolteachers, to the health nurses, to the welfare workers. You give them nothing! Now, what I want to find out is this.

If I understood Delegate Doi correctly, in other words, this provision does have a small secret provision for judges, another preferential treatment then. "Retire" means these justices or judges can retire with full retirement compensation. Is that correct?

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Delegate Doi, if you choose to answer.

Mr. Chairman, as I understand this provision, of course, all of this will be spelled out in the law that is to be passed by the legislature. Now, first with reference to Brother Kauhane's remarks. It is my rather vague understanding of civil service laws that if you are eligible for retirement, that no matter what happens to you there is not any type of forfeiture of your retirement pay in the event that you are discharged from your job or fired from your job. You can get

retired. And I don't understand Delegate Yoshinaga's remarks that this is preferential treatment. Because if a man has earned his retirement under the law, I don't know of any single case at the present time—and perhaps I can be corrected because I believe the legislators are more familiar with the statutes than I am on civil service provisions—where forfeiture of retirement privileges is a condition of service if they are to be discharged or fired for misconduct in office.

If they can point it out to me and say that a person who, having worked for the government for thirty years, is eligible for retirement but he is fired from office for misconduct and he forfeits all his retirement privileges, I will say that this provision then may be unjust discrimination in behalf of judges and justices.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: We have sat here for hours pounding our heads telling us what superior people judges are and therefore we should enact special provisions for justices and judges, and we have taken a majority vote for doing so as compared to other government employees. And if such human beings in our society are so superior to other people in our society, in public service, then they should not receive the same treatment as other government employees. We expect them to be next to God according to the majority vote taken here. Now, if that is true, why should they receive retirement pay? Maybe they can get back their compensation but why should they receive the same retirement pay. Now, I just want one more question answered now. Is there anything else in here that has financial benefits for justices and judges?

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I can't think of any. I think the delegate is a bit confused. If this proposal is not accepted by the delegates of this Convention, then the present provisions for retirement and removal help the judges continue in office. In other words, they can't be removed. You will need the concurrence of two-thirds vote of the house and the senate before you can remove a judge. And that is the only provision for removal of a judge. And is that what Delegate Yoshinaga wants? All well and good! He's got it against the judges and justices so he can insist upon retaining the present proposal and give them a break.

DELEGATE FASI: Mr. Chairman.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: Mr. Chairman, Delegate Kauhane raised a very important point. Delegate Mizuha has made a flat statement that if this section is in fact discrimination in favor of judges, he would be willing to

eliminate it. I would like to know from the attorneys whether or not this section does favor judges and discriminates against other civil servants.

CHAIRMAN: Now, Delegate Fasi, I'm not sure that this is a—I think this is a matter for the delegates to decide. Perhaps some other member of the committee can give some background so the delegates can decide.

DELEGATE YOSHINAGA: Mr. Chairman, I object to that statement.

DELEGATE FASI: What I want to know, and the question hasn't been answered and Delegate Mizuha raises the point—

DELEGATE YOSHINAGA: Mr. Chairman, I think Delegate Fasi has a valid point. Because you say the delegates decide, doesn't necessarily mean that this language in the supreme court is finally being interpreted to mean what we think it means. The fact that Delegate Mizuha says "as provided by law" means that the legislature will decide, doesn't necessarily mean the same thing to me here.

CHAIRMAN: The Chair will declare a short recess in order to confer with the attorneys.

At 10:30 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:31 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Dodge.

DELEGATE DODGE: I am not sure that the others have found the section that I found, but yesterday we reconfirmed by not changing Article XIV, Section 2 which reads:

"Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired."

I think that adequately answers the questions raised by Delegates Kauhane and Yoshinaga.

DELEGATE KAUHANE: Mr. Chairman.

DELEGATE MIZUHA: Mr. Chairman, I am happy to report to my brother and sister delegates that Delegate Yoshinaga has withdrawn all objections of this amendment to the proposal.

DELEGATE YOSHINAGA: I object to that.

DELEGATE MIZUHA: You did say it.

CHAIRMAN: However, if there is no further discussion on this amendment, I believe we can—

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Although I accept the reading of Article XIV, Mr. Chairman, the thing that I am concerned about is when we use the words "wilful misconduct." Wilful misconduct could imply a multitude of sins. Some of it cause felonies. Wilful misconduct could mean a misdemeanor. Wilful misconduct, this is why I raise the question of the protective shield over judges upon retirement. That is the only reason why I feel that there shouldn't be a protective shield in the degree of wilful misconduct, in that degree a felony or a misdemeanor.

CHAIRMAN: Any opinions on this?

DELEGATE FRANK LOO: May I ask the Chairman a question?

CHAIRMAN: On this question? Proceed.

DELEGATE FRANK LOO: Looking at the wording here after passing the ten-year tenure, assuming that this particular section is involved after five years because you want to remove a judge; does that mean the term "shall retire," the governor has the privilege of either retiring or removing the judge? In other words, at that time, let's say after five years, would he be entitled—the governor, to say, "Okay, you retire and have ten years' pay."

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: My heart bleeds for my brother judges and justices who still sit on the supreme court and the circuit courts. "Shall retire" or "shall remove" is in the discretion of the governor. The governor, if he sees that this person, this judge, has enough service in government where he will qualify under the retirement laws, then he shall retire the person. Then he will withdraw retirement pay. But if this judge or justice does not qualify under the retirement laws, having served only six years or five years, then he shall remove that judge or justice. We cannot write everything into the Constitution for every possible situation that may arise, Mr. Chairman. And I suggest that the delegate who asked the question, being a legislator, will see to it that the legislature will pass a law that will explain all of these things to anyone who wants to raise a question.

CHAIRMAN: The Chair will suggest that the statement in the committee report will be sufficient for your purposes. It should be.

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE FRANK LOO: Mr. Chairman, according to what the delegate said, that the legislature can clarify

that issue; however, according to the wording here, the only place where the legislature can step in as far as this particular section is concerned, "as provided by law," underlined there, is regarding the appointment of the board of three persons, not regarding whether the governor "shall retire" or "remove." There is nothing saying "as provided by law" there. "As provided by law" is in the wrong place, if that's what the intention of the committee is.

CHAIRMAN: Delegate Loo, I think the answer was given that if the judge or justice was—Delegate Loo, if you were serious about your question, the answer was given that if the judge or justice was otherwise entitled to retirement, then the governor could retire him. If he was not otherwise entitled to retirement, the governor could not retire him.

DELEGATE FRANK LOO: Then that would be part of the meaning that was read into the words here. Is that right? In other words, the governor cannot improve on the situation after wilful misconduct of a judge by saying that even after five years, as the example I gave, he could retire and get the benefit of ten years, and then as an addition, that the people should remember that in the case of a judge, his multiplication is 3.5 of his pay instead of the regular employees, just two times. So there is a great difference here, we're already giving the judges a great advantage.

Mr. Chairman, will that be part of the record as far as the explanation is concerned.

CHAIRMAN: Thank you. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I shall instruct the administrator of the Judiciary Committee when he writes up the committee report for the Chairman of the Committee of the Whole, for a list of services of the honorable delegate to see that the language is clear and concise so that there will be no misinterpretation of the provisions of this section in Article V.

CHAIRMAN: Thank you very much.

DELEGATE MIZUHA: I call for the vote if there is no further discussion.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I am a member of this committee and I signed the committee report, but because of the question raised by my colleague, Delegate Kauhane, I'm a little bit disturbed here because—and I want to be sure when I vote on this, that I am doing the right thing. I'd like to have this question answered.

If, for example, a judge having served twelve years becomes so bad a judge as to have his conduct become prejudicial to the administration of justice, and the commission finds out that the facts confirm that such has been the case and the governor then decides to retire such a judge, does that judge get his retirement

compensation and all the other benefits?

DELEGATE MIZUHA: Mr. Chairman, I believe Delegate Dodge referred to a provision in the Constitution that we adopted without change yesterday or day before yesterday, which says that all the retirement benefits an employee of this State, whether a judge, or a typist, or a janitor, is a contractual benefit which cannot be taken away from him. So even if the judge commits murder after his twelve years, before he goes to trial, I think he would be an insane judge if he doesn't retire. So let the commission or agency say that he should be retired and have the governor retire him. So we are dealing with something that will never exist in my own personal opinion unless he's crazy.

CHAIRMAN: Does that answer your question, Delegate Taira?

DELEGATE TAIRA: Mr. Chairman, yes, it does. It does answer my question. I have another question.

Now, if our attorney general who is an appointed officer of this State, having served twelve years, and then commits a felony, and he is removed from office, does that attorney general also qualify for the—

DELEGATE MIZUHA: Yes, he does, Mr. Chairman.

CHAIRMAN: Delegate Mizuha, would you like to answer his question?

DELEGATE TAIRA: Mr. Chairman, I am just looking for an answer, yes or no, because I think—

DELEGATE MIZUHA: Yes, he does.

DELEGATE TAIRA: Thank you very much.

CHAIRMAN: Thank you. Any other—

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I have to stand to make a point because my understanding is a little different from some of the remarks that have been made. I understand the legislature to have authority here first in the creation of the agency that makes the initial certification. Next, in the creation of this board of three persons, and finally, it is my understanding that after the second board of three persons, if they recommend removal or retirement, it is my understanding that the governor then has an uncontrolled discretion as to which path to take. Either to retire the judge or to remove the judge. Now, I make these statements only because this is my understanding of what was intended and I likewise sat as a member of this committee.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Delegate Dyer is right.

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: I think some confusion is arising here because of the fact that "retirement" and "removal" are in the same section. Now, I would like to ask anyone who is an expert in the retirement law, but it was my understanding that to be retired for incapacity which is the same as disability, has a special significance. Once retirement pay is accordingly adjusted and perhaps some shortness of time of service may be compensated by the disability provision. Therefore, I am puzzled as to how it can be left with the governor if he is removing a judge for misconduct, to say on the contrary that he is retiring him for incapacity and thereby confer upon him a special benefit of disability retirement. Perhaps the attorneys can help us here. I don't pretend to be an expert on the retirement law but I know there is a provision for disability retirement.

DELEGATE YOSHINAGA: Mr. Chairman, may we have a short recess.

CHAIRMAN: Yes, we may. A short recess is declared.

At 10:44 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:55 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Mizuha is recognized.

DELEGATE MIZUHA: I yield to Delegate Rhoda Lewis.

CHAIRMAN: One moment, your microphone is not turned on, Jack.

DELEGATE MIZUHA: It's turned on but it's not working too good.

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: During the recess, we ascertained and I got the answer to my question; namely, that the board of trustees of the retirement system is the authority to determine whether there is actual disability entitling the person, as judge or any other person, to disability retirement. And I understand from the chairman of the committee that the intention is that this same procedure would apply in this case where the governor chose to call it a retirement or removal.

CHAIRMAN: Thank you very much.

DELEGATE MIZUHA: That is my understanding, Mr. Chairman. And I believe, Mr. Chairman, that the attorneys for the Convention have said that the language as prepared by the distinguished attorneys in my committee, members, attorneys in my committee, is satisfactory to them with all this explanation that will accompany the proposal.

CHAIRMAN: Thank you very much. Is there any further discussion on the motion before the house? Are you ready for the question? All those in favor of the motion to adopt the amendments made by the committee in Section 4 will say "aye," all those opposed, "no."

DELEGATE MIZUHA: Mr. Chairman, and the deletion of the last sentence of Section 3, paragraph 3.

CHAIRMAN: We will take that separately since we have already voted on this one. The motion is carried.

Will the committee chairman be kind enough to make a new motion for the deletion of the last sentence of paragraph 3?

DELEGATE MIZUHA: Mr. Chairman, I move for the deletion of the last sentence in Section 3, paragraph 3.

CHAIRMAN: Delegate Steiner is recognized.

DELEGATE STEINER: Second the motion.

CHAIRMAN: Is there any discussion?

DELEGATE GOEMANS: Question. What happens, Mr. Chairman, if the vote is "aye"?

CHAIRMAN: If the vote is "aye" the last sentence

of that paragraph in that section will be deleted.

DELEGATE KAMAKA: Mr. Chairman, what happens if the vote is "no"?

CHAIRMAN: If the vote is "no," the last sentence would remain.

DELEGATE KAMAKA: Then we'd be faced with a possible conflict?

CHAIRMAN: Well, there's no question that this would be a difficult situation.

All those in favor of the motion say "aye," opposed, "no." The motion is carried.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I move that this committee rise to report to the Convention that it has completed consideration of standing committee report of the judiciary, Committee Proposal No. 3, and that it has been adopted without any amendment. A written report will be filed later.

CHAIRMAN: Delegate Steiner.

DELEGATE STEINER: Second the motion.

CHAIRMAN: You have heard the motion and the second. All those in favor say "aye," opposed, "no." Motion is carried.

The Committee of the Whole adjourned at 11:01 o'clock p.m.

Debates in Committee of the Whole on **TAXATION AND FINANCE**

(Article VI)

Chairman: DELEGATE WILLIAM E. FERNANDES

Monday, September 9, 1968 • Morning Session

The Committee of the Whole was called to order at 9:25 o'clock a.m.

Delegate Fernandes presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. This morning we will be discussing Article VI pertaining to taxation and finance. We want to inform the delegates here that this is one of the important areas of our Constitution.

We have before us, as the president announced, Standing Committee Report No. 52 and Committee Proposal No. 9 and Committee Proposal Language A.

At this time, the Chair will recognize the chairman of the committee, Delegate Hitch.

DELEGATE HITCH: Your Committee on Taxation and Finance was not composed of constitutional lawyers. As a result, the committee reached decisions with respect to concept—and here I am referring primarily to Section 3 dealing with debt limits—and then we left it to the legal fraternity to put these concepts into proper language. What was attached to Committee Report 52 as Proposal No. 9, Section 3 in that Proposal No. 9 was drafted by bond counsel in New York and transmitted to us over the telephone, and presumably it reflected the concepts that the committee had agreed upon. In looking over it after we had received it, and we received it just in time to attach it to the committee report, we found that it did not, in fact, in all respects reflect exactly what the committee had decided upon, so the Convention attorneys worked the last few days in redrafting the legal language of Section 3, and that has been checked by telephone by bond counsel in New York. A number of changes have been made in what appeared as Section 3 of Proposal 9 and those are now incorporated in Section 3 of Proposal 9A. Otherwise, 9A makes no changes in 9 except to Sections 4 and 5, where we make changes in language.

This will be looked at again more thoroughly by our attorneys and if it would appear there must be some other slight modification in language, that will be called to your attention and be taken up when we come to second reading.

Today we're going to have to deal with concepts rather than with language as far as Section 3 is concerned.

CHAIRMAN: Delegate Hitch, the Chair will entertain a motion at this time from you so we can get it officially on the record.

DELEGATE HITCH: I move that we substitute Committee Proposal No. 9A for Committee Proposal No. 9.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: Mr. Chairman, I second the motion.

CHAIRMAN: There's a motion to substitute 9A for Committee Proposal No. 9. Is there any question from the delegates?

All in favor signify by saying "aye." Opposed, "no." Carried.

Delegate Hitch, could we start with Article VI? Is there any amendment to Section 1 and Section 2?

DELEGATE HITCH: Mr. Chairman, your committee recommends—well, let me back up and say this. There are eight sections in Article VI, and I would propose that we deal with them chronologically if that's satisfactory.

CHAIRMAN: Is there any objection? None, proceed.

DELEGATE HITCH: Section 1 reads, "The power of taxation shall never be surrendered, suspended or contracted away."

CHAIRMAN: Is there any objection in Section 1 remaining as it is? Any amendments at this time, Mr. Clerk?

CLERK: There are none, Mr. Chairman.

CHAIRMAN: Proceed to Section 2.

DELEGATE HITCH: Section 2 is explained in the committee report, and I'll read Section 2. "The land and other property belonging to citizens of the United States residing without the State shall never be taxed at a higher rate than the lands and other property belonging to residents thereof."

The Statehood Bill, House of Representatives Bill No. 49 that was pending in the Congress in the spring of 1950 had as a requirement for admission to statehood, that language of this sort be in the Constitution and it

was therefore put in the Constitution. Of course, House Bill No. 49 of the session of 1950 was never passed. The Admissions Act wasn't passed until, as you all know, the spring of 1959 and the Admissions Act had no reference to anything of this sort. Under the general protection clauses, equal protection clauses of the federal and state constitutions, there is no way that the State of Hawaii could, if it chose, tax the land and property of citizens of the United States residing without the State at a substantially higher rate than that of its citizens residing within the State. We have an opinion from the attorney general which is appended to the committee report, Exhibit No. 2, in which he explains that substantially equal taxation is required under the equal protection clauses of the federal and state constitutions and therefore we consider as he indicated, that this section is essentially redundant and therefore in cleaning up the Constitution, we would propose that it be eliminated.

CHAIRMAN: Is there any objection to the committee's action in eliminating Section 2?

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, have we had an opportunity to receive the opinion of the attorney general of the State of Hawaii as to the effect of this deletion and what impact it will have?

CHAIRMAN: Delegate Hitch?

DELEGATE HITCH: Yes, that is attached as Exhibit 2 to the Standing Committee Report No. 52. It's in the yellow pages immediately following the pink pages of Standing Committee Report No. 52, dated August 5th.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I found it, thank you.

CHAIRMAN: Is there any other objection as to the committee's recommendation that this section be deleted?

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: May we have a very short recess so those of us who are not members of the committee—

CHAIRMAN: Recess granted.

At 9:33 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:35 o'clock a.m.

CHAIRMAN: The Committee of the Whole will

come to order, please. Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I have read the document marked Exhibit 2. Reading it, I fully appreciate the opinion of the attorney general but I am somewhat hesitant as to whether this has been given a judicial hearing as a tax case before the supreme court of the State of Hawaii. I feel therefore, Mr. Chairman, that I would have to reserve my vote for the deletion. In doing this, Mr. Chairman, I feel that without a precise decision rendered by any court in the land, that I am not ready to sacrifice my birthright in the adoption of the opinion of the attorney general at this time.

CHAIRMAN: Is there any other objection to the committee's stand? Hearing none, let's go to the next section.

Members of the delegation, may I say that the Chair will permit the chairman of the committee, with your consent, over a ten-minute rule in trying to explain certain sections. Some of the delegates here are trying to raise the question now that when I moved on to the next section, we are not actually taking a vote, but because there was no objection except Delegate Kauhane, we are registering that. Unless there were other objections, and at that time, the Chair looking around, seeing nobody else made any objection, we moved to Section 3.

Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, I'd like the clerk to note my vote as "no" on that section.

CHAIRMAN: Delegate Devereux is registered to vote "no" with Delegate Kauhane.

The Chair would like to state that when the Chair puts in its question, if anybody feels that he has a point to object, please signify it so that the clerk can put your objection down. Delegate Sutton.

DELEGATE SUTTON: Would you please register a "no" for me on that.

CHAIRMAN: Thank you.

DELEGATE KAGEYAMA: Mr. Chairman, point of information. When the section is deleted from the Constitution in the ballot, would that section also be printed to be voted by the public as to delete it?

CHAIRMAN: Delegate Kageyama, the Chair is aware that this Convention here will discuss, towards the end of the Convention, as to what proposals will go in what area of the ballot, whether all together or individually. This will be discussed later on in the Convention.

DELEGATE KAGEYAMA: A later part. My vote in the Committee on Taxation and Finance on this provision was one of negative and therefore I would like to continue my negative vote in the official record of this Convention and therefore my vote will be "no" on

this proposal.

CHAIRMAN: The Chair noted that there seem to be negative votes coming in after the Chair will go back and have Delegate Hitch put it in a motion, so that we can officially log down the objections.

Delegate Hitch.

DELEGATE HITCH: I move that Section 2 of Article VI be deleted.

DELEGATE HARA: I second the motion.

CHAIRMAN: All in favor signify by standing. Opposed, by standing also. Will the clerk note the opposition? Said motion passes.

CHAIRMAN: Delegate Hitch, the Chair will recognize a motion as to Section 3.

DELEGATE HITCH: Mr. Chairman, with your permission, I would like to stay for one moment on the general subject matter of Section 2 which is limits of taxing authority. I request this because we had referred to us a number of proposals which would limit the State taxing authority by virtue of granting independent taxing authority to the counties or would tend to limit the State taxing authority by reserving to the counties all taxing powers not used by the State. So your committee took up this subject for discussion and our conclusions you will find at the bottom of page 2 of Committee Report No. 52. I'll read it: "The committee voted overwhelmingly to retain full taxing power to the legislature, subject, of course, to the right of the legislature to delegate any such power to the political subdivisions. Some of the reasons for this decision were: efficiency, integrated statewide tax policy, simplicity and uniformity of taxation. Concern was expressed about the effect of substantial disparities between the counties"—that's plural—"the counties' tax bases on their relative abilities to raise tax revenues and also the possibility of proliferation of local taxes such as has occurred in some states which have granted broad taxing powers to political subdivisions." This is not a matter that requires a vote. It is simply an expression of the committee's opinion with respect to this subject.

CHAIRMAN: This is pertaining to Section 2? Section 3, excuse me.

DELEGATE HITCH: This subject matter comes up basically as a part of the subject matter of Section 2, Section 2 having limited the State taxing authority. Actually this matter is taken care of in Section 3 of Article VII in the local government section. We are simply explaining why we filed the bills that were referred to us on this subject.

CHAIRMAN: Thank you. Would you proceed now to—is there any question to Delegate Hitch on this committee action?

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: In reference to, I think, Mr. Chairman, Delegate Hitch was referring probably to Section 1 and the committee was not unanimous. I was the only one voting against the—Section 1, "the power of taxation shall not be surrendered, suspended or contracted away." I wanted the residual power to the county. So may the record show that I was against the committee's recommendation.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Now we get to Section 3 on debt limitations. I would like to preface my remarks on this subject by calling to the attention of the delegates that the issue of debt limits on states is handled quite differently around the country, but basically there are four patterns. There are eight or nine states that have no debt limits on states. Some have legislated administratively-accepted debt limits but no constitutional debt limits. These are eight or nine states. Except for Hawaii and now Pennsylvania, the other states are divided about fifty-fifty between in effect permitting the states to incur no indebtedness generally above some very minimal dollar figure that's been out of date for the last half century, or are permitting the states to incur unlimited indebtedness but only on the basis of referendum to the voters on each bond issue that's being issued. Now, Hawaii, Puerto Rico, and more recently Pennsylvania, have adopted a different pattern, that of relating the state's debt ceiling to some moving economic base. The economic base that we have used in the past has been the net assessed values for tax purposes of real property, but the state debt limit is fifteen percent of that.

Puerto Rico, some years ago, adopted a moving base of the general fund revenues of Puerto Rico, and said that debt could be whatever was issued so long as debt service charges were not greater than fifteen percent of the annual revenues of the general fund. Last spring, Pennsylvania changed its constitution and based its debt on the moving base of general fund revenues of the state and specified that the total outstanding indebtedness could not be greater than 1.75 times the average of the last five years general fund revenues.

Now the situation with respect to county and city, and metropolitan, and school district, and so on, debt limits around the country are almost universally related to real property. Some units of local government are limited to two percent of real property assessed values, some to ten percent. Some to fifteen percent, some to twenty percent. And I think that the reason that the Organic Act provided that we base our state debt on a fraction of real property values was that at that time the Territory received most of its income from real property and the Constitutional Convention of 1950 continued this practice.

Let me rather, as briefly as I can, explain with regard to Section 3 what we are not proposing to change and why, and then let me move to what we are proposing to change in Section 3 and why. I think this

may be an adequate introduction on the subject, Mr. Chairman.

First, we are not proposing to change the effective current requirement that state obligation bonds have to be passed by a two-thirds vote of both houses of the legislature. We feel that this requirement is some assurance to the municipal bond investor. We feel that this requirement helps to eliminate the passage of unsound projects. For these two reasons we do not propose a change in that.

We do not propose a change in the present practice required by the Constitution of counting authorized or unissued debt for non-self-sustaining undertakings like schools, parks, etc., against the debt limit. The reasons we think it's desirable to continue to count this type of authorized and unissued debt against the debt limit are two in number. It tends to preserve at all times a sizable margin of debt because outstanding, authorized unissued debt could always be cancelled for some more urgent project that came along. And it must be presumed that this authorized and unissued debt will in fact be issued and will in fact be counted and we might as well count it when it's authorized rather than waiting until it has been issued. We continue, third, to keep revenue bonds and improvement district bonds outside of the debt ceiling. They are secured solely by the revenues of the undertaking; they are not a charge against general funds. The full faith and credit of the State is not pledged to support them. Therefore, they should be outside the ceiling. We propose to retain all of the emergency provisions that are contained in the third paragraph of Section 3 as it relates to the State, and in the fifth paragraph of Section 3 as it relates to the county. We propose to keep the restrictions on the form on which debt can be issued such as the serial bonds—general obligation debt, serial bonds, repayment starting within at least five years of issuance, no bond being of a maturity greater than thirty-five years and so on. Those specific provisions are contained in the sixth paragraph of Section 3.

We propose, of course, to keep the general obligation charges specified in Section 3 as a first charge, debt charges as a first charge against the revenues of the State because this is absolutely essential to insure the sale of bonds. We propose to continue the procedures as relate to the counties, namely passage of bond issues by the county governing bodies by majority vote, and not counting authorized but unissued debt against the county debt ceiling because these provisions have worked well in the past and we see no reason for changing them.

Now, let me turn to a brief explanation as to the changes that we are proposing and why we are proposing these changes. First, we propose to eliminate the \$60,000,000 limit on debt with the State and in fact not to have any fixed dollar ceiling simply because any fixed dollar ceiling gets out-of-date very rapidly. There is simply no argument for any provision of that sort. We propose, and this is a major item, we propose to shift the base for calculating the debt ceiling for the State from the current base of real property values to

general fund revenues with general fund revenues being the revenues of the general fund minus federal funds which are in the general fund, federal grants-in-aid, and minus reimbursements to the general fund from other units of government for servicing debt, general obligation debt that has been issued on behalf of those other activities of government, because neither of these are available to service the debt that would be the general obligation debt that would be issued based upon some multiple of the general fund. This is following the procedures that are getting more and more common. What Puerto Rico started about 1960 in relating debt limits to general fund revenues as I mentioned was a constitutional amendment in Pennsylvania this spring. The New York Constitution provided for something similar to this at least for this concept of relating New York State debt limits to the general funds of the state. It is an effort to relate the debt that the state can incur directly to a measure of the state's ability to incur that and to pay it. Relating to real property is only an indirect relationship.

The third change that we are proposing is to exclude from the ceiling general obligation bonds that are demonstrably self-liquidating, both issue-general obligation bonds and authorized but unissued-general obligation bonds. First because these bonds, being by definition self-liquidating, carrying their own charges, are not a charge against the general fund; and second, to encourage the issuance of revenue bonds instead of general obligation bonds. What we consider will be a very sizable saving to the State in interest. Under the present Constitution, in order to preserve a debt margin for general government functions, it has been the practice of the legislature to authorize revenue bonds for those revenue-producing activities on behalf of which revenue bonds can be issued. We have currently outstanding some \$32,000,000 of revenue bonds and there are now authorized but unissued \$111,000,000 of revenue bonds. Now in most municipal bond markets at most times, a revenue bond is going to sell for probably one whole percent of interest higher than a general obligation bond.

Last September, the State of Hawaii issued both general obligation bonds and revenue bonds and the general obligation bonds sold for 4.1 percent and the revenue bonds sold for 5.1 percent. On a \$10,000,000 bond issue over a life of twenty years, the total cost of one percentage point of interest is about a million dollars, so that on about \$100,000,000 issue the total cost could be about \$10,000,000 if you issued revenue bonds instead of general obligation bonds. So we want to make this encouragement to issue general obligation bonds that are self-liquidating rather than issuing revenue bonds which by definition have to be self-liquidating.

We are, fourth, proposing to redefine revenue bonds both as to who can be the issuer and what can be security against the bond. Under the present Constitution, the only body that can issue a revenue bond is either a public corporation or a public enterprise, so that for example, the Highways Division of the State could not issue a revenue bond.

Furthermore, under the present Constitution as interpreted by the supreme court, user taxes cannot serve as security for revenue bonds. The only security can be the revenues from fees and tariffs of that undertaking. So while with one hand we are encouraging the issuance of general obligation bonds instead of revenue bonds, we realize that at times in the future it may be desirable to issue revenue bonds and we want to have a little greater freedom than exists in the present Constitution to issue them.

A fifth change that we are proposing is to provide slightly more flexibility in retirement installments. We are proposing that the State would have the freedom that it now has under the Constitution to have retirement installments in substantially equal amounts that's related to the principal, but we would add to that the proviso that the State, if it shows in terms of its debt management policy could provide for the retirement of bonds in substantially equal installments of both principal and interest. (Several days ago there was distributed to the delegates a document which I thought might be helpful, called the *Glossary of Terms* with respect to debt taxation and finance, and after the glossary of terms there were appended three charts, and the last chart explains visually what I have been explaining verbally.) The result of the current practice is a declining total annual payment of debt service charges because principal payments remain constant, equal, and interest payments decline, whereas what we're proposing in addition, is a possibility of having constant total payments over the life of the retirement of the bond.

The sixth change that we are proposing is to take off the limit on the counties to incur debt in any one year. The present Constitution specifies that county debt cannot be greater than ten percent of net assessed values of real property for tax purposes and that in no one year can a county issue debt in excess of two percent of that total. The net assessed values of real property for tax purposes on the neighbor islands are relatively low. Two percent of that is a very, very, very small dollar figure that might seriously interfere with a necessary major capital improvement project on one of the neighbor islands so we are proposing the elimination of this one-year limit of two percent.

Now, finally, and this is the last change we are proposing, is to increase debt limits for both the State and the counties. The thinking behind the committee's decision to increase debt limits for the State was that there very well may be in the future very sizable capital needs which we do not now foresee and which we must be able to meet, and that the current fifteen percent of real property assessed values or the equivalent in terms of a multiple of general fund revenues, might not be enough to meet the unforeseen future needs, and therefore we should have a somewhat greater margin. Our decision to increase the debt limit for the counties was based primarily, in fact I think I can say for the committee, exclusively upon the problems that may be faced by the neighbor island counties where as I mentioned earlier, real property values are so inconsequential that the current ten percent of real property values which constitutes the debt ceiling is in

fact a very low dollar ceiling. We have had statements from the finance officials of the City and County of Honolulu that the City and County of Honolulu never intends to go up to its present ten percent ceiling, let alone a fifteen percent ceiling. But we can visualize the need of the neighbor island counties, perhaps, to go above the present ten percent ceiling so we are proposing a fifteen percent ceiling for the counties.

What we are proposing for the State, after long and arduous debate in the committee, and after voting and reconsidering and voting again, is a ceiling that would be expressed as follows: the state debt ceiling on general obligation bonds countable against the debt ceiling—and as I explained earlier those that are demonstrably self-financing would not be counted against the debt ceiling—would be set at three and a half times the average, the general fund revenues of the State in the preceding three fiscal years but eliminating from those general fund revenues federal funds and debt reimbursement funds.

The first area of debate in this business was with respect to the length of the base period. Puerto Rico has a two-year base period. New York's Constitution proposed a two-year base period. Pennsylvania has a five-year base period. There are lots of good arguments for a short base period and there are lots of good arguments for a long base period. The primary argument for a short base period is that it is a more up-to-date base period that's more nearly related to the current economic situation of the State. The primary argument for a long base period is to smooth out sizable changes in the debt ceiling as you have sizable changes in general fund revenues from one year to the next, sizably up in the event of a high level of prosperity and very possibly down—and this is what worries the people who wanted a longer base period—very possibly down in the event of a recession. So we simply compromised on a three-year base period and I strongly recommend that to you.

The final area of debate on this subject related to the multiple. Should the multiple be two times average general fund revenues of the last three years, or two and a half, or three, or three and a half, or four, or four and a half, or five? Let me, for background, give you some figures. If we were to take the current debt ceiling of fifteen percent of net assessed real property valuations for tax purposes, we would come up for the spring of 1969, when the legislature will meet again, with an estimated figure of 589 million dollars. If we were to adjust that ceiling to our new proposed formula ceiling that bases the ceiling on general fund revenues, but at the same time take out of the ceiling self-financing general obligation bonds, we would take out of that ceiling 151 million, an estimated—this can't be a tight figure but an estimated—151 million dollars of self-liquidating general obligation bonds. So that putting the old debt ceiling formula related to real property, on to a base that would be comparable to the formula we are proposing with self-liquidating general bonds out of the ceiling, we would have a ceiling of \$438,000,000, taking 151 off of 589. The average general fund revenues as I have been referring to, over

the last three years as of the spring of 1969—we're talking about the next legislative session—would be \$220,000,000. So that a multiple of two would give a debt ceiling of \$440,000,000 which is almost identical with what the adjusted present debt ceiling would be. A multiple of two and a half would be the equivalent on an adjusted basis of a real property ceiling of nineteen percent instead of fifteen percent; a multiple of three would be equivalent to a real property ceiling of twenty-three percent instead of fifteen percent; a multiple of three and a half would be equivalent to a real property ceiling of twenty-six percent; and a multiple of four would be the equivalent of a real property ceiling of thirty percent. As I say, the committee debated this subject to which there is no ultimate, absolute, final ordained answer—debated this subject at great length. I must confess that I felt that I was going rather as far up as possible in recommending a multiple of three. The committee decided on a multiple of four by a rather considerable majority, and then decided later to reconsider and ended up with the multiple that is in the committee report of three and a half. With those background remarks, Mr. Chairman, I hope I have explained what we don't plan to change in Section 3 and why, what we do propose to change in Section 3 and why, and at this point I would be happy to field any questions or move on to a consideration—

CHAIRMAN: Delegate Hitch, the Chair at this time would entertain a motion to accept the committee's proposal and then the Chair will recognize a second. And the Chair then will declare a recess because attention has been called to the Chair that there are four amendments that are being prepared now by Delegate Rhoda Lewis pertaining to this section. So we may follow that procedure.

DELEGATE HITCH: I move that Standing Committee Report No. 52, the proposals with respect to Section 3—

CHAIRMAN: To Section 3 only as submitted in 9A.

DELEGATE HITCH: —Standing Committee Report No. 52 be accepted.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: I second the motion, Mr. Chairman.

CHAIRMAN: There is a motion. The Chair at this time will call a recess subject to the call of the Chair.

At 10:11 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:30 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

At this time, the Chair is going to recognize any

delegate wishing to ask questions of the committee chairman, and after that we will take up the amendments.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I would like to ask—

CHAIRMAN: State your question.

DELEGATE SUTTON: My question concerns revenue bonds and it concerns a particular situation which I will give the example of. Supposing that the revenue for a particular year, fiscal year, was \$10,000,000. Assume that the operating costs were \$8,000,000 and that the debt service requirements were \$3,000,000. Now eight and three is eleven and you would have a deficit of one million for that particular year. Would these particular revenue bonds be excluded from the debt limit to the extent that the total of the operating costs and the debt service charges exceeded the revenue?

CHAIRMAN: Delegate Hitch, I think this is the problem that was put on the board. Would you proceed?

DELEGATE HITCH: I'll have to change that question slightly in order to answer it. If you're talking about revenue bonds, they are outside the debt limit and in that case the revenue bond would probably be in default to a certain extent. What we're talking about are general obligation bonds issued for revenue-producing activities or undertakings. So can I modify your question to that extent?

DELEGATE SUTTON: That is correct.

DELEGATE HITCH: These are general obligation bonds issued on behalf of an undertaking that has either user revenues or taxes. User revenues would be like airport landing fees, user taxes was 10 million, all the operating and maintenance and repair costs and so on are 8 million, debt service charge is 3 million, that means that putting debt service charge at the bottom of the line, you can't cover it all.

DELEGATE SUTTON: That's right.

DELEGATE HITCH: This would mean that you could cover two million of the three million in your example. You could cover two-thirds of the debt service charges. Under our proposal, two-thirds of the debt outstanding on the general obligation debt outstanding on behalf of that undertaking, would be outside the debt ceiling and one-third would be counted against the debt ceiling. You will notice that at the top of page 4 of Committee Report No. 52 we propose that issued and outstanding general obligation debt for an undertaking supported by user revenues and/or user taxes shall be excluded from the debt limits to the extent that—and you can underline those words—to the

extent that after operating maintenance and other related costs, net user revenues and/or user taxes make the undertaking self-sustaining so that all debt service charges will be met. Now in this case you are meeting only two-thirds, and therefore to that extent two-thirds is out and one-third is in.

DELEGATE SUTTON: Thank you very much.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, I have a question.

CHAIRMAN: State your question.

DELEGATE ADUJA: I would like to know from the chairman where does he place the general excise tax insofar as the revenues are concerned.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: You ask where our general excise taxes as far as revenues are concerned?

DELEGATE ADUJA: Yes, sir.

DELEGATE HITCH: Well, my understanding is that general excise taxes go into the general fund. Therefore, they constitute a major portion of the general fund revenues and they are in the general fund, and they and the other taxes and income that goes into the general fund which serves as the base on which we would set the debt limit.

DELEGATE ADUJA: No, I probably was not understood. What I am trying to gather from you, Mr. Hitch, Mr. Chairman—

CHAIRMAN: Proceed.

DELEGATE ADUJA: —under the revenue bonds, does the general excise tax be able to come under revenues as mentioned in the revenue bonds on page 9A; first, 9A, the first page?

DELEGATE HITCH: Revenue bonds by definition stand on their own feet in terms of being supported by the revenues of that undertaking, and there is no faith and credit of the state or the county government standing behind a revenue bond. A revenue bond is such—is one that is supported solely by the revenues of the activity—our only change is to propose that revenues be redefined to include user revenues and also user taxes but not general taxes like the general excise tax.

DELEGATE ADUJA: That's what I wanted to know. I was afraid that revenues would include general excise tax.

DELEGATE HITCH: No, indeed.

DELEGATE ADUJA: But it does not.

DELEGATE HITCH: No.

DELEGATE ADUJA: Thank you. Another question which appears serious now but which you have already answered, perhaps I am not yet clear in my mind, will you explain once more why the committee selected three and a half rather than three or four. The reason for my concern is that most of us who are not totally effective in our computation of figures over billions of dollars or millions in this case, find that multiplying by another half percent will make it very difficult for our little minds.

CHAIRMAN: Delegate Hitch, would you want to yield that to Delegate Kamaka?

DELEGATE HITCH: I'll yield it to Stanley Hara or Hiram Kamaka.

CHAIRMAN: Delegate Hara is recognized.

DELEGATE HARA: Mr. Chairman, regarding the question as to why is it three and a half or why not four, or why not three, the multiplier based on the average number of years as we have decided here in the committee which is three, is an area where the committee members did have a difficult time in finally reaching an agreement. We came from two extreme ends. We started up from a two points by five years, or two and a half times five, and on the other extreme the group position was no ceiling. The final conclusion reached here was dependent on what your philosophy was in terms of government fiscal policy.

Do you want to see government having the tools and equipment, the latitude to make judgment to cope with whatever demands and needs they need in the future? If so, there should be no ceiling for the reason that, in the event that there is an undue demand made on the government in terms of bond requirements, that we have the flexibility in floating bonds to meet these needs. The other hand was well, we should have a ceiling simply because we want to erase the air of uncertainty on the part of the public giving an unlimited free hand in the area of the debt ceiling; the public then may come about and say, "Well, we don't know, we're afraid." And to erase this air of uncertainty the compromise position of the game, setting a ceiling, came about.

CHAIRMAN: Delegate Hara, face the Chair, please.

DELEGATE HARA: And in determining the point 3.5, I for one, I went to the state planning office. I asked them what was the past departmental request that was made of the department in the area of the capital improvement budget. At that point, I felt this was an area where it could give me some basis to reach a conclusion that I needed. What percentage point we are going to seek. I learned at that time that the departmental request over the last three years averaged somewhere around 75 million dollars. I also noticed that last year's demand was up to 125 million dollars. This prompted me to work around an average and this 3.5 times the base year of three gives us right now an annual incremental latitude in debt limits of 80 million dollars average, and this is the figure I felt ought to be

considered at this time for the next ten years with approximately 800-plus million dollars of debt margin I felt was the kind of project we are discussing right now of the next ten years for the State. We have this latitude and flexibility to meet this problem. For that reason, we decided on 3.5.

DELEGATE ADUJA: Would you get the same result much closer or better by putting it at four percent?

DELEGATE HARA: Yes, the question was again palatability, that is, the proposal to the public. This was the question, and the chairman's recommendation of three, the committee's desire of four, the final recommendation here to this body, and I urge you all to support this position of three and a half times the base year computing of a three-year period. Thank you.

DELEGATE FRANK LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo, Frank Loo.

DELEGATE FRANK LOO: Will the chairman yield to a question?

CHAIRMAN: State your question.

DELEGATE FRANK LOO: The question is this. On page 6 of this report, the multiplier just mentioned of three and a half times would increase the present debt ceiling from fifteen percent to around twenty-five percent if we use the real property base. But we are using three and a half percent of the general income of the State. Now on page 2 at the top, it says the committee considered the attitude that the investment community, the bond rating agency and so forth. The question is this, Mr. Chairman, Mr. Chairman of the committee, is that in the past the legislature has always had the problem of, as they approach the fifteen percent mark, they were concerned about the borrowing power of the State and also the amount of interest that we were charged once we move beyond or close to the fifteen percent. Now instead of fifteen percent, we're going to twenty-five percent. I certainly approve of the flexibility—

CHAIRMAN: State your question, please.

DELEGATE FRANK LOO: What has been the thinking or what is the thinking of the investment community and the bond rating agencies if we have this flexibility up to the twenty-five percent limit?

CHAIRMAN: Delegate Hitch, you understood the question?

DELEGATE HITCH: Yes, sir. I understand the question.

CHAIRMAN: Proceed.

DELEGATE HITCH: The news that we got from the financial community—and we contacted the institutions I mentioned in the paragraph at the top of

page 2, Bank of America, First National, City Bank, Morgan and Guaranty Trust, Dunn and Bradstreet, Moody's Investment Services, Standard and Poors, and the State Bond Counsel—was quite diverse. We had for example an impassioned plea, and I use that word advisedly, from Wade Smith who is chief municipal bond analyst for Dunn and Bradstreet arguing against any debt ceiling. On the other extreme, we got very conservative views. I must say that as a result of all of this investigation of view points, we certainly came—I had nothing approaching unanimity. Let me call your attention, though, in this respect, to what I consider an extremely important paragraph in the committee's report and that paragraph is at the bottom of page 3. We say here, "In making its recommendations, the committee wants it to be clearly understood that a constitutional debt ceiling is not a substitute for good debt policy and effective debt management. It is merely a statement of the upper legal limit under which appropriate borrowing policies may be formulated. The maintenance of a sound financial posture of the state and of the counties requires that policy-makers give due consideration to a proper balance of cash and bond financing in implementing the capital improvement program and that, in the future as in the past, an 'administrative' debt ceiling safely below the constitutional debt ceiling be established." In other words, this is not an open invitation to go up to the debt ceiling. If it were, I would argue for a moment or two.

CHAIRMAN: Thank you, Delegate Hitch. Are there any other—Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: May I ask the chairman if he would yield to a question?

CHAIRMAN: State your question.

DELEGATE RHODA LEWIS: The question concerns the statement in the committee report as to the present authority to issue revenue bonds. I felt doubtful that this was the case. It seems to me that at the present time under the present Constitution, a public enterprise as well as a public corporation can issue a revenue bond and the Harbor Division would be an example. It is not a public corporation and has many revenue bonds outstanding. I wondered if we could clarify that for the record.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Yes. The present Constitution provides that revenue bonds may be issued by public corporations or public enterprises or any public enterprises, I am not sure which. In our committee report on the top of page 5 we made the statement, "However, our present Constitution limits revenue bonds to public corporations." I would suggest that for the record there be added, "and public enterprises" after the words "public corporations." Is that satisfactory?

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: May I ask one more question, Mr. Chairman?

CHAIRMAN: State your question.

DELEGATE RHODA LEWIS: I think it would be very helpful if a part of the record of this Committee of the Whole, if we had some statistics showing the present outstanding bonds, the present authorized bonds, the margin which remains at the present time and matters of that kind. I had occasion to refer to the Committee of the Whole debate of the 1950 Convention in connection with this interpretation of the debt limit provisions, and I found those statistics were quite illuminating. It is hard to follow the debate unless you knew what figures they had in mind which they were all assuming were known.

I wonder if it would be possible for us to have something of that kind made available to us?

CHAIRMAN: Delegate Rhoda Lewis, the Chair has asked that Delegate Hitch prepare some tables and I have been informed that this has been completed now.

DELEGATE HITCH: That's right.

CHAIRMAN: So with this in mind, could we take a very short recess to have this circulated.

At 10:48 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:52 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order.

Delegate Hitch is recognized for the purpose of discussing the circulated material.

DELEGATE HITCH: Thank you, Mr. Chairman. There has been during recess distributed to you three sheets of figures and I think this would probably provide the information that Delegate Lewis has asked for.

CHAIRMAN: Proceed.

DELEGATE HITCH: Let me just take a minute and go through and show what we have on these three tables. The first table shows the debt status of the State of Hawaii, this is not the counties, as of the first of July of this year. There was at that time 261 million dollars of general obligation bonds outstanding. Now, to the best of our ability working with the Department of Budget and Finance to make this estimate, we would estimate that 113 million dollars worth of these are self-liquidating and therefore under the committee proposal would be outside the debt ceiling. Then of the authorized but unissued bonds there were 251 million dollars, of which we estimate about 38 million would be self-liquidating and therefore not accountable against the debt ceiling, so that of the total authorized and unissued plus issued, general obligation funds of the State amounting to 512 million dollars, 361 under our proposal would count against the ceiling and 151 would

not. In addition, there were—there are outstanding 32 million of revenue bonds and there are authorized but unissued another 111 million of revenue bonds for a total of 143 million.

Now, turn to page 2. Here is a comparison of what the debt ceiling would be under the present constitutional provision of 15 percent of real property and under the committee proposal of three and a half times the three-year general fund revenues. Now bear in mind that under the present provisions, all general obligation bonds count against the fifteen percent ceiling and under the committee proposal that 151 million dollars worth of bonds that you saw on the first page that was self-sustaining, would not count against the ceiling. But this shows how the ceilings have moved in the past historically, and for a projection of a few years, these projections coming from the Department of Budget and Finance. And you see the percentage increase in the real property base in contrast or in comparison to the percentage increase annually in the general fund revenue base. And you will find that the real property base was down low in '68, '69; that is, there was a relatively slight increase because of an increase in home exemptions and you find a very sizable increase in the general fund revenue base in fiscal year '68, '69 and '70 because of the increase in the general excise tax from three and a half to four percent.

In summation, for the five-year period at the bottom, fiscal '64-'69, the real property base increased sixty percent and the revenue base would have increased seventy-two percent. I think it's anybody's guess as to which base would increase faster in the future. I am a little inclined to think the real property base would increase faster—I mean the general fund tax base would increase faster but other people feel otherwise; they probably are about in the same ball park.

Now, the last page converts—and I know at least one delegate did not follow me when I went through this procedure earlier—converts the real property base to be comparable to the general fund revenue base. Under the general fund revenue base we are not counting self-sustaining, self-liquidating general obligation bonds which, as you saw on page 1, amounted to 151 million dollars. So to make the fifteen percent real property base comparable to the general fund revenue base, we would take 151 million dollars out of the ceiling established by the fifteen percent of property evaluations as the debt ceiling. So an estimate of fifteen percent of real property evaluations as far as 1969 of 589 million dollars—well, let's just take this first column as it is—under the present ceiling 589 million dollars from the debt counted against the limit now 512, there is a margin, there would be a margin next spring for the legislature of 77 million. Under our proposal, three and a half times the last three years general fund revenues would be 770 million, the funded debt that would be counted against the limit would be 361 million, giving a margin next spring to the legislature of 409 million. Now, the increment which comes from the preceding page based upon an assumption of an eight percent increase in real property values next year and

an eleven percent increase in general fund revenues would give an increment in 1970 of 54 million dollars under the old base and 82 million dollars under the proposed new base.

Now going back to what I said earlier, to put the real property base on the same standard as the general revenue base by taking the 151 million dollars out of the real property ceiling that we are taking out of the revenue base ceiling, that would give a ceiling in effect on non-reimbursable general obligation bonds, under the adjusted real property ceiling of 438 million. Now just below that 438, you see that the three-year average of general fund revenues as of now is 220 million, two times a multiple of two times that three-year average would be 440, which we say is equivalent to the present fifteen percent property base. A two and a half multiple would be 550 which would be the equivalent to a nineteen percent real property ceiling; a multiple of three would be 660 which would be equivalent to a twenty-three percent real property ceiling; three and a half, 770 million equivalent to twenty-six percent and then a multiple of four, 880 equivalent to a thirty percent real property.

Now we have attempted to show what's the real "nitty-gritty" in this picture, a comparison of what debt service charges would be under these two different ceilings. Now, we have assumed here that the debt limit in both cases in 1969 is reached, and that two-thirds of the debt countable against the ceiling is issued and one-third remains authorized but unissued. So we have calculated debt service charges on two-thirds of the two ceilings on the assumption that all bonds outstanding have been sold at four and a half percent or serial bonds of twenty-year maturities. That would mean that with a debt ceiling on an adjusted basis or fifteen percent of real property of 438 million which we got to earlier on this page, two-thirds outstanding would be 292 million, the debt service charges on that would be 27.7 million or 9.7 percent of the current year's general fund revenues. On the same type of calculation a multiple of two would be the same as the fifteen percent, 9.7 percent of general fund revenues for debt service charges; a multiple of two and a half, twelve percent; twelve percent was the limit New York's Constitution set; a multiple of three and a half would be seventeen percent; and a multiple of four would be 19.4.

CHAIRMAN: Are there any other questions to the Chair?

DELEGATE SUWA: Mr. Chairman.

CHAIRMAN: Delegate Suwa.

DELEGATE SUWA: Much has been said about this document here. If there is no objection from the chairman, may we receive this document as Exhibit 3 and part of the committee report?

CHAIRMAN: If there is no objection from the members here, that could be made part of the committee report.

DELEGATE HITCH: I would like to add to that a suggestion that several people have made to me, that what was distributed last week called a *Glossary of Terms* also be made a part of the committee report.

DELEGATE SUWA: Thank you, Mr. Chairman.

CHAIRMAN: Is there any objection that the two documents be made a part of the committee report?

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Rhoda Lewis. Are you objecting to the documents being made part of the committee report?

DELEGATE RHODA LEWIS: I wanted to make a comment for the record. I wouldn't call it an objection. On the glossary I thought the terminology did tie in to the original committee proposal. For instance the term "funded debt" is said, as used by the committee, means what's counted into the debt limit. Now, I believe that this redraft, capital A, is more—technical in its language, let's put it that way, and I rather doubt it ties in to the glossary; I am not sure because I haven't had a full chance to study it. If we receive this glossary, I think it should be upon the basis that it ties in with the original committee proposal. I would like to hear from the chairman of the committee on that.

CHAIRMAN: Chairman Hitch.

DELEGATE HITCH: Well, not being a serious party, not having any legal training to the preparation of the legal language that's in Proposal No. 9, I'm not sure my comments would be worth very much. I would have no objection to the notation that this was prepared in terms of the understanding of the—as an explanation of the terms that were used in the standing committee report rather than in the legal language of Proposal 9. That's what we prepared it for.

DELEGATE RHODA LEWIS: Well, that would clarify the point. I wanted to get it clear.

DELEGATE HITCH: Thank you.

CHAIRMAN: Being that there are no other objections, these two documents will be made part of the committee report. Delegate Takahashi is recognized.

DELEGATE TAKAHASHI: Mr. Chairman, I would like to ask the chairman a question.

CHAIRMAN: State your question.

DELEGATE TAKAHASHI: I would like to find out what the reaction of the financial committee—community was with respect to the three and a half percent factor.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: When we wrote letters to the financial community, the various institutions I

mentioned, we sent them a series, an all-inclusive series of questions relative to the whole subject matter of state and county debt limits. And we had not at that time gotten into committee discussions with respect to any decisions in this area. So that we did not ask anyone whether a multiple of two or two and a half or three or three and a half or four of the last three years of general fund revenues as defined in the committee report looked reasonable or not. We came to this decision only in a matter of about a week ago and we have not been in touch with them since. We got their general views which as I mentioned were quite diverse.

CHAIRMAN: Is there any other question to the chairman of the committee? Seeing no delegate, we will move now into the amendments that are before us. Mr. Clerk, what is the first amendment before us?

CLERK: Mr. Chairman, the first amendment has been offered by Delegate Rhoda Lewis.

CHAIRMAN: It's Amendment No. 1. Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: I move for the adoption of Amendment No. 1 which would redefine the term "revenue bonds" in the first paragraph of the first section set out in the committee proposal to read as follows:

"The term 'revenue bonds' means all bonds payable solely from and secured solely by the revenues of an undertaking."

CHAIRMAN: Delegate Lalakea is recognized.

DELEGATE LALAKEA: I second the motion.

DELEGATE RHODA LEWIS: Mr. Chairman.

CHAIRMAN: Proceed, Delegate Lewis.

DELEGATE RHODA LEWIS: Under the committee proposal, there are two types of bonds which are tied into what are called "user taxes." It is provided that general obligation bonds may be issued and if at the time of their authorization the legislature provides a special tax for debt service charges which can be set aside in a special fund for those bonds that they need not be counted, they will not be counted in the debt limit. Well and good. I think this is an excellent provision. However, the proposal goes further and says, "We will also define revenue bonds as those including not only bonds to be paid off from the revenues of an enterprise that's under the present Constitution, that is, but also the type of bond which is secured by the legislature committing itself to levy and maintain a tax of a certain kind sufficient to take care of the bond." Now, this latter type of bond we cannot issue under our present Constitution. And with the debt ceiling that we have now, that may have caused some difficulty. In fact as we all know, the situation did come up when we were a territory and we had a very tight debt ceiling and got special congressional authorization to issue some of these bonds with the legislative commitment to keep

levying a certain type of tax sufficient to pay off the bonds and then when the state was admitted we were in a box as to how those bonds would be classified, and that had to be settled by the supreme court. It seems to me, however, that whatever pressure or push there may have been toward allowing this kind of bond where we had a debt ceiling expressed as it is under the present Constitution, there can be no need whatsoever at this time where we have the self-sustaining bonds provided for in this committee proposal and which will not be counted and which can be general obligation bonds where the legislature will not have to commit itself to maintain a certain type of tax. In other words, the legislature, when it authorizes these bonds if they are general obligation bonds, need not count them in the debt limit if the tax is set up to take care of them but will not be committed to the bond buyers. That's my objection, Mr. Chairman. I see no need for this maintenance of a practice whereby the legislature's hands are tied once the bonds are issued as to the maintenance of certain types of taxes, and I therefore have proposed this redefinition of the term "revenue bonds" so as to cut them back to true revenue bonds bearing in mind that we have ample provision elsewhere in this committee proposal to take care of every conceivable situation.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Should I attempt to explain what I think the thinking of the committee was on this subject?

I believe that one of the bonds issued as a territory—one of the types of bonds issued by the territory as a revenue bond which was valid as a revenue bond at that time but which had to be considered against the debt ceiling as the general bond when the new Constitution came into effect, were some airport bonds. Is that not right?

DELEGATE RHODA LEWIS: Yes, I think that's correct.

DELEGATE HITCH: Around 14 million dollars. Now, from time to time as I understand it, the airport function has been financed in greater or lesser degrees by landing fees and concession revenues and aviation fuel tax. Now, under Delegate Lewis' proposal as I understand it, any revenue bonds issued by the airport could be secured solely by the revenues and not the aviation fuel tax and funds that came to the airport from landing fees and that they all ought to be considered as equally secure protection against the revenue bonds. I think that was the feeling in the committee.

CHAIRMAN: The question before us is whether we accept the amendment by Delegate Rhoda Lewis. The Chair will entertain the—all those in favor signify by saying "aye." Opposed, "no." The Chair will repeat that the noes have it very slightly there. Mr. Clerk, is there another amendment?

CLERK: Mr. Chairman, we have another

amendment. The second one also submitted by Delegate Rhoda Lewis.

CHAIRMAN: Delegate Rhoda Lewis is recognized. This is Amendment No. 2.

DELEGATE RHODA LEWIS: Mr. Chairman, this is more in the nature of housekeeping. Under the present Constitution—

CHAIRMAN: Delegate Lewis, would you put it in a motion first, please.

DELEGATE RHODA LEWIS: Oh, thank you, Mr. Chairman, I stand corrected. I move to amend the second paragraph of the first section set out in the first proposal, by adding the following:

“All bonds shall be general obligation bonds unless they qualify as revenue bonds, or constitute indebtedness incurred under special improvement statutes when the only security for such indebtedness is the properties benefited or improved or the assessments thereon.”

DELEGATE HARA: I second for the purpose of discussion.

CHAIRMAN: Delegate Hara is recognized for the second. Continue, Delegate Lewis.

DELEGATE RHODA LEWIS: This is in the nature of a housekeeping matter. Under the present Constitution, the sixth paragraph of Section 3 of Article VI states that the bonds shall be serial bonds and continues that interest and principal shall be obligation bonds. Then the sentence in the next paragraph where it's stated the provisions of this section shall not be applicable to . . . and then it describes revenue bonds and also improvement district bonds. So under this present Constitution there are provisions that the types of bonds that may be issued are general obligation bonds, revenue bonds as defined, and improvement district bonds. Now, I would like to see something like that in the proposed amendment. All that we have is that certain types of bonds are counted in the debt limit and certain types are not counted in the debt limit but there is no provision which says in so many words that the types of bonds that may be issued are the three types that are mentioned throughout—general obligation bonds, revenue bonds as defined and improvement district bonds as defined. They are the only types mentioned but there is no provision that they are the only types that may be issued.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: I believe that in Committee Proposal 9A on page 4, this is the version that came of the press this morning, item C covers this point. I don't remember whether it was covered in the original Proposal 9 that was drafted by bond counsel in New York and transmitted to us over the telephone but we provide there for bonds incurred under special improvement statutes when the only security for such

bonds is the properties benefited or improved or the assessments thereon.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: May I respond, Mr. Chairman? Yes, there is a provision for this type of bond, and also for general obligation bonds, and also for revenue bonds as defined, which definition is as set out in the committee proposal, my amendment not having been accepted. But I would like to say as the present Constitution says, that the bonds shall be of one of these three types. Otherwise to make my point clear, although it is very carefully defined that revenue bonds are the type of bonds which are to be paid from revenues of the enterprise or these user taxes, there would be nothing to prevent the legislature from issuing the kind of bond where a tax is levied, say a tax on admissions to theaters, and that is set aside in a special fund. This is done in some states to take care of certain bonds and the legislature's obligated to continue that tax to take care of the bonds. Now, I don't think there is much point in carefully defining the type of tax which may be used to secure a revenue bond if there it is perfectly open to the legislature to issue any kind of bond whatsoever anyway. Of course, the kind of bond I am speaking of apparently would be counted in the debt limit. You might state that for that reason it wouldn't be issued, but I'd much prefer the concept of the present Constitution which tells you that you are going to issue bonds that will be general obligation bonds unless they are qualified as another recognized type, recognized by the Constitution. It is as I say a housekeeping matter. I think the concept is worthy of attention.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: President Porteus is recognized.

PRESIDENT PORTEUS: May we have a minute's recess. It seems to me that when we get into this kind of language and difference, that it is better that we take a recess and let the proponent of the amendment as well as the attorneys and some of the members of the committee get together on the subject.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, before we take a recess, I wanted to point out that this language goes counter to the intent of the committee.

CHAIRMAN: The Chair will declare a very short recess.

At 11:20 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:30 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Hitch is recognized.

DELEGATE HITCH: As I understand this issue, Delegate Lewis, in proposed Amendment No. 2, would specify that all bonds would have to be either general obligation bonds or revenue bonds are in effect special improvement district bonds which would be in the latter case secured only by the properties benefited or improved by the assessments thereon. As I understand the purpose of this amendment, our action in defeating the first proposed amendment in effect negates this because we have redefined in our committee proposal revenue bonds to include bonds that are supported not only by user fees and revenues but also by user taxes, and therefore, in the first paragraph of Committee Proposal No. 9, we defined two types of bonds to be issuable. First, general obligation bonds which mean full faith in credit bonds, and then second, revenue bonds which would include improvement district bonds; bonds for an improvement undertaking or system.

CHAIRMAN: Any other questions?

DELEGATE HARA: Yes, Mr. Chairman.

CHAIRMAN: Delegate Hara is recognized.

DELEGATE HARA: Mr. Chairman, I'd like to, at this point, add to what the chairman has already mentioned regarding this amendment and its effect.

Another point I'd like to add is that this would also prevent the legislature from looking beyond general obligation bond and revenue bond types of financing, and for that reason I would like to urge this body to vote the amendment down.

CHAIRMAN: Delegate Rhoda Lewis, you are recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, I appreciate your indulgence as I have been up twice.

No, it was not my intention, Mr. Chairman, to reoffer the first amendment. I did intend to say, and I think that I would like to have this reprinted, that all bonds shall be a first charge on the general fund of the State or political subdivision as the case may be, unless they qualify as revenue bonds, or in effect, improvement district bonds. I would, perhaps, gain some light if the delegate from Hilo could explain what other type of financing might be desired. The statement was just made that the legislature might look ahead to other types of financing besides these three, and that was precisely the point that was in my mind. I didn't see that there are any other types that were desirable.

CHAIRMAN: Delegate Hara, you got another type of bond, a hair-raising bond or something?

DELEGATE HARA: Well, Mr. Chairman, the reason for my not wanting to support this amendment is there is in here a limitation being placed to a body, not knowing what is, really, before us in the future. If we do accept this amendment we are confining ourselves to three types of financing: improvement district bonds, revenue bonds and general obligation bonds. This way

we don't set any limits. This is my point of contention in urging this body to vote this amendment down.

CHAIRMAN: At this time, the motion before us is to vote on the amendment proposed, No. 2. All those in favor of the said amendment say "aye." Opposed, "no." The noes have it. The amendment has failed.

Mr. Clerk, is there another amendment before you?

CLERK: Yes, Mr. Chairman. Amendment VI (3) is also submitted by Delegate Rhoda Lewis.

CHAIRMAN: Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, this has to do with the method of computing—

CHAIRMAN: A motion is in order.

DELEGATE RHODA LEWIS: Pardon me, I did it again. I move for the adoption of Amendment No. 3 which relates to the computation of the general fund and which reads as follows:

"The third paragraph of the first section set out in the committee proposal is amended by inserting after the words 'general revenues of the State shall not include' the following:

"amounts paid to political subdivisions as a share of tax receipts or as grants-in-aid."

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: I second the motion.

DELEGATE RHODA LEWIS: Mr. Chairman, since the debt limit is now to be computed as a multiple of the general fund averaged over a certain period, it does become important to know what will be counted in computing the general fund. Now we have what I consider to be the shared taxes which may be considered grants-in-aid which are a very large part of the financing of the several counties. And as I understand the proposal as it is now written, there will be no exclusion made in computing the general fund on account of the amounts of money that regularly go to the counties as their share of the tax receipts under the new formula recently adopted, but which have been paid for many, many years to the counties under some formula or other. Now, obviously the counties in determining whether they can afford to issue bonds are going to be counting on these sole receipts.

It says on page 7 of the committee report that the property values in the counties are so low and I am not talking about the City and County of Honolulu, so low that they have to increase the ceiling from ten percent to fifteen percent. Now I am sure that was not done with any feeling that the real property tax is going to take care of all these bonds if the values are that low. Well, that would hardly be consistent reasoning to

simply raise the percentage ceiling. The reasoning must be that the counties have other funds on which they can take care of their bonds. Therefore, I think it comes down to saying that the counties can issue bonds with a higher ceiling whether obviously counting on their share of the tax receipt, and those same monies are going to be part of the general fund and count in computing the state debt limit. My suggested amendment, therefore, is to say that general revenues of the State shall not include amounts paid to political subdivisions as their share of tax receipts or as grants-in-aid.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: The committee decision to exclude for purposes of calculating the base for the debt ceiling to exclude from general fund revenues, federal funds and debt reimbursement receipts on general obligation bonds issued on behalf of other activities that are self-sustaining, and to exclude nothing else, was based on the theory that the state government has control over all the other funds, all the other monies, all the other dollars in the general fund except these two. They do not have control over debt service charges that are paid into the general fund that have to be paid out immediately to cover the debt service charges. As Delegate Lewis has said, the formula for providing grants-in-aid to the counties has varied from time to time, which indicates that the state government does have control over all of these funds. You could say the State doesn't really have control over the money that goes to pay the governor's salary because he's got to pay the governor's salary. So let's take the governor's salary out of this also. I think that in general the State has control of all the funds except the federal funds and the debt reimbursement receipts. So we decided to exclude only those two.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: Mr. Chairman, with that explanation I would like to urge this body to vote down this amendment also.

CHAIRMAN: The question before us is the proposed amendment by Delegate Lewis, Amendment VI (3).

All those in favor of this said amendment signify by saying "aye." Opposed, "no." The noes have it. The amendment has failed.

Mr. Clerk, is there another amendment before you?

CLERK: Mr. Chairman, we have Amendment VI (4) submitted by Delegate Rhoda Lewis, and also Amendment VI (5) which was submitted by Delegate Aduja, both of which cover the same subject matter.

CHAIRMAN: The Chair is wondering whether—

DELEGATE HARA: Mr. Chairman.

CHAIRMAN: —we could recognize the committee

proposal, and if the vote is taken in favor of the committee proposal, then both amendments are automatically defeated. So, if there is no objection, the—is there any objection?

DELEGATE RHODA LEWIS: Mr. Chairman, I would like to point out briefly my feeling about this multiplier of three and a half.

CHAIRMAN: Proceed, and then the Chair will recognize also Delegate Aduja if he wishes to make a comment, and then recognize that motion.

DELEGATE RHODA LEWIS: Mr. Chairman, we have been furnished with figures that show that the present debt ceiling computed on the real property tax value, at least by next year, will give a debt ceiling of 589 million, and that if we deduct the self-sustaining bonds in order to translate into our present concept, there are at present 438 million—there is at present a 438 million debt ceiling which would be applicable to bonds payable from the general fund. Now, we were also shown that this proposal of three and a half times the three-year average would run the amount of bonds that may be issued payable out of the general fund up to 770 million, which, according to my calculations is an increase of seventy-five percent. Now, I don't know how the constituents of other delegates may feel, but I will say frankly for myself, I don't know how I can go home and sell an increase from the debt ceiling of seventy-five percent. I haven't heard anything here today except that we want to be ready for anything. If that is so, perhaps we shouldn't have a debt limit. If we're going to have a debt limit and we've upped it by, say, fifty percent which is what I'm proposing, a multiple of three would be an increase of fifty percent. I think that is a great big hunk and it's going to be a big job to sell that. But seventy-five percent in my mind is something that just can't be sold.

Furthermore, I want to refer to the testimony of Mr. Ing, our finance director, before the committee when he discussed all the possibilities and discussed the possibility of a multiplier to be applied to average revenue. He said a multiplier of one and a half to three times. I didn't see any mention of three and a half as a tenable figure. He was talking about one and a half to three times. Mr. Ing also spoke about the concept of using a percentage representing the debt service charges and he mentions a maximum of fifteen percent. Now, we are furnished figures to show that a multiple of three and a half, if it were used, would mean debt service charges which exceed this fifteen percent maximum which would be seventeen percent of the general fund. Whereas, under my motion, a multiple of three, the debt service charges would amount to fourteen point six of the general fund which is within the fifteen percent maximum.

CHAIRMAN: Delegate Aduja, you have yours on four percent.

DELEGATE ADUJA: Mr. Chairman, my prime reason in placing this amendment is because I find that the three and a half percent was a compromise figure

that came out in the committee report. Now, I notice from the forecast of 1969, 1970 and 1971 on, that the running total as far as the plus sign of six is practically equivalent to what we have now. And we do not wish to be in a straight jacket. And I notice also that a multiple of four gives you nineteen point four percent. Now, I'm saying in the future, Mr. Chairman, that there may be an opportunity for us to reduce some of the excise taxes and by reducing it perhaps to one-half percent would still leave us to the total valuation you have now of three and a half percent. I do not feel that we should go on being in a straight jacket. I feel that four percent is a nice, round figure and after all that's only a debt limit and nothing more, and it's always nice to have a round figure to multiply for most of us who cannot multiply by halves. Thank you, sir.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President is recognized.

PRESIDENT PORTEUS: Mr. Chairman, I rarely have spoken in this Convention but since reference was made to the difficulty of persuading people in the community that the recommendation of the committee is valid, I believe it might be useful to look at the record. In 1950 when several of us were delegates, we picked a limit of \$60,000,000, and it hasn't been that many years later in the history of the territory and then the State to find this was a totally inadequate amount. At present with a million visitors and with the estimate that within a few years there will be three million visitors a year, we will have a tremendous burden placed upon not only Oahu but on the neighbor islands as well. If those visitors remain here on Oahu, I am sure they will so change their lives that we will almost not recognize this community. I don't mean just by the height of the buildings but just the impact of that number of people who are not accustomed to our ways and our attitudes and Hawaiian culture, that it will substantially change it. It therefore will certainly be necessary that the neighbor islands have an opportunity for development. It means roads, and sewers, and boat harbors, and airports, and other improvements. It will mean extensive areas of recreational projects such as golf courses and parks, and camping areas, and hunting preserves, and conservation as well where it may be necessary that this State actually buy lands that are now in the hands of estates or other people in order to preserve those lands in an undeveloped form or possibly even the wilderness concept that is being used by the federal government for the preservation of land for the people of the future.

Now, if this be true, then it must, if need be, that we provide adequate limits within which these needs may be met, and the neighbor islands will not be able to meet them by themselves. And just as \$60,000,000 may have been inadequate a few years later, so even three and a half times may prove to be a limit within which it is difficult to achieve all aims and ambitions. And may I also direct your attention to the fact that this is a limit.

It doesn't mean that the legislature is mandated to

float these bonds, and certainly if you have confidence in the legislative process as you have indicated that you do, the confidence in a two-body system of legislature plus an executive branch, plus the judicial branch, then the thing is that the legislature and the executive with the checks and balances that there exists, must determine what is best in meeting the needs of the people of this State for many years to come. And therefore the legislature is not required to issue a maximum number of bonds and presumably the people themselves if they find that more money is authorized for bonds than they believe is necessary, that this matter every two years will be in the forefront of political campaigns if it is as drastic an issue as is being implied, the various representatives and senators will be debating this and the people electing people who will take positions on it. I feel that possibly we will find ten, and fifteen and eighteen years from now that even those of us who thought we were liberal today will be regarded as just as stodgy as some of you believe the delegates to have been in 1950 when they picked the \$60,000,000 limit.

CHAIRMAN: Delegate Kamaka is recognized.

DELEGATE KAMAKA: Mr. Chairman, I rise to support the committee's proposal regarding a debt ceiling computed annually at three and a half times the three-year average of general fund revenues and against both amendments, and I do this with somewhat mixed feelings. Every argument I mention in relation to the multiplier of three and a half applies more forcefully and emphatically against the multiplier of three and perhaps in support of four percent. But please hear me out.

I feel it necessary that my concern be incorporated and my support of what I believe is only a compromise proposal for perhaps some future convention may consult the proceedings of this Convention as possible guides to their actions. I cannot cease to be amazed that at times this honorable body has acted with exceptional foresight as in the areas relating to the legislature and to the executive, and again as this body may adopt Committee Report 53 on Committee Proposal No. 11. Quite often, however, in order to assure flexibility for the future, this body is leaving much to the discretion of the legislature and rightly so.

However, without any idea as to when the next Constitutional Convention may be called, with certainly no better idea whether any legislatively-proposed amendment calling for an increase in any debt ceiling by the legislature may be approved by the electorate we are, I believe, setting a debt ceiling which may fail us in the long run. I understand all the rationale set forth in the committee report. I have seen the projection of revenues, the debt amortization schedules, the computation of debt margins, all of which I accept.

What I find difficult to accept is that this debt ceiling and the consequent debt margin will suffice for the future. We will not only be shortsighted but even conservative in the long run. For today, and for the next few years, the recommended debt ceiling may be

adequate. The State has yet to, and certainly will, undertake projects the magnitude and cost of which would stagger us today. Like today, the cost of an ordinary classroom has exceeded projections by two hundred times on the Island of Hawaii. Certainly two times \$22,000 may be no big thing but I am told that if construction costs on the neighbor islands continue to rise as they have in the past and presently to around sixty percent over initially projected costs that this can be a problem. That can easily mean that a three hundred million dollar CIP can cost about four hundred or four hundred fifty million dollars when built. This amortization and increases in general fund revenues may not be able to keep pace with the need and increased construction costs. Can we foresee what a present guess of four billion dollars will actually be when and if a mass transit system is built? The cost varies and it matters how you make it long as well as how long you make it. A one hundred fifty million dollar reef runway from the airport to town—how much will that cost when built? A highway to Waianae of approximately two hundred million dollars—how much will that cost when built even though toll charges in that project may be assessed. What another one hundred million dollar improvement of our airport program will cost when and if constructed? All of these may not be built simultaneously but on the other hand it cannot all be built Indian file. Surely all of us, all of these rather, will be built along with the continually increasing need for schools, for the University, for the community colleges, for other highways, bridges, et cetera, for other buildings, hospitals and the like.

I am hopeful that the next Constitutional Convention will look at our proceedings and avoid undue conservatism in the area of our debt ceiling. I support the committee's proposal because I believe it will help us for a while. I hope for a period longer than a skeptic like I can foresee. Certainly with these feelings more so should the amendment be defeated and this I speak in reference to the three percent amendment by Delegate Lewis.

Concerned as I am, Mr. Chairman, I do not advocate. I will not support increasing the multiplier of three point five which is a compromise I feel we can, if prudent, live with. If we were to compromise and amend, where and when do we stop? If it's four percent, why not four and a fourth? If four and a fourth, why not four and a half? I think this committee has reached a compromise that all of us can live with and I ask that the body vote down both amendments.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Mr. Chairman, I speak in favor of the committee proposal. I agree with the president of this Convention that back in 1950 we had a population of approximately a half million, the gross state product was less than a billion dollars. Today I believe our gross state product is about three billion dollars, the population around 800,000 with the Island of Oahu with 650 to 660 thousand. By 1980, it should be in the neighborhood of a million people. Gross state product by 1980 should approach six to ten million

dollars. And I say that the three and a half percent figure used by the committee is a fair compromise, and I agree with the president that if anything, not fifteen or eighteen years from today, but by 1980 the state legislature may be strapped with this three and a half percent figure that has been submitted by the committee.

I urge all of the Convention delegates to consider the proposal, especially those that were just mentioned by Delegate Kamaka about the needs of the people not only in the State, but especially here on Oahu. And we talk about a mass transit system. This city is not going to find the monies under the taxing resources that it has to build a mass transit system that can cost us in the neighborhood of one billion dollars. We just can't do it and I don't believe the State can do it even with state aid. We need federal aid also. But I do say this, that if we cut this figure down any lower than what the committee reports out for us to vote on, we would be doing a disservice not only to our State today but in a very few short years. We just will not be able to give those things that make for good life in Hawaii—things that we can afford to give considering the expanding economy. I urge all delegates to support the committee proposal as submitted.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: I rise to support the amendment.

CHAIRMAN: Which amendment?

DELEGATE SUTTON: Presented by Rhoda Lewis of three, a multiplier of three.

I refer to the committee report, page 3, and one of the objectives of Section 3 is to set limits that are sufficiently liberal to permit adequate financing of future capital improvements but that at the same time provide assurance to investors that their investments in Hawaiian municipal securities are safe. Throughout this report, I notice a tremendous desire to comply with what the market place will evaluate Hawaii bonds so that we get the lowest interest rate.

I notice that on page 6 of the report, that if we should adopt a multiplier of two and a half, this roughly represents the equivalent of raising our present debt ceiling based on real property values from fifteen percent to around twenty-five percent. That would mean the increment that Rhoda Lewis has already pointed out of approximately seventy-five percent.

We would be in a position to re-evaluate our needs in twenty years. There is a provision in this Constitution for calling for a new Constitutional Convention similar to this every ten years. Certainly our debt limit is adequate with a multiplier of three to cover the ten-year period and certainly, we have almost astronomical projections when we look at this chart which is now being incorporated so that it goes up to a billion dollars and we're talking in terms of projections which statistically have never been actually confirmed.

We just take a trend and take that trend into projection without any possible confirmation. Now, involved in the multiplier of three, would be that the community-business world which is the New York Municipal Bond Market, would know that we had taken an approach here which would insure a debt limit that was sufficiently conservative to give us the highest, rather the lowest interest rate and the highest marketability of the bonds and give us a rating which we would hope to be triple A. Any triple A bond in and of itself has a marketability, and that marketability is always determined upon the policies of this particular state and municipality where the bonds are being sold. Let us get a reputation for having a conservative approach to something as basic as bonded indebtedness. Let us be realistic at the same time and I believe that the committee was realistic in its original report which the chairman indicated that the multiplier of three was the one originally concerned and that the three and one half was one that was subsequently adopted. I therefore speak in favor of the multiplier of three as proposed by Delegate Lewis.

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto is recognized.

DELEGATE YAMAMOTO: May I ask the Chair to call a short recess because the reason I am rather confused is that I was the introducer in the committee for a multiplier of four. Then after it was passed, I moved for reconsideration, that passed, and I moved for three and one half. Now I am rather confused.

CHAIRMAN: Delegate Yamamoto, the Chair will not entertain that short recess because I think the matter is clear before us. Delegate Ansai is recognized.

DELEGATE ANSAI: Mr. Chairman, first of all, I would like to bring a little point that Delegate Lewis made in her talk here regarding the one and one half multiplier, one and one half to three multiplier that Mr. Ing mentioned in the committee meeting. I think that day we had a series of subheadings which Mr. Ing said that we can apply as a base or use as a base. One was the personal income of every resident here in the State, that can be used as a base, that is in turning over or changing over from the real property to some other method of figure that we can use and the one was the combination of general fund revenues and special fund revenues.

Now, here Mr. Ing thought that being a bigger base, the combination of two, perhaps a smaller multiplier can be used. And I think that was when he said that a multiplier of one and one half to three, anywhere in between, can be used. Whereas, if you want to confine it only to the general fund revenues naturally you need to have a bigger multiplier. But when an amendment like this is introduced it kind of puts some of us on the spot because this is the kind of multiplier we thought in committee would be a more prudent multiplier. However, since that meeting and since I am a member of the Local Government Committee also, the financing of the county government coming into the

picture, and you cannot separate the debt of the State and the county separately, you very near have to consider both of them.

Now inasmuch as in the Local Government Committee, we did not give any residual taxing powers to the county, the county very near had to come to the State for financial aid, and not only in terms of grants but funds for capital improvement. And while this may be reimbursable, there are many areas since Act 95—many areas where the county and State work conjunctively in projects. And therefore in an area such as this, they very near have to finance the county over and above the grants-in-aid. I at least look forward to it. But when we try to prove the point that perhaps the multiplier of three would be a more prudent figure to use, some of us felt that if the multiplier went up to three, it will create a margin or cushion of something like four hundred million over and above what the real property tax gives the State as a cushion.

Now, over and above the four hundred million, we would be realizing something like one hundred million dollars annually because the base—the new base that we hope to use will naturally grow and since we are taking an average of three years, the new base will be added on to the two succeeding years which will make the base that much bigger every year. And it is estimated that this will bring in something like ninety million dollars. It was also brought to our attention that something like ten million dollars will be lessened toward our debts through amortization. So here's a figure of something like one hundred million dollars new money that we are going to add or will be made available to us every year. Now we have a cushion of four hundred million dollars plus one hundred million dollars that will give us something like five hundred million dollars to work with. That's almost equivalent to what the whole fifteen percent limit that real property gives us now. And because it's almost doubled, the question came to mind as to whether we need this kind of cushion. And as Delegate Lewis said, if this cushion of the multiplier of three is just used arbitrarily then we may as well not have any cushion at all or rather not have any limit at all.

After going through all the pros and cons, Mr. Chairman, I'm thinking seriously about the needs of the county. If the counties will have to depend on the State to finance them, we need some kind of cushion. I still am not certain as to whether an increase of four-fifths of what we have now is a prudent limit.

CHAIRMAN: The Chair recognizes that it is five after twelve. We will recess until 1:30 this afternoon.

At 12:05 o'clock p.m., the Committee of the Whole stood in recess until 1:30 o'clock p.m.

Afternoon Session

The Committee of the Whole reconvened at 1:30 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole

please come to order. Delegate Taira is recognized.

DELEGATE TAIRA: Mr. Chairman, I would like to yield my position in speaking at this time because I notice that certain beneficiaries of my remarks are not yet present.

CHAIRMAN: Delegate Jaquette is recognized.

DELEGATE JAQUETTE: I will be glad to speak with a small audience, if I may.

CHAIRMAN: Proceed.

DELEGATE JAQUETTE: I would like to speak for the committee proposal and against Amendment No. 5. Somewhat like Delegate Kamaka, I speak in favor of the committee proposal with mixed feelings. Mixed unlike him where he wanted to go for a multiple of four, my initial reaction was that a multiple of three would be better. But I am speaking for the committee proposal of a multiple of three and one half because I think that that extra half gives us a margin which we might use in case of emergency, in case of a major decline in the State's general revenue or in case of a major project which needs to be approved. I believe that delegates should have in mind that although I subscribe to the idea of the great future for our State, we will grow, we will have great needs for capital improvement. Also I'd like to point out that our revenues will grow. And that like you and me, like my company and yours, every company has a debt limit which is based on its ability to repay the debt. That as our State grows our ability to finance it will grow. If we refer to the exhibit, the tables which were distributed to the delegates, page 3, item 4, it shows that the percent of our general fund revenues devoted to debt service at the level of four, would be 19.4%. I would like to point out that this is with the assumption that only two-thirds of the debt would be outstanding, the other third would be authorized but unissued. And that if the entire debt would be outstanding with a multiple of four, we would have nearly thirty percent of our general fund revenues to be needed for debt service, needed for debt service and not available for current services, not available for welfare payments, and not available for general executive expenses. I believe four is entirely too high a multiple to use, three might be satisfactory, but three and a half is a compromise which we can live with and which I recommend for adoption.

CHAIRMAN: Delegate Lum is recognized.

DELEGATE LUM: Mr. Chairman, as a member of the committee, I speak in favor of the committee proposal of three and a half times. I think that we have to be sure as to what we are doing here. Like in 1950, they looked at sixty million and they assumed that the cost of other particular construction would cost x dollars based upon the figures in those days, sixty million looked like a far-fetched amount. Here looking at a figure of seven-hundred-plus million dollars we say, "By golly, this is a big amount." But who is to assure that the construction of a gymnasium like this being \$300,000 today as today's standard five years from now

won't be double that. We are looking at the figure of x million dollars and we say, "By golly, this is too far out, this is too much debt." And we are worrying about how much the ceiling is. I feel like Delegate Kamaka. I feel that perhaps that we are strapping ourselves by three and a half. I'd be in favor of four and I'd like to see that this compromise be maintained because I think it is conservative enough to be acceptable by the public and yet it doesn't strap, at least for the next few years anyway, the State's future CIP bill.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak in favor of the committee proposal calling for a multiple of three and a half percent.

I don't want to repeat many of the things that have been said except to say that in my opinion, the opponents of this who are opposed to our debt ceiling appear to be not only overly conservative but it seems to me that they are more apt to try to figure these things in an office using figures and formulas not knowing what the requirements of our people are; what the desires of our people are in the field. Those of us who have served in the legislature and those who have not served and have taken the trouble to visit places like our Hawaii State Hospital, our Youth Correctional Center, our own University of Hawaii where things are so badly crowded that it is getting ridiculous; our own public school system where we have had to do a crash program of building portables and then having many of our people feel that we are neglecting public education. I'd like to invite the opponents of this formula approach to go out to the field and see what the growth demands of our State are, not only in the field of the economic development of Hawaii but in the area of education, of health, correctional activities and then see who can honestly say that this type of feeling is not really needed in order to take care of the growth demands of the State of Hawaii. This, Mr. Chairman, an invitation to go to the field to see what our people are having to cope with, what their needs are, if they do that I am sure that they will agree with the committee proposal of a multiple of three and a half percent.

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Delegate Beppu is recognized.

DELEGATE BEPPU: I support the recommendation of the committee proposal. I think some of the fears expressed here we have heard many times. A few years back I recall when we tried to lift the debt ceiling of the City and County of Honolulu, we found the same argument and I think some of the prospective councilmen should bear this in mind, that we don't want to stymie the growth of the city and some of the projects like parks, playgrounds, school sites, et cetera. I support the measure.

CHAIRMAN: Delegate Lalakea.

DELEGATE LALAKEA: Mr. Chairman, I rise to

speaking against the committee proposal for three and a half times because I feel it can be adequately accomplished by the three times that has been suggested by certain amendments. This is the reason why I feel that it can be done at a lower rate. I, too, recognize that there will be tremendous growth in the islands here in the next few years, but I believe by splitting off these self-supporting projects you will find that we will pick up hundreds of millions of dollars of projects which do not go into the base.

This is what I'm talking about when we talk about airport expansion. That does not go into the base in which we are applying to the multiple. When we talk about highways, that does not go into the base when we talk about multiples. So there is adequate room for expansion under a three times multiple because we are talking about schools as Mr. Taira talked about, perhaps office buildings but we are not talking about these great capital improvement projects that we are afraid of and therefore are asking for a multiple which will defectively raise the comparison from fifteen percent of real property values to twenty-six. Furthermore, as we grow our income will grow, so we are talking about a flexible base. We are not talking about today's base. We are talking about a base that will continue to grow and therefore the multiple of the dollars as represented by the multiple will continue to grow. I sort of have a feeling here that by increasing it this much we are also talking about, somehow we must talk about, an increase in taxes. Certainly taxes primarily go to pay for operations but we are talking about increasing the debt base so much that somewhere in there we are talking about more taxes for the people.

So I urge you delegates to consider what we mean by three and one half times and why three might be more than sufficient. We are talking about projects that will be funded by the general fund, we are not talking about projects that will be funded by self-liquidating debts. And we are also talking, I am quite sure, that much more of an increment in taxes that our people will have to pay.

CHAIRMAN: Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: One very short comment with respect to the statement made by the last speaker. He indicated that then the debt ceiling of three and one half percent we were not talking about including the highways. I wish to point out, Mr. Chairman, that while under the formula this might be so as a practical matter because the highway fund is not sufficient at the present time to provide for self-liquidating of any highway bonds, any bonds which are to be floated in the future without any adjustment and the income base for the highway special fund will have to count against the general fund, I'm sorry, will be amortized out of the general fund and for that reason, for practical purposes, will have to be counted against the ceiling that we are talking about. And we are talking about a tremendous expansion in our highway program.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, I am at a very definite disadvantage in this position in view of the fact that I am not in favor of a reduction of three percent. I am not in favor of a three and a half percent but I am in favor of four percent. I notice from all the speeches made from the various delegates, they all see the future as being a bright one and that the State of Hawaii is going to move forward and therefore there is going to be a need for more of the things that we are talking about today. Three and a half percent to me is still a little too conservative for my point.

You will notice that according to our desires in this Constitutional Convention there may be another twenty years before we meet here in the Constitutional Convention again. Not ten years. It's going to be twenty years. And I am sure that three and a half percent, the compromise that all these committee members have gone into will find that it is a very conservative figure. Knowing that all of us are talking about advancement in the future, I say that three and a half percent should not be voted on but four percent should be a more recognizable figure. And I would like to say also to those of you who are not or who are concerned about selling this three and a half percent, if you cannot sell four percent, you cannot sell three and a half percent. That one-half figure will not make any difference whatsoever.

So I say to you, members of the committee, let us not be conservative. Let us be positive in our thinking if we know that there will be changes in the future, let's put a debt limit of more than three and a half percent. Thank you.

CHAIRMAN: The Chair has gotten the message loud and clear from the delegate that spoke, and before we get into any point of order, the Chair will retract its statement and will proceed on the basis of entertaining the motion for the committee's approval and then entertain the motion from Delegate Rhoda Lewis and then vote on the amendment and then continue.

At this time, Delegate Hitch, the Chair will recognize the motion for approval of the committee's recommendation.

DELEGATE HITCH: I would move that the committee recommendation with respect to the multiple and the base period be approved.

DELEGATE HARA: I second the motion, Mr. Chairman.

CHAIRMAN: Delegate Hara is recognized. Delegate Rhoda Lewis is now recognized to—concerning your—

DELEGATE RHODA LEWIS: I move to amend the multiple to three times.

CHAIRMAN: Delegate Lalakea.

DELEGATE LALAKEA: I second the motion.

CHAIRMAN: Is there any further discussion on

this? The question is asked. All those in favor signify by standing.

DELEGATE RHODA LEWIS: Will you clarify the motion?

CHAIRMAN: The motion is on your amendment for the multiple of three and the Chair has asked all those in favor to signify by standing. Will the clerk note the number of those standing. Those opposed, same sign. The amendment has failed to pass.

Delegate Aduja is recognized.

DELEGATE ADUJA: Mr. Chairman, I move that we amend Committee Proposal No. 9A to increase the three and a half multiple to a multiple of four.

CHAIRMAN: Is there a second? There being no second, the amendment fails.

The motion before us at this time is the question of the committee proposal. There has been request for a roll call during the recess. Is there a sufficient number for a roll call?

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: Yes, Delegate Beppu is recognized.

DELEGATE BEPPU: Point of information. Will the Chairman yield to a question?

CHAIRMAN: State your question.

DELEGATE BEPPU: On page 8 of Committee Proposal 9A, line 7, and I quote: "In each regular session in an even-numbered year, bills may be introduced in the legislature to amend any appropriation act of the current biennium." The question is, Mr. Chairman, whether this will preclude any CIP bills from being introduced in even-numbered years.

CHAIRMAN: Delegate Beppu, if I may interrupt, that particular section, if I may, will be discussed in Section 4.

DELEGATE BEPPU: Thank you, Mr. Chairman.

CHAIRMAN: So we are on Section 3, correct. So we are now considering Section 3. The question's been asked.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: Point of information.

CHAIRMAN: State your point of information.

DELEGATE MIZUHA: As I understand it, the motion is only to adopt this three and a half percent concept on the base years. Isn't that so?

CHAIRMAN: The motion that I made to understand is concerning the Section 3 as proposed by the committee which includes the figure of three and a half percent.

DELEGATE MIZUHA: May I ask the chairman of the committee a question then?

CHAIRMAN: State your question.

DELEGATE MIZUHA: On page 2 of the amended proposal marked A, the last paragraph of same reads as follows: "A sum equal to fifteen percent of the total of the assessed values for tax rate purposes of real property in any political subdivision as determined by the last tax assessment rules pursuant to law is established as the limit of the funded debt assessed political subdivision at any time outstanding and unpaid."

My question is this. Setting such a high limit and without giving the counties any taxing power, how in the world are they going to raise revenues to pay any bonds that they wish to issue?

CHAIRMAN: Delegate Hitch is recognized.

DELEGATE HITCH: As I indicated earlier, a constitutional debt limit constitutes only the legal maximum that is permissible and is not a substitute for sound debt policy and efficient debt management, and within this limit the counties must act in accordance with their capabilities.

DELEGATE MIZUHA: The question I have in mind is what capabilities will they have if they don't have any taxing power to raise revenues to pay for their bond?

CHAIRMAN: Delegate Hitch, would you care to answer that question?

DELEGATE HITCH: I think the answer to that is that they will have the taxing capabilities that are conferred upon them by the legislature.

CHAIRMAN: Thank you. The question before the house is that—are we in favor of the committee's proposal. Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: Point of order, Mr. Chairman. Am I correct in understanding that the language of this committee proposal is not necessarily adopted since we just received the new copy this morning, that we will have an opportunity later to be heard on the phrasing and legal angles?

CHAIRMAN: The understanding is that the committee proposal that was put in this morning by agreement by all was to substitute for language that the committee proposal we had 9A before us at this time.

DELEGATE RHODA LEWIS: Mr. Chairman, I understood perhaps wrongly that we were voting on concepts and that we would have an opportunity to go

into the phraseology and the question whether this carried out the intent. I certainly have not had an opportunity to review that.

CHAIRMAN: Delegate Hitch, would you like to comment on that?

DELEGATE HITCH: Yes, Mr. Chairman, I would like to comment on it. I am inclined to think that what we should vote on now are the committee proposals as spelled out in nonlegal language in Standing Committee Report No. 52 with respect to Section 3, that the legal language for this section of the Constitution as is currently contained in Proposal 9A will be subject to review by the Committee of the Whole on second reading.

CHAIRMAN: Thank you. I think you have answered Delegate Lewis' question. Delegate Lewis.

DELEGATE RHODA LEWIS: Well, then I take it the answer is that we may have a little more consideration of language on second reading than we ordinarily would have since we have not gone into that area.

CHAIRMAN: Delegate Lewis, it is the Chair's understanding that this language before us, this language was worked out with the people, the bonding people and with various other groups that came out with this recommendation as far as the language is concerned. And I have also been informed that there are some other technical language changes to spell out some clearly by the intent. And I presume that this language will be taken care of by the Style Committee or by the delegates themselves bringing the point of where the language is improperly drafted to carry out the intent. So if you do, in my opinion at this time, if you have an area that you feel strongly that the language does not carry out the intent, then I think it is your duty to bring the attention to it to the Committee of the Whole.

DELEGATE RHODA LEWIS: Well, Mr. Chairman, I am not prepared to do so when I received this just this morning at 9:00 o'clock and I have been in the Committee of the Whole since until lunch time. This is a really important area where much, much litigation can arise and I feel it's well worthy of our attention and that we should have an understanding that on second reading that points may be brought up.

CHAIRMAN: I don't think there is any objection if a legal point that has merit will be brought up to the attention of the whole committee or whether in section or not, that has merit, that we won't consider it. And at this time, I think the points are well taken.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I'd like to ask a question.

CHAIRMAN: State your question.

DELEGATE KAUHANE: Since this morning we substituted the original committee proposal with that of Proposal 9A, am I to understand that because of the recommendation that the committee chairman has received from other jurisdiction with respect to the principle of bonding and financing as to whether or not the counties, government officials had an opportunity to review the substituted Proposal 9A so that we can fully understand their position, which position I understand was attempted to be questioned by Delegate Mizuha as to the counties' ability or inability to meet their indebtedness under the substituted Proposal 9A.

CHAIRMAN: Delegate Hitch, do you wish to comment?

DELEGATE HITCH: The only position that the counties took with respect to Section 3 was a request that the debt limit of the counties be raised to twenty percent of net assessed real property values for tax purposes and the committee's recommendation is fifteen percent. They had no recommendations with respect to any other part of Section 3.

DELEGATE KAUHANE: Further, Mr. Chairman, what about the counties' powers to levy taxes so that they can meet their indebtedness, their obligations?

CHAIRMAN: Delegate Hitch is recognized.

DELEGATE HITCH: They did ask for residual taxing powers which I covered earlier in my comments to Section 2, but that does not relate to Section 3.

CHAIRMAN: Are you ready for the question? Are there ten members—Delegate O'Connor is recognized before the question is put.

DELEGATE O'CONNOR: Mr. Chairman, I am somewhat confused by the question. Do I understand we are voting on the entire Section 3 in the A amendment which is before us?

CHAIRMAN: Correct.

Is there a request for a roll call? Are there ten members for roll call? There is a sufficient number. Call the roll.

DELEGATE HARA: Mr. Chairman.

CHAIRMAN: Just one minute.

DELEGATE HARA: May we have a short recess?

CHAIRMAN: A recess is asked, a very short recess.

DELEGATE HARA: We've got some delegates here that I would like to see here before the vote.

CHAIRMAN: The Chair will not grant the recess so call the roll.

(Roll call having been ordered, the clerk proceeded to call the roll. The motion to adopt Section 3, Article VI of Committee Proposal No. 9A passed by a vote of 57 ayes, 7 noes and 18 excused; with Delegates Aduja, Chang, Dyer, Kauhane, Lalakea, Rhoda Lewis and Sutton voting no; and Delegates Akizaki, Amano, Andrade, Burgess, Hung Wo Ching, Doi, Fasi, Goemans, Hansen, Harper, Kaapu, Kageyama, Kato, Frank Loo, Schulze, Shiigi, Steiner and Ueoka being excused.)

CHAIRMAN: Said proposal has passed.

Delegate Hitch is recognized.

DELEGATE HITCH: Mr. Chairman, to me it would be logical to take up Section 4 relating to the budget and Section 5 relating to appropriations together, budgeting and appropriating being very closely related processes.

CHAIRMAN: Are there any objections to the Chair's request to take this both together? Proceed.

DELEGATE HITCH: Let me explain very briefly what the committee proposes with respect to budgeting and appropriating procedures.

We are proposing that we substitute for an annual budget—biennial budget which would be passed in odd-numbered years. We are proposing that the present provision, that the budget must be submitted in two parts, one with respect to the operating budget and one with respect to the capital improvements budget, be deleted and that the budget will be submitted in a form prescribed by law.

We are proposing that, third, there be a process of biennial appropriations with the biennial appropriation being made in the odd-numbered year, but that there be a mid-term review in the even-numbered year with respect to funding the budget, that is with respect to appropriations, and that the governor may submit requests for supplemental appropriations and that the legislature may consider appropriations on its own account. And then we are proposing that in the odd-numbered years, the general appropriations bill as currently provided by the Constitution must be passed before other appropriations bills are passed, and that in the even-numbered years any supplemental appropriations must be passed before any other appropriations bills are passed. These then, Mr. Chairman, are the proposals with respect to Section 4 and Section 5.

CHAIRMAN: Is there any question to the chairman of the committee at this time? If not, the Chair will—

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I rise to speak against the committee recommendation of the biennial budgeting. Prior to my study of this problem, I, too, was for the biennial budgeting on the grounds that perhaps our

departments were too preoccupied throughout the year in preparing one budget after the other under the old annual budgeting system. But subsequent to that, the initial opinion that I had, I find that most of the departments comprising our eighteen state departments, with the exception, perhaps, of the Department of Education, the University of Hawaii, and possibly some other department, could very amply and adequately prepare their budgets annually given within thirty to forty-five working days. And that this great human cry that they have presented that the annual budgeting processes for the individual departments is a monumental task, I find that I can't give much credence to. The average budget of the average department doesn't differ drastically from year to year. I said with the exception of the D.O.E., the University of Hawaii and perhaps one or two other departments.

I am of the opinion that with the relinquishment of the annual budgeting and the annual provisions for funds for every department, the legislature is relinquishing what is perhaps their last vestige of control over the departments, control to the extent that they are able to require of the departments sensible and economic implementation of some of the programs they speak about when they come to the finance committees of each respective house for their budget presentation. There have been provisions provided that supplemental budget provisions can be written into the law but I don't think that this is too good an idea. I think it makes for unruly and cumbersome procedure when, for example, we say a department in its initial request for a budget, finds that at the end of one year under the biennial budgeting system that they may not require the extent of funds requested initially on the biennial budgeting basis, and then to have a supplementary budget submitted so that the second year's monetary requirements can be reduced, I think, is going to require a very cumbersome procedure, and the likelihood of a department's appropriation being reduced even if this is a feasible cause of action, I think, is very poor or very unlikely. I am particularly concerned with those members of the house of representatives who have the two-year term of office. It appears to me that their votes on the budget during the initial biennial budget voting in behalf of an appropriations budget, this is going to be their first and last chance to have any financial say in the operation of each department, because their term of office is for two years and they would have relinquished any other chance that they may have had to exercise some fiscal control over each department that comes under the biennial budgeting system. And I just wondered if the members of the house of representatives would want to relinquish this kind of control, as I said, because I don't believe that this provision for a supplementary budget appropriation provided for in their recommendation is going to work as well as it appears to at this structure. I think one of the most effective leverages a member of the legislature has in trying to help bring about economy and efficient operation of each department is that fact that he is able to vote annually on this matter of appropriations for each department, and I think the necessary work, man-hours that are spent—expended in each department preparing its annual budget and each finance committee

of each house scrutinizing each budget is a necessary evil. I think this secures much better than the biennial budgeting system that a closer scrutiny, a closer examination of the staff requirements of program implementation, of whether a voter's funds are expended sensibly—this can be done under the annual budgeting system.

The biennial budgeting system where we have to depend on revenue projections two years hence, I think, is unfeasible. We've come to the experience that without exception almost invariably the Department of Taxation has not been able to estimate within a reasonable degree the projected income projections, and we have found out in retrospect that in almost every instance, the tax office's projections for income for the next six months have been off considerably. And this is another reason why I think getting into the biennial budgeting system may not be a feasible one at this point. I understand that the State of Illinois had commissioned a committee, or a commission of force to look into their budgeting system which was a biennial budgeting system, and this committee, comprised of capable and qualified people sitting in this body, came out with a recommendation recommending to the State of Illinois that they return to the annual budgeting system as compared to the biennial budgeting system under which they were operating in the last few years. In any case, I think that the prime extent in the departments in preparing their budgets is not as extensive as they have claimed to be and I certainly would urge members of this body to vote against this committee's recommendation.

CHAIRMAN: Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I speak not in the same vein as the former speaker, perhaps, but from experience over many, many years of working with at least three of the major state departments of government. I would like to go back in history from the time even 1944 when I was a volunteer lobbyist in the legislature for various budgets for the Department of Health, the Department of Welfare and the Department of Education.

I well remember, Mr. Chairman, sitting in—and I am speaking against the proposal—I well remember, Mr. Chairman, sitting in on meetings of the school board, time after time, year after year, hearing the Department of Education director bemoan the fact that they had a biennial budget for the reason that educational changes were taking place even then, not nearly as rapidly as they are today, but they were taking place and it was extremely difficult for anybody who was planning to spend literally millions of dollars to plan three, three and a half, and four years in advance for what those expenditures would be. The same criticism was made by heads of the Department of Social Welfare and the Department of Health, the difficulties encountered in trying to attempt to plan a budget that long in advance.

Now, it has been said time and again, that it is too difficult to plan annual budgeting, that it takes an all-year effort. I say this to you, members of this

delegation, that if we have a budget authority or a budget officer in each of the major departments of government, this is his job—to keep on top of what is happening in each department, to assist the department heads in determining what their needs will be for the next year, and to come out with a recommendation for the Budget and Finance Department which later will be presented to the governor.

I fail to see how we will gain anything from going back to a biennial budget, particularly in view of the tremendous changes which are taking place in our federal funding. Federal funds become available almost at the drop of a hat. We are never certain when they are coming. We know that if we want to make use of them we have to provide the programs which are going to augment our existing programs within our state government departments. We know that we are going to have to depend from year to year on new rules and regulations which come up in the federal government, in our poverty programs, in our model cities program, in our health programs, in our education programs, name them all, we have them, in our highway programs which even fluctuate from year to year because of federal funds. I feel that we must be flexible. We must be ready at any moment to make changes. Once a biennial budget is presented, in my opinion, it becomes increasingly difficult for a department to get approval through the Department of Budget and Finance, and through the governor's office, to put in a supplementary budget. It also becomes increasingly difficult for the legislature to determine the exact needs of the department. It is true that we have our legislative auditor and we depend upon him a great deal for review. However, there comes a time when we cannot even provide sufficient staff for that legislative auditor's office to be on top of every department of government.

I feel we have been doing very well with our annual budgeting. There are problems, there will be many more problems going back to the biennial budgeting at this particular time in history, and I would urge you to retain the present form of budgeting, although I do believe that the governor should provide a budget based upon whatever type of budget the legislature approves. I think that with our P.B.S. we will probably want one budget rather than two separate budgets in the future.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I rise to speak against the committee proposal. We have had a number of occasions during the Convention to move ahead, this is the first occasion we have had to move backwards. And I think this is a backward step, and I don't think we should take it. The only argument that I have heard over the years against annual budgeting is the fact that it takes somewhat more administrative time than the biennial budget. If any of you think that this reverting to a biennial budget will take a single person off the payroll or require one hour less work on budgeting, you're mistaken. It won't do it.

Budgeting is a continuous process and it is one of the essential functions that government has to perform.

This is as much an administrative responsibility as it is a legislative responsibility. The thing that concerns me most about this proposed step, however, is that what in effect it will mean is no budgeting at all. If you adopt a two-year budget with constitutional authority to go in the next year and revise it, you have not adopted a budget. You have merely provided a means of not budgeting in a sensible, careful manner because you can always go in the next year and erase any mistakes that you make. It's the same thing as a zoning ordinance or a planning ordinance, or something of that effect. If you can constantly change it, you don't have a plan. If you can constantly change a budget, you don't have a budget. It was a very long stride forward in 1950 when the delegation at that time changed from a biennial to an annual budget. And those of you who have been persuaded that we have a very fine Constitution should know that one of the reasons that it is acclaimed to be a good one is because of the annual budget provision.

I don't know how many of those here were familiar with the territorial legislatures when they used to deal with biennial budgets. But they used to start work about thirty months before the end of the next budget period and they would look in a very cloudy crystal ball and try to forecast all the things that were going to happen in the next thirty months and try to put little figures down on paper in support of it. It is almost an impossible job. Then when you add to it the thing that was not written in Organic Act language in 1950, when you add to it the specific authority to go in and revise it by something known as the supplemental appropriations act, you destroy any kind of adequate budget.

Budgeting is a responsibility primarily of the chief executive and the administrative department heads. The policy on whether there are proposals by the executive branch is going to be carried out in Hawaii as a legislative responsibility. Hawaii is moving ahead so fast these days that I don't think it's possible for anybody to look ahead as far as the biennial budget would be, but my main concern is that a biennial budget now would be no budget at all. And I would urge those—I don't very often stand up and ask to be heard on maintenance of the status quo, but I don't get much support in changing things to be somewhat more progressive. I'm going to reverse my order of things, and ask that we not be regressive this time. Please vote against it.

CHAIRMAN: Delegate Miyake is recognized.

DELEGATE MIYAKE: Mr. Chairman, I rise to speak against the proposal amending the present Section 4 of Article VI.

I believe that economists will not disagree with the fact that when you forecast budgets further removed from the fiscal year which that budget will take place, the forecast will be that much more inaccurate. And what we are asking now and this amendment is, by providing for a biennial budget, asking our administrators to forecast what the needs of the State will be and what the revenues will be three years from

the second half of the biennial budget, two years before the first year of the biennial budget.

Now any economist will tell you this is a very difficult situation, to make these forecasts, because you have so many variable factors to consider to begin with. You have such things as revenues that you have to estimate for two years from now and three years from now. You have to estimate what the costs will be two years and three years from now. You will have to estimate what the population will be two years and three years from now. You have to estimate what the federal aid will be or will not be two years or three years from now. You will also have to estimate what the current programs will be two or three years from now. And you will also have to estimate what the economic activity will be in this State two or three years from now, and this budget forecast is being made in that current year without even having an evaluation of how that budget is being implemented or whether it is a good budget in the current year that these forecasts are being made for fiscal years two and three years from now.

For those delegates who have not worked in the legislature, and do not understand how the budget process develops in the state government, may I inform you that budgets for the departments are requested by the director of the Department of Budget and Review in July or August, so budget estimates are being made now or have been already made for the departments for fiscal year 1969, which the legislature will consider in February. The budget is finalized in December in the governor's office and it goes to press in December in order that the budget will be available in printed form to the legislators twenty days before the legislature convenes on the third Wednesday in February.

So here we are faced with a difficult task of having our administrators trying to forecast what our needs will be for the State of Hawaii two years from now, three years from now, without any precise understanding of what our economy will be then, what our revenues will be, what our population will be, what the federal aid will be, and what the international situation will be.

Gentlemen and ladies, last session because of these variable factors, the Director of Taxation and the Director of the Budget and Review both said that because of the Vietnam situation we cannot make accurate estimates of what our revenues will be for the next fiscal year. And because of this fact, their recommendation was that our revenues be insufficient to afford a tax cut on food and drugs, the revenues be insufficient to support a pay raise for government employees. And this was a forecast only in February and March because of variable factors. Why, in this situation where we operate on an annual budget they even had difficulty making an accurate forecast and how do you expect these same administrators to make more accurate forecasts when you expect them to make budget estimates two years from now and three years from now.

I can only say that inaccuracy does increase when

you make estimates further away from the budget year. We also are faced with the biennial budget—the problem of not being able to take advantage of revenue increases in our debt margin in the second half of a biennial budget because you as a legislator will be limited to what the debt margin will be at the beginning of the biennial budget. And in the area of CIP, therefore, the legislators will be handcuffed in taking advantage of surpluses in funds that we may have because you are limited to the debt margin at the beginning of the biennial year.

Mr. Chairman, the legislature has enjoyed the status of being a co-equal branch of government with the executive office and I believe this status has been maintained because of the fact that it has legislative control over the appropriations. What we are doing here is relinquishing some of our legislative powers by giving the executive two years of free hand instead of having the executive come and confronting the legislature every year with its programs and having the executive and his departments account to the legislature how well or how badly they are conducting these programs. You let one year go by and you have to wait. I realize fully that that proposal here permits the legislature to provide for supplementary budgets. But practically speaking, this is not an easy process, to provide for supplementary budgets. It is not as easy as having the executive provide annually an annual budget and having all of his programs reviewed by the legislative body of government. It reduces the control that the legislature has over the executive branch. And I believe the legislature is abdicating its role as a watchdog of the expenditure of state funds through a biennial budget—

CHAIRMAN: Delegate Miyake, your time is just about a half a minute.

DELEGATE MIYAKE: Thank you. So what we are doing here is reducing the check and control that the legislative body has over the executive. I realize fully that the senators serve for four years as a check and balance over the executive through their confirmation powers and we supported the senate confirmation powers last week, but the house's only control over the executive is through the control of the budget and we are asking here to have one-half of the legislature relinquish further its control. We have already relinquished one-fourth of our control over the monies when we allowed for fifty percent of the operating budget to be implemented through a lump-sum budget for the Department of Education and the University of Hawaii. Thank you.

DELEGATE ANDO: Mr. Chairman.

CHAIRMAN: The Chair will declare a short recess to give our steno a break.

At 2:37 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 2:48 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to order. Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, I rise in support of the committee's proposal that we change our budgeting to biennial budgeting and that the budget be in a new form rather than that form—the practice that we have now. Also, the concept of having supplemental appropriations when necessary during the mid-term of the budgeting. I support this concept or biennial budgeting for the reason that it just plain makes sense. It makes sense, Mr. Chairman, because it's the most efficient—in the use of—and also the most effective in the use of administrative manpower and administrative and professional talent. It also makes sense because it's a more effective use of our state revenue. It also makes sense because it gives our legislature a better opportunity to evaluate the programs in our departments and our various sub-programs within our departments.

It's been said this afternoon that someone in the fiscal office of each department can sit down and write a budget. Well, I am aware that this can't be done. The Department of Education has 213 schools with seven district offices, with twenty programs in our state offices. We have thirty public libraries. And most of these professionals and administrators in these offices must be involved in making what eventually becomes a budget. A budget essentially is not one that is merely a matter of dollars and cents, but it's an identification of what programs we have in our state government and also what goals are being sought and how we are going to evaluate such programs. The budget essentially then is an instrument of state policy in our state programs and this is stated in terms of revenues and expenditure proposals.

The legislature evaluates this and grants approval or disapproval by such devices, appropriating the monies, modifying the appropriation on the budget requested or not appropriating the funds. The question of control of the programs in our State by the instrument of a budget and the appropriating mechanism, the appropriation bill is one in which we would say is the practice of the 1940's and 1950's but in the 1970's we're going to begin to start thinking in terms of budget as an expression of the programs and plans that the state government has. The line-item budget, the object-oriented budget is essentially one in which the control is identified. You want to know how many people are there, what you're going to do with the money in terms of what things you are going to buy. In terms of management, it's function- or activity-oriented. You want to know what you are going to do with the money that is being put in there, but evolving our new concepts in budget, and these concepts make for better and more effective use of our state revenues in the programs that we are going to have.

We have had biennial budgeting before statehood, we've had the annual budgeting concepts over the last nine years. There are a great deal of governmental leaders, as well as citizens, expressing that we return to biennial budgeting. And I say because it is this—what I

sometimes call a "vicious cycle" that we are involved in. Today, in the Department of Education for instance, the school-level people as well as district and state-level people are beginning to think of the budget that is to be presented in the legislature in February. At the same time, they are beginning to essentially look over the allocation of this fiscal year's budget and at the same time, they are reviewing the effectiveness of the last fiscal year's budget. This thing goes on year in and year out.

Budgeting is a continuing process for not only the budget person or the line people, but right down to the school-level people that really have a business of servicing their patrons in our Department of Education, servicing their educational needs of our children. We are spending too much time on the budget. Our professionals need more time to plan to use their talent in the area that is necessary to give service with their talent, in the area that is necessary to give service with their professional talent. This concept would avoid essentially a breathing spell where several tests of evaluation can be made of the programs and the objectives. And also, preparation for modification or improvement based on new evolving concepts that come before the professional so that they can be kept up-to-date and brought forth in our program.

We must begin to take a long-range view, planning, doing things not under a basis of what our monies buy, but what we're looking forward to, what objectives, what goals we are seeking in terms of the revenues that we put into our programs in our state government.

And on this basis, Mr. Chairman, I feel that we are indeed progressing when we look at the concept again and incorporate in our Constitution the biennial budgeting with the opportunity for the executive to come in for supplemental appropriations when such need arises. The annual budgeting makes the legislature required to look at every program in every department. With this concept they will look at those programs that need looking into and do an effective job. And this, after all, is what a good budgeting system is for.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: State your point of information.

DELEGATE LUM: I'd like to know if the previous speaker would yield to a few questions.

CHAIRMAN: State your questions.

DELEGATE LUM: Okay. As the chairman of the Board of Education, I want to know if the educators through the superintendent have been asked to submit a biennial budget with the idea of having a biennial appropriation.

CHAIRMAN: Delegate Ando, would you answer the question?

DELEGATE ANDO: Mr. Chairman, the laws of our

State require today the budget be reviewed annually and on that basis we are abiding by the law. However, we state programs in terms of long-range goals and plans are projected over several years.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Am I to understand that the position of the previous speaker that the Board of Education—if this particular budgeting is accepted by this Convention and approved by the people, would then move into an area of biennial, or maybe triennial or more, types of budgeting?

CHAIRMAN: Delegate Hitch, would you stand for that question?

DELEGATE HITCH: I think I should say at this point that obviously this proposal of the committee involves the transitional problem and that would be left to the transitional section of the Constitution with this procedure going into effect in 1971 rather than in 1969.

DELEGATE SUTTON: Mr. Chairman.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: I rise to speak against the committee report.

CHAIRMAN: Just one minute, Delegate. Did any of the other delegates rise to ask a question? Delegate Takahashi is recognized for questioning purposes.

DELEGATE TAKAHASHI: Mr. Chairman, I'd like to ask Delegate Ando several questions.

CHAIRMAN: State your questions.

DELEGATE TAKAHASHI: Delegate Ando, I understand that the Department of Education has adopted the so-called P.P.B.S. system of budgeting, or has embarked on a program of that sort?

CHAIRMAN: Would you care to answer that question?

DELEGATE ANDO: Mr. Chairman, working jointly with the legislature, the Department of Education devised a format for P.P.B.S. We have not been given the go-ahead to implement our budgetary system by that format yet.

DELEGATE TAKAHASHI: Now, with the adoption of this amendment, would you say that a system if you adopt a system—that is, the P.P.B.S. system, would be workable or would be adaptable to a biennial system?

CHAIRMAN: Delegate Ando?

DELEGATE ANDO: Yes.

DELEGATE TAKAHASHI: It would be?

CHAIRMAN: The answer is yes.

DELEGATE TAKAHASHI: Thank you.

CHAIRMAN: Delegate Sutton is recognized.

DELEGATE DONALD CHING: Point of information, Mr. Chairman.

CHAIRMAN: Delegate, state your point of information.

DELEGATE DONALD CHING: Mr. Chairman, I'm curious. The chairman of the committee has said that the article would be put into effect in 1971 and left it at that. Now, would either the Chairman of the Committee of the Whole, the chairman of the committee or the president of the Convention apprise me as to how this will be carried out, or will this be embodied in the concept that we are going to vote on at the present time, so that some of the committee can take this into account?

CHAIRMAN: I think that is a well-taken question and will ask to yield to the president to answer that question as to the mechanics of the transition. Delegate Ching, would you repeat your question?

PRESIDENT PORTEUS: The answer is a short recess.

CHAIRMAN: So granted.

At 3:00 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:02 o'clock p.m.

CHAIRMAN: Will the Convention Committee of the Whole please come back to order.

Mr. President, do you have the answer to Delegate Ching's question?

PRESIDENT PORTEUS: Mr. Chairman, I hope I do.

The chairman of the Committee on Revision and Printing, when all the work of the various committees has been completed, will hold a committee meeting at which time, or prior to which, the chairmen of the various committees will report to him problems of transition. His will be among the last reports to reach this floor, and that committee has jurisdiction over transitional provisions and he cannot meet and clear this matter up until he finds out what all the problems are. So of necessity, we will have to wait until we have disposed of the various questions including the question of reapportionment before that committee can make a recommendation to this floor, but it will be within the jurisdiction of that committee to bring to us the problem of at what time do various provisions go into effect.

CHAIRMAN: Delegate Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman. May I follow up with another question to the president and as a matter of procedure not only as to this point but supposing this matter has not been decided, not only by the Committee of the Whole but the subject-matter committee itself and the chairman has no idea as to how the committee wants to have this transition problem handled, how then is it put to the revision committee?

PRESIDENT PORTEUS: The—

CHAIRMAN: The Chair would like to interrupt. Delegate Hitch, will you first clarify the question raised as to this area and then the president can follow through.

DELEGATE HITCH: As far as this area is concerned, the committee did discuss the transitional problem, did decide by majority vote that this biennial budgeting procedure would go into effect in the spring of 1971 rather than in the spring of 1969. I simply failed to get this into the committee report in the rush of getting it out.

CHAIRMAN: Mr. President, do you want to add anything?

PRESIDENT PORTEUS: Yes. In response to the precise question of how a chairman will know, I think it will be up to him to meet with his committee and then pass along the word. In other words, again it will be a matter of the rule of reason. One chairman, I assume, of any committee, will not decide when he would like something to go into effect and therefore tell the chairman of the Committee on Revision and Printing the precise date, but will carry with him the support of his committee. If he doesn't carry the support of his committee, I certainly would anticipate that when the report came to the floor that the majority of the committee would stand up and say, "While that may have been your recommendation, that is not the position of that committee."

DELEGATE BEPPU: Mr. Chairman.

CHAIRMAN: For what purpose do you rise?

DELEGATE BEPPU: I rise on a point of information. I want to resume my point of information when I was so rudely interrupted by the Chairman of the Committee of the Whole.

CHAIRMAN: You were not rudely interrupted. You had stated that that was pertaining to Sections 4 and 5. At this time, Delegate Beppu, the Chair would like to give back the—grant the floor to Delegate Sutton who yielded for these various questions concerning the procedures, if you don't mind.

Delegate Sutton.

DELEGATE SUTTON: I wish to express my appreciation to Mr. Beppu.

CHAIRMAN: Thank you very much.

DELEGATE SUTTON: We have often heard that we must bring into government the best practices of business. Every large corporation that is going through the type of growth that we have seen envisioned for the State of Hawaii, has a new officer that has been added, and that is a comptroller. I am one of few people in this room that have taken the C.P.A. examination and I can assure those present that a comptroller's duties in figuring out a budget for a corporation is never done on a biennial fiscal year. It is always done on an annual basis so that revenues can be projected. Very often revenues are cyclical, very often revenues are seasonal. And it is the intent of the comptroller to try to average out the cycles and the seasons so that he can figure out exactly what the revenue will be for a particular year and then in turn try to budget his expenses—operating expenses and also capital expenses just as the status quo envisioned of the two parts. You will notice in this particular report that the two parts are being eliminated also, and therefore, you do not have the division. Now, should we be on a basis that follows the general objectives of the report as shown on page 9, the objectives as outlined by Chairman Hitch are: (1) to improve planning by enforcing a longer range view of government programs; and if you will skip down to the third section, (2) to permit more intensive analysis of selected areas of programs by the legislature in ultimate years. Were you to have an annual budget, those two objectives can be reached.

I realize the problem that was brought out by the chairman of the Style Committee, delegates, and I realize that there is an administrative burden and there is continual involvement in existing annual budgeting processes. I have helped prepare those budgets and I recognize that it does take the time of those who might devote their time otherwise to teaching school. However, the basic fact remains that with a growth economy, this is not a type of efficiency that you are after.

This morning, we took as a basic assumption, and did not even debate it, that one part of our formula would be the average state general fund revenue. All we discussed was what multiplier. Whether it would be three, three and a half or four. Now, if we are to achieve any type of budgeting as far as our bonded indebtedness, we must know what our average state general fund revenue is. And if we have to wait two years to find that out, then we do not know what our debt limitation is. If we have a fiscal biennium, then we have for all intents and purposes said that this particular report is only due once in two years. But if we have an annual fiscal and we have an annual budget, then from that we can always in turn just add the two years and come to the answer of a biennium. In other words, one includes the other but the other without having had the information of one year precludes our basic information of our average state general revenue.

We have found in business and we have found in particular growth and dynamic industries that nothing is more important than budgeting. Let us not leave to half-chance where a minimal of administrative difficulty

and trouble is going to make the difference. Thank you.

CHAIRMAN: Delegate Beppu.

DELEGATE BEPPU: Thank you, Mr. Chairman. I rise on a point of information.

CHAIRMAN: State your point.

DELEGATE BEPPU: I wonder if the chairman of the Committee on Taxation and Finance will yield to a question.

CHAIRMAN: State your question.

DELEGATE BEPPU: Am I correct to assume that on page 8, line 8, the phrase, "to amend any appropriation act of the current fiscal biennium," will not preclude the introduction of any new capital improvement expenditure bills?

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Would Delegate Beppu give me that reference again? Page 8?

DELEGATE BEPPU: Yes, page 8, on line 8.

CHAIRMAN: That's on 9A.

DELEGATE HITCH: Of Section 4?

DELEGATE BEPPU: Yes sir.

DELEGATE HITCH: Is this the bracketed section?

DELEGATE BEPPU: No, it starts on line 7, "in each regular session," et cetera.

CHAIRMAN: Delegate Beppu, are you referring to 9A?

DELEGATE BEPPU: 9A.

CHAIRMAN: 9A, Delegate Hitch. Your last page.

DELEGATE BEPPU: Mr. Chairman, I think this relates to Section 5.

CHAIRMAN: Correct. This is the area that you raised before we went into Section 4. Delegate Hitch, would you care to answer or will you yield?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: So we can follow the discussion, is Delegate Beppu referring to the committee report, page 10, second paragraph?

DELEGATE BEPPU: No, I am referring to 9A.

DELEGATE YOSHINAGA: But the interpretation—the language you read, nothing in this

section precludes the legislature from operating, combining—that's not the section, huh?

DELEGATE BEPPU: No, no.

DELEGATE YOSHINAGA: I just want to be sure.

DELEGATE BEPPU: No, it starts off on line 7 of page 8 of 9A, "In each regular session in an even-numbered year, bills may be introduced in the legislature to amend any appropriation act of the current fiscal biennium." That is the phrase I am asking about.

DELEGATE HITCH: That would—

DELEGATE HARA: Point of information, Mr. Chairman.

CHAIRMAN: Delegate Hitch, are you yielding or—

DELEGATE HITCH: No.

DELEGATE HARA: Point of information.

CHAIRMAN: State your point—

DELEGATE HARA: And the question is that—

CHAIRMAN: —Delegate Hara.

DELEGATE HARA: Delegate Beppu, would you please restate the question.

DELEGATE BEPPU: Will this phrase here preclude any introduction of capital improvement expenditure bills in even-numbered years?

DELEGATE YOSHINAGA: Mr. Chairman, that is the reason I asked the question whether that refers to the standing committee report, page 10, because the second paragraph does treat that question. Delegate Beppu insists it doesn't. You're reading two separate committee reports.

DELEGATE BEPPU: No, I am reading—

CHAIRMAN: Just one minute. Can we get some order in the hall here for a minute? The question raised by Delegate Beppu is concerning the question on 9A, on the 9A docket. The comment made by Delegate Yoshinaga states that in the section in the committee report, it spells out the answer to Delegate Beppu's question.

DELEGATE YOSHINAGA: That's what I am trying to find out.

CHAIRMAN: And then when Delegate Yoshinaga asked you whether it relates to your question, you referred back to 9A. Now the question is, does it refer back to your question as to Delegate Yoshinaga's statement as to the committee report?

DELEGATE BEPPU: I am not following the

committee report.

CHAIRMAN: Okay.

DELEGATE YOSHINAGA: Mr. Chairman, well, I think he'd better read the committee report.

The question is whether you can treat capital expenditures separately. And page 10 states this intention, the last line of the second paragraph, the last sentence of the second paragraph of page 10 of the committee report. Is that the question?

CHAIRMAN: The Chair will declare a short recess so that we can get our heads together.

At 3:15 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:16 o'clock p.m.

CHAIRMAN: Delegate Kamaka is recognized.

DELEGATE KAMAKA: I think what Delegate Yoshinaga is referring to is the one that is specifically directed to the question raised by Delegate Beppu. So the answer to both questions is yes.

CHAIRMAN: So the question before the house is that the question of the Chair's having a recess so that both questions and answers can be both adjourned into the right frame of mind so we can start again.

DELEGATE KAMAKA: The answer to the first question is yes, and the answer to the second question is no.

CHAIRMAN: No. Fine. Thank you. Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, I rise to speak in support of the committee proposal. It's been said here that on a biennial setup one cannot properly project ahead sufficient number of years, one cannot project the kind of revenues that the State will have, one cannot project the economic condition under which the State will find itself at a given time. It's been said also that one cannot predict the kind of federal funds that may become available. And I would say, Mr. Chairman, that these would be all very valid arguments against the proposal had it not been for the fact that the bill provides for annual review. The biennial budget concept here is that you would budget for two years but as circumstances change during the following year, you can make the kind of adjustment that you want. It's been said also that this results in a relinquishment of legislative control over the affairs of government and I don't look at it in such a manner, Mr. Chairman, because the legislature does have the power to look at and make the kind of review that they want. One of the delegates also mentioned that she heard the same old story being repeated under the old setup that they wished that they could have an annual budget instead of a biennial budget. Might I point out to the Chair

and the members of this committee that at the time that we had a biennial budget, which was in the territorial days, we only had one session every two years so that there was not an opportunity under that kind of biennial budgeting for a review one year after the initial appropriation. I think that what it really does, what this concept of biennial budgeting really does, is to provide for, to eliminate the automatic submission to the legislature every year and the process that the administration has had over it in making this kind of submission to the legislature.

I have had the opportunity to serve under the territorial biennial budget session as a member of the Finance Committee and I have served in the Ways and Means Committee under the state annual budget, and I think that I have found that one cannot really bring about efficiency and economy as has been talked about here on this floor of a biennial budget. The question of whether or not you have efficiency and economy in government is primarily one that is rested with administration. The role of the legislature and the budget process is to set forth the policies and the kind of programs that the government should get involved in and beyond that it becomes a problem for the administration to administer the programs in the cheapest and most economical way and to try to see that people who work for the government work in such a way that efficiency is brought about. I think that the present system eliminates the process of, the time-consuming process of submitting a budget. It's been said that all you need is one budget office and they can work out the budget. What has not been said is that it requires a constant consultation with the budget and finance department, it requires a clearance to the governor's office, in addition to the printing that takes place. I found also that during the even-numbered years, in reviewing a budget, an annual budget, one can more or less tell the areas in which the legislature ought to give more scrutiny and bear in mind that under the present setup where current services takes up perhaps 95% of the operating budget, very little review is given in the area of current services. You are talking basically about workload entries and expansion. The same thing can be done. You can look at workload, you can look at expansion during the even-numbered years, and look at the areas which you feel, as a result of the prior year's work, require more careful scrutiny and examination without having to look at some departments where you feel it is not really necessary to take a look at and without requiring them also to submit to the legislature a budget. And it is for these reasons that I support the concept of a biennial budget.

CHAIRMAN: Delegate Kudo.

DELEGATE GEORGE LOO: Mr. Chairman, point of information.

CHAIRMAN: State your point.

DELEGATE GEORGE LOO: May I ask the preceding delegate a question?

CHAIRMAN: Proceed.

DELEGATE GEORGE LOO: He mentioned in his speech that this amendment provides for an annual review. Now, I have been reading this amendment and I can't find any place where it says that there be an annual review. Could he inform me where the precise language about an annual review so—

CHAIRMAN: Delegate Ariyoshi, will you clarify?

DELEGATE TAIRA: May I help, Mr. Chairman?

CHAIRMAN: If Delegate Ariyoshi yields.

DELEGATE ARIYOSHI: Yes, Mr. Chairman. On page 8 it says, "In each regular session in an even-numbered year, bills may be introduced in the legislature to amend any appropriation act of the current fiscal biennium."

CHAIRMAN: Thank you. Delegate Kudo.

DELEGATE KUDO: Mr. Chairman, I speak in favor of the biennial budget.

DELEGATE DEVEREUX: Point of information, Mr. Chairman.

CHAIRMAN: State your point of information.

DELEGATE DEVEREUX: Will the previous speaker explain the statement he just made? This does not, in my opinion, represent an annual review. It just says "bills may be introduced."

CHAIRMAN: The Chair would have to rule you out of order because unless you want to raise that same point, but to me, Delegate Loo was satisfied. Were you not?

DELEGATE GEORGE LOO: Mr. Chairman, I read the same statement and I don't get the same answer as Delegate Ariyoshi.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: The Chair will recognize Delegate Ariyoshi to clarify the matter.

DELEGATE KAMAKA: Point of order. Doesn't Delegate Kudo have the floor, Mr. Chairman?

CHAIRMAN: The question was raised to a point of information, the Chair conceded to the point of information, and then the Chair ruled that that point was answered by Delegate Ariyoshi to Delegate Loo who sat down and did not get up for another point. So that at this time the Chair will say that Delegate Kudo is in order, unless there is another question to be raised to the previous speaker. Delegate Kudo.

DELEGATE KUDO: Thank you, Mr. Chairman. Mr. Chairman, I speak in favor of the biennial budget. To me, biennial budgeting will encourage efficiency in both the legislature and in the various government

departments involved in developing the budget. The other system tends to be more rigid, less flexible than the biennial. It requires unrealistic accuracy. It discourages long-range planning, subjecting governmental departments to repeated annual fiscal reviews of the legislature, seriously handicapping the departments in the exercise of their functions. Annual appropriations, rather than being an aid to the department, discourage the distant planning and the implementation of the sound, future programs since funds are appropriated only for a one-year period. On the other hand, a biennial system will afford the long-range view of government.

At the same time, a good biennial system such as the one proposed by this committee would provide for annual adjustment and appropriation in non-budget years. This yearly check combined with the long-range plan will make biennial budgeting extremely valuable. Staff management should be considered in discussing budget efficiency. Annual budgeting requires the measure of the administrative department to assign new roles to personnel to provide liaison with the legislature. It means the assistance upon the accounting by departments before there has been a reasonable opportunity to make adequate progress in the planning and execution of some programs. In preparing the year's budget, new programs are reviewed for progress in February of the succeeding year, only several months after being started. Here I may divert a little, Mr. Chairman, and say that the budget that has been approved in February, the month that the legislature convenes, the effective date of that budget would be as of July 1st. When we reconvene in February of the subsequent year, the legislature or the legislators have only seven months to review the programs as requested by the departments. So the question is, do we have an adequate time to review the programs as put forth by the various departments?

Annual budgeting means the doubling of the frequency with which the administrative routines are interrupted. It means additional workload for the legislature so that getting its total business done requires more time than would be necessary under a system of biennial budgeting. Countless hours are required of the hundreds of individuals who are involved in the work necessary in developing and implementing a budget. The less labor involved in preparing two budget documents every biennium and seeing this through the appropriation enactment in the legislature is enough to speak against an annual budget system.

Biennial budgeting will grant legislators and department personnel more time to do their own important work. They could concentrate on an intensive analysis of selected aid or in the implementation of certain program objectives. Only problems in the budget will have to be referred for executive and legislative review. In this regard, the State Director of Finance has said, and I quote: "Budget requests that are made would be the result of more intensive evaluation and analysis because there would be a relief from the psychological mandate to seek more funds because the opportunity does exist. Fewer, yet better, budget requests would be generated."

By concentrating on careful, physical planning, the legislators will not have to concern themselves with deliberations and defeat of numerous unfound measures each year. In terms of productivity, this elimination of tedious legislation will save taxpayers money. Staff costs, too, would be lower. Fewer meetings with lower per diem wages and permanent staff dealing with budgets would not need to be large. But this is not to say that biennial budgeting reduces legislative and executive control over the expenditure of appropriated money; that would be required by the Constitution. But there also would be sufficient checks and balances to control expenditures. The legislature would be kept abreast of budget matters through frequent oral or written reports by the various departments, and the legislative auditor would continue to provide checks on accuracy in revenues and expenditures.

Finally, it is agreed that budgeting for a two-year period worked well under the territorial government. The present governor and his administration have stated their desire to return to biennial budgeting for the last five years. In 1965, the Governor's Advisory Committee on Taxation and Finance recommended that serious consideration be given to returning to the biennial budget system. A large majority of the thirty-one states whose budgets are in this manner have indicated that they are satisfied with the biennial system and see no advantage in changing into annual budgeting.

In conclusion, Mr. Chairman, it would be emphasized that no single act in this fiscal process is of greater importance than the preparation of the budget. This preparation would be done with the future as well as the present needs of the State in mind. A carefully planned and efficient fiscal system would be the result of the return to a biennial budgeting system. Thank you.

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate, could I recognize Delegate Lum first?

DELEGATE LUM: Are you going to ask a question? I will yield if you are going to ask a question.

DELEGATE KAWASAKI: I want to respond to one of the statements made by Delegate Ando here.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Mr. Chairman, I rise to speak against the committee proposal.

CHAIRMAN: Proceed.

DELEGATE LUM: I speak against the committee proposal although I signed it without any reservations. I am very, very disturbed at the actions of a few delegates to try to make the executive very, very strong. I see this as another step to try to make the executive stronger. I see no good reason so far. We have made a longer session and we are meeting annually. The

carry-over bills, we're paying them higher pay, we are going to have new districts to associate, likewise to have similar voices expressed. And then you take a step backwards. Now you say the legislature will meet for the first year, appropriate a budget, a biennial appropriation, and the second year you have the chance to review only if the legislature and the governor want it to be reviewed. Let me explain.

According to what I read here, it says: "Bills may be introduced in the legislature to amend any appropriation." Let's face it, the practical side of it. What happens to the bills that do not come in the favor of the people in power, either committee chairmen or the majority? They die. They don't even have a chance to be expressed or even looked at. What's going to happen, I fear, is that only those areas of government in the even-numbered years that the people in power want to be seen will be looked at. Otherwise they'll say, "Well, we don't have time, we'll have to schedule this for investigation." They haven't prepared anything in this area. They can't do it and what have you. What other excuses they can make up. I feel that when you do this particular action, you are limiting the hands of the legislature. As expressed earlier, the members of the house of representatives only meet for two years and his second year he is just sitting down reviewing. Reviewing what? Whatever the governor and the people in power and the legislature want him to see. The area I am concerned with—and I have been a member of two years in the house—is the area of current services. I am concerned with this area because most of our budget is in this area. Well, what kind of time are we spending looking into this area? I still maintain that the problem with our budgeting process is because we do not spend enough time in it. I thought that this Constitutional Convention would, and they did, extend the session.

And what we are doing is we are limiting their actions by saying that the second year is only to review. I cannot foresee the committee chairmen or the governor coming forth with pages of amendments to delete appropriations or to correct mistakes made maybe three years hence, or things of that nature. I can see only supplemental, as they say here, supplemental appropriations asking for more money. I think we are going to be very sorry when we finally put this into effect because we're going to be finding out three years after, a mistake we may have made two years before, because of this lack of review or perhaps control review that we may have. I'd like to urge each and every one of you to consider the type of legislation we are making here. Here is a guy that we are going to pay better, we're going to have him meet for a longer period of time, and at the second year he is only going to review.

CHAIRMAN: Delegate Kawasaki is recognized.

DELEGATE KAWASAKI: Mr. Chairman, in speaking against the committee proposal for the development of a biennial budget, I am compelled to respond to an inference made here by Delegate Ando that the utilization of the retention of the present system of

annual budgeting will somehow hamper the development or implementation of long-range plans. I believe this to be quite a departure from the truth. The fact of the matter is, Mr. Chairman, there are several departments in our state operations today that have developed and are implementing some very rational long-range plans that are being implemented in their annual budget request to the legislature. A very good example of this, Mr. Chairman, as you well know as chairman of the Committee on Tourism and Transportation, is the Department of Transportation, which department has developed some very good long-range plans covering a number of years in the future, and they are implementing their plans, rational plans, by their annual budget requests that come before the legislature at the present time. So my point here is that the retention of the present system of annual budgeting does in no way preclude developing and implementing long-range plans as they are called.

DELEGATE MIYAKE: Mr. Chairman, I'd like to—

CHAIRMAN: Before the Chair recognizes Delegate Miyake, may I recognize Delegate O'Connor unless you have a question.

DELEGATE MIYAKE: Thank you.

CHAIRMAN: Delegate O'Connor hasn't spoken.

DELEGATE MIYAKE: I shall wait for my second chance.

CHAIRMAN: Delegate O'Connor, the Chair apologizes because Delegate Kawasaki has finished twice and I didn't recognize you in the beginning.

DELEGATE O'CONNOR: Thank you, Mr. Chairman.

Mr. Chairman, I would like to call your attention to the fact that the proposed Section 4 besides calling for a biennial budget has another feature in it in which the budget idea set out in Section 4 calls for a complete plan of proposed expenditures. Therefore, I rise to speak partially against the proposal and partially in favor of it, for this reason.

CHAIRMAN: You are a kanalua speaker, go right ahead.

DELEGATE O'CONNOR: Thank you, Mr. Chairman. I don't come from Kauai. Mr. Chairman, the State, as I understand its present scheme of budgeting, is going into a program planning budgeting system. Such a system requires that packages of budgetary expenditures be proposed to the legislature. Take for example, a ferry scheme would be proposed to the legislature as an entire package or it may even be incorporated as part of an overall transportation package which would include not only capital improvement expenditures but operating expenditures and would also include debt servicing expenditures in the future. So, for this reason, since the State has already embarked on this type of budget plan, it would be absolutely

impractical to retain the present Section 4 in the Constitution which calls for separate operating budgets and capital improvement plan budgets since such a scheme would make it impossible in reality to go into a program planning budgeting system or P.P.B.S. as it is commonly referred to.

For this reason, Mr. Chairman, I would suggest that if the Chair sees fit, the matter of a biennial budget be considered separately from the provision in the new Section 4 which calls for the budget to set forth a complete plan of proposed expenditures, because I think it would be a mistake in this new modern look at budgeting for that particular provision of this section to fail.

Talking for a minute on the biennial versus annual budget. For the same reason, because of the move into the P.P.B.S. system, Mr. Chairman, I feel that an annual budget for the State is in the future going to be more of a necessity than it is now. It's going to be necessary for the legislature each year to review the programs which are budgeted under the new P.P.B.S. system. And I say that for this reason, I would liken our State to the Defense Department of the United States which has recently under McNamara adopted such a system. Particular expenditures become completely submerged under such a system. People tend to look at a very large package. For example, as I said before, ocean transportation for the State might have submerged into it everything down to a tugboat system in Honolulu Harbor including both capital expenditures and operating expenditures. Under such a system, unless it is reviewed with extreme care on a regular basis, expenditures can be made which legislators in their wisdom may not desire to have made. And I would suggest that since we are going to P.P.B.S., since our budget will be all lumped into one large budget, and further, since this morning we essentially removed any ceiling on debt, that each year the legislature should review the entire package, look at debt servicing expenditures, look at operating expenditures, look at capital improvement expenditures and relate them to the programs in which they are placed by each department. I think in the future each year this will become more and more important and for that reason at this time since we are all looking forward to this future Hawaii, that this Constitutional Convention should very strongly consider retaining an annual budget.

CHAIRMAN: Thank you. Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I rise to support the committee's proposal regarding biennial budgeting and again I must speak my concern, and again with somewhat mixed feelings. The proposal calls for biennial budgeting and permits annual amendments to any appropriation bill of the fiscal year in the second session. In other words, an annual legislative review. I support biennial budgeting.

In theory, I imagine the administration would be somewhat relieved by the committee's proposal. Instead perhaps of nine out of twelve months per year of budget preparation and justification, it is thought that it

might be something less. Theoretically, annual legislative review may be helpful. However, we here today appear overly concerned at legislative prerogatives. I think it may well be that some of us want a super-branch of government. The word is "check," not "control." I believe there are other means of amending the biennial budget to provide for legislative action and budgetary amendments whenever needed. We fool ourselves if we believe that the legislature will confine itself to sectional review in the off-year. Unless and until the legislature discourages, if not curtails, committee review, every subject-matter committee will feel compelled to review its area of responsibility requiring substantial rejustification of programs already approved. It is the committee's responsibility. We have seen this during every budget session. It is the essence of the legislative entity. To me biennial budgeting with the right of annual appropriations and review is annual budgeting minus only formal budgetary preparation by the administration. We have hardly spared the administrators, not at all. For a moment, Mr. Chairman, let us consider the matter of projection. I suggest that in this area we be sensible. Let us review and examine the assumptions made and the basis upon which these are made. No projection is ever intended nor expected to be accurate. If there have been inaccuracies in the past, and there will always be these in the future, they have all been on the conservative side. The projections are being reviewed constantly. This year at least two reviews were made during the legislative session. The problem is not the inaccuracies or the projections, as I see it, but rather the inability of the legislature to understand and work with them.

A few more words about projections. The problem with the past session is that perhaps there were too many financial plans. I speak, Mr. Chairman, hoping that those here who will sit again in the legislature have some concern and appreciation for the administrators. Give them the opportunity to implement programs, review the budget and projections biennially, assisting them annually only when the need arises. Here in effect, you have an annual budget. Again however, with prudence as I see it, it can work. Perhaps my concern is best reflected and summarized in a statement made by Dr. Hamilton when as president of the university he stated to the Committee on Finance, out of concern for what he possibly thought might result in repeated, unwarranted and exhausted review of the university, that "you kill a tree when too often you pull it out to examine its roots."

CHAIRMAN: Delegate Aduja wanted to be recognized.

DELEGATE ADUJA: Mr. Chairman, I speak in favor of the committee's report. I say this in all sincerity because I feel this is the best way that we know how. Now those that fear the annual budgeting I do not have—I don't think that they need to fear as much as they should fear. For those representatives who serve in the house, we'll have the big opportunity of meeting ahead on this biennial budgeting so to speak. They can express their fears, they can express their thoughts, they can express everything that they wish.

There is no need to express it the second year. I feel, therefore, Mr. Chairman, that biennial budgeting may also give not only the legislators the opportunity to at least look into their budget, it may give the various department heads more opportunity to examine what they have already exposed themselves to in this biennium. Thank you.

CHAIRMAN: Delegate Taira. Oh, Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I have an amendment to propose.

CHAIRMAN: The amendments, Delegate Dorothy, if I may, as soon as we get through with the pros and cons, then we will ask the chairman to make a motion and then the amendments will be in order.

DELEGATE DEVEREUX: All right.

CHAIRMAN: Delegate Taira.

DELEGATE MIYAKE: Mr. Chairman, may I—

CHAIRMAN: Delegate Taira is recognized and Delegate Jaquette and Miyake.

DELEGATE TAIRA: Mr. Chairman, I rise to speak in favor of the committee proposal calling for biennial budgeting and the reason for my position is primarily the objective that is explained on page 9 of the standing committee report where it says, "Biennial budgeting will alleviate the administrative burden of almost perpetual involvement in the existing annual budgeting process."

Mr. Chairman, I'd like to call the attention of this Convention to the fact that budgeting is but a tool of management. Management has as its ultimate goal much more than the idea of budgeting, appropriating dollars, finding revenues and so on. It seems to me that in my simple approach to this problem, if we involve our key people, from the department heads, the division chiefs, section chiefs, and others who had so much to do in leading our state and county employees in achieving the goals for the various programs that we have funded—the legislature funds for the State and the counties, the State rather, that in place of having these key people spend a whole year developing, justifying their budget requests and then to repeat the process that under a two-year biennial budget, these key people have one year to implement the budget itself and do a better job of carrying out their objectives and their responsibilities as managers for the various departments and divisions of our State. It seems like a simple point, but I look upon this change to biennial budgeting this way and I hope that this approach will make it possible for our State's programs to be carried on more efficiently and more effectively.

CHAIRMAN: The Chair is going to—before recognizing Delegate Jaquette, the Chair is going to ask for a short recess for our steno here. But before doing that, you have before you Amendment No. 6. Will you

please remove the first page. Delete the first page. There is an error and during the recess they will pass out a corrected page. So at this time we will declare a short recess. As for the time schedule, the intention is to work till 6:00 o'clock, recess and be back at 8:00 o'clock to finish our work.

At 3:47 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:00 o'clock p.m.

CHAIRMAN: Will the Committee of the Whole please come to attention? Delegate Jaquette is recognized.

DELEGATE JAQUETTE: Thank you, Mr. Chairman. I rise to speak in favor of the committee proposal and to state that in my opinion the language provided gives us whatever we want. It gives flexibility in budgeting and flexibility is much to be desired. It can if we want, and I hope this is the result, permit a complete review in one year of all seventeen departments and a review in depth in the even year of only those departments where a complete review is required.

However, to quiet the fears of those who are afraid of the legislature losing its powers, I believe the language is sufficiently broad to provide in effect for an annual budgeting if that is the desire of the legislature. I call your attention to page 10 of the committee report, the top paragraph which says, "Provision is made for either the governor or the legislature to initiate increases or decreases in any appropriations in even-year sessions."

I recommend that we vote in favor of the committee proposal.

CHAIRMAN: Nobody else? Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, although I don't profess to be an economist, nor do I profess to having had such sufficient degree of legislative experience as compared to the many others more capable and qualified, perhaps, than I am, with respect to legislative service. But I am somewhat concerned with the projection as being submitted by the committee and the amended, substituted proposal, Proposal 9A, that I speak against the committee's proposal. Because of the confused state of mind that I have in the application or the change from an annual session to a budgeted biennial session, I believe, Mr. Chairman, in the past we have experienced the going back to the 1940 and 1950 stages of budgeting practices and policies. And during the course of the 1950 Constitutional Convention this matter was fully explored so that a suggested change had, that we're going to handle budget sessions, I've experienced—what little experience I have had—in the year of 1940 and 1950 practices of budgeting review, and the submission of such biennial budget by the various departmental agencies of our government.

I have reviewed these practices with some great

concern because I felt there was some system of relief beyond expended surplus funds that were available within some of the governmental agencies so that when time came for submission of departmental budgetary requests to the governor, that all such surplus monies which can be used to the new approach of budgetary subject matters were so expended that the legislatures do not have a full opportunity to look into some of these unexpended funds because they have been somewhat committed.

This kind of practice led, I am sure, to the 1950 Constitutional Convention to change that outmoded practice. I see no reason why we cannot continue the practice that we have made in the change to an annual budget session because I do not feel that any department of the governmental structure is greatly concerned with an annual submission of their budget program. I do not feel that even the members of the house who were elected to serve for a two-year term should begin to take the position to dedicate their powers in the review of the budget as they have been accustomed to presently, because this is the only means by which the members of the house can have some voice in control over the various governmental agencies of the State. You know, Mr. Chairman, you were once a house member, and when the department heads came before the members of the Finance Committee or even to a subcommittee appointed to look into budget matters that's being submitted by various governmental agencies, they looked right through as though we were just windowpanes sitting in the front of these departmental heads. Then they had no fear of the expression from the house members. With that in mind, the annual budget review or the annual budget consideration by the legislators will give you some control over the expenditures to revenues of the State to support any projection that is to be made by the various agencies of government.

I note, Mr. Chairman, that we have voted to pay our legislators an annual salary of \$12,000. I believe that when I voted for the pay or did not vote for the payment of this \$12,000 because I had a reservation with respect as to when and if this money should be applied, how much time will be rendered by the legislators in providing a sensible budget operation that the taxpayers will be able to accept and be willing their just share for this governmental expenditure. I note in the committee report which reads, nothing in this section which curbs the legislature from combining operating capital expenditures in such bills or from people with capital expenditures in separate bills. I note further that it does not prohibit the legislature from even, to the point as I read it, Mr. Chairman, to permit the legislature to increase or decrease the budget after their review. I also see in this report the matter of supplementary budget requests that can be made by the legislature or even submitted by the governor. This new terminology leaves me to believe that the old-fashioned deficiency budget appropriation that comes in by departmental heads requesting funds if and when such or if the need for additional monies to continue their program has been made available. So all of the new concepts that I find in this committee report are not

only meaningful in their change of title but are somewhat confusing to the layman in trying to find out just what sincerity and purpose is being paid by this proposal.

Mr. Chairman, may I be permitted to ask the chairman of the committee a question?

CHAIRMAN: State your question.

DELEGATE KAUHANE: Mr. Chairman, I'd like to ask the committee chairman a question, not as chairman of the committee but as an economist, if in his judgment, and an honest judgment at that, that the proposal, the submitted Proposal 9A would work in the best interest of the government of the State of Hawaii.

CHAIRMAN: Delegate Hitch, would you care to answer that question?

DELEGATE HITCH: I didn't get the tail end of that question. Would you please repeat it, Delegate Kauhane?

DELEGATE KAUHANE: The tail end of my question is whether or not the substituted Proposal 9A would work in the best interest of the government of the State of Hawaii.

DELEGATE HITCH: I think there can only be one answer to that question. I certainly would not and I don't think any member of my committee would have proposed this if they didn't feel that was the case.

CHAIRMAN: Thank you.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I'm thankful for the answer given and this ends my remark in my vote against the committee proposal and the committee report.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Thank you, Mr. Chairman. I have been sitting here listening to the arguments made by the proponents and I would like to summarize these arguments made by the proponents to this amendment. I've heard that the administrators have to spend too much time preparing the budget, it's a burden on the administrators, and this will help the administrators. And all they have been talking about are the benefits which the administrators can receive and they do not talk about the benefits that the taxpayers can receive through annual confrontation of the executive office through its administrators before the legislature. This is the only chance for the taxpayers through their legislators to approve, modify, or deny budget proposals of the executive. This is the only check against excessive spending of taxpayers' money. Without annual confrontation, this reduces the opportunities of the legislature to provide the watchdog supervision of executive spending. And we talk about excessive

spending of government. We talk about excessive taxes being paid in the State of Hawaii.

Changing the subject to another aspect, Mr. Chairman, improving the budget and its process calls for the consideration of new concepts and techniques rather than merely lengthening the fiscal period. We heard mentioned earlier by one delegate that we had the P.P.B.S. system. This is a new technique which is being developed. It has not been tested. It is not the answer. Now we have had Dr. Hamilton's name mentioned also by another proponent as an authority in this area and may I quote from the report of the Citizens' Committee that advises the senate on legislative process and it reads, this was the question that the committee itself raised to itself and I quote: "How can the budget process contribute to increasing the effectiveness of legislative policy-making, education and oversight." And I continue further with the quote: "The committee has grappled with this problem without finding an ideal solution. It therefore recommends that necessary flexibility in budget process be maintained by leaving such problems for legislative rather than constitutional determination."

A query, Mr. Chairman. Because of the use of improving technical methods in treatment of budget process being developed and ignoring completely the question of legislative power and control over the executive, shouldn't the legislature be provided with the flexibility and authority to develop budget formats to legislation in keeping with these developing technologies than to tie their hands for the next ten years or twenty years.

I have one more minute, Mr. Chairman. Another aspect that I have raised considering this amendment. It combines both the operating budget and the capital budget. Now these two budgets are financed with different kinds of money. The operating budget is a short-term budget and it is financed by current revenues because we are dealing with current expenses. Now with the capital budget, we are dealing with money that is obtained mostly through loans, and this is why we have been talking today about the debt margin that the State should burden itself with. This is the very reason why we should not have these two budgets combined into one. For these reasons, Mr. Chairman, since arguments—all being for the convenience of the administrators and because the taxpayers' interests and how their money is spent should also be spelled out here, I ask every delegate to vote against this amendment.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Just one minute. Is there anybody else who hasn't spoken who wishes to speak?

Delegate Ariyoshi is recognized.

DELEGATE ARIYOSHI: Mr. Chairman, it's been said here that there's no benefit to the taxpayers and it's only for the convenience of the administrators. Perhaps the point was not made clearly, but by bringing

the administrators from the process of having to prepare this kind of budget for submission, it frees the administration and makes it possible for them to spend time in executing the budget and spending the monies. And this I believe is a very definite advance to the taxpayers.

It's been said also that the Citizens' Committee recommended flexibility and that it should not be treated constitutionally. But, Mr. Chairman, I wish to point out that the matter of an annual budget is treated in the Constitution and the question here is whether or not it should be changed, or whether or not we retain the same provision in the Constitution.

CHAIRMAN: Delegate Miyake, the Chair informs you that you have exactly one minute to finish.

DELEGATE MIYAKE: Thank you, Mr. Chairman. In reply to the statement made by the last delegate, as to the time involved by administrators in preparations of budget, to take care of this matter adequately the state legislature over the past six years has provided human bodies, manpower, we call them fiscal officers to take care of annual budget preparation. Therefore, they have been adequately supplied with technicians to help each department director to prepare an annual budget. I am wondering if we go the biennial budget whether these same directors will recommend the state legislature to cut out the positions that they have in the department.

CHAIRMAN: Before we go any further, the Chair would like to inform the delegates here that upon roll call, if the Chair's not informed that you've asked to be excused, the Chair's going to mark you absent. So I will ask all delegates to take their seats when roll call comes about. Delegate Hasegawa is recognized.

DELEGATE HASEGAWA: Mr. Chairman, under Standing Committee Report No. 46 submitted by the Committee on Legislative Powers and Functions, the following sentence is on page 10 relating to legislative sessions. The amendment proposes general sessions thus eliminating alternate budget sessions. The question I pose now—are we again discussing this matter which already has been decided upon?

CHAIRMAN: The question—the Chair did not hear your question. Is the question, are we here discussing a matter that was already decided upon?

DELEGATE HASEGAWA: The question relating to budget sessions which has already been decided upon in Standing Committee Report No. 46.

CHAIRMAN: The Chair will ask Delegate Hara if he wishes to comment.

DELEGATE HARA: Well, my reply to the question posed by Delegate Hasegawa is, I believe what we are doing right here now is discussing the biennial and annual budget acting in concept only. And later on your type of concern will be brought forth by members of this Convention and the Chair as I understand, Mr.

Chairman, the chairman of the committee will be moving and placing this proposition in position for amendments or thereabouts to be placed to this proposition. And the general discussion now is the concept of biennial versus annual budgeting.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I think what Delegate Hasegawa's referring to—that day we decided on the type of sessions we're going to have. We're going to change the regular and the budget session which was the past to two regular sessions. But today we are discussing the type of budgeting which will be controlled, the state budgeting process, not the form of sessions or the type of sessions. There's a distinct difference here.

DELEGATE KUNIMURA: Mr. Chairman.

CHAIRMAN: Delegate Kunimura is recognized.

DELEGATE KUNIMURA: Point of information. When are we going to vote? It's getting too hot in this corner here.

CHAIRMAN: Delegate Yoshinaga is recognized.

DELEGATE YOSHINAGA: Mr. Chairman, there has been a lot of verbal oratory here for and against the annual budget, and for and against the biennial budget, most of which has been wasted in the heat of oral oratory and the heat of the gym. Now, it seems to me like this is a very simple matter, like the vote we took before this. Four times or three times. If four times is it too much? Three times, is it too little? Nobody knows, an economic question no human being has solved yet. But because the committee spent a great deal of time and the committee gave us a great deal of time and information here on the floor, the reasonable thing was three and a half and that is how the majority voted, and unless God decides otherwise, so will it be.

Now, whether an annual budget is better than a biennial budget, it's somewhat of a similar problem. Nobody's going to convince nobody here that this mathematical certitude in this work of social art, that one year is better than two years. So regardless of what's being said here, whether the departments had enough staff so they can get a good budget out annually or whether time limitations require two years, nobody's going to have the answer. But as usual in this case, it seems to me, being someone who doesn't know too much about this subject matter, having served under the biennial budget and the annual budget, that the reasonable compromise as between legislators, as between administration, as between one year and two years is the kind of solution that has been offered by the committee, and we have no other course to go except annual, biennial or in between and support the committee. So I intend to support the committee. So if you are ready to vote, I think we have had ample discussion.

CHAIRMAN: The Chair at this time will recognize Delegate Hitch for the purpose of putting a motion and then the amendments will be in order.

DELEGATE HITCH: I move that Section 4 and Section 5 of Article VI be amended as proposed in Standing Committee Report No. 52 and in Committee Proposal No. 9A.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: I second the motion.

CHAIRMAN: Is there any objection to the two sections being combined together? Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I have an amendment to offer. Amendment No. 7 with one correction. On the fourth line of the first page, the words "general fund" should be excluded. As corrected, it reads as follows:

"Section 4 of the State Constitution as set forth in Committee Proposal No. 9A, as amended, is hereby further amended to read:

"1. Amend Section 4 (page 7) of the committee proposal to read as follows:

"Section _____. Within such time prior to the opening of each regular session as may be prescribed by law, the governor shall submit to the legislature a budget setting forth a complete plan of proposed expenditures and anticipated receipts of the State for the ensuing fiscal period, together with such other information as the legislature may require. The budget shall be submitted in a form prescribed by law. The governor shall also, upon the opening of the session, submit bills to provide for such proposed expenditures and for any recommended additional revenues or borrowings by which the proposed expenditures are to be met. Such bills shall be introduced in the legislature upon the opening of each regular session."

"2. Amend committee proposal by deleting Section 5 (pages 7 and 8).

"Section 5 of the State Constitution as set forth in Committee Proposal No. 9A, as amended, is hereby deleted in its entirety."

I move this amendment be adopted.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: I second the motion.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, may I

speak on the amendment?

CHAIRMAN: Proceed.

DELEGATE DEVEREUX: Mr. Chairman, this in effect brings us back to annual budgeting but also provides that the budget shall be submitted in a form prescribed by law. It makes no mention of capital improvements per se because the feeling we have had, some of us, under the proposed P.P.B.S. budgeting, is to the effect that we will want to relate our capital improvements to the program which is being planned.

Mr. Chairman, much has been said this afternoon on a number of subjects and I do not wish to repeat what has already been said but I would like to make a couple of remarks in relation to what has been said. We have heard conflicting statements, Mr. Chairman, on whether 9A does or does not provide for annual review.

My interpretation of this section 9A is that it does not specifically imply for annual review but rather for an opportunity for bills to be introduced. I believe that this amendment would provide for the type of budget which we've made in these changing times. I am not convinced by the arguments against the annual budgeting and I should like to speak just a word on the matter of control versus another subject of my interest. I am not so much interested in the control of the executive departments as I am interested in the legislature being able to assist the executive department. And I am reminded earlier that I was speaking more as a layman who had been involved many years back in 1944, which I admit dates me a bit, and I also should like to say that I doubt if there is a present state administrator who was involved in biennial budgeting. I doubt if any of the present members of this delegation with perhaps two or three exceptions were deeply involved in biennial budgeting. But for those of us who were lay persons working with departments, we realize that the bemoaning of the departments was not because we had a biennial legislative session but because they had to provide a biennial budget.

I have observed over the years as a legislator now, I should like to speak, that the departments depend a great deal upon the legislature to assist them in meeting their problems. They have administrative orders relating to their budgets which when once prepared are presented to the legislature. I have observed over the past few years that department heads are reticent to speak out and tell of some of their problems if it is not a part of the existing budget, and it takes actual pertinent questioning on the part of members of the Finance Committee, and I presume the same is true with the Ways and Means Committee in the senate, to determine what some of the real problems are. In my opinion, this annual determination of the problems of the departments is most essential and my personal feeling is that my concern is more with the legislature's assistance to the departments than the legislature's control of the departments, although I do feel we are accountable to the people who have elected us to office. But I would urge you to vote for this amendment. This will provide real flexibility for the

legislature in determining whether some capital improvement budgets perhaps should be submitted separately and some should be submitted with the programs. That depends on how far and how fast we go with P.P.B.S.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I rise to speak in favor of the amendment and my comments will be very brief. The reason that the existing language of our Constitution makes reference to a budget in two parts, in an operating and in a capital improvements part, is because in 1950 this was a fairly new concept in state budgeting procedures. And it was felt necessary to put in this capital improvements concept into the Constitution in order to get it started. We have had eighteen years and it's no longer a new concept. Newer concepts have come along as Delegate Miyake said and other concepts of program or package budgeting. This amendment retains the present system with the exception that the legislature prescribes the form of the budget, and I would also urge the delegates to vote for it.

CHAIRMAN: The question before us is the amendment presented by Delegate Devereux, Amendment No. 7. A vote is in order. Is there anyone wishing for a roll call? Stand please, so we can see if there are ten. There is a sufficient number. Mr. Clerk, call the roll.

(Roll call having been ordered, the motion to adopt the amendment was put by the Chair and failed to carry by a vote of 21 ayes and 49 noes, with Delegates Aduja, Akizaki, Alcon, Amaral, Ando, Ariyoshi, Bacon, Beppu, Bryan, Burgess, Donald Ching, Fasi, Hara, Harper, Hasegawa, Hidalgo, Hitch, Ho, Jaquette, Kage, Kageyama, Kamaka, Kato, Kawakami, Kudo, Kunimura, Larson, Peter Lewis, Rhoda Lewis, Frank Loo, Matsumoto, Medeiros, Menor, Morioka, Noguchi, Oda, Ozaki, Shiigi, Souza, Suwa, Taira, Takamine, Ueoka, Ushijima, Yamamoto, Yoshinaga, Young, Mr. President and Mr. Chairman voting no; and 12 excused, with Delegates Amano, Ansai, Hung Wo Ching, Doi, Goemans, Kaapu, Nakatani, Schulze, Steiner, Takahashi, Uechi and Yim being excused.)

CHAIRMAN: The amendment failed to pass.

DELEGATE PETER LEWIS: Mr. Chairman.

CHAIRMAN: Delegate Peter Lewis.

DELEGATE PETER LEWIS: I request a very short recess.

CHAIRMAN: What is the purpose for the short recess, if I may ask?

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: President Porteus is recognized.

PRESIDENT PORTEUS: I think there are one or two other pending amendments that might be able to be introduced on the floor.

CHAIRMAN: A recess is in order, so granted.

At 4:30 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:42 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Mr. Clerk, do we have any amendments on your desk?

CLERK: Mr. Chairman, we have an amendment which consists of three pages and is numbered 6 which is being offered by Delegate Peter Lewis.

CHAIRMAN: The Chair at this time will recognize the chairman of the committee, Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, it's been pointed out to me by several delegates that it is possible that the proposal relative to Section 5 in Proposal 9 perhaps does not entirely reflect the recommendations of the committee as contained in Standing Committee Report No. 52. In Standing Committee Report No. 52, referring to our recommendations with respect to Section 5, specifically with respect to the review of the appropriations at mid-term in the biennium during the even-numbered years, we made it quite clear that this review referred both to operating expenditures and to capital expenditures. We said nothing in this section precludes the legislature from combining operating and capital expenditures in such bills that would be supplemental appropriation bills or containing capital expenditures in separate bills.

I would therefore like to offer an oral amendment to Proposal No. 9 on page 8, the Proposal 9A on page 8, the sentence in the middle of the paragraph which reads: "In each regular session in an even-numbered year, bills may be introduced," et cetera. I would have this read: "In each regular session in an even-numbered year, bills may be introduced in the legislature to amend any appropriation act and bond authorization act of the current fiscal biennium," to make it quite clear that this mid-term review relates both to operating appropriation acts and capital expenditure acts.

CHAIRMAN: The Chair will put the question before the delegation if there is any objection that this oral amendment be submitted at this time.

DELEGATE HARA: I second the motion.

CHAIRMAN: Just wait. Hearing none, then the Chair will entertain the motion that the—

DELEGATE DEVEREUX: Point of information.

CHAIRMAN: State your point.

DELEGATE DEVEREUX: Will the chairman of the committee yield to a question?

My question is, are we to interpret this sentence that he just read to us then to mean that in fact there will be an annual review of the budget?

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: That there can be, but it is not mandated.

DELEGATE DEVEREUX: In other words, do I understand that there can be and therefore no department would be prepared in advance of a legislative session to present information for an annual review? Such information would only be required by the legislature during the period of time it is in session.

DELEGATE HITCH: We are providing that the governor may submit to the legislature a bill to amend appropriations, in which case if he were planning this I imagine he would have the departments concerned be prepared and do all the work in support of this. We are also providing in the middle sentence that I just referred to that the legislature may amend any appropriation act or bond authorization act.

DELEGATE DEVEREUX: Mr. Chairman, this does mean in fact there is no provision for an annual review.

CHAIRMAN: The question before the house if I may, first, is that we are in agreement that a verbal amendment may be made. There was no objection. Now the Chair will entertain your motion as to the verbal amendment.

DELEGATE HITCH: I would move that the middle sentence in the paragraph on page 8 of Committee Proposal 9A be amended to read as follows: "In each regular session in an even-numbered year, bills may be introduced in the legislature to amend any appropriation act and bond authorization act of the current fiscal biennium."

CHAIRMAN: Delegate Hara.

DELEGATE HARA: I second the motion, Mr. Chairman.

CHAIRMAN: The motion has been duly seconded. Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: Point of information. How would that tie in with the first sentence on the same page? I don't know whether I follow the explanation which says the governor may submit a bill to amend appropriations for operating expenditures.

DELEGATE BEPPU: Mr. Chairman, I request a short recess.

CHAIRMAN: The Chair will declare a short recess.

At 4:46 o'clock p.m., the Committee of the Whole

stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:00 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Delegate Hitch is recognized.

DELEGATE HITCH: I think it's quite clear what the committee intended to be the contents of amended Section 5 which appears on page 8 of Proposal 9A; namely, that at such time in each even-numbered year as may be prescribed by law, the governor may submit to the legislature a bill to amend any appropriation for current expenditures of the current fiscal biennium to be known as the supplemental appropriation bill, et cetera, and skipping to the lower end of this paragraph that that supplemental appropriation bill will have to be passed and transmitted to the governor before any other appropriation bills except emergency matters are taken care of. Also it is the intention of the committee that the legislature be authorized to introduce amendments to any appropriation act for the current fiscal biennium in this even-numbered year mid-term review and also introduce any act to amend any bond authorization act. It is also the intention of the committee that the governor would be in a position to make recommendations with respect to amendments to the capital expenditures program of the fiscal biennium during this mid-term review. This was the intention of the committee and rather than trying to write constitutional language in the heat of McKinley Auditorium in a few minutes at 5:00 o'clock in an afternoon, I would like it to be the sense of the proposal that the language be worked out by the Style Committee which of course comes back for final approval on second reading to this body.

CHAIRMAN: Kokua. No objections? All in favor of the—Delegate Ando.

DELEGATE ANDO: The Style Committee gets hold of it after the second reading, Mr. Chairman.

CHAIRMAN: Yes, so the intent is that the wording we properly made is possible—properly made before it gets to the second reading and then to Style.

DELEGATE HITCH: That's right.

CHAIRMAN: Question? All in favor signify by saying "aye." Opposed say "no." Carried. Delegate Hitch.

I think you're on Sections 6 and 7. If I—

DELEGATE HITCH: Are we through with Sections 4 and 5, Mr. Chairman?

CHAIRMAN: According to my records we are. If there are any objections that we are not, then that's something new. But I think we are headed—so we are moving now to Section 7.

DELEGATE HITCH: Section 6.

CHAIRMAN: Section 6. The Chair stands corrected.

DELEGATE HITCH: Section 6 is the—

DELEGATE DEVEREUX: Point of order.

CHAIRMAN: Just one minute, there's a point raised.

DELEGATE DEVEREUX: Mr. Chairman, I thought we were voting on the amendment in the wording, the verbal amendment which was presented. Were we voting on the—

CHAIRMAN: The Chair stands corrected. We were voting on the amendment and now the amendment is in order. The motion to accept the committee's report as amended pertaining to Sections 4 and 5 is in order.

DELEGATE HITCH: So move.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: Second.

CHAIRMAN: Any questions on 4 and 5? All in favor signify by saying "aye." Opposed, "no." Carried. Delegate Hitch.

DELEGATE HITCH: Section 6 is the public purposes section of Article VI, and it provides that no public funds shall be expended for purposes other than public purposes. Our committee had a number of proposals with respect to this section to add a definition of what constitutes public purposes, particularly with respect to authorizing industrial development bonds. We feel that industrial development bonds perhaps should be issued but they should only be issued if they are in fact for a public purpose and if they are in fact for a public purpose, we have no doubt that the courts would hold that they were for a public purpose and we feel that trying to spell any constitutional definition as to what we mean by public purpose would serve no end and in fact might weaken the section. So we propose no change in Section 6 of Article VI.

CHAIRMAN: Is there a motion?

DELEGATE HITCH: So move.

DELEGATE HARA: Second the motion.

CHAIRMAN: Seconded by Delegate Hara. Are there any amendments on the clerk's desk to Section 6? None?

All those in favor signify by saying "aye." Opposed, say "no." Carried.

CHAIRMAN: Delegate Hitch is recognized.

DELEGATE HITCH: Mr. Chairman, Section 7 relates to expenditure controls. We had no proposals with respect to amending this section. No committee

member had any desire to amend this section and we recommend that the section be left in the Constitution as it now appears.

CHAIRMAN: A motion is in order.

DELEGATE HITCH: I so move.

DELEGATE HARA: Second the motion.

CHAIRMAN: Mr. Clerk, are there any amendments to Section 7?

CLERK: There are none, Mr. Chairman.

DELEGATE HARA: Question.

CHAIRMAN: The question is called for. All in favor, signify by saying "aye." Opposed, say "no." Carried.

Section 8.

DELEGATE HITCH: Mr. Chairman, we had a number of proposals submitted to us with respect to Section 8 which provides for the legislative auditor and his functions. Basically, we had two proposals. One would clarify in the first part in the middle part of this section that the legislative auditor could perform not only post-audit functions but also perform program and performance audits. The legislative auditor is in fact performing program and performance audits and we felt that that clarifying language was not necessary. So we have no recommendation on that part.

There was some concern with the last sentence of Section 8 of Article VI expressed by people appearing before the committee and by some committee members in that the last sentence provides that the legislative auditor shall also make such additional reports and conduct such other investigations as may be directed by the legislature. It was noted that this direction by the legislature had perhaps at times taken various forms such as in committee reports, legislative acts, resolutions of the senate or of the house, and so forth.

Our committee does not recommend any change in this language. It simply says in the report: "Your committee recommends that the legislature examine this aspect with a view towards formulating its procedures in calling for additional reports and investigations." But no change in Section 8's language.

CHAIRMAN: Motion in order. Delegate Hitch?

DELEGATE HITCH: I so move.

CHAIRMAN: Delegate Hara.

DELEGATE HARA: Second.

CHAIRMAN: Mr. Clerk, is there any amendment? None?

CLERK: There are none, Mr. Chairman.

CHAIRMAN: Is there any question?

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Just one explicit answer I would like. There is in this instruction to the Style Committee on Section 4 some provision for this—what you referred to as a mandatory mid-term inspection of the budget review?

DELEGATE HITCH: There is no provision for a mandatory mid-term review but there are all of the provisions as I have indicated—

DELEGATE YOSHINAGA: Mr. Chairman.

DELEGATE HITCH: —for voluntary budget review.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Point of order. Are we on Section 4 or Section 8?

CHAIRMAN: We are on Section 8.

DELEGATE HARA: Question.

CHAIRMAN: All those in favor of the committee's recommendation signify by saying "aye." Opposed, say "no." Carried.

DELEGATE KAWASAKI: Mr. Chairman, now may I pose my question again to Delegate Hitch? I think there are some of us here on the floor who would like very specifically to have provided in Section 4 a mandatory review provision in the mid-term.

CHAIRMAN: Delegate Hitch, do you care to answer? If not, the section has been through but still you—

DELEGATE HITCH: I realize that's true. There were some people on the floor who did favor that.

DELEGATE KAWASAKI: And what concession have you made to this point of view?

DELEGATE HITCH: My understanding is that they were voted down in favor of the committee proposal.

CHAIRMAN: Correct.

DELEGATE KAWASAKI: Is that the feeling?

CHAIRMAN: Delegate Hitch, you are in order at this time for a motion to report.

DELEGATE HITCH: I move that this Committee of the Whole rise and report its findings to the Convention.

CHAIRMAN: Delegate Hara.

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DELEGATE HARA: Second the motion.

The Committee of the Whole adjourned at 5:10
o'clock p.m.

CHAIRMAN: All in favor signify by saying "aye."
Opposed, carried.

Debates in Committee of the Whole on **LOCAL GOVERNMENT**

(Articles VII and XVI)

Chairman: DELEGATE JACK K. SUWA

Monday, September 9, 1968 • Afternoon Session

The Committee of the Whole was called to order at 5:12 o'clock p.m.

Delegate Suwa presided as Chairman.

CHAIRMAN: The Committee of the Whole will come to order. At this time, the Committee of the Whole has for consideration Standing Committee Report No. 53 and Committee Proposal No. 10 regarding Article VII and Article XVI. At this time we will proceed with Article VII from the Committee on Local Government.

At this time the Chair will recognize Delegate Ushijima.

DELEGATE USHIJIMA: Mr. Chairman, before I make a motion for the adoption of the Standing Committee Report No. 53, I would like to just make a few brief remarks as to the committee's work in this particular Article VII.

Article VII is composed of five sections as it presently reads in the Constitution and insofar as Section 1 is concerned, where there has been no amendment proposed whatsoever, the reasoning for the committee's action as to the retention of Section 1 is contained on page 4 of the committee report. Insofar as Section 2 is concerned, there has been a recommendation for amendment of this particular section, and I believe that the committee report speaks for itself. As to reasoning back of the committee's action, this is contained on pages 2, 3 and 4 of the committee report. There has been no change proposed to Section 3. That is the taxing power which was reserved to the State and in this regard the committee's reasoning is set forth in page 7 of the committee report. And might I add at this time that the committee overwhelmingly concurred with the action taken by the Committee on Taxation and Finance to retain Section 3 as is.

There has been no amendment to Section 4 and the committee's reasoning for the retention of Section 4 as is, is contained on page 10 of the committee report.

And there has been no amendment to Section 5 and the reasoning for the retention of Section 5 as is, is contained on page 11.

There has been another new proposal or amendment suggested by Standing Committee Report No. 53 and that is for the inclusion of another article, Article XVI, which is a transition article insofar as Section 2 is concerned, in the event that Section 2 is ratified by the voters then there will be a period of three years before this Section 2 will take effect.

Mr. Chairman, do you want to go section by section or shall I move for the adoption of Standing Committee Report No. 53?

CHAIRMAN: Shall we—

DELEGATE USHIJIMA: Well, I move for the adoption of the Standing Committee Report No. 53.

DELEGATE SAIKI: I second that motion.

CHAIRMAN: Delegate Saiki has been recognized. It has been moved and seconded that Standing Committee Report No. 53 be adopted. Delegate Ushijima.

DELEGATE USHIJIMA: Well, for discussion purposes, Section 1, there has been quite a bit of discussion insofar as residual powers and we have not had a full majority or entire consent insofar as Section 1 is concerned. There was one member who signed the committee report who did not concur with the action of the committee insofar as Section 1 is concerned. I do not know whether there are any amendments on the clerk's table. Otherwise, if there isn't then I'll get down to Section 2.

CHAIRMAN: Mr. Clerk, are there any amendments?

CLERK: No, Mr. Chairman.

CHAIRMAN: Shall we proceed to Section 2 then?

DELEGATE USHIJIMA: Well, Section 2 is the charter provision. We have by our action given certain areas constitutional right insofar as charter provisions are concerned, and that is in the field of executive, legislative, administrative structure and organization. I think the committee report is very clear as to the reasons why we left out procedure and personnel. We have had lots of witnesses who testified that insofar as personnel matters are concerned, we should retain it on a statewide level and retain the philosophy of Act 188 which is presently in force. Insofar as procedure of the adoption and repeal of these amendments, we felt that

it should be a uniform matter and should not be a matter that will be set up separately by each of these charter provisions. We also took into account some of the problems that might possibly arise insofar as uniformity and charter provisions are concerned, and that is why we have included the last paragraph of the proposed Section 2.

Are there any further questions? I'd be very happy to answer questions.

CHAIRMAN: Any questions from the delegates?

DELEGATE YOSHINAGA: Yes, Mr. Chairman.

CHAIRMAN: Yes, Delegate Yoshinaga.

DELEGATE YOSHINAGA: In Section 2 a new sentence has been added. Is that correct?

CHAIRMAN: That is right.

DELEGATE YOSHINAGA: Is this the language, "The prescribed procedures shall not include approval of a charter by a legislative body"?

CHAIRMAN: That is right.

DELEGATE YOSHINAGA: Does this mean that the prescribed procedures shall not require approval of a charter? Is that the intent or—

DELEGATE USHIJIMA: As it requires, the word also "include," "require," the full intent is that—

DELEGATE YOSHINAGA: Same thing.

DELEGATE USHIJIMA: Same thing, that's right.

CHAIRMAN: Are there any amendments to Section 2? Mr. Clerk?

CLERK: There are none, Mr. Chairman.

DELEGATE USHIJIMA: Then I'll go down to Section 3 which is the taxing power and as I stated originally, the committee overwhelmingly concurred with the action of the Taxation and Finance Committee whereby the taxing power shall be reserved in State and that whatever delegation there is to be for taxing powers will be done by the legislature. I don't have any amendments on my desk.

CHAIRMAN: Is there any question from the delegates? Mr. Clerk, is there any amendment to Section 3?

CLERK: No, Mr. Chairman.

CHAIRMAN: Shall we proceed to Section 4?

DELEGATE USHIJIMA: Well, Section 4 and Section 5—I think the explanations as contained in the committee report are self-explanatory.

CHAIRMAN: Any questions from the delegates to the chairman? Mr. Clerk, are there any amendments to Sections 4 and 5 at this time?

CLERK: There are none, Mr. Chairman.

CHAIRMAN: Proceed.

DELEGATE USHIJIMA: Finally, on page 11 we have included another section and we would leave it up to the Style Committee as to whether it should be included in Article VII or Article XVI of the Constitution. And this as I explained earlier is that in the event Section 2, as amended, is ratified by the voters, then upon ratification, the legislature would have three sessions actually to review all of the charters to be sure that they comply with the constitutional provisions and that accurate studies have been made. It will be out of the control of a legislature insofar as the five years that I originally pointed out. And this is a transitional provision.

CHAIRMAN: Any questions from the delegates? Yes, Delegate Sutton?

DELEGATE SUTTON: Is that a retroactive application?

DELEGATE USHIJIMA: The retroactivity would be this. That after three years, and even the City and County Charter which as of now is a legislative charter prior to statehood, will all have standards of main constitutional charters.

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Yes, Delegate Dorothy Devereux.

DELEGATE DEVEREUX: Point of information. Will Delegate Ushijima yield to a question?

CHAIRMAN: Yes.

DELEGATE DEVEREUX: Is this then to mean that the charters which are being adopted by the counties at present will still have to be approved by the legislature during this period until three years have passed, and any charters thereafter shall not meet the approval of the legislature?

DELEGATE USHIJIMA: Well, I think, if my memory serves me correct, we are enabling the legislature that we have—it is not subject to approval by the legislature. I think what this transitional section refers more to is that we will have the opportunity to study a charter to be sure that it is constitutionally correct, et cetera, before it passes on to be a constitutional charter whereby the legislature would have nothing to do with these insofar as these five areas are concerned. It also makes the City and County Charter a constitutional charter.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: Yes, Mr. Chairman, on the same

question, the answer was that the legislature would not have the power to change, if I am correct. Is that your answer?

DELEGATE USHIJIMA: That's right.

CHAIRMAN: Delegate Ushijima.

DELEGATE USHIJIMA: That is right.

DELEGATE FASI: According to page 11, last paragraph, last sentence, "they," meaning the charters, remain statutory charters until the amendments take effect would seem to indicate to me, Mr. Chairman, that these charters, if being statutory charters, can be amended by the legislature within that three-year period. I'd like to have the chairman explain whether that's so or not.

DELEGATE USHIJIMA: Well, I suppose as the Constitution presently reads, full control is vested in the legislature at the present time. But what I pointed out is that the enabling legislation that we have right now for charter provisions for the Counties of Maui, Kauai and Hawaii does not have the requirement that they have to be approved or ratified by the legislature. Of course, we can always change it.

DELEGATE FASI: May I, Mr. Chairman?

CHAIRMAN: Proceed.

DELEGATE FASI: I'm getting a little more confused. What I want to know is, does this last sentence—these charters according to the new constitutional provisions would remain statutory. My question is, if they are to remain statutory charters for that three-year period—

DELEGATE USHIJIMA: That's right, that's right.

DELEGATE FASI: —they are in effect then amendable by the legislature for that three-year period after they have been—in other words, even though they have been ratified by the counties, the voters in their respective counties, they still can be reviewed and changed by the legislature.

DELEGATE USHIJIMA: That's right. Under the present provision of the Constitution, the power is vested in the legislature to make whatever changes they feel necessary. It is amendable.

CHAIRMAN: Delegate Fasi is satisfied? Thank you. Any other delegates have any questions? Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, may I have the rationale of the three-year waiting period?

CHAIRMAN: Mr. Chairman, are you ready?

DELEGATE USHIJIMA: Well, actually I should yield to Delegate Kunimura but this was a compromise that had been effected within the committee. Some people wanted two years, others wanted four, so we felt

that under the new Constitution, we're going to have general sessions every year and we felt that at least three sessions would be sufficient time for the legislature to do its work before the provision takes effect.

CHAIRMAN: Any other delegates? Delegate John Goemans.

DELEGATE GOEMANS: Mr. Chairman, Delegate Ushijima, could you explain to me the concept in Section 2. We have often heard as a matter of law—heard it stated as a matter of law that a municipal government is a creature of the state. Inherent in that concept is the proposition that no sovereignty rests in a municipal body. It would appear on reading this that this is in fact a grant of sovereignty to the counties to a certain degree and if that is the case, is that constitutional?

CHAIRMAN: Chairman?

DELEGATE USHIJIMA: Well, I suppose yes.

DELEGATE GOEMANS: It is constitutional? There are two questions. Does the provision—

CHAIRMAN: Delegate John Goemans, please rise.

DELEGATE GOEMANS: First question. The provisions in Section 2 concerning that certain matters shall be superior than to statute. Is that a grant of sovereignty to the counties?

DELEGATE USHIJIMA: We don't use the term "sovereignty." We use the term "home rule."

DELEGATE GOEMANS: Well, would you call it sovereignty?

DELEGATE USHIJIMA: Well, I don't know what your definition of sovereignty is. What we are doing here is to give certain basic rights, constitutional rights to the charters, to the various counties insofar as the enactment of their charter is concerned. You want to ask me if it's constitutional, I would say yes. Whether it is constitutional or not, I'd say yes. We're amending the Constitution, as I understand it.

DELEGATE GOEMANS: As this has been brought into, it is just accepted as a matter of law that the municipal government is a creature of the state.

DELEGATE USHIJIMA: All powers rest with the supreme court and that of the state. That is the Billings Rule. When you say constitutional, you mean in violation of the Constitution of the United States or our State Constitution?

DELEGATE GOEMANS: Well, I am talking about constitutional law generally. If that is a matter of law and if this provision does to a certain degree grant sovereignty and by sovereignty I mean that in a certain area the counties are no longer subject to control by the State, and by the State I mean, of course, the

legislature, then it is a grant of sovereignty and then that statement that the counties are the creature of the state wouldn't apply to that degree.

DELEGATE USHIJIMA: Mr. Chairman, we have two constitutional lawyers in our committee so I am going to yield to Delegate Dodge.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: That wasn't very nice but I thank you for the comment.

I think that the answer to Delegate Goemans' question is found in Section 1 of Article I of the Bill of Rights where it says that all political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority. So the delegation of what power we are giving the municipalities or the counties under Section 2 comes from us. It doesn't come from the State. We can apportion or the people can apportion those powers among the several units of government any way they want to and because it is in the Constitution, it is constitutional.

CHAIRMAN: Thank you, Delegate Dodge.

DELEGATE GOEMANS: Mr. Chairman, my one question related to that.

CHAIRMAN: Is that for information—

DELEGATE GOEMANS: Well, I would follow logically except in this case. It isn't a matter here of spelling out what powers and functions are granted to the counties superior to legislative enactment. That is left to each of the counties to determine for themselves. We are just mandating them, it appears to me, mandating them the ability to spell out what their charter shall be. If we were in this Constitution specifically delineating what was going to apply to each county, then I could see that that would follow logically, but here we are just giving them the ability to do something without setting the limits, without being specific. It seems to be a grant of sovereignty to the counties which I don't know that you can do.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, it seems to me that the phrase "grant of sovereignty to counties" is not what we have done in this committee report. What this Section 2 actually means, or means to me, and I think meant to the committee, was that we were just crowding out certain areas in protecting counties from legislative interference, while reserving at the same time to the state legislature the power to withdraw powers and functions or reallocate them between the county and the state government. And we felt that in the area of the things that are spelled out in Section 2, those were not of statewide concern. Those were of purely

local concern and therefore the counties should be able to determine those things themselves. This is certainly the provision that seems to me that's in between a constitutional grant of local government, what we normally call "residual powers," and the concept of only delegated powers. It falls somewhere in the middle.

CHAIRMAN: Thank you, Delegate Dodge. Chairman Ushijima, do you have anything to add to that?

DELEGATE USHIJIMA: No, I don't.

DELEGATE FASI: I'd like to ask another question of the chairman of the committee.

CHAIRMAN: May I call a short recess.

At 5:33 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:37 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. Delegate Fasi.

DELEGATE FASI: Yes, Mr. Chairman. I have talked with the chairman of the Local Government Committee and he agrees that this three-year mandatory waiting period, in effect upon ratification of the changes in the Constitution, will not be used a second time in that the City and County of Honolulu for example, every ten years can come up with a new charter commission and come up with an entirely new charter. So I want it in the record that when that should happen in every ten-year period, the new charters will not be reviewed or have a waiting period of three years.

CHAIRMAN: Delegate Sutton, would you like to speak for the record?

DELEGATE SUTTON: I want to ask a question of the chairman, please.

CHAIRMAN: State your question.

DELEGATE SUTTON: Assuming that a county does not adopt the charter, then what?

CHAIRMAN: Delegate Ushijima.

DELEGATE USHIJIMA: All counties have adopted charters as I understand it. But insofar as procedure is concerned, you notice that procedure we are retaining in the state level so that it will be something that will have been taken up by statutory enactment. We are setting up the procedures insofar as the adoption on the repeal of charters on the state level.

DELEGATE TAIRA: Mr. Chairman, I wonder if Delegate Sutton is thinking of the county of Kalawao?

CHAIRMAN: All he wants is equal time.

DELEGATE BRYAN: Mr. Chairman.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: I'd like to speak for the record. I'd like to say "aye" when it comes time to vote.

CHAIRMAN: I think we had a pending motion for the adoption of Committee Proposal No. 10 regarding Article VII.

DELEGATE USHIJIMA: I think I already made a motion for the adoption of the committee report.

CHAIRMAN: All in favor of the motion say "aye." Contrary, say "no." Unanimously carried. Proper motion.

DELEGATE USHIJIMA: Mr. Chairman, I move that we report back to the Convention that the Committee has completed its work on Standing Committee Report No. 53, Committee Proposal No. 10.

CHAIRMAN: Delegate Saiki.

DELEGATE SAIKI: I second the motion.

CHAIRMAN: It has been moved and seconded. Any questions? All in favor say "aye." Opposed, "no." The motion is carried. Thank you very much.

The Committee of the Whole adjourned at 5:40 o'clock p.m.

Debates in Committee of the Whole on **PUBLIC HEALTH AND WELFARE**

(Article VIII)

Chairman: DELEGATE ROBERT CHANG

Monday, August 26, 1968 • Morning Session

Report No. 30.

The Committee of the Whole was called to order at 9:27 o'clock a.m.

Delegate Chang presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The committee is convened to consider two standing committee reports: Standing Committee Report No. 30 pertaining to Article VIII, Sections 1-5 inclusive, of our State Constitution as submitted by the Committee on Public Health, Education and Welfare; Labor and Industry, and Standing Committee Report No. 32 relating to Section 5 of Article VIII of our State Constitution as submitted by the Committee on Agriculture, Conservation, Land and Hawaiian Homes. The Chair wishes to state that the convention rules will prevail in this Committee of the Whole. The Chair also wishes to state that after the motion to adopt the first committee report has been made and seconded, the committee chairman will be asked to speak on the report, and any other members of the committee may further elaborate on the report. This is to afford the opportunity for all committee members to remark on the report so that questions may be resolved and need not be raised repeatedly.

Also, if there are any questions to be asked, the Chair requests that they be directed at the Chair and then the Chair will refer the question either to the committee chairman or to the appropriate delegate who may wish to yield to a reply. Are there any questions on this procedure? If not, the Chair will recognize Delegate Taira at this time.

DELEGATE TAIRA: Mr. Chairman, I move that Standing Committee Report No. 30 be adopted.

CHAIRMAN: Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that Standing Committee Report No. 30 be adopted. The chairman of the committee, Delegate Taira, is recognized again.

DELEGATE TAIRA: Thank you, Mr. Chairman. I would like to speak briefly in favor of having the Committee of the Whole adopt Standing Committee

This is a report that recommends no change to any of the five sections in Article VIII of our State Constitution. I believe that the broad grant of legislative power contained in these five sections pinpoint state responsibility in public health, care of the handicapped, public assistance to the needy, slum clearance, rehabilitation and housing, and public sightliness and good order. I believe that under these broad grants, the legislative and executive branches of our state government have been able to carry on very meaningful, effective public health programs in cooperation with the federal and county governments. This is why the Committee on Public Health, Education and Welfare; Labor and Industry is unanimously recommending that Sections 1-5 of Article VIII of our State Constitution be retained without amendment. I'd like to urge the members of the Committee of the Whole to approve Standing Committee Report No. 30 at this time.

CHAIRMAN: Does any delegate wish to be recognized?

DELEGATE DOI: Mr. Chairman, isn't there one amendment that you propose here, "including legal assistance"?

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I didn't understand the question.

CHAIRMAN: Delegate Doi, would you pose the—

DELEGATE DOI: As I heard your report here on the floor, you indicated that we are retaining what is in the Constitution on this particular article, but you have in your committee report recommended an additional language of "including legal assistance." Is it not so?

DELEGATE TAIRA: That's something new to me, Mr. Chairman.

DELEGATE DOI: That is what I read here.

CHAIRMAN: The Chair will declare a short recess subject to the call of the Chair.

At 9:31 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:32 o'clock a.m.

CHAIRMAN: Are there any other members of the committee who wish to speak?

Delegate Lum is recognized.

DELEGATE LUM: Mr. Chairman, thank you. I also rise to speak in favor of the committee report. I would like to refer to page 5 in the committee report on the paragraph referring to Proposal No. 301 and elaborate a little bit about that particular proposal. In the proposal, it asks for a combination of the Board of Health—combining the Board of Health and the Welfare Department to one separate department. The testimony that was given stated that under the territorial government approximately thirteen different agencies administered the various health and welfare services of the Territory. As a result of an interim committee, legislative interim committee of the Thirtieth Territorial Legislature, they suggested that we combine the agencies into one single agency. However, after careful deliberation at that time, that was back in 1959, there were three reasons why this particular action was not taken. It was felt that a convincing case had not yet been made to show the health and social service functions of the State are subject both through relationship that they should be included together in a single administrative organization. And that the second point was that the establishment of the two departments would not prohibit the eventual consolidation into one department if it is finally determined that health and social welfare are so intimately related that they should be the same department. And thirdly, that the separate department for health and social welfare would be of sufficient size and diversity to stand alone and justify department status.

We also heard about the different states and what they were doing. It was pointed out to us that the federal government itself, in 1953, consolidated all these functions together and came up with the department of H.E.W. Other states that have taken this particular position are California in 1961, Kentucky in 1962, Alaska in 1959, Missouri in 1945, Nevada in 1963 and New Hampshire in 1961.

Here at this Convention we did consider this. It was the agreement of the committee that we would perhaps be best to stay as we are now for all to consider, and this is an idea presented to the Convention; I urge all of you to accept this particular standing committee report as is. Thank you.

DELEGATE KAMAKA: Mr. Chairman.

CHAIRMAN: Delegate Bacon had risen earlier. Delegate Bacon is recognized, then Delegate Kamaka.

DELEGATE BACON: Mr. Chairman, I rise to speak in favor of Standing Committee Report No. 30 and ask that the delegates support this recommendation.

I have a great concern, Mr. Chairman, about the rising incidents of crime in this State, and although this committee report recommends that a Department of Crime Prevention proposal be filed, and I agree with this at this time, I did want to make note in the record and for this State, that there must be some coordinated concern for this rising and serious crime problem in this State.

Mr. Chairman, robbery, murder, burglary, car theft, larceny have become to us almost an everyday occurrence and something which is now taking the third and fourth pages of our newspapers. I think this is very indicative that crime is a serious problem here and I would like to see that some time, legislative action preferably, that more coordinated—a more coordinated fight be taken up to protect the individual family and people who are daily being threatened by this. I was very happy to note that your state legislature is now working on this in a joint house committee which is looking into this problem. After consulting with others on the committee I decided not to push this proposal but to ask that it be left to the legislature and I stand not only to support the committee report but to support this State in a coordinated fight against the multi-headed monster which is facing it. Thank you.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, in rising to speak in favor of the adoption of Standing Committee Report No. 30, I would like merely to call the attention of the body to Standing Committee Report No. 32 as it relates to Section 5 of Article VIII. Rather than elaborate, I think that the committee report from the Committee on Agriculture, Conservation, Land and Hawaiian Homes quite adequately sets out the justification for retention of that section of Article VIII. It is the intention of the committee that upon final action by this body on Standing Committee Report No. 35, that a motion will be made to accept and file Standing Committee Report No. 32—rather, that a motion be made to accept and file Standing Committee Report No. 32. Thank you.

CHAIRMAN: Delegate Kamaka, you were referring to Report No. 30 of this committee, rather than No. 35.

Is there any further discussion?

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: As a member of this committee, I am speaking for the committee's report. Evidently, I am not a ghost, I am supposed to be in Chicago but I am here as I felt that this was a very important article by reason that I was a member of this committee in 1950. I felt this at that particular time, we felt that we have a catch-all under Article VIII as public health and welfare. I would like to back up the committee's report because this is a very good article and it stood the pace of time, and up to this time I

think it is all covered well as a basic in our Constitution, public health and welfare. Thank you, Mr. Chairman.

CHAIRMAN: Are there any others who wish to speak on this report?

Are you ready for the question?

Then all those in favor of the report please say "aye" and all those opposed, "no." The motion is carried.

At 9:39 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:40 o'clock a.m.

CHAIRMAN: The committee will please come back to order.

Delegate Kamaka is now recognized.

DELEGATE KAMAKA: Mr. Chairman, I move that the body adopt Standing Committee—rather, accept Standing Committee Report No. 32 and file same.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I second the motion.

CHAIRMAN: You have heard the motion. Is there any discussion on the motion? If not, all those in favor of the motion, please say "aye," opposed, "nay." The motion is carried.

At this time, Delegate Kamaka is recognized.

DELEGATE KAMAKA: I yield to Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I move that this body rise from the Committee of the Whole at this time.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I second the motion.

CHAIRMAN: All those in favor of the motion to rise out of the Committee of the Whole, please say "aye," against, "nay." The motion is carried.

We shall now rise and report.

The Committee of the Whole adjourned at 9:42 o'clock a.m.

Debates in Committee of the Whole on **EDUCATION**

(Article IX)

Chairman: DELEGATE ROBERT CHANG

Tuesday, September 3, 1968 • Morning Session

The Committee of the Whole was called to order at 9:21 o'clock a.m.

Delegate Chang presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order.

This committee has been convened to consider Standing Committee Report No. 41 as submitted by the Committee on Public Health, Education and Welfare; Labor and Industry. The report relates to Article IX of our Hawaii State Constitution, Sections 1 through 5.

The Chair wishes to state that the rules of the Convention will prevail during the committee's deliberation. During the period of discussion, as to any question that may arise, the Chair asks that you direct it to him and he in turn will direct it to the committee chairman or any appropriate delegate who may yield to the question.

I would also like to indicate that we will be considering the sections one by one after the opening remark by the committee chairman. At this time, the Chair will recognize the chairman of the committee, Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, before I offer a motion to have Section 1 of Article IX retained in its present language, I'd like to point out to the members of this Convention that Article IX on education is comprised of five separate sections and the standing committee report from your committee has a basic recommendation that all five sections be retained in their present forms. The only change that is being proposed by your committee is the addition of a new section dealing with the subject of local school advisory councils. And therefore, Mr. Chairman, to expedite the proceedings this morning, what I'd like to do is to offer a motion for each of these five sections and finally go into the proposal to add a new section to Article IX.

With this in mind, Mr. Chairman, I move that Section 1 of Article IX be retained in its present form.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: I second the motion, Mr. Chairman.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I would like to yield at this time to Delegate Ando.

CHAIRMAN: Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, I rise to speak in support of Standing Committee Report No. 41 and all of its recommendations that Article IX remain unchanged except for the addition of this new section that was stated by the chairman.

The Tenth Amendment of the United States Constitution provides: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved for the states or to the people." Responsibility for education has not been delegated to the United States by our United States Constitution. Therefore, the people of Hawaii, through the State Constitution, have directed our state government to assume full responsibility in the field of education. In American education, Hawaii is unique in having a statewide school system. We've had this single unified system as long as Hawaii's educational system has existed.

Article IX requires the State to establish and support and control a statewide public school system, public libraries, a state university and other state educational institutions. The wisdom of the people of Hawaii as expressed in our State Constitution has made our State assume the obligations to provide equal educational opportunities for our children regardless of whether they live in the rich or poor areas of our State.

Hawaii's educational system is generally envied by local school boards throughout our nation for the reason that the board of education needs to go only to the governor and to the legislature for support of our school programs. Therefore, the state board of education, unlike local school boards throughout our nation, is not burdened with the problems of raising school revenues and floating bonds. Yet without taxing powers it has more fiscal responsibility, more independence and more state financial support of its educational programs than most of our nation's 26,000 school boards in America.

One of our most serious problems in education is that of its funding. The problem of funding has created pockets of inequity and inequality in our schools in our nation. The reason for this inequality is that most of our local school boards are created and left to themselves to raise revenues and float bonds for their schools. As a result rich school districts have plenty of

money to build more facilities and hire more teachers. The poor school districts have little money for the job of educating their children. In Hawaii, our legislature and governors have proven themselves to be people dedicated to fine education. In contrast, you are aware of the articulate pressure groups from the mainland that continually confront school boards and superintendents in opposition to school taxes and school bonds elections.

In recent years, as the cost of educating our children has mounted and as property taxes that fund mainland schools have risen in many states, governors and legislators are beginning to ponder the question of giving more state funds to local school districts. Today, no local school board is totally fiscally independent even with their power of taxation.

During my recent visit to Detroit, Michigan, I learned that the Detroit board of education had filed a lawsuit in court to force the State of Michigan to assume its responsibility for the education of Michigan children. The Detroit board cited a provision of the Michigan State Constitution that says: "The legislature shall maintain and support a system of free public and secondary schools." The Detroit board contended that the city has the largest proportion of the state's socially disadvantaged and deprived children. These children need more services than the average child. And therefore, Detroit should receive a larger proportionate share of schools allocated by the state to the local school districts. To the Detroit board of education the power of taxation is a dubious one. Referendum after referendum to raise needed revenues to operate the schools, to build additional facilities, has been defeated in successive elections.

Early this summer, with some of the members of this Convention, I joined them to hear Dr. James Conant, one of our nation's most foremost educators, make what he called "a radical suggestion" to this gathering of—the education commission of the State. Conant said he foresaw the day when each of the states of the United States will assume all obligations from state general funds for the financial support of education. He cited as an example the province of New Brunswick, Canada, long a proponent of local control of schools. Dr. Conant astonished this gathering when he stated that this recommendation is made because of the growing uneven development of programs when education is left to local financial resources. In my private discussion with Dr. Conant, he indicated that he was aware of Hawaii as the exact educational model that he was advocating. But he said that Hawaii is so new, so different and so free of restraint as compared to the other states, he felt he ought to cite New Brunswick as an example for the American educators.

Today, there is a nationwide interest in Hawaii's allowance of differential budgetary input to schools on the basis of need. There is also expression of incredulous interest in the legislature's grant of lump-sum allocation of general fund appropriation and non-lapse funding privileges to our schools. There are those who still look at our "untypical" educational

organization and express the traditional concern, that Hawaii's board of education and Department of Education have not enjoyed the delegation of the power of taxation. I say that Hawaii is capable of making the greatest progress in resolving the major problems of education—the attainment of the socio-economic goals of its people by preserving the organizational and funding model that we have.

We are also fortunate that the present structure of our educational government allows us the flexibility to take advantage of the best features of both a centralized system that we are, and a decentralized system that is so extensively the mainland model. We are not faced with resolving the uncomfortable and perhaps fatal choice of resolving the question of centralization and decentralization. This is a false dichotomy advocated by those who do not truly understand the great flexibility of our structure. Rather, we are faced with the happy choice of selecting the best elements of centralization and decentralization. For example, there are great benefits and economies to be derived from centralized purchasing of texts, supplies and equipment. We have started to take advantage of these economies. At the same time, we clearly recognize that educational decisions relating to individual students must be made as close to those students as possible. This is the ultimate goal of decentralizing. We can and have provided for this. Thus the criteria for decentralization and centralization of functions are known. We can allocate the providing of service where it is most convenient and economical. We can place the function of educational decision as close to the student as possible.

Thus, the main promise of our statewide educational system is that Hawaii's schools can institute and support better programs and keep up with the fiscal and organizational demands of rapid growth and the increased complexities of education.

However, Hawaii has yet to take full advantage of our unique, unified school system, Mr. Chairman. We have had an elected board of education for less than two years. We have eliminated the dual control of our schools just recently. We have enjoyed lump-sum budgeting for our programs for a still shorter period of time. All of these conditions are necessary to the full realization of the potentials of our system. I am convinced the present constitutional provisions will permit us to reach our educational goals.

Since 1959 when we attained statehood, the people of Hawaii have considered education to be an urgent concern. They had not waited for this Constitutional Convention to perfect Article IX. There have been at least fifty legislative proposals to amend Article IX, of which three have been ratified by the people and came into effect in 1964.

I believe the changes have been essentially good and effective. I do not believe this is the time for any further change.

We have spent most of our seventy years, since becoming an integral part of the United States, trying

to look like any other state in our educational system. It now develops that Hawaii's constitutional provisions for education are becoming the envy of the other states.

As we fully exploit our advantages, Article IX of our State Constitution will be the launching pad for leadership in American education. Let us not try to recast our educational system to the mold of a typical school system. Let us not take on the burdens of the recurring problems of the mainland school districts.

Therefore, Mr. Chairman, I urge the retention of Article IX in its present form with the exception of the added section providing for school advisory councils which is well covered in our standing committee report. Thank you.

CHAIRMAN: Thank you, Delegate Ando. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I am confused like Brother Yoshinaga was earlier in this Convention. If there is no recommendation by the committee for a change in Section 1, why are we debating Section 1? I thought that debate will only come if there is any delegate here who desires to amend Section 1. And I don't know the procedure that you're going to follow, but it seems to me there's a procedure that had been followed by other chairmen of the Committee of the Whole, which was to entertain an amendment to any section that will remain in force as it was for the past ten years. Section 1.

I have an amendment and I rise now in reference to an amendment and I would like to have some information whether or not this is the appropriate time to submit an amendment for free public education here in this State, including all collegiate levels, whether it be at the university or in the community colleges. If this is the section in which the amendment may be offered, I have one being printed and I would like a recess at this time. If it isn't, and it can be deferred to Section 4, when we deliberate on the University of Hawaii, and if the Chair so rules, I will defer any motion until that time.

CHAIRMAN: The Chair declares a short recess to iron this problem out.

At 9:35 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:45 o'clock a.m.

CHAIRMAN: The meeting will please come to order. To clarify the matter, I've asked the chairman of the committee to withdraw the original motion applying to Section 1 only and to make a new motion to cover the entire article as indicated in the committee report. Delegate Taira. You wish to withdraw the motion?

DELEGATE TAIRA: Well, Mr. Chairman, at your request, I withdraw my motion on Section 1. Will Mrs. Devereux withdraw her second?

DELEGATE DEVEREUX: Mr. Chairman, I withdraw the second.

CHAIRMAN: Delegate Taira, you're recognized again.

DELEGATE TAIRA: Mr. Chairman, at this time I would like to offer a motion which verbatim is contained on page 8 of Standing Committee Report No. 41 and this motion will read as follows: "That Article IX, Sections 1, 2, 3, 4 and 5, be retained without amendment." My motion is to adopt this portion of the committee report.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, for the purpose of discussion I will second the motion.

CHAIRMAN: It has been moved and seconded that the committee report be adopted. Delegate Taira.

DELEGATE TAIRA: I yield to Delegate Mizuha. I don't like to do all the talking.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: This only refers to the adoption of the committee report, not—

CHAIRMAN: Any amendment will be in order.

DELEGATE MIZUHA: At this time?

CHAIRMAN: Yes, sir.

DELEGATE MIZUHA: Inasmuch as the tactics have changed and the whole report covering the whole article is now before this Committee of the Whole, I have an amendment and I will orally read the amendment.

CHAIRMAN: Proceed.

DELEGATE MIZUHA: I move to amend Section 4—

DELEGATE TAIRA: Mr. Chairman, point of order.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: My point of order is that as amendments are being considered by this Convention, that copies are to be printed and distributed to all the members so that each member will be fully aware of what that amendment calls for and be familiar with the details.

CHAIRMAN: It is my understanding that the amendment has been filed on the clerk's desk and it's being printed.

DELEGATE MIZUHA: Mr. Chairman, I ask for a recess to have the amendment printed.

So move, Mr. Chairman.

DELEGATE KAUHANE: I second the motion.

CHAIRMAN: It has been moved and seconded that the amendment be presented—

Delegate Miyake.

DELEGATE MIYAKE: Couldn't this Section I be deferred to allow the honorable delegate from Kauai to have his amendment printed and may we proceed to the next section instead of calling these unnecessary recesses and delaying this business before the Committee of the Whole?

CHAIRMAN: It's my understanding that the amendment is being distributed at this time. We'll recess very briefly until the amendment has been completely distributed.

At 9:47 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:50 o'clock a.m.

CHAIRMAN: The committee will please come back to order. The Chair has a question of Delegate Mizuha. Delegate Mizuha, is this amendment you wish before the body?

DELEGATE MIZUHA: Mr. Chairman, I asked for time to have an amendment rewritten and it's now in the hands of the attorney of the Convention. The reason why I had to do this is now you have the whole proposal up for adoption. And I didn't want to forego an opportunity to amend the appropriate section of this Article IX because I don't know. I asked you for a ruling originally as to whether it will be in Section 1 or Section 4. But I don't want to belabor the point. I will have the amendment, you can continue with Section 2 or Section 3.

CHAIRMAN: Thank you, delegate.

DELEGATE O'CONNOR: Point of information, Mr. Chairman.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Since there has been only one amendment suggested to Section— to Article IX as it presently exists, I wonder if it might not be possible at this time to have a vote on the other four sections to which there are no amendments proposed?

CHAIRMAN: If there are no other amendments to the other sections, it would be possible. Delegate Goemans.

DELEGATE GOEMANS: Point of order, Mr. Chairman. The matter before the body is the entire committee report. The proper order of business is to vote on amendments thereto.

CHAIRMAN: Delegate Bacon, did you wish to be

recognized?

DELEGATE BACON: Yes, Mr. Chairman. I would like to know if I could offer an amendment to Section 5 of Article IX at this time?

CHAIRMAN: Yes, you may.

DELEGATE BACON: The amendment has been printed and is on the desks of the members and I move for the adoption of this amendment to—

DELEGATE YOSHINAGA: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that the amendment as proposed by Delegate Bacon be adopted. The amendment reads as follows:

“Committee Proposal No. 4 is hereby amended by adding an amendment to Section 5 of Article IX of the State Constitution to read as follows:

“Section 5. There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. At least part of the membership of the board shall represent geographic subdivisions of the State. At least one member of the board shall be a full-time student of the university and another member of the board shall be a member of the faculty of the university. The board shall have power, in accordance with law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board.”

Delegate Bacon, you have the floor.

DELEGATE BACON: Mr. Chairman. I will speak for the amendment. I rise today to speak out for thousands of students and hundreds of faculty members at the University of Hawaii. I have appointed myself to speak out because I believe that the proposed amendment has worth and because I believe the students and faculty are worthy of an effort on my part.

Mr. Chairman, recently the faculty and students of the university have become victims of what can be called “instant prejudice.” One need only to mention the word “university” and instantly there is a negative reaction in the large part of this community. “Trouble-makers, wild, shouting, long-haired radicals, mainland haoles who sit down in hallways, who scream brutality, student power, revolt. Today the University of Hawaii, tomorrow the world. The faculty are all sign-carrying, seedy-looking older people who should be in their classrooms teaching or at home just being absentminded.”

Mr. Chairman, this is not the true picture at the university. The vast majority of the students and faculty do not deserve this picture of instant prejudice. The

vast majority are interested, mature people whose true potential is being overlooked because of confusion which exists. It is at our university where millions of dollars are spent and justly so. It is there where the dreams of tomorrow are being woven today and will become reality. The proposed amendment will help, I feel, to bridge a gap of communication which exists between the segments at our university.

Recent student activism and development at the university have been given a great deal of publicity. The president resigned to become head of the Hawaii Visitors Bureau, which, aside, to me is like having Mickey Mantle play in the Kailua little league. Professors have started to complain and as I now understand, representatives of a national organization will investigate our university. Students have complained about a lack of communication and a sit-in took place, and the alumni are taking a poll of developments on campus. It is obvious, Mr. Chairman, that there are problems at the university and I suggest again and the proposed amendment would be a positive factor in the problem-solving process.

Recent student activism should not be described as an example of immaturity but should be examined as to the parts involved. First, I see this as a part way of students displaying a willingness and desire to share in the responsibility, to participate meaningfully in their immediate environment. Activism can be described thus as the result of exclusion from the process of decision-making.

Second, I see another part where there are students who are involved and who will be involved and who are now threatening the university. These students are there to cause trouble for trouble's end. They are there to agitate for no other reason than an expression of their own personal problems. It is with these people that the community will need to watch to see their true light. It is with these very, very few, the rude minority as were described, who really hurt the university image. And the proposed amendment will literally pull the rug out from under them as a communication system will be set up which they will need to use or otherwise look very foolish.

The concept of democracy rests on the right of the people to govern their own affairs, and if the democratic process is one which encourages and promotes lay participation and involvement, there can be no alternative but to allow students and faculty a voice in determining the general direction the university is to take. These individuals are directly affected by this decision made by the board of regents. The faculty has a peculiar and important set of interests which should be represented at the regents' level of decision-making. They constitute the prime resource of the running of the university. The students are the major element at any university and require communication and recognition along with the faculty on an equal basis. Although our political system purports to lend itself to all persons interested in constructive participation and involvement, most, if not all, of our young people have found their attempts at participation thwarted. I feel

that every effort must be made now to eliminate the belief that these people have, that they possess only a small chance of accomplishing anything there.

It is also widely recognized that policies are more effective and successful when those who are to benefit by them are included in the process. Such participation promotes education on the part of the individual, provides responsibility, and better insures acceptability and accommodation. It is, in fact, part of the educational process itself that students participate in every level of university decision-making.

Mr. Chairman, understanding and communication between the community at large and the university can also be better achieved through the proposed amendment. Students and faculty members on the board can provide a better avenue of constructive rapport between the university and the community.

Mr. Chairman, it has been pointed out that under the provisions of the Constitution, that student and faculty members can be appointed. However, it does not seem very likely. This has never happened and I doubt whether it will happen in the near future. It has also been pointed out, Mr. Chairman, that one student and one faculty member could not adequately represent all the students of the various campuses or the total faculty. This, I feel, is a weak argument. Relate this to our own election, Mr. Chairman, a very few, a very low percentage of the total population have turned out to elect the delegates to this Convention. Does this mean that we do not truly represent the State of Hawaii? Does this mean that I, who was elected at-large in my district, do not truly represent the people of my district? Mr. Chairman, I would like to sum up my feelings about my amendment by again saying that it has worth and I feel that I should make the effort. My feelings can be summed up in a short quotation by George Bernard Shaw, who wrote: "Some men see things as they are and ask why, I dream of things which have never been and say why not." Thank you.

CHAIRMAN: Thank you, delegate. Is there any other discussion?

DELEGATE ALCON: Mr. Chairman.

CHAIRMAN: Delegate Alcon is recognized.

DELEGATE ALCON: Mr. Chairman, may I ask a question?

CHAIRMAN: Yes, sir.

DELEGATE ALCON: I was wondering whether the words "full-time student and faculty" include the students and faculties of the community colleges?

CHAIRMAN: Would Delegate Bacon wish to yield to the question?

DELEGATE BACON: I would say yes, Mr. Chairman.

CHAIRMAN: Thank you. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak against this proposed amendment. I think all of us here at this Constitutional Convention are very much concerned with some of the problems that our University of Hawaii is facing at the present time and will probably face in the few years ahead.

This particular proposal that's being offered as an amendment, as I understand it, is designed to prevent the kind of problems that will arise at our own university in the future. Your committee deliberated at great length on this particular idea or proposal and it is your committee's position that while we are very much concerned with what happens on our university campus, we'd like to have our students, our faculty members to be heard, that this solution in the form of this amendment is not the answer that we are seeking. It seems to me and to the members of my committee that the real solution on our university campus as well as on any other university campus is the kind of rapport, the kind of communication, the kind of interchange of ideas which can be reached between the board of regents, the administration, the faculty and the students. Because, I say, no matter what we put in our Constitution, no matter what we put in our laws for the State of Hawaii, that unless we have the personal kind of communication or rapport between the people of the body that I mentioned, we're still going to have trouble at our campus and at our community colleges.

I don't want to belabor this issue but I'd like to remind all delegates of the arguments that swayed the majority of the committee—these are listed on page 6 of the standing committee report.

This is why, Mr. Chairman, I ask the delegates to support the position of the committee and to reject the proposed amendment.

CHAIRMAN: Thank you, delegate.

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I'd like to just say briefly that I am in favor of the amendment proposed by the delegate from the 8th District, however, only with mixed feelings. I'd like to compliment the committee and the committee chairman on their fine work done in their committee on this particular proposal. I think that this proposal did have full hearing so it is with mixed feelings that I speak on this subject. I think this subject of having the student and faculty member on the board of regents could be properly statutory and not constitutional. But I think the value of the discussion within the committee and in this Committee of the Whole rests in the directive that it is going to place to the legislature, particularly to the governor of our State realizing that the students at the University of Hawaii do indeed desire to have an active voice and to partake of an active role in what affects their lives. Just as perhaps some of the more modern prisons, if I may use

my own value judgment, in the United States have prisoners sitting on the board of directors of the warden's group. Whereas in some of the high schools we now have what is called faculty councils where teachers participate actively in the administration of the high schools and also disciplining their own. I think likewise that students who are spending three or four years of their lives full-time at an institution whether educational or otherwise, need to and correctly should have a voice in what happens to them. And for those of you who—it's been years perhaps since you've been in school—but I'll tell you it's terrible as a student to sit in the classroom and let's say a professor doesn't care for you, doesn't like the comment you make, and then to have him just merely tell you to jump in the salt lake without any recourse. Now this is an immediate grievance and certainly students are concerned with more far-reaching and policy considerations than mere grievances.

So I think this discussion is of definite value in this Convention and I hope that whatever the vote is on this matter, that people will take home the thought into consideration that students do need and actively should have a role in the policy-making of an institution which so intricately affect their lives. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, will Delegate Larson yield to a question?

CHAIRMAN: State the question to the Chair and I shall—

DELEGATE DEVEREUX: Mr. Chairman, I would like to ask Delegate Larson if he believes that there is one representative student within the entire university who would represent all students, whose voice could be heard by all students, and if there is one representative faculty member of the same type?

CHAIRMAN: Delegate, do you wish to yield to the question?

DELEGATE LARSON: I'll be happy to. I don't know that I can answer to anyone's satisfaction. I can't speak for anyone else but myself, Delegate Devereux, and I doubt that any student could say that I could speak definitely for every other student on campus or every other faculty member, but what you can do is be open and make yourself available as a representative to carry out ideas, suggestions, proposals through your representative to the policy-making institute of the university—the board of regents. So that in effect, I think a person can be representative of other persons' opinions and desires so to a certain extent it's possible to be truly or literally representative because you speak as I do speak for myself only.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, one further question. Do I understand you to believe,

Delegate Larson, that a student and a faculty member, not only will be held accountable for their actions as members of the board of regents by their respective students and faculty whom they represent, but would be truly effective in representing those members?

CHAIRMAN: Delegate Larson, do you wish to yield again?

DELEGATE LARSON: Yes, Mr. Chairman. I do think, depending on the student or a faculty member chosen, that this is a good possibility that they would be truly responsive. It depends. This is true with the representatives in our state government. I don't know that all representatives are truly responsive and are responsible to their constituents. Some are not, I believe. But on the whole I think our representatives do attempt to be very responsive to the constituents, more so than the people know. And I think likewise a student placed in such a position of responsibility, or a faculty member, would endeavor to meet such a criterion and to uphold the faith placed in him by his fellow students. I might cite as an example the tremendous work and tremendous effort on behalf of the student body of the University of Hawaii by the student body president, that's Linda Delaney. I think she has very much shown that a student can be indeed responsive and responsible to fellow students and work within the so-called establishment, with plain establishment rules to achieve a goal which the students would desire.

CHAIRMAN: Thank you, delegate. Is there any further discussion on the proposed amendment? Are you ready—

DELEGATE KAWASAKI: Mr. Chairman.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I rise to a point of inquiry. I fully understand the requirements to submit amendments to any proposal in writing and have it passed out, but my question to you specifically is, is the same requirement made of amendments that we may want to make on amendments submitted to us? Is there a necessity to call for a recess to have the amendment we might want to make on an amendment be submitted in writing and necessitating a recess and the time consumed?

CHAIRMAN: No, the Chair would like to suggest that if any amendments are to be made, any further amendments, that it could be made when the amendment has been printed and then circulated. If time is required to have it circulated, the Chair will declare a recess but we do have five sections to consider.

DELEGATE KAWASAKI: I realize that, Mr. Chairman, but what I am saying is this amendment came to our attention a few minutes ago and there is one amendment I'd like to make specifically changing one word. I just wanted to know whether this requirement to have this printed, one word printed.

Does this hold true for an amendment to an amendment?

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: There is no—it is improper to have an amendment to an amendment of an amendment, and we have before the body the committee report which is an amendment and we're talking strictly right now of an amendment to that amendment so any other amendment would be out of order.

DELEGATE KAWASAKI: Mr. Chairman, I beg to differ with the delegate who just spoke. I think amendments germane to an amendment before consideration of the body are perfectly in keeping with parliamentary order.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I would just like to point out that the amendment that is being debated right now is an amendment to Proposal No. 4 which is the only proposal that is coming out of your Committee on Public Health, Education and Welfare; Labor and Industry, and it seems to me that when we vote on this amendment to Proposal 4, we either expand on Proposal 4 or we keep Proposal 4 the way it is for later action. So this is my position, Mr. Chairman.

DELEGATE KAWASAKI: On a point of personal privilege, just let me explain what I intend. I just wanted to substitute the word "and" a student member or a faculty—substitute the word "and" with "or"—

DELEGATE MIYAKE: Point of order, Mr. Chairman. There is no personal privilege in a Committee of the Whole.

DELEGATE KAWASAKI: All right, I'm trying to explain the point of inquiry that I made. I would like the amendment—

DELEGATE MIYAKE: Mr. Chairman, I rise on a point of order. Personal privilege is not allowed in a Committee of the Whole. We're now free in open debate. This is to allow free and open debate in the Committee of the Whole. This is why you don't grant a personal privilege because no matter how heated an argument becomes, a member of this Committee of the Whole cannot ask for personal privilege—

DELEGATE KAWASAKI: Mr. Chairman, in order to save some time, may I ask for a one-minute recess?

CHAIRMAN: Before declaring any recess, Delegate Ariyoshi, did you have—

DELEGATE ARIYOSHI: Mr. Chairman, I was going to suggest that the Chair ask Delegate Kawasaki to submit his amendment verbally. I think he is in order.

DELEGATE BRYAN: Mr. Chairman.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: If it's not in order to submit in verbally I suggest that we suspend the rules in order to submit it—a one-word amendment—orally. It's up to the Chair to rule.

DELEGATE MIYAKE: Mr. Chairman, another recourse the good delegate may have is to appeal the ruling of the Chair. This is a part of parliamentary procedure he could follow.

CHAIRMAN: Delegate Kawasaki, if you wish to amend the amendment, I suggest you have it printed up.

DELEGATE KAWASAKI: No, I don't think the step—time required to print this up, is necessary. I just want to change one word and the intent of this amendment is where this amendment calls for an appointment to the board of regents of both a student and a faculty member. I just want to change it to a faculty member or a student. Just one person out of these two respective bodies.

DELEGATE FERNANDES: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: The rule clearly states regardless of whether it is half a word or quarter of a word, that I feel we should stay status quo on this area when amendments are to be made. And it doesn't take two minutes if you have it done, to have it done.

CHAIRMAN: I would like to suggest that, Delegate Kawasaki, you have an amendment drawn up even to change a word.

DELEGATE KAWASAKI: All right then, do you want to call a recess for that?

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I would like to know if this is going to be the procedure of being able to amend amendments, we'll be here all day. I think that perhaps permission could be asked from the person making the amendment if he could have a change of the word and as long as it doesn't change the substance, perhaps, this could be accepted.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, we've sat here and voted on concepts the other day and we covered a lot of ground in a short period of time. I see no reason why the Chair can't put the question of the concept of "and" or "or" if the concept carry one way or the

other, then the amendment can be reprinted if necessary. But let's vote on the concept rather than worrying about all of the procedures. Thank you.

CHAIRMAN: Is that—Delegate Goemans.

DELEGATE GOEMANS: A short recess.

CHAIRMAN: Okay, a recess subject to the Chair is declared.

At 10:14 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:21 o'clock a.m.

CHAIRMAN: The committee will please come back to order. At this time the Chair will rule that Delegate Kawasaki will be permitted to submit a verbal amendment in accordance with Rule 23, where "amendments to proposals, reports, resolutions and other matters submitted to the Committee of the Whole shall be noted and reported." And perhaps we're talking about a concept here as to whether or not there ought to be a student and a faculty member on the committee. If the delegate wishes to change a word therein, and if there is no objection, I'd like to permit him to do so. Delegate Kawasaki.

DELEGATE KAWASAKI: Let me make a clarification once and for all on this, Mr. Chairman. I appreciate your patience in this matter. In the amendment submitted by Delegate James Bacon, just about the middle of that paragraph, and let me read it, "At least one member of the board shall be a full-time student of the university and . . ." That word "and" I want to substitute with the word "or" and then delete the next one, two, three, four, five, six words—"another member of the board shall be a member." So in essence the change here is that where this amendment suggests a member of the board be a student and another member be a member of the faculty, I just want to change it so that either a member of the faculty or a student could be appointed by the appointing authorities.

CHAIRMAN: Is that a motion, Delegate Kawasaki?

DELEGATE KAWASAKI: That is correct.

CHAIRMAN: Is there a second to that motion? Delegate Doi seconds the motion. Any discussion? Delegate Kawasaki.

DELEGATE KAWASAKI: I will not take part in any discussion. The intent of this amendment is very clear. It seems to me to have a member of the board be either a student or a member of the faculty by the appointing authority, I think, speaks for itself. I want to cut my discussion short.

DELEGATE LUM: Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I have a question to ask. Is the president of the university considered part of the faculty?

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Well, not for the purpose of my amendment, no.

CHAIRMAN: Any more discussion on the amendment? If not, with your permission, I will ask for a standing vote rather than roll call. All those in favor of the proposed motion to amend, please rise. All those opposed, please rise. The motion is lost.

We'll turn back to the original amendment proposed by Delegate Bacon. Is there any further discussion on the amendment?

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: I'm not on the committee that came out with this report. I've heard the arguments in favor of the proposal to amend. I think it's a rather important question that we're involved in and I'm surprised by the lack of debate on this question. I'm surprised by the lack of information given us here by the chairman of the committee in response to the questions raised by this proposal.

I have a peculiar feeling, Mr. Chairman, that some of us here may feel that this is one way to accommodate the problem and vote for it. For myself, I say that we have a problem but no one on this floor this morning has clearly set out a solution to the problem. I have a feeling that perhaps by voting for this particular amendment we are actually giving the students and the faculty less effective representation. In response, the chairman of the committee says that we ought to really work for better rapport amongst the several bodies or groups or sectors on the campus of the University of Hawaii but does he tell us how? Does he tell us some of the ideas that the committee has wrestled with that possibly might solve this problem? Not having the benefit of that thought, I have a fear here that perhaps we may vote for it and hurt ourselves just as students hurt the faculty. For myself, I'm voting against this because I see no clear solution. If that be the case, then let the legislature study it further and then provide for proper accommodations. Thank you.

CHAIRMAN: Thank you, delegate. Is there any further discussion? Delegate Devereux and Delegate Kauhane.

DELEGATE DEVEREUX: Mr. Chairman, I rise to speak against the amendment. I am reminded that the 1950 Convention provided for the president of the university and the president of the board of education to serve on their respective boards with a vote. I'm also reminded of the fact that a few years later the legislature provided an amendment to the Constitution to remove those two gentlemen from their voting

positions because they considered it a conflict of interest. This amendment was presented to the people and ratified by the people. The president of the university is the one who is most intimately connected with every facet of the University of Hawaii and he does not have a vote on the board of trustees.

In my opinion, placing a student on the board or placing a faculty member on the board would set that student and that faculty member apart and really be a disservice to them as far as their ability to be effective on campus. I feel that the students are affected by every action of the board of trustees as is the faculty and to place one student and one faculty member on the board with the responsibility for voting on issues which affect themselves and their fellow faculty or student members on campus is not a wise move to make.

I therefore urge all of you to vote against this amendment.

DELEGATE FASI: Point of clarification, Mr. Chairman.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: I would like to know if Delegate Doi was expressing his sentiments against the amendment or against the committee proposal. He did not say.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: I think I said it, Mr. Chairman. Because I'm not clear, I'm voting against the amendment to the committee proposal.

CHAIRMAN: Delegate Kauhane, you have the floor.

DELEGATE KAUHANE: I sat here with reservation, whether to speak or not. I felt that the action of the committee that reported out Committee Report 41 was sufficient for all of the members of this Convention to place themselves in the manner in which they will vote for the committee report. Mr. Chairman, this matter was discussed fully and I'm speaking against the amendment.

The amendment was discussed fully in the committee. We felt that the governor today has the power to make the selection of the board members of the board of regents of the University of Hawaii as well as any other boards of the State of Hawaii. I felt that the governor is fully capable to make the right decision in the people to represent the state and governmental boards. And I leave this judgment in favor of the governor rather than to commit the governor to something that I feel we are doing something wrong, and if it is the desire that this matter should be fully considered then I feel the legislature should be involved in passing statutory requirements that the governor do this or do that.

I feel also that naming only two groups when the University of Hawaii is composed of other groups,

namely, the alumni membership, should they not be included in the representation of the good and welfare of the University of Hawaii, as well as other lay people whom the governor appoints?

I therefore, Mr. Chairman, feel that the amendment as proposed has been fully discussed and the delegate who proposed the amendment is a member of the committee and he had every right to participate, which he did participate in the committee hearing in support of this proposal. Certainly the will of the majority should prevail but in due respect, he's right to come up for the second time to offer this proposal.

CHAIRMAN: Thank you, delegate. Is there any other discussion? Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, I rise to speak against Amendment No. 1 to Article IX, Section 5. This morning, some questions have been raised as to communication between the board of regents, members of the faculty and members of the student body. Also the question has been raised whether there is a grievance procedure, whereby grievances could be appealed to the board of regents. Mr. Chairman, it seems to me we already have organizational structures within the university environment and community, whereby grievance procedures may be brought to the attention of the board of regents, whereby both the student body and the faculty have governing bodies elected by respective members of each organization, the student body and the faculty respectively. The student body elects its own officers and the student senate. The faculty elect its own officers and the faculty senate. Grievance matters and communications could be brought before the board of regents at its meetings by these officers or representatives designated by the president of the Associated Students of the University of Hawaii and the faculty senate. I believe that these communication lines are open and acceptable to both organizations through their respective governing boards. I don't see the necessity of having a faculty member serving on the board of regents or student serving on the board of regents. And I reiterate further the very reason why the legislature proposed an amendment to the State Constitution removing the president of the university and the superintendent of schools was the conflict of interest that was earlier mentioned by Delegate Devereux. So I request everyone to vote against this amendment.

CHAIRMAN: Any further discussion? Delegate Bacon.

DELEGATE BACON: May I rise for the second time, Mr. Chairman?

CHAIRMAN: Does anyone else wish to speak? Yes.

DELEGATE BACON: Very briefly, I would like to bring up again this thought that there have been questions raised whether a student and a faculty member could truly represent the students and faculty. And again, I repeat, do the delegates here truly represent the people of your districts? The same

question pertains to each and every person here. This question pertains to each and every one who sits in our legislature. This is a very important question, Mr. Chairman, and I would encourage the delegates to support this proposed amendment. Thank you.

CHAIRMAN: Are you ready for the question at this time? The intent of the amendment is to include in Section 5 of Article IX, the sentence, "At least one member of the board shall be a full-time student of the university and another member of the board shall be a member of the faculty of the university."

All those in favor of the—I'll again use the standing vote rather than the roll call unless there is a desire by ten or more members to so do. All in favor of the motion, please rise.

DELEGATE SHIIGI: Mr. Chairman, I didn't understand the question.

CHAIRMAN: Delegate Shiigi, did you have a question?

DELEGATE SHIIGI: Mr. Chairman, could you please clarify what we are voting for again? Are we voting "yes" if we want the amendment? Is that true?

CHAIRMAN: If you vote "yes," it would be to include this sentence in Section 5.

DELEGATE SHIIGI: Thank you.

DELEGATE KAWASAKI: Mr. Chairman, can we have a roll call on this, please.

CHAIRMAN: Are there any more delegates who wish—the sergeant at arms advises me there is a request for roll call.

DELEGATE KAUHANE: Mr. Chairman, I believe you have called the vote for those who are in favor, you haven't called for those against. In case there is a doubt in the Chairman's mind, then the roll call is properly one to be put to the delegates at this time.

CHAIRMAN: We did start with the vote and we didn't complete it so, I just answered a point of clarification. All those for the amendment, please rise again. Please stand until—

DELEGATE YOSHINAGA: Mr. Chairman, how about finding out whether we're going to get a roll call or not.

DELEGATE GOEMANS: We're in the middle of a vote right now. Nothing's in order.

CHAIRMAN: Delegate Yoshinaga, we are in the middle of a vote and I wanted to complete it, if I may.

DELEGATE YOSHINAGA: I demand for a roll call.

DELEGATE KAWASAKI: Mr. Chairman, I think there is enough sentiment here for a roll call and I

think a roll call vote is in order.

CHAIRMAN: Okay, we'll have a roll call then.

DELEGATE KAUHANE: Mr. Chairman, I feel the roll call is out of order at this time. You have called for a vote on the question, asked for those who are in favor of the motion to rise. Those who are against the motion have not been given an opportunity so that you can ascertain whether or not you are in doubt.

CHAIRMAN: Delegate Kauhane, we didn't finish the vote even on the affirmative so I'll declare a roll call is in order. Mr. Clerk, will you please call the roll.

(Roll call having been ordered, the motion to amend Section 5 of Article IX failed to carry by a vote of 12 ayes and 63 noes, with Delegates Aduja, Ajifu, Akizaki, Amaral, Ando, Ansai, Ariyoshi, Beppu, Bryan, Donald Ching, Hung Wo Ching, Devereux, Dodge, Doi, Dyer, Fernandes, Goemans, Hansen, Harper, Hasegawa, Hitch, Ho, Jaquette, Kage, Kageyama, Kamaka, Kato, Kauhane, Kawakami, Kudo, Lalakea, Peter Lewis, Rhoda Lewis, Frank Loo, George Loo, Lum, Matsumoto, Menor, Minn, Miyake, Mizuha, Morioka, Nakatani, O'Connor, Oda, Ozaki, Pyo, Saiki, Shiigi, Souza, Steiner, Suwa, Taira, Takahashi, Takamine, Uechi, Ueoka, Ushijima, Wright, Yamamoto, Yim, Mr. President and Chairman Chang voting no; and 7 excused, with Delegates Amano, Andrade, Burgess, Hara, Kaapu, Kunimura and Schulze being excused.)

CHAIRMAN: Motion is lost.

Delegate Hidalgo.

DELEGATE HIDALGO: Mr. Chairman, I have an amendment. I think it's still being printed.

DELEGATE MIYAKE: Mr. Chairman, point of order.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: The result hasn't been announced by the Chair.

CHAIRMAN: I did announce it. Delegate Mizuha.

DELEGATE MIZUHA: I have an amendment to Section 4 of Article IX which has been printed now in its third draft which is before all of the delegates. It's IX (4), just being distributed now and reads as follows:

"Committee Proposal No. 4 is hereby amended by amending the first sentence of Section 4 of Article IX of the State Constitution to read as follows:

"The University of Hawaii is hereby established as a state university which shall be free for undergraduate residents of Hawaii and constituted a body corporate."

CHAIRMAN: Is there a second to that amendment?

DELEGATE NAKATANI: I'd like to second the motion, Mr. Chairman.

DELEGATE HO: Mr. Chairman.

CHAIRMAN: Delegate Ho.

DELEGATE HO: Mr. Chairman, I just wondered whether Amendments 2, 3, and 4, might not be better handled by the concept method, let us say, vote for the concept of free education for resident students at the University of Hawaii.

CHAIRMAN: I think the point is well taken. Let's see if I've got these amendments here.

DELEGATE MIZUHA: Mr. Chairman, I didn't understand Delegate Ho.

CHAIRMAN: Delegate Ho, would you clarify your remarks?

DELEGATE HO: I simply suggested, Mr. Chairman, that perhaps Amendments 2, 3, and 4, inasmuch as they all deal with free tuition for residents of the State of Hawaii and the University of Hawaii, might be handled under one question, that is to say to vote for the concept of free tuition or not.

DELEGATE MIZUHA: That is correct. The language here—there's some difference in the language but it is the proposition and may I speak on the amendment at this time, Mr. Chairman.

CHAIRMAN: We may approach this on a concept basis. I think the point is well taken.

DELEGATE MIZUHA: I'm not approaching it. He might think it is on a concept basis but I have a specific amendment to be considered at this time.

CHAIRMAN: Proceed.

DELEGATE MIZUHA: I'm speaking on the amendment which is before the delegates numbered IX (4). I believe it is about time for this State to provide free tuition for all of its undergraduate students at the University of Hawaii and for its community colleges.

This does not grant free tuition to all residents who are in the graduate schools. It's only for those who are in the undergraduate schools, which is four years of collegiate level. Some may take five or six to graduate but they still are undergraduates.

From what I read in the newspapers about deliberations on this question in the committee, the question of expenses is risen and the fearful expense of three million dollars or something that they might lose from the pockets of our students here in Hawaii was a determining factor in not having this written into our State Constitution, the amendment as proposed now. It is an easy solution for those who are legislators if they're looking for another three million dollars, just cut down the Hawaii National Guard to ninety percent

and then they won't have that big military appropriation for the maintenance of our national guard in peacetime. They don't want it anyway, now that they all have to go to Viet Nam. Hawaii has the highest per capita ratio of members in their national guard than any other state in the union except Alaska. We maintain a national guard force of over 3500 infantrymen, not counting the air national guard and missile Nike defense system. And look at our state budget and you will see how much is appropriated for the maintenance of the Hawaii National Guard. This is a question that has bothered legislators a great deal because it is a gravy train, so to speak, for those who join the guards. One used to avoid the draft but now they run into a little bit of a difficulty. As soon as they are called into active federal service and they might just go to Viet Nam, everybody joins the big parade and says, "It's unfair to take all of our Hawaii National Guard because the bulk of Hawaii residents are now in Viet Nam fighting this war." If there are too many of our Hawaii boys in the national guard, cut it down.

DELEGATE LUM: Mr. Chairman, point of order.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Are we here to discuss the national guard or the issue at hand?

CHAIRMAN: We're here to discuss the issue at hand.

DELEGATE MIZUHA: Mr. Chairman, I'm speaking to the point and arguing the point where they can find the money that they might lose if we have this amendment adopted, where we can find three million dollars, and I think that was germane to the issue in Mr. Taira's committee. They were worried where they were going to find that money. And I thought, when we first had caucuses and original debates of the delegates here, that we were going to have a so-called exploration in depth. If it is the desire of the members here today to speak specifically just on the amendment itself without the reasons therefor and the basis for the amendment, I think we can go home next week, as the president wants us to do and all of the rest of the legislators can campaign. But here it was my deep desire, Mr. Chairman, to explore all of the problems before this Convention in depth to fully understand the issues so that we can write a good Constitution here for all of the people of Hawaii and that is why I'm speaking now on the point of personal privilege now, because this was brought up by Delegate Lum. I'm speaking now on a point of personal privilege. If I believe that we are going to write a good Constitution we must explore these problems very carefully. And I am certain that it would be easy for all of the legislators to find three million dollars that they might lose if they don't charge any tuition at the university and this Constitution so mandates them and it is accepted by the people. The people must adopt this Constitution. If they approve of this Constitution it is a mandate upon the legislators to proceed. I am not so worried that they can find three million dollars when we have a 250 million dollar budget and so I urge, if there is any

desire on the part of you delegates here present this morning to write into the State Constitution the concept which has built America to be the strongest nation in the world, to build America so that everyone can have a college education where they can go forth into the community not only to earn a living but help participate in the government of free men. Where all the forces of totalitarianism as we know in Europe and Asia. We now have a chance in America, then give our children that chance for a free college education. It is something, it is a concept, it is a belief that is purely American and something that we will be all proud if we can give our children that chance. Thank you.

CHAIRMAN: Delegate Shiigi was rising.

DELEGATE SHIIGI: Mr. Chairman, I would like to ask a question of the excited and strong-voiced delegate from Kauai. And that question is, according to your amendment, the University of Hawaii is hereby established as a state university which shall be free to undergraduate residents of Hawaii and constituted a body corporate. Now, if I were from the mainland, I lived on the mainland, and I decided, because there's good-looking boys in Hawaii, I'm going to come here as a student, I would be an out-of-state student, then I will live here for a year and go to school here for a year, at that time will I then from my second year on be a resident and thereby be allowed to have free tuition?

DELEGATE MIZUHA: I would like to answer that question. The legislature will prescribe who shall be a resident of this State. And if I were a legislator, and may God give me that chance someday, I will say that if this young man wants to come to Hawaii and live here a year and if he had a one-year residence requirement, he will be a resident of the State. I believe the problem will be solved. I saw somewhere a proposal or an amendment, something that everyone who lives in Hawaii for one year will be automatically a resident of this State, or something like that, I don't know. Somewhere in the Constitution it might be written but that's my answer to the question.

CHAIRMAN: Delegate Shiigi.

DELEGATE SHIIGI: I have another question, sir. And this is, I didn't quite understand the delegate in the beginning. Did he say that this will also include the community college, adult education and those other educational systems? I'm sorry, I didn't hear you quite clearly in the beginning.

DELEGATE MIZUHA: Yes, this would include everything on the undergraduate level on a full college program.

DELEGATE SHIIGI: Thank you, Mr. Chairman.

CHAIRMAN: Delegate Fasi has risen and also Delegate Loo earlier. Delegate Fasi.

DELEGATE FASI: I would like to ask a question of Delegate Mizuha following Delegate Shiigi on the

same subject. Delegate Mizuha, am I to understand then that the vocational schools also will not have to pay tuition and fees which would be higher than tuition at the University of Hawaii in some instances?

DELEGATE MIZUHA: I don't know of any fees which would be higher than the tuition. As I understand it now, the tuition charge in the community colleges is much less than that of the university if I'm not mistaken. They charge only about \$35.00 tuition a year or something to that effect. This college right here in the back.

CHAIRMAN: Delegate Fasi. Delegate George Loo.

DELEGATE GEORGE LOO: Mr. Chairman, will the delegate from Kauai yield to a question?

CHAIRMAN: Address the Chair and I'll present it to the delegate.

DELEGATE GEORGE LOO: Mr. Chairman, I was going to ask the delegate from Kauai the definition of the word "undergraduate resident," but since he partially defined it and he said that the state legislature would define what undergraduates are, is it your intention that this be so? Because, as I read your proposal, there's nothing in it that said the legislature will do it.

DELEGATE MIZUHA: Mr. Chairman, it's elementary. The legislature can establish whatever residency requirement they wish in this State. If they say everybody can come here and live one year and be a resident, I can't argue with the legislature, Mr. Chairman. But the Constitution never writes for a residential requirement as I understand it.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: Mr. Chairman, I would like to ask for clarification. Delegate Mizuha, are you willing to enter in the record that when you state "free" that does not mean books, housing, parking, transportation but merely the tuition?

DELEGATE MIZUHA: I contemplated writing the words in here, "shall be tuition free," and I'll accept an amendment to that effect. It was never intended that they were living off the money to go out on dates while at the university.

CHAIRMAN: So the concept you're proposing is tuition free, Delegate Mizuha, is that correct?

DELEGATE MIZUHA: That is correct.

CHAIRMAN: Delegate Nakatani, you had asked for the floor earlier.

DELEGATE NAKATANI: Yes, Mr. Chairman. I rise to support the amendment. I was a member of the Committee on Public Health and Education. Though I signed the majority report, because of the amendment, I would like to speak in support of the amendment. The

amendment which was submitted to this body calling for free tuition is nothing new. Throughout the states, throughout the nation, I can point out to you that some of the universities which are supported by the states give free tuition to the students. I can name, like Alaska, Arizona, Arkansas, California, Delaware, Florida, Idaho, Purdue University, University of Mississippi and many, many universities that provide free tuition.

We've been talking about education for many, many years, and I believe that it's time that we give an opportunity to all youths and a family that cannot afford a higher education, of free tuition on the level of university and community college and even as vocational education. I believe that at present, the board of education has the power to increase the nonresident tuition to offset the free tuition for residents of Hawaii. There's a total of 16,564 students at the university and the nonresident number is 3,750. I believe that by increasing the nonresident tuition five times more, to \$850, there will be a total of \$3,187,000. Last year, the University of Hawaii has collected in tuition \$3,115,000. I believe if the board of regents feel because of giving a free tuition to the residents, we'll offset the budget, by increasing the nonresident fee, I believe that we can balance the budget. Even though we increase it to \$850, to point out to the delegates, the University of Oregon was about the last university on the west coast, even the University of Oregon has increased its tuition to \$999. The University of Vermont, which is considered the highest university, is charging the nonresident \$1,877. So you can see, even though you increase the nonresidents to \$850 to give a free education to the residents of Hawaii, I think the youth in Hawaii deserve this.

CHAIRMAN: Thank you, delegate. Delegate Lum. Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, I think that I believe as firmly as anyone else in this delegation that no one should be denied an education for economic reasons. I think that there is the other side of this coin that has not been looked at; namely, that just as people who do not have adequate funds to pay tuition fees should be given a free education, equally so I think people who have adequate funds to pay for their education should pay for it. I think a much more intelligent approach to the tuition problem would be to set a tuition rate that would more or less cover the cost of education and with the vast sums provided by the people who can afford to pay it and who should pay it, there would be a scholarship fund of millions and millions and millions of dollars that would guarantee that anyone who needs help can go to school free. I would therefore oppose this amendment very strongly.

CHAIRMAN: Thank you, delegate.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: I don't want to repeat what has been said on the floor but I have thought of rising to

speak on the point suggested by Delegate Hitch.

I do want to say that the idea of a free-tuition university is fascinating, it's exciting, it does grab you. But I think by passing such an amendment we are tying the hands of the legislature and not for advantage. Actually the proposal, I think, benefits those who can afford to pay tuition. If the intention of the proposal be to open an avenue for all those in the State of Hawaii who are able to attend the University of Hawaii, then I say it does not accomplish the purpose. Rather I think we ought to collect the tuition from those who can afford to pay, throw that all into a lending scholarship fund and make this available to those who can't afford it, not only for the cost of tuition but also for living expenses. If we do that, I think we more effectively accomplish the purpose.

CHAIRMAN: Thank you, delegate. Delegate Kamaka is recognized.

DELEGATE KAMAKA: Mr. Chairman, I rise to speak against the amendment. First of all, I'd like to clarify the matter of cost. Some remarks have been made to the effect that the Hawaii National Guard is funded at least to the extent that the free tuition would be covered by it. That is not so. The Hawaii National Guard is basically a federally-funded program and the state funds to that program are somewhat minimal. In fact, they fall quite under one million dollars.

If we adopt this concept and we look to the University of Hawaii as having a total enrollment at the Manoa campus of 25,000 and we look at the—and if we consider the possibility that there will be nonresident tuition imposed, and also that the nonresident students will probably approximate 20% of the enrollment, then we will be speaking in terms of 20,000 students at the University of Hawaii Manoa campus. And we consider that the community college system and perhaps the four-year liberal arts college, as well as the Hilo campus will probably give us another 10,000 students, then we are talking about 30,000 students possibly, who'll be receiving free tuition and possibly other kinds of free expenses or expense-free education. And if we average the tuition in the years to come to be about \$200 per child, or if you want you can use the figure of \$150 per semester, then with 30,000 students at roughly \$200 per semester, we're talking about six million dollars. We have heard recently that the coming season of the legislature may have to increase taxes. And as one person who is somewhat familiar with the finances of the State, I would imagine that the tax increase will be in the neighborhood of twenty-five to forty million dollars. You can add six million dollars to that. I would suggest that there are grants for scholarship programs available at the university and available throughout the community which can help those students who need it. I, as one has-been or pretty soon has-been, I will discuss a series of conversations and discussions that I had with another has-been. Dr. Hamilton and I have considered the possibility of someday having some sort of totally free higher education for the students and the youth of Hawaii. The possibility can come, but like Delegate

Hitch said, this should also be based upon need and the ability to pay. I think that we will be hamstringing the legislature and the administration from devising a program where a fund or funds can be utilized to provide some sort of financial aid to the student who needs it. I do not believe that this is the means to accomplish that end. In fact, I think that it can be very well short-sighted because we cannot anticipate the full enrollment at the University of Hawaii as a statewide university can have the other look in terms of what the Manoa campus can hold. It is possible that our student enrollment can someday approach thirty or thirty-five thousand if not fifty thousand. Obviously not all of these would be at the Manoa campus.

So in terms of the number of students who can come into our statewide higher education system, in terms of not knowing how much it's going to cost to support one of these children or these youths to the university or to the community college, I think it would be very safe on our part to leave this matter to the discretion of the legislature. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Frank Loo and then Delegate Ching.

DELEGATE FRANK LOO: Mr. Chairman, I rise to speak against the amendment. The committee discussed this particular matter at quite a length during its discussion and many were very touched by the suggestion and as one of the delegates said, this is very catching. In fact as the papers reported, it was passed in the committee, then reconsidered and voted against after all had had a chance to consider the matter more at length.

One of the delegates did mention, the delegate from Hilo, said that we can raise the tuition of the out-of-state students. Actually we have a one-year residence requirement now. And according to law, there's only two requirements to become a resident. One is the intent to be a resident. Two, physical presence in the State, so therefore with those two requirements a student coming here for the first year, staying for one year, expressing his intent to be here for and be a permanent resident of Hawaii, then becomes entitled to free tuition from his second year on. So therefore, all that tuition that the delegate from Hawaii is mentioning for out-of-state students actually is out the window. It's only for one year.

Also, we're not talking about just three million dollars as has been mentioned if we adopt this particular amendment, we're talking about an increased enrollment. It seems to me with our weather, our fine faculty and our equipment, there'll be more students from out of state coming here. We will need more classrooms, more faculty, more equipment, that will require much more funds. Also we have not yet reached the point where we can say that we have the best education for our students here, not only in Hawaii—that is, in the University of Hawaii, and also vocational schools, but also from grades K to 12. I think we should take care of the young ones first, those that we must educate. Those who are privileged to

attend the university, certainly we should provide for them in funds that have been mentioned, by additional scholarships which the legislature has made available and will continue to make available, and also the possibility of additional funds for living expenses for the students that are from the neighbor islands.

It seems to me, Mr. Chairman, we must take care of the quality of education first for our residents, which is, this is mentioned, but we shouldn't invite all the students from all the other forty-nine states to come here to attend our good schools and thereby we will be forced to support them for their education. Therefore, fellow delegates, I hope that you will vote down this amendment.

CHAIRMAN: Thank you, delegate. Delegate Hung Wo Ching.

DELEGATE NAKATANI: Mr. Chairman.

CHAIRMAN: You have a point of information?

DELEGATE NAKATANI: Yes, I'd like to clear Delegate Loo's question on nonresidents.

CHAIRMAN: Before you do, Delegate Ching, will you yield to Delegate Nakatani? Delegate Nakatani.

DELEGATE NAKATANI: On the residents, I presume that the present language defining the resident is not clear. The resident you're talking about is defined in the Constitution in some of this area on election and so forth, while university residents, the board of regents, I presume, has the right to define the resident.

CHAIRMAN: Delegate Hung Wo Ching.

DELEGATE HUNG WO CHING: Mr. Chairman, I rise to speak against the motion. I think the fundamental issue before us is one of philosophy. In our day and age we cannot deny that we are really accelerating our process of socialism. We are extending this process by continually giving things free, by continuing to do things and deciding things for young people. An education at the university level should be considered a privilege and it is a part of the growing up process for students in preparation for their adulthood. It is much better for them to learn how to work and to cherish their college education and find money to educate themselves if they really desire such an education. Otherwise I can predict in Hawaii you will have a big campus full of professional students, who do not now have jobs or who have no future but just want to pass the time in leisure. And I can also see that the campus must more than double its size just to accommodate the mainland students, who can create for themselves a residency after one year. We talk about free tuition, we talk about everything that's good in life free. The next extension of this is going to be free lunches for even college students. Everything, free books. Now, when are these students going to make a decision for themselves? What they want of life they must pay for, they must contribute to. What I'd like to see is something free for the taxpayers. Now, let us be

serious about this philosophy of life; I think we're making a great mistake if we are to do everything for our students without giving them a chance to make up their own minds what they want and what they want seriously, to pay for what they're going to get. Thank you very much.

CHAIRMAN: Thank you, delegate. Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, I rise to speak against the amendment. The issue as I see it here is free tuition for students at the university. Mr. Chairman, I see nothing in the Constitution which would prohibit the legislature from exploring this issue and if it's the will of the people, enacting legislation that can carry this out. My understanding that our job here is to rewrite various parts of the Constitution where necessary but the legislature can do the job. In my humble opinion, amendments are unnecessary. The G. I. Bill of Rights, to my way of thinking, did tremendous good for this country. It provided education for many who might not otherwise have had it and perhaps it has contributed materially to where we are today. However, Mr. Chairman, I wish to point out that it was unnecessary to amend the United States Constitution to provide for such legislation. Thank you.

CHAIRMAN: Delegate Lum.

DELEGATE UEOKA: Mr. Chairman, I move we take a recess.

CHAIRMAN: A recess is declared.

At 11:11 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:20 o'clock a.m.

CHAIRMAN: The meeting will please come back to order. Delegate Lum had asked for the floor earlier and Delegate Kageyama, you will be next.

DELEGATE LUM: Mr. Chairman, I rise to speak against this particular amendment. Although the arguments have been based mostly around the area of cost factors, upon tying the hands of the legislature, might I point out that there are other areas of concern that the committee did go into. One area of concern is that there was a feeling that the greatest barrier to the higher education problem is perhaps not the tuition alone but the cost of living away from home or living at the site of the university. For those from the other islands it definitely is a problem. This will probably be the biggest problem for them. Might I also point out that by doing this particular action we are therefore telling the legislature that you have to spend umpteen million dollars and although the figures are not determined because you don't have the facts and figures here at this Convention, we may be also taking away some of the programs that are presently on K to 12. And I ask you gentlemen, I think the programs on K to 12 are more important to a resident and the people of Hawaii than the higher education program is now. So

we must seriously consider what this action could be doing. The other thing is that I think we are inviting the possibility of raising substantial fees as they call in other states to make up the deficit that is presently being taken out of the arrears of the budget because of this particular action. Also, may I point out that we have six grants presently at the university and enforced for those who need the scholarship. There are also a list of private scholarships that are also at the university for those who need scholarships. I say that if you vote for this particular amendment, you're voting to tie the hands of the legislature, as has been mentioned many times today, you are definitely voting for a tax hike. We have to have a tax hike to make ends meet and make the pay raises that the employees deserve and so on and so on. And we are possibly hurting other programs within the State. Thank you.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: Mr. Chairman and fellow delegates, I have sat here since the Convention has commenced and we sit again today with some of the problems that face these delegates at this Convention, and a proposal has been submitted and an amendment has been submitted at this Convention to make it tuition free for any student attending the University of Hawaii or any community college. I believe in the amendment and that this amendment is worthy of consideration by every delegate who is thinking about amending the Constitution for the purpose of having it ratified by the people. The purpose of this amendment here is to give to the people of these islands or the State of Hawaii an opportunity to express themselves and if they say I shall vote for free education then that is the verdict of the people of this community or the State of Hawaii, although it must pass this assembly of delegates before this proposal or amendment is submitted to the people. We should give the people of this State of Hawaii an opportunity to express themselves and if they so desire that they do not agree with the Convention delegates' recommendation, then use the decision as you would go to the court and have the so-called judges make their decisions.

As Delegate Tennyson Lum has pointed out, people from the outside islands must have room and board expenses paid. I come from the Big Island, probably I would have had a degree were it not for having the tuition and other expenses imposed upon the individual from the outside islands.

You delegates from the outside islands and the delegates from Honolulu receive a per diem. And what is the per diem? To meet your expenses. So they charge the university students what is called tuition fee to meet some of the expenses. Why shouldn't we eliminate the per diem? Because it costs you that amount to live in the city of Honolulu and we are giving a certain amount to the outside island delegates to take care of the higher expense since they have to establish two homes.

Now then, we find in the newspapers the lack of professionals in Hawaii, lawyers, doctors and

schoolteachers. What did you notice in the paper lately—we are importing 50% of the schoolteachers. What for? Why? Because we don't furnish the supply and demand of the university and this community suffers as a result. Is it our duty, the legislature and the community leaders today, to correct the imbalance of that situation? Look at the newspaper. "Engineers wanted, teachers wanted—"

CHAIRMAN: Delegate Kageyama, are you speaking for or against the—

DELEGATE KAGEYAMA: I am speaking for and that is the basic argument why this amendment, its important facts to support this amendment. These are the figures. Now you have federal aid to the State and the school. Why don't we tell Congress we don't want federal aid because we, the people of this State, can carry out the burden of higher education of supporting the schools.

CHAIRMAN: Delegate Kageyama, will you speak closer to the mike, please.

DELEGATE KAGEYAMA: Yes. We have further made federal education that provides scholarship and loans but these are being paid back to the respective government and provided that they return to their provided profession for which 50% is deducted. But the purpose is to give the local residents free education, and I think democracy will stand on the basic issue of demonstrative versus education. In the country of Japan, initiative has come down to almost nothing because they provide education for the masses and if Hawaii is to follow that principle of giving everybody an education, whether it's the first grade, kindergarten up to the college, I think it's that purpose for which we should as citizens of this community support free education from the grade of first to a higher college and I believe, look at the technical schools today, are we supplying technicians to supply the demands in aviation, in the field of mechanics? Yet the want ads today have carried four or five pages and this is the answer to some of those. Those who are advocating that we should have tuition can afford it. Look at their backgrounds. They're making ten or fifteen thousand dollars over as businessmen. Look at the overall picture of this community where you have two or three sons or daughters attending the university and the income of the average person in this State. Do not worry, in comparison to that ten or fifteen percent of the people who can afford to send their children to the colleges which ask tuition or to send, if they are in the greater high-up bracket, they send them to out of state to which they can provide. Look at the doctors and the lawyers. You see a lawyer, as soon as you open your mouth they charge you. If you go to see a doctor, as soon as you visit the office they charge you, because it costs them so much to have that education and the degree and the qualifications to be of that profession. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Kageyama. Are you now ready for the question?

DELEGATE KAUHANE: Mr. Chairman. I'd like to speak in favor of the amendment. Although a member of the committee I voted in the first instance for free tuition but again when the matter was reconsidered, my vote was lost. But I still believe in the concept of free education. I want to read something here, Mr. Chairman, that appeared in this morning paper where, in quoting from participation of business and public service, "We cannot say that every man, although supposedly created equal, has the same capabilities. We should take it upon ourselves as an obligation to assist them." If this is the way a businessman speaks, to assist those who are of unequal capabilities to help themselves, then I'm sure free education the businessman is providing this assistance that should be given to the unfortunates who cannot ably and capably pay for their educational opportunities. I also say, Mr. Chairman, that in order for us to have a wholesome community that we should look to all of the opportunities that we may make available to our students by providing them the equal educational opportunities. And this can only come about by government participation in finding the area in which government too can provide some assistance and that is to free education.

We have, Mr. Chairman, people who are, well, say under welfare rolls because of their incapacities. Certainly they're not—they should not be deprived of their right of educational opportunities. You and I know they are, in some of these cases where these people are being denied the right of the educational opportunity because of the harassment that they have to go through in order to obtain assistance for free education. The possibility of raising a high fee has been brought about, Mr. Chairman. Should this be a barb for those who are unfortunate enough and not capable enough to provide for the education of their children? That because of the high rise of fee, they should be denied the right of free education. They talk about state grants at the university for those who need. They forget to say to us that in these grants at the university are qualifications that have to be met. And if the individuals who are unable or whose families are not in a position to provide continuous educational opportunities do not meet the qualifications, they certainly are not given any state grant. In this state grant, we also find that the legislature provides for scholarships for the children through legislative action. Here again, qualifications have been set up. They say we should not tie the hands of the legislature, maybe this is about time that we should tie the hands of the legislature, Mr. Chairman.

I remember back when both political parties advocated free education in the public schools, I know too that the people in support of this program of free education, particularly those who are in need of this type of further education came to the support of all the candidates who were elected to public office on this particular platform, and yet when they served the people in the legislature, this cry of providing free public school education was overlooked.

Let's take the case of its continued overlooking by

the legislature. We know that facilities are to be constructed to take care of the rising need of the student enrollment but at the same time, Mr. Chairman, while we are taking care of the facilities for the rising student enrollment, let us also be mindful of the opportunities that are being asked for by those who are unable to provide this equal educational opportunities. Let us look forward to the time when these children will become the leaders of our State through the assistance of the legislature perhaps, then let us in that thinking be aware that there is a need, a crying need. Then if there is this crying need, equal opportunity should be extended to all. Then the proposal should be adopted. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Hasegawa.

DELEGATE HASEGAWA: Mr. Chairman, I speak for the amendment. I believe in the concept of free education. I believe every opportunity should be given all the students who want higher education to get that higher education.

If a few students not now attending the university would be able to attend university because we are offering education without the requirement of tuition, we should provide that opportunity. We are talking about the cost of government operation, but as I see in this report, the cost would be a meager three or four million dollars additional cost. Why are we so reluctant in spending that meager amount to provide this opportunity? I know for a fact that a lot of students going to the university today are scrimping and trying to make ends meet, their families are scrimping to provide these kids with education. Why shouldn't we, if we are, if it is possible, by doing away with this tuition, afford these opportunities to students who want to get higher education. I am for this amendment wholeheartedly and I recommend the deletion of the requirement of tuition at the University of Hawaii.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: Mr. Chairman, I rise to speak against the concept of no tuition at the University of Hawaii. I, too, however, am for the concept of free education in our State. But I am mindful of the fact that in the State of Hawaii, for our 170,000 children, we are providing just above the national average in terms of support for their education. That is approximately \$600 per student in our kindergarten to twelfth grade. I'm also aware of the fact that some of the better school systems in the United States that support their children in their schools spend anywhere from \$750 to \$1,000 per student in their school system. This means, Mr. Chairman, that we need at least 50% more moneys in our public school system over our current level of services before we can say we are beginning to adequately take care of their educational needs and curriculum and counseling and all the other support services that go to a fine education that all of our children need. This can amount to anywhere from 50 million to 75 million dollars additional moneys in education.

We are not ready, Mr. Chairman, to go into such a level of services in education that we will support the 20,000 students that may go to the university when we are not fully supporting the 170,000 students in our public school system. On that basis, Mr. Chairman, I'm against the proposal submitted to this Convention.

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Mizuha asked for recognition.

DELEGATE MIZUHA: Mr. Chairman, I will yield to Delegate Miyake.

CHAIRMAN: Okay. Delegate Miyake.

DELEGATE MIYAKE: I will not care to reiterate the subject of debate discussed by other honorable delegates of this Committee of the Whole. However, just for information purposes, since revenues and loss of revenues have been mentioned here in our discussion, and the question of 3.2 million dollars loss of revenue has been mentioned, based on the committee report, I want to inform the delegates that our loss in revenue is not limited to 3.2 million dollars because you have the additional costs with an increased student body if you do grant free tuition, and as mentioned earlier, to students who do not deserve a free tuition because of the wealth of their respective parents. Free tuition would increase the size of the student body. By increasing the size of the student body you will need additional professors to take care of these additional students. To take care of these additional students, you need additional classrooms and lecture halls. These are the fact and cost figures we have to consider, not just the 3.2 million dollars stated in the committee report. Thank you very much.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I just asked for recognition because as the movant of this amendment, I have the right to close. If there's anyone else who wishes to speak, I will yield to him.

CHAIRMAN: Is there anyone else who wishes to speak? Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, Delegate Miyake has just pointed out the complexity of the question. I think that many of us wholeheartedly support the concept that anyone who really wants higher education at the University of Hawaii should not be denied because of his personal financial limitations. On the other hand, there are many other problems that come into play. I believe that the legislature is the body appropriate to wrestle with these problems and that they should not be limited by the constitutional provision which we are proposing. I therefore will vote against the amendment. Thank you.

CHAIRMAN: Is there anyone who wishes to speak before I—Delegate Nakatani.

DELEGATE NAKATANI: Mr. Chairman, I'd like to

make one point clear. In future increase of nonresident or increase in resident enrollment at the university, looking back in 1962 we had a resident rate of 84.1%; in 1967, 77.4%. For nonresidents in 1962, 15.9%, in 1967, we had 22.6%; so if the university continues with this trend even though the students increase and to keep within this 20% of nonresidents the cost factor is not a question.

CHAIRMAN: Thank you, delegate. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman and fellow delegates, the main purpose of my amendment seems to have been lost in argument over the economics of the increased cost to this State over the deep worry by some of the delegates who have had to pay more taxes but my primary concern in this amendment, ladies and gentlemen, has been in the youth of Hawaii. It was the concept many, many years ago and I'm surprised in the chairman of the board of education, it was a concept of about twenty years ago that everybody should have a high school education. But today the minimum, the very minimum requirement of every citizen, any citizen in this State is a college education and we have recognized in the years that have passed by since Hawaii was a territory and now has blossomed full bloom as a state that the minimum requirement for every young man and woman is a college education and that is what my amendment points to. That when he graduates from college he shall be able to go forth into the community, maybe not with the professional techniques that are required for some occupations but for a general occupation, he is qualified. That he will understand for himself and for his family the minimal processes of government, what this government of ours is all about. And if it is the opinion of this group that here in Hawaii you don't want all of our children to have a college education, then heaven forbid what this State has in store in the future progress as a bastion here in the Pacific.

I doubt very much that minimum requirements today will say that just a high school education is sufficient. Now, in closing, we're in the sense of my amendment attack has been made that we have scholarships and handouts. All through my life I had to have handouts. At the University of Hawaii, to get a \$50 scholarship to attend the University of Hawaii, and I never forgot it. How the faculty and the president and those in charge of giving me the scholarship reminded me while I was a student of the university and all throughout the years, even till today that "we helped you, Jack, while you were a student at the university." And these handouts are the very thing that the black people in the United States are fighting against right at the present time. They say, "We don't want any handouts from the government, we want to have a place in the community where we can be citizens free and equal. We want the education, we want the economic opportunity." And that is what I want for our youth in Hawaii. This amendment will not prevent the state legislature from raising the tuition which is the same for graduate students or undergraduate students to \$1,000 a year for graduate students. If they want to go on to graduate school they should pay for it. I believe it's proper. And

therein maybe \$15,000 a year as we had to pay when we went up to the mainland to study law—

CHAIRMAN: Delegate Mizuha, will you please conclude your remarks. You're just close to the five-minute limit.

DELEGATE MIZUHA: Have I spoken five minutes?

CHAIRMAN: Practically. So will you conclude your remarks please.

DELEGATE MIZUHA: In closing then, my good fellow delegates, I trust that in your vote some of you may remember the humble beginnings you've had in plantation fields, pineapple fields or on the docks. And now that you are members of an affluent society you will not forget that we have young men and women in Hawaii who are desirous of rising to the positions of trust and responsibility you are now seeking as members of this Constitutional Convention. Thank you.

DELEGATE MIYAKE: Mr. Chairman, I have a question to direct to the Chair.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, this question is not directed to any particular delegate. However, for those who are supporting this amendment I would just like to raise the question since they are all for free education, free higher education for all qualified students, whether they also consider subsidizing the tuition of students who do not qualify for the entrance examination at the University of Hawaii and whose parents who are taxpayers have to send their students to mainland colleges.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I rise to speak in favor of the motion. While I'm on my feet, I believe that it is not the intention of the University of Hawaii to lower its academic standings to subsidize students who are not qualified for higher education. I believe that that is a moot point in this discussion. I want to remind the delegates, as Delegate Miyake himself stated earlier, that if we have free education, higher education at the University of Hawaii, the cost would be more than the 3.2 million dollars that we presently receive from tuition. That we would have to vastly expand the University of Hawaii to accommodate the residents of this State who want an undergraduate education in the University of Hawaii. That point alone convinces me that we cannot put a cost factor on the education of the children of our State. The fact that Delegate Miyake points out that we need adequate facilities means that if we had free tuition that there are in fact a great number of children in this State who upon graduation from our high schools who cannot afford to go to mainland universities, who cannot afford to go to the University of Hawaii because of the income status of their families, would then come up to the University of Hawaii. We cannot put a dollar-sign value on the education of our students who aspire to higher

education that does in the long run, the investment that we make today will be paid back a hundredfold and a more enlightened citizenry not only for our community, for our State and for our country, and I say that the State of Hawaii should go along with other states and take the lead in providing free education all the way up to and including the University of Hawaii.

I urge the delegates here to remember and to recall the struggles that they had when they were trying to get an education and to consider the income of their families and how many of your fellow students in the high schools that you attended could not afford to go to the university of higher learning because the income was not there. I say don't put a dollar sign on the education of our children. I urge all of you to support this amendment.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I rise to speak against the proposed amendment to Proposal No. 4. I think all of us—

DELEGATE GOEMANS: Point of order, Mr. Chairman. The mover of this proposition has asked to close debate on the matter and no objection was voiced at that time and now we are continuing debate. I think—

CHAIRMAN: I think the point is well taken. However, the committee chairman might have a concluding remark to make. Do you want to so state?

DELEGATE TAIRA: Mr. Chairman, as the committee chairman I would like to point out for the delegates that—am I permitted to speak, Mr. Chairman?

CHAIRMAN: Continue, yes.

DELEGATE TAIRA: Thank you very much. I think all of us here are concerned about getting cost-free education for our children. Be it K to 12 or university level. I think that is not the issue here. It has been very well put by Delegate Steiner. The basic issue here is whether in this Convention we are going to get into the legislature's budgetary deliberations something which will cost a few millions of dollars. Your committee's position is, that in an area of this type, let us leave it up to the legislature which meets every year to deliberate on its budget requirements, its revenue projections, because I think you and I know that there are many other implications to the action that we will take here this morning. And therefore I'd like to urge all you delegates to vote down this amendment.

CHAIRMAN: The Chair at this time will order roll call. I would like to state that Delegate Mizuha's amendment is to provide for a tuition-free university for the residents of Hawaii. So if you are voting "aye" you will be voting for that. Mr. Clerk, will you please call the roll.

(Roll call having been ordered, the motion to adopt the amendment offered by Delegate Mizuha to Section

4 of Article IX relating to free tuition was put by the Chair and failed to carry by a vote of 25 ayes and 51 noes, with Delegates Aduja, Ajifu, Akizaki, Amaral, Ando, Ansai, Ariyoshi, Beppu, Bryan, Donald Ching, Hung Wo Ching, Devereux, Dodge, Doi, Dyer, Goemans, Hansen, Harper, Hitch, Ho, Jaquette, Kage, Kamaka, Kato, Kunimura, Lalakea, Peter Lewis, Rhoda Lewis, Frank Loo, George Loo, Lum, Medeiros, Menor, Minn, Miyake, Morioka, Noguchi, O'Connor, Oda, Pyo, Saiki, Shiigi, Souza, Steiner, Sutton, Taira, Takahashi, Wright, Yim, Mr. President and Chairman Chang voting no; and 6 excused, with Delegates Amano, Andrade, Burgess, Hara, Kaapu and Shulze being excused.)

CHAIRMAN: The motion has failed to carry.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, I note the time is five minutes to 12. I suggest the Chair declare a recess until 1:30.

CHAIRMAN: Chair will declare a recess until 1:30.

At 11:55 o'clock a.m., the Committee of the Whole stood in recess until 1:30 o'clock p.m.

Afternoon Session

The Committee of the Whole reconvened at 1:30 o'clock p.m.

CHAIRMAN: The committee will please come back to order. The Chair at this time will recognize Delegate Hidalgo who would like to offer an amendment. Delegate Hidalgo.

DELEGATE HIDALGO: Thank you, Mr. Chairman. Mr. Chairman, I move that this body will amend Article IX, Section 5 to add the following sentence after the second sentence of Section 5: "At least one member of the board shall be a full-time student of the university and another member of the board shall be a member of the faculty of the university provided"—and this is the one that is new, we had no privilege to discuss earlier this morning—"provided that they shall have no vote."

CHAIRMAN: Is there a second to that amendment?

DELEGATE LUM: For the purposes of discussion, second.

CHAIRMAN: Delegate Lum seconds the motion. Delegate Hidalgo.

DELEGATE HIDALGO: Mr. Chairman, fellow delegates, at the committee hearing we had people from the university, we had students from the university who came over and gave us their side of the story of the problems that they are having not only in our university but also in other universities on the mainland. I'm not going to make a long presentation here. The only thing I would like to express or rather point out is the right

of our students and the faculty members to be heard. The right to voice their feelings, the right to be able to participate in deliberations and discussions of the very problems that affect the students and faculty members of our university, and that, by the way, includes the community colleges.

Mr. Chairman and fellow delegates, all I want to do is to construct a bridge, to build a bridge of understanding between the students, faculty members and the university administration, between students and faculty members and our government officials, and a bridge of understanding between young citizens in our university system and the people of Hawaii. We can improve that understanding among our young people, our young scholars and the people of the State by allowing the students or a student and a faculty member to be on the board of regents. I think by giving the students and the faculty members the right to do that, the right to participate with the policy—in the policy-making body of our state university system, in my humble opinion, we can prevent similar problems, the problems that are quite common on many, many campuses in this country and other countries.

Fellow delegates, I urge you to support this amendment, I ask you to at least have that representation of the students and faculty as member of the board of regents with no right to vote. This is no right to vote, just the right to be represented, the right to be able to participate and the right to be heard. Thank you.

CHAIRMAN: Thank you, delegate. Is there any further discussion on the amendment? If not, are you ready for the question? Then all those who'll be voting for the amendment will be voting for the inclusion of the sentence where a full-time student of the university and a faculty member shall serve without vote on the board of regents. I will just use a voice vote on this vote if I may. All in favor of the motion, please say "aye." All those opposed, "no." The motion is lost.

Are there any other points of discussion to come before the motion now on the floor of the house that we adopt Sections 1 through 5 of Article IX without amendment?

If not, are you ready for the question? I'll take a voice vote again. All those in favor of the motion, please signify by saying "aye." Opposed, "nay." The motion is carried.

Delegate Taira.

DELEGATE TAIRA: Mr. Chairman—

PRESIDENT PORTEUS: Delegates, may I interrupt the proceeding for just one moment to order the distribution of the opinion dated September 3, addressed to the president from the attorney general's office with respect to the attorney general's interpretation or his office by Bertram Kanbara and approved by Bert T. Kobayashi with respect to collective bargaining. Now, I request that the sergeant at

arms make a distribution of this and when we're in the general session, for the purpose of the record, we will note that this has been received and ordered distributed. Thank you, Mr. Chairman.

CHAIRMAN: Delegate Taira is recognized.

DELEGATE TAIRA: Mr. Chairman, at this time I'd like to request that this Committee of the Whole consider Committee Proposal No. 4 and for this purpose I would like to yield to Delegate Yamamoto.

CHAIRMAN: Delegate Yamamoto is recognized.

DELEGATE YAMAMOTO: Mr. Chairman, I move for the adoption of Committee Proposal No. 4 of Standing Committee Report No. 41.

CHAIRMAN: Is there a second to that motion? Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, I second the motion.

CHAIRMAN: Thank you. Delegate Yamamoto.

DELEGATE YAMAMOTO: Mr. Chairman, I rise to speak on this proposal. The proposal of the Committee on Public Health, Education and Welfare; Labor and Industry is, "There shall be a school advisory council to advise the board of education in accordance with law."

Mr. Chairman, this is called the school advisory council and it is nothing new. A provision for setting up local school advisory councils was incorporated in the Convention by the 1950 Constitutional Convention. Section No. 2 of Article IX, which stated as follows:

"There shall be a board of education, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor from panels submitted by local school advisory councils to be established by law. At least part of the membership of the board shall represent geographic subdivisions of the State."

Mr. Chairman, when Hawaii attained statehood, the legislature established by law the school advisory council merely to present a panel of names to guide the governor in appointing the members to the board of education. Although the function of the local advisory council was specific as aforementioned, the advisory council expanded tremendously with the passing of the years, it just bloomed up. The justification for its need was there, requests, gripes and everything that was connected with our public education system were brought up to the members of the advisory council. It serves as an integral part of the community life and the educational system of Hawaii. To me it serves as a vital sounding board for the parents and for the people of Hawaii. The president of the Hawaii Congress of Parents and Teachers in his testimony stated, "We believe that the station of government, the arm of public education should be as close to the people of this state as

possible. We have found the advisory council to be important, a connector, a link between the general public and the Department of Education. We have found the advisory council coping, channeling information, communication and better representative of communities than the school board."

Mr. Chairman, the Legislative Reference Bureau in its blue and white book, *Hawaii Constitutional Convention Studies*, Volume I, Article IX, under public education of July 1968, in Chapter 1, under the topic of introduction, background, explains, "In the Hawaii State Constitution provisions for its education are contained in the five sections of Article IX. Since 1959, there have been at least 50 legislative proposals to amend this article. Of the five constitutional amendments to the State Constitution since its adoption, three have been to Article IX on Education. Relative to other constitutional articles, the education article has undergone the greatest number of changes." And in almost every legislative session since 1967 bills have been introduced to set up and define the local school advisory council. This is a clear indication that the legislature is ever alert to the challenge in upholding the concept and future success of our educational system. However, Mr. Chairman, I am concerned about the uncalculable future when we may be faced with a different breed of legislators whose position and stand on education may be found much to be desired. We cannot stand idly by and remain indifferent to such a probability coming to pass. The status quo of the present school advisory council should be maintained as they have conserved the voice of the little people whose voice is often shunted in the high hum of government. To maintain this status quo would be to incorporate the committee's proposal into our Constitution. Hawaii stands unique in being the only state besides Alaska that has a true workable statewide school system in the union, thereby affording each child the means and opportunity of receiving an education whether he be domiciled in Honolulu proper, Papakolea, Koloa, Kaunakakai, Lanai City, Hana, Hilo or Kawaihae.

In Hawaii there are no independent local districts or local school boards or independent district superintendents. All other states have highly decentralized public school systems with considerable degree of authority delegated to the local school board. Mr. Chairman, here in Hawaii, because we have a statewide system of public schools operating under the board of education much of the far-reaching policy-making decisions affecting education are conducted in Honolulu which is not feasible and accessible to many individuals who reside in the neighbor islands. The school council is the answer. Mr. Chairman, there are presently nearly 35,000 local boards of education in the United States. The trend today is to bring educational systems as close as possible to its people. Local participation of our education, educational system is basic to the democratic system. Education is considered to be the subject of primary interest to the citizenry. And therefore consideration of educational objectives and directions should be made most available to them. Such system sustains the intent, sustains the interest of the people in the education of their children and makes them more willing to provide the financial resources required to

maintain an adequate school program. Under the statute Act 50, regular session of 1966 of our legislature, Section 37 creates school advisory councils by district. First district—seven members of Hawaii; second—five members, Maui; third district—five members, Honolulu; fourth district—five members, central Oahu; fifth district—five members, leeward Oahu; sixth district—five members, windward Oahu; seventh district—five members, Kauai. Making a total of 37 members.

The role that the school advisory council plays cannot be measured with dollars and cents. The hot issues of consolidation of schools, location of schools, bus transportation, schedules of school periods, naming of schools, school lunch program, schoolchildren working in cafeteria, problem of school student and teacher, principal, and many other issues that are most important to the parents of the children attending public schools are all passed on to the school advisory council.

Education that poses a problem at the district levels are passed on to our school advisory council. These problems require much intelligent research studies and soul-searching on the part of the advisory council. For the future of Hawaii, the molding of a child at his infant age is the key to the future. The role that the advisory council plays in the local district to correct these inequities that are bound to come about in an ever-growing society and the effectiveness of this body will be tremendously in keeping step with other states in the union in the education of its citizens and future leaders of our country.

I want to see the school advisory council remain a permanent fixture in the community. The school advisory council is a lifeline, the connecting link between the parent and the board of education that creates the educational climate for the children of Hawaii. I strongly—

CHAIRMAN: Delegate Yamamoto, you have one more minute.

DELEGATE YAMAMOTO: Yes, thank you. Mr. Chairman, I strongly urge my fellow delegates to vote for the committee's recommendation, Proposal No. 4. Thank you.

CHAIRMAN: Thank you, Delegate Yamamoto.

Is there any other discussion on the amendment? Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, I'm going to make my presentation very short because I'm in complete agreement with the position expressed in the second to the last paragraph of the committee report, the position of the minority on the committee. And may I read verbatim their sentiments on this. "... that there is no quarrel with the importance and necessity of local school advisory councils but that provisions for their establishment and their role in public education should continue to be left in the hands of the legislature, which, by its action in 1966, showed

responsiveness to the needs and desires of the people of Hawaii in public education," the position being that, let the legislature handle this problem.

CHAIRMAN: Thank you, delegate.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: This is too good an opportunity for me to let slip by. I've been defeated in two important amendments on the floor of this Convention. One with reference to have the supreme court handle election contests and the other one was the proposal that education be free up to the collegiate level in Hawaii. Both times all of the opponents of the amendments said, "This is a legislative matter, we'll let the legislature take care of giving the supreme court original jurisdiction in an election contest." And with reference to tuition, "The university can handle that by giving scholarships and they'd be reducing tuition and raising tuition elsewhere." But the very argument used by the distinguished delegate from Hawaii who says you can't trust the legislature, that's why we want to put it in the Constitution. Something that we have written in black and white, in detail and yet now you want to lay it out in this Constitution, this beloved Constitution that you will submit to the people in November with this proposal all about school councils.

I don't know where we're going. As my brother Yoshinaga said early in the debates that he is confused, I'm going to be really confused if this one which is in legislation now in details and we are going to amend the Constitution to tell the legislature, that benevolent body whom we trusted up to now in all our debates, "Behold, we don't want you to change the statutes in Hawaii and we're going to have school council." May I remind you, as the delegate from Hawaii said that the legislature may change and those of you defeated the amendment with reference to free tuition at our university, that the legislature may change next spring and raise the tuition of the University of Hawaii up to \$500 a semester. That's the same thing. And for those of you who will find it to be true, and I can predict it now without any limitation in the Constitution, that the legislature will be increasing tuition instead of lowering tuition for Hawaii students just as much as maybe the delegate from Hawaii and the committee feels that the legislature might abolish school councils. After all, there are many, many people in Hawaii who would like to sit in some kind of governmental position, whether it be advisory or not. And to all of you who have known what it is to have people poking you left and right, you legislators I hope you vote for this amendment.

CHAIRMAN: Thank you, delegate. Is there any further discussion on the floor? If not—Delegate Yoshinaga.

DELEGATE YOSHINAGA: I just want to assure Mr. Mizuha that I was confused for the first thirty days but I am no longer confused. I know where this Convention is going. It's going nowhere.

CHAIRMAN: Thank you, delegate. Any other discussion? Delegate Ho.

DELEGATE HO: Mr. Chairman, I, like everyone else in this Convention, care about the education of our children. I care about it very much and therefore I will vote against this amendment.

I will vote against this amendment because, Mr. Chairman, I think it is just one more case of too many people's fingers in the soup, and the people who have to drink that soup are the children of the State. We are adding, Mr. Chairman, a humbug upon a humbug. We are determining the policy of education in the State already. We have the Committee on Ways and Means of the senate, the Committee on Appropriations of the house, the respective Committees on Education of both the house and the senate, the board of education, the superintendent of education and now we are asked to add to the confusion, we're about to add another commission, the school advisory council.

I have no doubt that the intention of this proposal, this amendment is a good one, well motivated, but Mr. Chairman, what the problem of public education of today is that there's far too much policy-making, there's far too much checks and balances and not enough decisions. And this is why I intend to vote against the amendment, Mr. Chairman.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: Mr. Chairman, what is the question before this house?

CHAIRMAN: The question before the house is to add a new section to Article IX, Amendment No. 6, "There shall be school advisory councils to advise the board of education in accordance with law."

DELEGATE LUM: If we vote against this, it means the prevailing sections will be the one—

CHAIRMAN: There'll be no new section added if we vote against it. Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, I rise to speak in favor of the amendment. I hadn't intended to speak until my distinguished colleague from the 15th District made the remark he did just now and I feel that I must add to the words that have already been spoken. In my opinion, there may be many people with their fingers in the soup, so to speak. However, the democratic process involves people. And fellow delegates, I believe that one of the best ways of constantly improving our educational system is to have more and more people involved in knowing what is happening. Involved in expressing their ideas and their opinions. As it is now, the Constitution provides for an elected board of education and for the Department of Education. There are specific responsibilities between the various branches of government and the legislature is responsible for appropriations for the department but the policy-making portion of it at least has been delegated now to the board of education. The parents

of this community throughout the entire State are intensely interested in the future of the education of their children. The PTA's hold meetings, they like their voices to be heard, the board meetings are so full of so many things which must be handled. They cannot possibly listen to a constant parade of individuals representing individual PTA's or individual neighborhoods coming before them with their problems for consideration. However, the school advisory councils fill this role, they are the liaison between the community and the board and the legislature, if you will. They are the group that has accepted the responsibility by appointment or by whatever other means the legislature shall so design. To hear the problems presented by the parents and by the people in the community, to hear the problems presented by the teachers in the various schools, to hear suggestions for improving our educational process and I therefore would urge all of you to vote in favor of this amendment, to assure that forever, at least during the period of this Constitution, will be in effect, school advisory councils will be an integral part of our community and our school system.

CHAIRMAN: Delegate Sutton is recognized.

DELEGATE SUTTON: I rise to speak in favor of this particular amendment. We have a statewide educational system. This statewide educational system encompasses all the islands and if you had accompanied, as I did, the Constitutional Convention committee on their hearings on the other islands, you would have found that a council such as is proposed by Mr. Yamamoto is highly in order because it insures the participation of those interested in education not only of their own children but of their neighbors' children.

Since Sputnik, we have had tremendous advances in American education. Every child who goes to school today has far more intensive work to do than you and I did. I feel that a council of this nature, insuring the participation of the citizenry, is highly needed on the neighbor islands and would have a sedentary effect on Oahu. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Doi.

DELEGATE DOI: Mr. Chairman, the proposal reads, "There shall be school advisory councils to advise the board of education..." I sit here and I do not hear the voice from the board of education and it somewhat bothers me. I would like to invite the delegate who is also the chairman of the board of education to enlighten us whether he seeks the advice and whether he finds it profitable and to the advantage to get the advice of the advisory council.

CHAIRMAN: Delegate Ando is recognized.

DELEGATE ANDO: Mr. Chairman, I am pleased at this invitation to speak on the school advisory council. The school advisory council in this State, since statehood, has been a very valuable instrument in our educational system. As you know, the 1950 Constitution that was to become the instrument of our

basic law in Hawaii had the school advisory council with a specific responsibility and this was to nominate members to be selected by the governor for the board of education. With the constitutional amendment that made the board of education an elected board the function, the main function of the school advisory council was removed from this responsibility but in the creation of the elected board of education, implementing it by law, Act 50 of, I believe 1965, the legislature in its wisdom created by statute school advisory councils in our State. I can say this, that there are six members of the elected board of education who are members, former members of the school advisory council. Without any question, the first elected board of education seeks the advice and continually carries on dialogue with the school advisory council. For the information of this Convention, Mr. Chairman, the by-laws of the board of education permit and give every school advisory council at every meeting of the board of education participation opportunities. They are part of the board of education's deliberation at each of our meetings. Indeed, Mr. Chairman, the board of education considers the school advisory council an important part of the educational government of our State. The only question before this Convention that is significant is whether the school advisory council shall be a constitutional entity, and as you see by the signature that I have affixed to the committee report, I'm in favor of it.

CHAIRMAN: Is there any other discussion?

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Before you speak, Delegate Yamamoto, anyone else wishes to speak? There being none, Delegate Yamamoto.

DELEGATE YAMAMOTO: Mr. Chairman, I want to explain to the honorable delegates here the question whether this provision should be a constitutional matter or statutory. The question whether the provision is a constitutional matter or not cannot be answered since we are not expertise or God, as someone quoted in the previous deliberation on another issue. Only on August 15, just a few weeks ago, we passed the presidential preference primary, Section 5 of Article II. Mr. Chairman, records show that only one state, Ohio, requires a presidential primary by constitutional provision. Thirteen other states and the District of Columbia statutorily provide for such a primary. The question whether it's statutory or constitutional depends heavily on the decision of the delegates who represent the people of Hawaii. To me it's a period of decision made by you delegates here, so I will plead to you that because of the fact that advisory councils became a part of the community which is so close to the parents of our children, we talk about education, the future of children, the future builders of Hawaii, the nation, the world, we've got to implement by giving them every opportunity so our parents will go together with our

children in reference to work for a better Hawaii. So I plead to you, vote for the amendment.

CHAIRMAN: Thank you, delegate. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, as you know I'm chairman of the committee from whence Proposal No. 4 emanated, emanated by a very close margin.

I want to make it clear to the Convention that on this particular proposal, my position was negative. At the same time, being chairman of this committee, I did not even choose to sign the committee report with reservation because there were other aspects of the committee report which were very, very important. But to be consistent in my position as delegate, after debating with myself for many, many days, I have decided to cast a "no" vote in this particular instance.

CHAIRMAN: Thank you, delegate. Let the Chair state again that the motion before the house, if you vote "aye," it will mean that a new section will be added to Article IX regarding school advisory council. A vote "no" will mean this will not be included. We shall now take the vote. Mr. Clerk, will you call the roll, please.

(Roll call having been ordered the motion to adopt Committee Proposal No. 4 relating to school advisory council was put by the Chair and failed to carry by a vote of 31 ayes and 43 noes, with Delegates Akizaki, Alcon, Amano, Ansai, Beppu, Bryan, Burgess, Donald Ching, Dodge, Goemans, Hasegawa, Hitch, Ho, Jaquette, Kamaka, Kato, Kawakami, Kawasaki, Kunitura, Lalakea, Larson, Peter Lewis, George Loo, Lum, Menor, Minn, Mizuha, Morioka, Nakama, Noguchi, Oda, Ozaki, Pyo, Saiki, Shiigi, Souza, Steiner, Taira, Takahashi, Ueoka, Wright, Yim and Yoshinaga voting no; and 8 excused, with Delegates Aduja, Andrade, Fasi, Hara, Kaapu, Frank Loo, O'Connor and Schulze being excused.)

CHAIRMAN: The motion is lost. Delegate Taira is now recognized for motion to rise and report.

DELEGATE TAIRA: Mr. Chairman, I move that this Committee of the Whole rise and report its progress to the Convention.

CHAIRMAN: Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that this committee rise and report to the Convention. All those in favor please say "aye." Opposed, "nay." The motion is carried.

The Committee of the Whole adjourned at 2:09 o'clock p.m.

Debates in Committee of the Whole on **CONSERVATION AND DEVELOPMENT OF RESOURCES**

(Article X)

Chairman: DELEGATE KAZUO KAGE

Thursday, August 29, 1968 • Morning Session

The Committee of the Whole was called to order at 9:10 o'clock a.m.

Delegate Kage presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order.

The Committee of the Whole is sitting for the purpose of discussing as informally as possible Standing Committee Report No. 35 as submitted by the Committee on Agriculture, Conservation, Land and Hawaiian Homes. The committee report deals with Article X, Sections 1, 2, 3, 4 and 5 of our State Constitution.

To avoid repetition and to conserve precious time, the Chair will not go over the rules as they apply to this meeting. I'm sure that you are all aware of the rules. We want to explore informally all views and yet not be repetitious. Now, as to the rules on amendments, the Chair wishes to request that all amendments be turned in to the clerk who in turn will refer it to the legal staff for language and legality. This is to avoid calling numerous recesses.

If there are no questions as to procedure, the Chair wishes to declare a very short recess for the purpose of ascertaining as to the number of delegates who may wish to speak on the matter under consideration and to receive or have amendments prepared. This does not, however, foreclose others who may decide to speak later or to offer further amendments. The Chair declares a very short recess.

At 9:17 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:19 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Chair recognizes Delegate Kamaka, chairman of the Committee on Agriculture, Conservation, Land and Hawaiian Homes.

DELEGATE KAMAKA: Mr. Chairman, I move that the Committee of the Whole recommend adoption of Standing Committee Report No. 35 to the body.

CHAIRMAN: The Chair recognizes Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Kamaka, please.

DELEGATE KAMAKA: Mr. Chairman, although I have certain reservations about the conclusions reached by my committee, I would like to speak for the motion by briefly summarizing the major topics covered by the standing committee report and the thinking behind the committee's decision.

The report deals with proposals directed at amending Article X relating to the conservation and development of resources. For the most part the proposals are concerned with Sections 1 and 2 of Article X. Section 1 establishes to seek natural resources quality by mandating the legislature to promote the conservation, development and utilization of agricultural resources and all other natural resources. Other than one part of Proposal No. 280, your committee is of the opinion that the proposals dealing with Section 1 relate to the details of policy implementation and therefore are more appropriately a matter of statutory law rather than constitutional provision. Moreover, a review of the language contained in this section reveals no restrictions upon legislative authority in the areas concerned and in fact several of these suggested proposals have been implemented by legislation. The amendment in Proposal No. 280 seeks to alter the existing policy statement found in Section 1 by incorporating Section 5 of Article VIII. This committee concurs with the reasons given in Standing Committee Report No. 32 for retaining Section 5 of Article VIII without change which was previously adopted by the body.

Section 2 prescribes the basic administrative structure for natural resources owned or conserved by the State by vesting in one or more executive boards or commissions management powers, executive powers and disposition as may be authorized by law. With two exceptions the proposals for amending this section involve management issues which fall within the existing constitutional framework. Again, it is the judgment of this committee that these are matters suitable to and best dealt by the legislative process.

Proposals No. 98 and 155 require similar executive heads rather than boards or commissions for the

management or disposition of natural resources. Although your committee recognizes that such an arrangement will provide increased efficiency and expertise but in the view of the majority of the members of the committee the unique character of natural resources administration where ill-considered action can lead to permanent damage necessitates the greater protection from pressures of a more diversified representation of community interest which only a board or a commission can provide.

At this point, Mr. Chairman, I would like to state that I cannot agree with the reason or decision of my fellow committee members favoring the retention of the plural executive system, for no proposal sought to amend Sections 3, 4 and 5. They have been carefully reviewed and finding no compelling reason for change, the committee favors the retention of these sections in their present form.

Therefore, Mr. Chairman, your Committee on Agriculture, Conservation, Land and Hawaiian Homes recommends that proposals numbered 61, 65, 146, 280, 98, 155, 261, 299 and 268 and Petition No. 2 be placed on file; that Article X be retained without amendment and that the committee report be adopted.

In conclusion, I wish to reiterate my opposition to the use of boards or commissions for the management of natural resources. In the light of my opinion on this issue, I feel it only fair to leave the defense of the committee stand in this area to those of my colleagues who argue so ably the case for retaining the plural executive system.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Kamaka. Before going any further, the Chair would like to make an assumption to expedite things. If you disagree with the Chair's assumption, I would like to have you say so.

I believe that Section 1, Section 3, Section 4 and Section 5, there is no difference of opinion as far as those four sections are concerned and if this is agreeable, I would like to eliminate those four sections and then get into the very meat because I understand that Section 2 is in question. Is there any disagreement on the Chair's assumption?

Yes, Delegate Loo.

DELEGATE FRANK LOO: Mr. Chairman, apparently your assumption is right, so I therefore move that Sections 1, 3, 4 and 5, as far as those sections are concerned, the committee report be accepted.

CHAIRMAN: Do I hear any second to that motion? Delegate Pyo.

DELEGATE PYO: Mr. Chairman, I second the motion.

CHAIRMAN: Any discussion on the motion to accept—

DELEGATE DOI: Mr. Chairman, I don't think we need that motion. We'll have a motion at the end anyway to adopt as amended or adopt without the amendment. If this is just an understanding we have on the floor that these several sections are not up for amendment. Isn't that your purpose for mentioning this?

CHAIRMAN: This is correct. The Chair wanted to go through the process of elimination. If we're going to take section by section we thought we'll get rid of the sections that are not controversial and deal only with that particular section that had any difference of opinion.

Delegate Loo, is that okay with you?

Delegate Pyo, is that all right with you?

We have a consensus here. So our discussion more or less centers around the committee report on Section 2 of the Committee Report No. 35. And I'm sure you all have it before you. The Chair welcomes any discussion as to the committee report as it deals with Section 2 of Article X.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: I have an amendment that I would like to propose at this time. I believe it's been printed and circulated and placed on the desks of the delegates and reads as follows:

"Section 2 of Article X of the State Constitution is amended by amending the first paragraph to read:

"Section 2. The legislature shall vest in a single executive powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be authorized by law; but land set aside for public use, other than for a reserve for conservation purposes, need not be placed under the jurisdiction of such an executive."

I so move.

CHAIRMAN: Mr. Clerk, this particular amendment, Amendment X-1, has it been distributed to all the delegates?

CLERK: It has been, Mr. Chairman.

CHAIRMAN: Thank you. You may proceed, Delegate Doi.

Before you proceed, Delegate Doi, I'd like to have a second to the motion. The Chair recognizes Delegate Lewis.

DELEGATE PETER LEWIS: I second the motion.

CHAIRMAN: Thank you.

DELEGATE DOI: Mr. Chairman, I rise this morning by direction of the executive committee of this Convention. Proposal No. 98 was referred to the executive committee for consideration and has been discussed this morning by the chairman of the Agriculture, Conservation, Land and Hawaiian Homes Committee. The proposal suggested and urged a single executive for all department heads for the State of Hawaii. Your executive committee considered the proposal and came to the conclusion as evidenced in the committee report that the committee favors a single executive head for the Department of Land and Natural Resources and for the Department of Agriculture.

The Department of Agriculture, which is headed by a board, is entirely a statutory accommodation and therefore we do not want to take it up this morning. We do not want to give it the prominence of a constitutional provision. However, because the land department is accommodated and provided for under Article X, we make the amendment proposal as we have just made.

Mr. Chairman, practically all the recent experts would tell you, and that includes the Council of State Governments, the Western Governors' Conference, the Committee of Economic Development, the Constitutional Convention of Maryland, would all tell you that they favor and urge strongly a single executive head for the departments of the state who are directly responsible to the governor. I do not want to get into the details of the arguments but I do want to say briefly that the reasons are (1) better accountability; (2) higher visibility, clearer visibility; and (3) efficiency.

There's been much talk about the application of such a provision and the operational effectiveness of such an accommodation in the State of Hawaii as applied to the Department of Land and Natural Resources. Well, let's look at the Department of Land and Natural Resources in the State of Hawaii.

On the board, we have six people, one from each land district, one at-large and the director, which makes six. We also know, as a matter of fact, that on each neighbor island we have a permanent full-time office open to accommodate the needs of the public and to better serve the public. I am told that the land board representatives from the several land areas in the State of Hawaii do very little in the way of representing their land area for purposes of answering a statewide land program. Rather, the fact that they sit on the board leads up to long delays, increases the cost of running the land department and in fact the recommendation of the director of land and natural resources is almost 100% anyway accepted by the land board. Further, because they represent land districts, there's a little provincialism that creeps into the decisions. The modus operandi here many times and sadly so is, "You scratch my back and I'll scratch yours."

So, will you again allow me to run down the disadvantages of having the land board as head of the

Department of Land and Natural Resources. Delays, higher cost and the difficulty to place primary source of responsibility on anyone in the department because there are several on the board and as between the board and the director, there's also this difficulty in saying exactly who stood for what.

Then again, the governor's constitutional responsibility to generally supervise over all departments is somewhat handicapped and frustrated because we have a land board at the head of the Department of Land and Natural Resources.

And also in this Constitutional Convention, you've heard many concerns expressed as to what the safeguards might be should they turn the department to a single executive head. Actually the law does not change, but allow me some time here this morning to illustrate to you how the present safeguards would continue. To begin with, the Administrative Procedures Act which applies to all departments in the State of Hawaii will continue to apply and this act will continue and require that notices be given to the public, that public hearings be held before rules are adopted.

Now, let's get into some of the specific areas. We have, for example, a division where certified lands are being managed. Now, what do we mean by this? Lands that the State, for example, turns over to the school department, lands that the State turns over to the Department of Transportation, lands that the State turns over to the maritime division, so and so, et cetera. Now these lands are under the control of the several agencies so the levels of control or management over these lands go somewhat like this: the governor at the top, the director and the land board presently, and then the agency. If you eliminate the land board, then it will only mean this change. You have at the top the governor, the director, and then the agency. Suppose there is a suggestion made that one acre from the Department of Transportation should be withdrawn for purposes—for the use or purposes other than transportation. How do they go about this? You will first have to secure the consent of the particular agency under which this land has been placed for management control. In this case, it would mean the Department of Transportation. That's one check. You also would have to secure the consent of the director of land and natural resources and also the governor. And only after these three different officers have approved the withdrawal of the one acre do we for the first time allow the withdrawal. And of course all these would have to be supported by plans, programs and studies. I think personally the safeguards are there in that example. Then we all say that we should lease our public lands. Well, first we'll have to plan, we have to justify it. One of the things required under the law is that the director of lands would have to go—he is required by statute to go to the land study to justify the particular use to which this particular land is going to be placed under lease. What about resort destination area land program? Here, you have the Department of Economic Development and Planning which must first certify as to the amenities. These are the amenities which will mean whether the land is suited for resort

development, whether there is a greater demand for this type of need and so on.

What about exchanges of public land? We have it in the law. I think most of us are familiar with this. I might say that the private land owner in this exchange value, he would have to stand by the tax value assessment. The part of the government who is giving government land away in exchange, his assessment is done a little bit differently, usually higher than that which was made for the private landowner.

So, I say, even with the changeover to the director and the elimination of the land board, we are protected under the law. We have much to gain because it will make for efficiency, a saving in cost, it makes for better accountability, makes for better feasibility, and certainly I think the State stands to gain. I urge the amendment, Mr. Chairman.

CHAIRMAN: Thank you very much, Delegate Doi. If the Chair may, before recognizing Delegate Bryan, I would like to just mention that the intent of this particular amendment is to delete from our Constitution—the Constitution, at the present time calls for a land board. With this amendment, it will be deleted from our Constitution. Am I correct in that assumption, Delegate Doi, in a few words?

DELEGATE DOI: If we change the land board to a single executive as the head of the Department of Land and Natural Resources.

CHAIRMAN: Thank you very much. Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, I rise to speak in favor of the committee report and in favor of retention of the land board as provided in the present Constitution.

The words in the committee report are fairly brief and descriptive. Perhaps if I read them it will be the fastest way to get the point. "We recommend the retention of a board of the Department of Land and Natural Resources because the problems which involve our natural resources differ somewhat from those of other administrative functions. The State's natural resources are expendable."

In other words, as we discussed in 1950, once they are gone any change in the board cannot bring them back. "In this area where great damage and irreparable loss may result from hasty or ill-conceived actions, it is essential that the powers of management and disposition be entrusted to a board rather than a single executive—a single individual. Strong influences and pressures are likely to be encountered and a board is less likely to succumb to such influences and pressures than the single individual since pressure would be diluted among several members. Further a board represents a variety of geographical, economic and social interests, and thereby tends to insure greater consideration of interrelationships of the multiple factors involved in any decision."

To comment beyond the report, maintaining this board will also provide greater understanding and participation of the citizens in the government and the processes of government. It will provide valuable agency of liaison between the people and this branch of government. And in Hawaii, where land is our most important natural resource, I think that we are not being extravagant in either the cost of government or the process of government to retain a board for this function of government. Thank you very much.

CHAIRMAN: Thank you, Delegate Bryan. The Chair recognizes Delegate Lum.

DELEGATE LUM: Thank you, Mr. Chairman. I rise to speak against this particular amendment. The reason why I feel so strongly against this is because of my experience in my district with the Aina Koa Community Association. I realize that the arguments presented by Senator Doi are the same arguments that made unicameral a better, efficient type of a body as well as this particular executive here. But, let me explain to you a few of the things that I am fearful of.

I hate to put so much power into the hands of one individual and have him, through his wisdom and through the staff that he has, have the possibility of doing whatever he wants with the state land and private land, as the case may be, and not having the people feel like they have some recourse. In our fight to try to maintain the zoning in the Aina Koa area, at least we felt with the board that it was worth sitting down and planning out what had to be done and testifying before these people because we felt that we may be able to reach the other board members.

Let me say that we should not do away with this system because of the perhaps poor selection of the people serving on the board, perhaps the lack of proper compensation regarding these individuals so they would have the time to deliberate, investigate and study the different things affecting the zoning and land changes and land usage. We should be very, very cautious of the amount of power that this one man and the amount of the effect of this man's action and recommendation can do to the community we live in. I feel that this slow process, this deliberate process of trying to find out what is best for the community, whether it is the county or the whole State, is a thing we should try to preserve. I think this is a legislative matter, I think it takes more consideration than just what we have here. But perhaps this particular thing would be best put back in the legislature so that they can sit down and look at our present system and see if perhaps compensation is the reason why we have the supposed lack of interest from the other island or the other county representatives. Whatever it is, it should be thought out carefully. I urge all of you to seriously consider the ramifications of this amendment and agree with me and vote against this particular amendment and let the legislature take care of this problem.

CHAIRMAN: Thank you, Delegate Lum. The Chair recognizes Delegate Mizuha.

DELEGATE MIZUHA: I rise to ask Brother Doi from Hawaii a few questions.

CHAIRMAN: Delegate, will you state your questions first and then—

DELEGATE MIZUHA: Truly a brilliant speech in favor of a single land executive. Will it prevent the kind of situation we had just about six or nine months ago when the land executive said that he was going to lease for 55 years our Magic Island, some 36 acres for \$100,000 a year without any percentage clause on the income that the lessee will get for the 55 years?

CHAIRMAN: Delegate Doi, would you wish to answer that question?

DELEGATE DOI: Mr. Chairman, the question imposes upon me a responsibility here that I cannot assume. And what I mean to say here is, there's no man perfect on this earth. God was not that kind to all of us here who were fortunate to be born. The director of land is only human, Delegate Mizuha, and perhaps what he points to at worst was a mistake. But this could happen also with the six men on the board. But I do want to say this, let us not lay ourselves down with so much checks that we're going to end up without balances.

CHAIRMAN: Thank you, Delegate Doi.

Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I asked this question and I know that I will ask a series of questions in order to clarify for the members of the Convention some of the important aspects and duties of the land commissioner whether he be a single executive or whether he is operating under the direction of a board. I am still confused to this day when we have an existing land board how the land commissioner who doesn't seem to have the authority under the Constitution to say that he can grant this lease and I don't know where the land board members were. Senator Doi, maybe you can answer that question.

CHAIRMAN: Senator Doi, would you care to answer that question?

DELEGATE DOI: Mr. Chairman, I don't know the "why" to that question but I can say this has been told to me, in effect, that the land board is nothing. They take the recommendation of the director today 100%, anyway. Why? Because they're ill-informed, they're part-time people who can't do their jobs anyway. So why not make it so we can point our fingers at the director of land and transportation, to their accountability so that there is responsibility and perhaps we might get some good channels of communication to the governor and also a fair report to the legislature.

CHAIRMAN: Thank you.

DELEGATE MIZUHA: Mr. Chairman, I love that word "accountability" because it's going to be used

again later on in debates in the Committee of the Whole. I assure the delegates of that fact. Then, I take it, Mr. Doi, that the lease, the prospective lease of Magic Island for 55 years, at \$100,000 was with consent of the land commission which you seek to eliminate at the present time. Is that so?

CHAIRMAN: Delegate Mizuha, the Chair would appreciate it very much if you address your questions to the Chair.

DELEGATE DOI: Mr. Chairman, I must confess, I don't know the answer but I cannot see the relevance of that question.

CHAIRMAN: Thank you very much.

DELEGATE MIZUHA: I will explain the relevance of that question. We are now debating the merits of the land board composed of seven members as against a single executive. And the argument of this, my good brother from Hawaii, is to the effect that there is accountability, efficiency and all of that that we heard all along for the last six weeks. Now, if we do not know who were responsible for some of the theatricals that have resulted in the decisions, whether it was the decision of the land director, or the land board which resulted in some representatives of the Republican party going to court to stop it. I think it is the business of the delegates here to find out how this sort of thing has happened in this State.

Another interesting example, ladies and gentlemen, and I like the way this Convention avoids some of the most important issues confronting the legislature and which the legislature had to resolve itself with, is the exchange of lands with certain corporation in this State, is worth 48 million dollars, or 55 million dollars. And then the legislature has to step in and stop it. Was that the decision of the land board? Or was it the decision of the director? Now, if my good friend, the delegate from Hawaii, is not happy with—will he eliminate the commission and have only the director have direct accountability and eliminate this sort of exchange of 55 million dollars in land? Or even the American Legion was going to lose its land next to McCully Street and Kapiolani Boulevard in exchange and brother Sutton raised a howl? We want to know and I want to know. I don't know, I can't vote intelligently on this question.

Thank you.

CHAIRMAN: Thank you, Delegate Mizuha. Delegate Doi, did you want to say anything?

DELEGATE DOI: Well, I wanted to answer the good delegate here. It appears then that the delegate could not also vote for the retention of the present provision because he does not know the facts. But I do want to point out again here that in the exchange of land, the law does not change even if we were to change the head of the department to a single executive. We still have the protection of the legislature, having the need for the legislature to approve the exchange.

CHAIRMAN: Thank you, Delegate Doi. The Chair recognizes Delegate Fasi.

DELEGATE FASI: Mr. Chairman, Delegates Lum and Mizuha have raised some interesting questions which I think can be answered. I happen to agree with Delegate Doi that accountability and responsibility of a department head to a duly-elected official of the people is the best system for the people of the State.

Aina Koa and Magic Island have been two examples that have been cited. In both instances it would appear that the buck has been passed. We didn't know, as Justice Mizuha points out, who actually came up with the decision, the department head or the commission. I say that without the commission there's no question that the people can go to the governor to talk to the department head and order him, if need be, to act in the best interest of the people in that particular area that's being affected and not in the interest of a few people, the would-be developers.

Aina Koa is a prime example. Insofar as Magic Island is concerned, there is no question in my mind that when the chief of the land and natural resources came before the city council, they were his plan and totally his plan and not the members of his commission, that this Magic Island should be developed into a second Coney Island for \$100,000 a year. But the check and balance was provided luckily under our laws which would require his chief executive to get Magic Island zoned by the City Council of Honolulu, which did not happen.

So there are checks and balances. And the arguments that I have heard thus far from the delegates in opposition to the amendment are not valid.

CHAIRMAN: Thank you, Delegate Fasi. Is there anyone else who would like to participate in this discussion? Delegate Dodge and then Delegate Kaapu will be recognized.

DELEGATE DODGE: I rise to speak in favor of the amendment. I have no objection to a board or a commission when it has policy-making functions such as the board of regents at the university. And here we're talking about management. And that is made very clear by the use of that word in the present Constitution. We're quite willing to trust the disposition and the management of our water resources of the State to a single executive and I see no difference in that and doing the same with our land resource.

State policy concerning public lands is set by the legislature. It should be administered literally by a single executive.

CHAIRMAN: Thank you, Delegate Dodge. Now Delegate Kaapu is recognized.

DELEGATE KAAPU: Mr. Chairman, I rise to speak in favor of the amendment. I think the arguments have been laid forth well by Delegates Doi, Fasi and Dodge and I'd like to say that while we are concerned with

the preservation of our natural resources and the effect of bad decisions, I don't feel that bad decisions can be prevented by having the continuation of the board. I think they're more likely to be prevented by having a single executive. I would like to urge the adoption of the amendment.

CHAIRMAN: Thank you. Delegate Kamaka is recognized.

DELEGATE KAMAKA: Mr. Chairman, I wish to speak in favor of the amendment, as it relates to the concept of single executive head for principal administrative departments in this case as it relates to Section 2, Article X.

My basic concern is that of the opponents, I am sure. It is our task to assure an executive branch which is reflective of and accountable to the electorate. Crucial to this effect is the ability of the voter to make a fair and intelligent assessment of the conduct of the executive branch and to express that judgment at the poll. I wish to indicate that Hawaii has chosen to make the voter's task feasible by obtaining accountability to a strong, highly visible governor. For this system to operate, clear lines of authority between the governor and department heads are required which is better achieved when the responsibility is sharply focused on the single administrator rather than submerged in a group anonymity of a board or commission. Under the single executive arrangement, actions taken by the department head reflect directly upon the governor. In addition, this system furthers gubernatorial responsibility by establishing an unobstructed capacity to implement and coordinate programs and policies among the several departments.

Therefore, Mr. Chairman, it is my belief that the distinct chain of command obtained by the single executive method contributes to popular control by enabling the electorate to hold the governor more strictly accountable for the actions or lack thereof taken by the executive branch as a whole.

Next, Mr. Chairman, I wish to deal with the argument that the departments are vested as quasi-legislature or policy-making function. The decision-making process requires representation which can be acquired only through a board or commission. This proposition assures that the executive department can be neatly classified as purely administrative, or quasi-administrative and quasi-legislative. It's my contention that the character of modern governmental operations defies such classification. The complexity of social problems in such areas as food and drug control, highway safety programs, state administration and workmen's compensation have resulted in the enactment of statutes with broad policy statements but whose details of implementation are specified as a rule-making authority of the executive departments. Since Rule 18 is a legislative act, it is simply no longer possible to view our quasi-legislative department as exceptional. They have become typical. Moreover there is an area in itself that the particular department is concerned, the highly sensitive areas of policy-making. This can be adequately

supplied by an advisory board who could counsel but not detract from the accountability of the single department head.

Finally, Mr. Chairman, I support the use of a single executive head because I believe this plan makes a significant contribution for the efficiency of governmental operations. Experience has shown that the plural heads of departments produce a division of authority, a general lack of initiative and hinder unanimity of action. The single executive on the other hand results in greater speed in acceptability in decision-making, establishes clear lines of authority within the department and better coordination in inter-departmental activities. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Kamaka. Delegate Mizuha is recognized.

DELEGATE MIZUHA: Mr. Chairman, I have a question. I would like to direct this question to the chairman of the committee on education, which I believe—

CHAIRMAN: Will you state your question and then I will forward it to the chairman of the—

DELEGATE MIZUHA: I believe he has control over the executive boards that appoint the president of the university and appoints the superintendent of the Department of Education, is that correct?

DELEGATE TAIRA: What is the question, Mr. Chairman?

DELEGATE MIZUHA: First, that he has jurisdiction of the executive board with reference to this Convention, with the executive board that controls the University of Hawaii and the Department of Education.

CHAIRMAN: Delegate Taira, before you get to answering the question, the Chair would like to rule that Delegate Mizuha is out of order. The reason for it is that we are discussing Committee Report 35, dealing with Article X.

DELEGATE MIZUHA: May I explain my position, Mr. Chairman.

CHAIRMAN: Yes, sir.

DELEGATE MIZUHA: It may be a little bit difficult to understand at the outset but we are now dealing in an area of executive board in place of single executives. As I understand our Constitution, the land board is an executive board which Delegate Doi's amendment seeks to delete and makes it a single executive. But as I understand our Constitution, it's rather difficult at times, we have two on the executive board that controls the Department of Education and the University of Hawaii. Now, my question now to the chairman of the committee on education is whether there is any difference with reference to the administration of the university and the Department of Education as compared to the administration of all the

natural resources of this State by a land board.

CHAIRMAN: Delegate Mizuha, the Chair would make an exception of it and if Delegate Taira wishes to answer that question, will you very briefly answer that particular question.

DELEGATE MIZUHA: Mr. Chairman, we are at the basic issue confronting the delegates of this Convention. We are going to determine now whether for efficiency or accountability a single executive is better than a board and I don't see how you can say it is not related to each other.

CHAIRMAN: Delegate Mizuha, the Chair did not say it's not related, I'll be very happy to make an exception, I have allowed Delegate Taira to answer your question.

DELEGATE TAIRA: Mr. Chairman, I'll try to be very brief in my answer. First of all, the board of education is an elected board unlike the other board members who are appointed by the governor with the advice and consent of the senate. The university board of regents, like the land board, are all appointed by the governor with the approval of the senate. In the case of the board of education, that board appoints the superintendent; in the case of the university president, he is appointed by the board of regents. And these two boards are executive boards and they exercise functions of an executive capacity as contrasted to the idea of a single executive where there would have been just a superintendent of education appointed by the governor or the president of the university appointed by the governor, I suppose, with the advice and consent of the senate. I don't know, Delegate Mizuha, if this is the kind of thing that you were looking for in my answer but this is special information that I would like to submit, Mr. Chairman, at this time.

CHAIRMAN: Thank you, Delegate Taira. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, now we can go to the real meat of the question. Is the operation of the university and operation of the Department of Education any different than the operation of the Department of Natural Resources of this State? If it is, maybe we have reasons to support Delegate Doi in his amendment. If it isn't maybe we should retain our land board or vice versa. But if we support Delegate Doi and his argument is such that we should vote in favor of his amendment maybe when the committee on education reports, eliminate the board of regents and eliminate the board of education and have a single executive and I am certain, very certain, that the questions of accountability and efficiency will come up also.

CHAIRMAN: Thank you. Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I think that Delegate Mizuha is comparing apples and oranges. I think he understands that there are exceptions as there are exceptions in the present Constitution. We have something like eighteen department heads. But we don't

have eighteen commissions to advise the department heads so the argument that he uses that elected board should be rejected or the board of regents should be tossed out because of the fact that we are making determination of land and natural resources has no bearing whatever on the argument before this body today. Because if that is the case then we should be consistent and have eighteen boards and commissions for every department head to assist with the problem in making his decision.

CHAIRMAN: Thank you, Delegate Fasi. The Chair would like to declare a short recess to give the steno a well-deserved rest. As soon as we come back from the recess, the Chair will recognize Delegate Ando.

At 10:00 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:05 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Chair will recognize Delegate Ando and as soon as he gets through, the Chair will recognize Delegate Noguchi.

DELEGATE ANDO: Mr. Chairman, I rise to speak against the proposal to amend Section 2 of this article. However, I am pleased that the discussion brought about by the amendment has focused on the issue of executive boards versus single executives for departments of our government. I will say this, Mr. Chairman, that when we give for reasons efficiency as one of the strong reasons for single executives, there is no defense in our government to have executive boards. However, there are other more pertinent considerations that we are quite aware of as established in the committee report and some of the studies presented to the delegates.

There is a difference among the executive boards that our Constitution provides, and the Constitution provides for this difference. The land board leaves it up to the legislature as to the responsibility and power of policy-making that the land commissioner will have and that the director of the department will have. The Constitution provides for the education, board of regents and the board of education, the responsibility to formulate policy and leave it to their appointee the responsibility to execute these policies. It does not leave to the legislature the power of policy-making or the determination of the responsibilities of the commissioner or the director in the area of policy-making and executive of such policy. It is the question that we must raise as we consider this issue—whether the problems stated here are derived from the constitutional structure of the board or are the problems that we hear derived from the statutory provision that utilizes the constitutional mandate of having an executive board.

I am in favor of executive boards, Mr. Chairman. I watched television last night and I hear the loud cry of our people for participation in the process of government. I think there was great wisdom in 1950 that provided for some of the functions of government

to be handled by executive boards. Thank you.

CHAIRMAN: Thank you, Delegate Ando. Delegate Noguchi is recognized, then we'll have Delegate Devereux and Delegate Taira, in that order.

DELEGATE NOGUCHI: Mr. Chairman, I rise to speak for the amendment. I would like to say that first of all I concur with all the arguments set forth by Delegate Doi, Delegates Fasi, Kaapu, Dodge and Kamaka. As Delegate Lum brought up the interesting point about Aina Koa and his relationship with the board there, his fine relationship with the board—well, I'd like to cite another instance in which our citizens did not have such a relationship.

Two years ago, in Manoa Valley which was a strictly residential area, but unfortunately behind the residential area was the conservation zone which is under the jurisdiction of the Board of Land and Natural Resources. I'd like to say that those of you who think that because you have this board of—these commissioners as members of the board that you've got a guarantee that there will be no abuses of the public lands, you have another think coming. I'd like to say that in this particular instance, the board, despite the protest of the Board of Water Supply and the University of Hawaii, went ahead and approved a project called the bird park—"Paradise Park." Now, I'm not against such a development. I think such developments in the State are fine. But then the way they went about it I think was pretty sneaky. We asked members of that board who have, even though it does not mandate a public hearing, they have a moral obligation to call them because lots of questions were not answered. The question of pollution of water, the question of germs emanating from the birds, possible disease such as parrot fever. And you have the question of increased vehicle traffic there in a residential area. And then the residents in that area would then have to widen the roads at their cost because of limousines and buses going into that strictly residential area. Now I ask you, where were the board members when this question came up? At least they had a moral obligation to do so. The residents protested such a development, they went to the governor. And the governor said, "It's out of my hands, it's in the hands of the board." And so you talk about accountability. Where was the accountability here? It was in the hands of the governor. I would say that we have accountability there but then the people have a voice through electoral process and in regards to the members of the board we have no such voice there. Thank you.

CHAIRMAN: Thank you, Delegate Noguchi. Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I'm becoming a little bit confused. We heard from Delegate Doi that the board apparently is inefficient and does exactly what the director tells them to. Now, we hear from Delegate Noguchi that the director had no say in the decision for Paradise Park in Manoa Valley but it was the board that made the decision. Apparently there's something wrong somewhere.

The point I wish to make is this, Mr. Chairman. If the problem is the board which is said to be inefficient, do we correct that problem by changing our Constitution? Are there not measures which can be taken to replace members of boards who are inefficient? I would ask the members of this body to think very seriously about making changes in a Constitution in order to correct a particular problem when there are other avenues available for correcting that problem. Thank you.

CHAIRMAN: Thank you, Delegate Devereux. The Chair will recognize Delegate Taira, and when he is through then the Chair will recognize Delegate Ching and Delegate O'Connor.

DELEGATE TAIRA: Mr. Chairman, I rise to speak in favor of the committee report as presented to this Convention and against the proposed amendment to Section 2. The proponents of this amendment to Section 2 talk a great deal about greater accountability, efficiency, particularly under a single administrator. But Mr. Chairman, at the present time, let us not forget that the six board members are appointed by the governor and in the same way it seems to me that the governor can hold these six board members accountable in the same way as he can hold the director of the land department accountable. True it may be harder to get accountability from six people rather than one person. But I believe that in our kind of democracy we just don't want to have too strong a type of government from the top all the way down to the bottom because this would remind me then of something more of a dictatorship. If you want efficiency in government the best thing to do is to have a single top man, a single middle man in positions of responsibility and power and then you're going to have the best kind of efficiency, but I don't think this Convention would like to see us started in this type of political philosophy. I also would like to point out that if it's the work of the board that has not been acceptable to the people of Hawaii, then as someone else pointed out previously, there's always the possibility of removing these board members and getting people in there with experience, with interest in their jobs, people who do a better job of being board members for the State of Hawaii. It's like getting rid of a dog because the dog has so many fleas. Let's get the fleas out and keep the dog because I think the dog is a good pet to have. Thank you very much.

CHAIRMAN: Thank you, Delegate Taira. Delegate Ching is recognized.

DELEGATE HUNG WO CHING: Mr. Chairman, as a businessman I am strongly in favor of decentralized management with accountable responsibility. Accountability is very important even if some of us may feel the word is misused or weakly used. An executive board dilutes the effectiveness of a single executive and it also dilutes his accountability. I would much prefer to have a single strong executive play games, if you wish to call it that, or abuse his prerogative but be directly accountable. This is far better than to have six board members play games among themselves or to horsetrade on behalf of their client and their friends. I have seen it

and I don't like it. And I therefore support Delegate Doi's amendment. Thank you.

CHAIRMAN: Thank you, Delegate Ching. Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak against the amendment. The land in Hawaii is probably, as has been said earlier by Delegate Bryan, our most and probably, single precious entity.

Since the time of the Great Mahele in Hawaii, the land of this State, Mr. Chairman, has been controlled for the executive by a commission or board. The Great Mahele was organized and run for the king by a commission and since that time under king, president, territorial governor, and state governor, the land has been so controlled. And why? I think the matter is very simple. When you have one commodity which is the basis, the heart and soul of a community organization, that commodity should easily be retained in a situation where the executive has some checks. Delegate Ching points out that efficiency from a business standpoint is a necessity. I would certainly agree and efficiency seems to be our biggest argument in favor of a single executive in the land area. But I would point out to you, Mr. Chairman, that Delegate Ching, as a president of a corporation, is responsible and must answer to a board of directors. And I would suggest that in our situation we retain our board of directors for the land.

Delegate Doi, in his argument, says no man is perfect on this earth and I would certainly agree with Delegate Doi. And I would say that if we put our land in the hands of one man, our children may not see, at least on the Island of Oahu, the situation which we now enjoy because we are faced with a future on this island with an encroaching development, with use of land which will require juggling of state land and will require trading back and forth of land with corporations and other development organizations. And I would suggest to those delegates who heard the very excellent questions put by Delegate Mizuha, that the state legislature is not going to be in session at all times when one of these deals is made and they are not going to be able to call by way of investigative hearing to the legislature the people involved in order to stymie a situation which might exist. And I would suggest that efficiency is no argument where you're dealing with our most precious commodity. I would further suggest that in the area of accountability, as Delegate Taira so excellently pointed out, that a board appointed by the governor is certainly the governor's responsibility and for the governor to say that the board appointed by him is not his responsibility I think is as much for the voter to consider as making the same statement about the single executive.

Delegate Doi made a very excellent remark in his comments, "You scratch my back and I'll scratch yours." I would suggest that this basic doctrine is more to be considered in the area where a single executive is running our land and in the area where it is controlled by a board. For these reasons, that single executive will of course join the governor's cabinet. If the basic

executive philosophy for the exchange or use of land is adopted and other department heads in the executive require for their department certain uses of land I would suggest that a department head in the governor's cabinet would more likely go along with that utilization and more likely push for that utilization than would a board which is more concerned with the overall philosophy and use of the land in the State of Hawaii. And if you consider the policy criteria in this area, I would suggest, Mr. Chairman, that policy plays an important part in the utilization of land in this State, as it does in our education or as it does in the administration of our university. Therefore, Mr. Chairman, I would urge this body to defeat the amendment.

CHAIRMAN: Thank you very much, Delegate O'Connor. The Chair is going to recognize Delegate Aduja but before recognizing Delegate Aduja, the Chair would like to make a request. The Committee of the Whole is discussing the report from the Committee on Agriculture, Conservation, et cetera. In the name of conservation, the Chair would appreciate it very much if your testimony is going to be repetitious that you refrain from speaking. This is not a gag rule but this is for the sake of conservation, if you have it's all right. And also, the Chair would like to rule that there are quite a number of people who would like to speak. I would like to have the delegates who have never spoken be given the opportunity and then we can go back for a second round.

Delegate Aduja is recognized.

DELEGATE ADUJA: Thank you very much, Mr. Chairman. I speak against the amendment. I think we all know for a fact that the reasons for these boards and commissions were they have been advantageous because we are trying to get politics out of these boards. I believe the land board that we are talking about is one of the reasons. I see for a fact that by returning to the old system where the governor appoints a single executive, more politics must play. And that present management board that we have now, you will note that the present terms of the members allow it—allow its members to be out of politics.

I would like to say, and this is a good example, on the Big Island, there is a rule that was adopted by two residential areas right now and it is agriculture. Now there were certain attempts on the part of developers to make this residential. Naturally, there is no reason for the land board to even be commissioned here, not to allow this area to be—this agricultural area to be residential. But what if this area becomes residential, we are going to find the Island of Hawaii with a lot of residential areas that you would dilute the cost of the lands that are being developed. That despite many efforts that the land board and the commissioner here have done the proper thing. But these are borderline cases, Mr. Chairman, and I feel that by doing away with the land commission we are going back to the old system where we are going to be playing politics from the moment he is in office. Thank you.

CHAIRMAN: I think Delegate Lewis is standing so I am going to recognize the delegates in this order. Delegate Lewis and Delegate Hitch, Delegate Sutton and Delegate Medeiros.

DELEGATE RHODA LEWIS: Mr. Chairman, I rise in opposition to the amendment. The merits pro and con have been very thoroughly reviewed. I do want to say that I agree with the delegate from the 17th District but there's no comparability between the department which is administering millions of dollars of assets and an executive department of the more usual type. I consider that the land department more nearly resembles a large corporation which should have a board of directors as well as an executive. There have been many cases handled and we know those—Magic Island, Paradise Park. Would the delegates prefer that these problems, these matters of such deep concern resolved, urged upon us, or would they prefer that they have been processed through a land board where the press could attend, anybody can go and watch the proceedings and find out what's coming up, what's being considered. I much prefer that the early stages of these matters be handled in the open. I know of no means by which a single executive can be followed around by the press and these particular types of transactions which we all consider so momentous would be reviewed in the press at their early stages. I do have a question for the mover of the amendment.

I feel concerned that if this amendment should be adopted and if the legislature should discover that after all it would be better to have a board that it would be not possible to reinstitute the board because the section would say that the legislature shall vest in a single executive. Now I am aware that under the executive article there is a provision that "each principal department . . . unless otherwise provided in this Constitution or by law, shall be headed by a single executive." I am wondering, however, if that provision which does give some play in the joints can permit the legislature to set up a board if it sees fit, I am wondering whether that provision would apply in the face of a mandate for a single executive in the land department.

CHAIRMAN: Thank you, Delegate Lewis. Would you like to have your question answered?

DELEGATE RHODA LEWIS: Yes, I was addressing the question to the mover of the amendment.

CHAIRMAN: Delegate Doi, would you wish to answer that question?

DELEGATE DOI: Mr. Chairman, the present language of Article X, Section 2, will mandate the vesting of that power in the executive board or commission. The proposed amendment would vest it in a single executive. The particular clause that you refer to "or by law" that we find in Article IV, I believe, will not be applicable because the specific provisions either way, by way of the amendment or because of the present provisions, would prevail.

CHAIRMAN: Thank you, Delegate Doi.

DELEGATE RHODA LEWIS: Mr. Chairman, that then constitutes an additional reason why I oppose the amendment. I don't think that a provision for a single executive should be thrown into the Constitution beyond the power of the legislature to reconsider the matter.

CHAIRMAN: Thank you, Delegate Lewis. Delegate Hitch is recognized.

DELEGATE HITCH: Mr. Chairman. I merely want to say that as a former member, in fact as a former vice-chairman of an executive board in the days when Hawaii was a territory, I recognize fully the validity of the arguments that have been put forward by the people who have spoken for this amendment. I would therefore favor it.

CHAIRMAN: Thank you, Delegate Hitch. Thank you very much for your brevity. Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I rise to support the amendment. I feel that Oliver Wendell Holmes expressed it well when he said, "One page of history is worth a hundred pages of law." I think if we have the history brought before us by Delegate Noguchi, we have seen the invasion of a conservation area by Paradise Park. We have seen where one of our islands—Magic Island, was nearly turned into a Coney Island. We have seen on the Island of Hawaii vast areas of forest reserves turned into other uses.

If we pinpoint responsibility we are going back to the concept of a strong government. If we look at American history we find that originally our states had governors who were very strong. And then we came into a phase where we put all sorts of boards and commissions hoping somehow or other to make that government more responsive. And now we have come back to another trend and that is to pinpoint responsibility. And I think that Mr. Doi's amendment does that.

CHAIRMAN: Thank you, Delegate Sutton. Delegate Medeiros is recognized.

DELEGATE MEDEIROS: Yes, Mr. Chairman, at this time may I request from the Chairman if we could call upon our attorneys for an opinion.

CHAIRMAN: Would you state your question.

DELEGATE MEDEIROS: I would believe at this time that this would make a great difference in whether or not we continue on this subject for the next five hours or so. We are discussing a subject that is in my area—land. When we talk about land, we talk about big business.

This morning on the floor, questions have been raised about different incidents that have happened throughout our State under our past regime. But no one here has stood up to say the good things that were done. How

many people even heard about the Department of Land and Natural Resources five or six years ago. I'm not saying I'm for this amendment and I'm not saying I am against it. What I'm asking and I am requesting from the attorney is that how much power has our legislature today over the head of the Department of Land and Natural Resources and if this can be answered I think at this time a decision can be made. I request this—

CHAIRMAN: Am I correct in stating that you have a question of the legal staff on an opinion as to—

DELEGATE MEDEIROS: I want an opinion, Mr. Chairman.

CHAIRMAN: The Chair will declare a very short recess.

At 10:34 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:43 o'clock a.m.

CHAIRMAN: Will the Committee of the Whole please come to order. At this time, I will ask the president to make known the legal opinion rendered by the legal staff, raised by Delegate Medeiros. President Porteus, would you—

PRESIDENT PORTEUS: The attorneys for the Convention have supplied the president with the following opinion. In the case of exchanges of public lands, the present law requires that it is subject to legislative disapproval. In the case of sale of residential lots it must be by public auction but the power is in the board. In the case of commercial and other business leases, the power is in the board. In the case of hotel and resort leases the power is in the board. In the case of residential leases, the power is in the board. In the case of permits the power is in the board. As for contract for development by direct negotiation for various areas the power is in the board. If there are any questions, the president will take it up with the attorneys.

DELEGATE LUM: The last statement you made upon conclusion is it also true that the financial gain or loss to the State is no consideration to a transaction that is negotiated by the particular chairman? It will be strictly up to the chairman whether he has two proposals and one gives more money to the State or not, it's strictly in his prerogative.

PRESIDENT PORTEUS: It's the president's understanding that the matter of direct negotiation may be with a single developer. And I will ascertain that from the attorneys as to whether this direct negotiation may not be carried on with one. I would assume that if two people came in to negotiate, he could negotiate with more than one person at the same time.

DELEGATE LUM: The reason why I ask this, Mr. Chairman, is because last session, this particular bill was passed that amended this particular section of the law

and it was in the particular bill that passed and signed by the governor that no financial consideration will be mandatory in the negotiation but the chairman of the land and natural resources would have the direct decision based upon anything he wanted to base it on.

CHAIRMAN: Delegate Yim, is there a question?

DELEGATE YIM: Yes, on the opinion.

CHAIRMAN: Are you going to refute the opinion?

DELEGATE YIM: No, I would like to ask a question.

CHAIRMAN: Thank you.

DELEGATE YIM: Mr. President, from your reading of the opinion and from your understanding of the present state laws, is it true that the present law prohibits any sale of state lands that are income-producing, like lands that are zoned for warehousing, hotels, business, et cetera? Is there any state law in existence today that prohibits any sale in fee simple of state lands that are income-producing as to be distinguished from residential lands?

PRESIDENT PORTEUS: My understanding from the gesticulations from the attorneys is that the answer would be "yes."

CHAIRMAN: Thank you. Delegate Dyer, did you have a question on that—?

DELEGATE DYER: Yes, I did. You used the language, Mr. President, on several occasions "the power is in the board." Could you elaborate just a little more what you mean by that please?

PRESIDENT PORTEUS: Yes. Under the manner in which the law has been drafted when it comes down, let us say, to exchanges, the exchanges would be negotiated with the approval of the board but it would be subject to disapproval by the legislature so that the exchange could be thrown out. For instance, in the sale of residential leases, the sale of residential land, this would have to be by public auction but the power would be in the board to determine which pieces of property should be sold and at what upset prices. If you have a single executive, obviously then, if the law is not changed, the power will be in the single executive. That's why I say the power is in the board.

This is under the present statutes. Nobody is trying to make a prophesy of what would happen if there is a change. As I understood the opinion and as the attorneys understood it is what would happen under the present laws with respect to disposition of residential leases, fee simple and so forth.

CHAIRMAN: Thank you very much, Mr. President. Delegate O'Connor, did you have a question on that opinion?

DELEGATE O'CONNOR: No question.

DELEGATE DOI: Mr. Chairman, may I add to the opinion rendered by the attorneys to the president. I would like to read a summary of Section 103a-5 and 56.1. This is what I was able to glean from the particular section. It says here, "This Section deals with disposition by negotiation, contract for development by direct negotiation and disposition to a private developer." Requirements are detailed as well as procedures of contracting for development. It should be noted that no private development of public lands into these sections can take place unless the particular project has been authorized by the legislature by concurrent resolution.

CHAIRMAN: Thank you very much, Delegate Doi. Delegate Suwa is recognized, after Delegate Suwa the Chair will recognize Delegate Ansai and Delegate Hidalgo.

DELEGATE SUWA: Thank you, Mr. Chairman. Mr. Chairman, my testimony this morning will be very simple and basic. I speak for the committee report and speak against the amendment. Mr. Chairman, by having the single executive it seems to me that the legislature will be the only effective means whereby the people will have a way of expressing their will. But as you know, Mr. Chairman, being an elected official, I know that sometimes people have different views than I do. For that reason, Mr. Chairman, I would like for the people of the district of Puna who have different views than I have to be heard by the board. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Suwa. Delegate Ansai is recognized.

DELEGATE ANSAI: Mr. Chairman, I too would like to make my statement very brief. I do not want to delay the point any longer. I think we have enough information to take a vote but in speaking in support of the amendment, I would like to say that I would like to bring to the attention of this body one small point that may not have been emphasized up to now. We all know that boards and commissions are created for the sake of helping the department head in the form of a policy-making body or advisory body or an executive body. It's true, some find that when seven or nine heads get together to resolve a problem, they come up with a more workable or intelligent answer. But when this executive board, either by the passage of resolution or by their action have ceded their responsibility over to the director, then I think they are not accepting their responsibility. Now responsibility is something that you cannot delegate. You can delegate authority, you can delegate function. But you cannot delegate responsibility and if responsibility is going to be delegated, then put this responsibility smack on the person rather than have it behind the cloak of the executive board. Now this brings about one point then. Is the system wrong or is the appointment of the committee members wrong? Well, since we do not have any criteria, we do not have any qualifying requirements for the membership of this particular executive board, I think it's going to be very weak. Now, can we create criteria and qualifying requirements as one of the

delegates said? In practical politics it's going to be very difficult so the end result is going to be as is, where the very ineffective executive board who is going to prompt the delegates by their action or by some other methods to the director and the work is going to be as has been mentioned by those who have. So I would like to support the amendment. Thank you.

CHAIRMAN: Thank you. Delegate Hidalgo is recognized and after that Delegate Miyake.

DELEGATE HIDALGO: Mr. Chairman, I speak in support of the committee report. The management of our natural resources is so important for Hawaii and the future of our great State. The decisions we get in the future of our lands and our natural resources should not be placed on the shoulder of one man. Just imagine, one man charting the charts or making decisions that will affect our children in the future. Mr. Chairman, I think a commission or a board with the due responsibility of—like it was pointed out here—making the decisions, and possibly fine decisions, a commission represents a good mixture of political background, economical and social interest. And this would give us a wider consideration of a greater number of interests among our people. I therefore urge adoption of the committee report and turn down the amendment.

CHAIRMAN: Thank you, Delegate Hidalgo. Delegate Miyake is recognized, and after Delegate Miyake, Delegate Lalakea.

DELEGATE MIYAKE: Thank you, Mr. Chairman. I rise to speak against the proposed amendment thereby supporting the committee report. Mr. Chairman, we have only two great resources in the State of Hawaii, and these two are: one, our human resources; and two, the land. Land that the State controls, dominates and owns. Because land is considered such a prime item here in Hawaii because of its limited availability, the legislature in the past has seen fit to provide many protective provisions in protecting the disposition of state lands. Therefore, in Chapter 103a, Section 103a-4 entitled "Board of Land and Natural Resources, terms and qualifications of members of the board, organization and expenses," you will note there are six members to be appointed to this board, however, with the consent of the senate. Therefore, it surprises me that some members who are sitting here as delegates and who are also members of the state senate question the qualifications of the members of that board. Qualifications of these members of this board should have been questioned at the time the governor made the appointment and the names of these appointees were before the senate.

Now I would further protect the disposition of our public lands. You will note in that same section "not more than three members on the board shall be from the same political party." The legislature has seen fit to tie up as much as possible political influence, partisan political influence, in the appointment and composition of the land board. The legislature also has seen fit to even provide a special paragraph on conflicts of interest and I read to the honorable members of this convention

and I quote from the same section: "Each member shall disclose and file with the board a list of all transactions with the Department of Land and Natural Resources in which he has a direct interest. He shall also disclose all transactions with the department involving any corporation, association, partnership or joint venture in which he is an officer, partner or employee. Any member having any interest, direct or indirect, in any matter before the board shall disqualify himself from voting on or participating in the discussions of such matter."

Mr. Chairman, because public land is considered such an important asset to the people of the State of Hawaii, we have these protective provisions enacted into law, now I would like to have the delegates consider the powers granted to this land board. Section 103a-13 reads and it is entitled: "Disposition of public lands. Except as otherwise provided by law and subject to other provisions of this chapter, the board may: (a) dispose of public lands in fee simple, by lease, lease with option to purchase, license or permit; and (b) grant easement for particular purposes which may be granted for a term not to exceed 65 years on such terms and conditions set by the board, subject, however, to revert to the state upon termination or abandonment of the specific purpose for which it was granted."

This is a tremendous power that this board is granted by legislation. Now are we to turn over this tremendous power in the hands of one man? We have the movant of this amendment admit that no human being is a god. He has all the fundamental weaknesses of a human being. Yet, under this amendment, we are granting this power to dispose of previous public land in the hands of one person who can be easily influenced, much easier than a six-member board.

Now, also, I want to refer to further protective provisions in Chapter 103a, in Section 103a-29, which is entitled, "Report to legislature on all dispositions," and I quote: "The board shall submit a written report annually to the legislature within ten days of the convening of each regular session, of all land dispositions made in the preceding year, including sales, leases, leases with options to purchase, licenses, concessions, permits, exchanges and setting aside of lands by executive orders, the persons to whom made, the size of each disposition, the purposes for which made, the land classification of each, the tax map key number, the per unit price paid or set, and whether the disposition was by option, by drawing or by negotiations."

Mr. Chairman, these laws were enacted into law in the year 1962. And we have delegates sitting here who sat in that legislature. I cannot see now why an attempt should be made to negate all these protective provisions enacted into law to see that our lands are very well managed, protected and disposed in the best interest of our citizens. And now we're willing to give this tremendous power to one individual who is not God, who is a mortal, and let us be aware of our weaknesses as mortals. Thank you.

CHAIRMAN: Thank you, Delegate Miyake.

DELEGATE DONALD CHING: Mr. Chairman, I rise on a point of information.

CHAIRMAN: Delegate Ching.

DELEGATE DONALD CHING: May I question the honorable delegate from the 14th District as to what he has just—

CHAIRMAN: Will you state your question please?

DELEGATE DONALD CHING: Yes, Mr. Chairman, I would like to ask the delegate who last spoke, whether, by the passage of this amendment to the committee proposal whether the omnibus land act from which he quoted extensively will be completely negated or will the act still be in full force and effect.

CHAIRMAN: Delegate Miyake, would you care to answer that question?

DELEGATE MIYAKE: The legislative provisions will be in full force and effect. However, what I object to is, it provided in the Constitution the opportunity for the legislature to transfer the powers to a single executive and eliminate the board.

CHAIRMAN: Thank you.

DELEGATE DONALD CHING: Mr. Chairman, may I further ask the delegate—

CHAIRMAN: State your question.

DELEGATE DONALD CHING: First, the other question I'd like to ask is, in quoting from the first section relating to disposition of land by whatever means whatsoever, are there not further provisions in that same section calling for public notice and public hearing whereby the board and/or the single executive, if this amendment goes through, cannot act without due notice to the public and due hearing to the public?

CHAIRMAN: Delegate Miyake, would you care to answer that question?

DELEGATE MIYAKE: Yes, Mr. Chairman. If this is so, and it is so, then we have been negligent as legislators in providing this further protection. If it is possible under our law then we should enact into law further protective provisions.

CHAIRMAN: Thank you.

DELEGATE DONALD CHING: Mr. Chairman.

CHAIRMAN: How many more questions do you have, delegate?

DELEGATE DONALD CHING: No, I don't have any further questions. I'm just going to say I wish to get the answers without any editorials. Thank you very much.

CHAIRMAN: Thank you. The Chair recognizes Delegate Lalakea.

DELEGATE LALAKEA: Mr. Chairman, I rise in support of the committee report and speak against the amendment. I think we all know that over the next ten years what we say here will well establish the precedence for the management of our lands. It will cover a period that is anticipated to be the most explosive period of growth in our State. And as we all know and as every man in the street knows land is our most important natural resource.

Now, I've heard comments about the efficiency of a single executive as department head. I've also heard a businessman delegate state that in business this may indeed be the best way. But I must point out that even in our most aggressively managed corporation in our State that the president must confer with his executive board before taking action. Now, at times this may be slow, but I think to look again into our aggressive corporations that this is not the case and need not be if the quality of our members on that board is excellent. I ask therefore for retention of the board in the management of our lands and I believe that this will be the best means with respect to preserve and to improve Hawaii's land for the future generation.

CHAIRMAN: Thank you very much.

DELEGATE YIM: Mr. Chairman.

CHAIRMAN: Delegate Yim and then Delegate Peter Lewis.

DELEGATE YIM: Mr. Chairman, I rise to speak in favor of the amendment. Mr. Chairman, we just heard one of the major arguments against the amendment as expressed by my distinguished colleague and delegate from the 14th District. If I heard him correctly, all the quotes that he gave in our present statute, I'd like to submit those arguments as in favor for the amendment.

The fear of putting the power under one man, a single executive, is for the purpose mainly for the management of said lands. We have already heard from the distinguished delegate from the 14th District, reading from the land laws and also from the statements made by the president of this Convention of the opinions of our attorney that they are mainly protective features already in existence in our laws in Hawaii; namely, that many of our lands cannot be sold, many of our lands, if sold must be by auction. There'll be much public notice and public hearing and certain activities as it pertains to lands must have some sort of action by our legislators. All these are examples of checking this one man. I don't think the argument as to the fear of a single executive having so much power is a valid one.

The second argument by those against the amendment is that if we do continue to have a board we will have somewhat better representation particularly by the people in our neighbor islands. I contend the legislature is the best representation for the

respective areas, particularly for those living in the neighbor islands. It's my observation that the legislators from the neighbor islands have done an excellent job in all matters, especially when it comes to land to make certain that their interest is being protected. So the only question that we are faced on this particular amendment is, "Which is the better system in managing our lands for the State of Hawaii?"

CHAIRMAN: Thank you very much, Delegate Yim. Delegate Peter Lewis is recognized.

DELEGATE PETER LEWIS: Mr. Chairman, I'd like to speak in favor of the amendment. And with your indulgence very briefly relate my own personal experiences with the multi- and single-member department head.

From December of 1962 until January of this year, I had the privilege of serving as a deputy attorney general for the State of Hawaii. During that time period I was a legal advisor to the Board of Agriculture, the single head of the Department of Health, the single-headed Department of Transportation and I worked with the staff of the Department of Land and Natural Resources and appeared before that board on numerous occasions. In my humble opinion, the board has not served any useful purpose and I would recommend favoring the passage of the amendment.

CHAIRMAN: Thank you very much. The Chair recognizes Delegate Fernandes.

DELEGATE FERNANDES: Mr. Chairman, I sat here and listened to the comments concerning various commissions of the land division. I rise to speak in behalf of the committee report. If it wasn't for the commissioner from our island, which all of us here would agree that he's done darn good work, we would have been faced with problems of development in areas where the community was not in favor of. We would have foreseen that certain areas were requested to be taken away for hotel development and these were the areas where the people voiced their opinions through our commissioner, who in turn took it to the executive who in turn didn't go along with the intent of pushing it through. The makings are there. The protections are there. If we look back a few years, one begins to wonder what would happen if the Great Mahele program was pushed through under this one single executive today.

CHAIRMAN: Thank you very much. I will have to recognize Delegate Lum and then I'll recognize Delegate Dyer.

DELEGATE LUM: Mr. Chairman, I would like to ask a question of—

CHAIRMAN: Okay. Before recognizing Delegate Kauhane, the Chair would appreciate it greatly if you have no evidence or new arguments, refrain from speaking. Again here this is not a gag rule but this is a repetition of evidence of arguments, let's try to get out of here. Delegate Kauhane is now recognized.

DELEGATE KAUHANE: Thank you, Mr. Chairman. Thank you for permitting me to speak. Mr. Chairman, I rise to speak in support of the committee report. As a member of the committee, I have listened to the arguments presented in favor of the recommendation of the committee as contained in the committee report. As a delegate of 1950 I went through the same process of listening to the retention of the board and commission of our land and natural resources I would have then, if I felt any different as expressed by some of the members today who have taken a position to vote for a single executive type. But I was very much concerned in the management of our land and I compared the management of our lands with respect to the management also of the Hawaiian Homes Commission land under a single executive board.

Mr. Chairman, I respect the rights of each individual to change their minds. Once having sat in the committee and listened to the arguments presented in support of the retention of the present provisions of this article and after having an opportunity to review in the committee report and affixing their signatures thereto, supporting the recommendation of the committee, I'm somewhat taken by surprise this morning, as I have said, I recognize the rights of each individual to change their mind because we men sometimes change our minds like women which is a privilege to change their minds. But, Mr. Chairman, I would like to ask a question, if I may be permitted at this time, of the delegate from the 14th Representative District.

CHAIRMAN: Will you state your question first, please.

DELEGATE KAUHANE: I'd like to know if the representative from the 14th Representative District who spoke perhaps before me supporting the amendment, as a single executive as against a board. This expression of support of the single executive for the land board, would that expression be the same if the map of Hawaiian Homes Commission was being decided this morning and the executive board is—the single executive as against the present board?

CHAIRMAN: Will you state the delegate's name?

DELEGATE KAUHANE: From the 14th District who sits at my left.

CHAIRMAN: Delegate Yim, would you care to answer that question?

DELEGATE DONALD CHING: Point of order, Mr. Chairman. I rise to a point of order. I don't think the question is pertinent to the subject that is now being debated on this floor and therefore, I raise this point of order.

CHAIRMAN: I tend to agree with you, Delegate Ching, but I will give the—as far as answering or not answering—privilege to Delegate Yim.

DELEGATE YIM: Mr. Chairman, I'll be glad to

answer that question. My answer to Delegate Kauhane would be, I would be against the single executive for the Hawaiian Homes Commission.

CHAIRMAN: Thank you very much.

DELEGATE KAUHANE: I'm thankful for the answer, Mr. Chairman, and I'm thankful too for the position taken by the delegate from—who attempted to raise a question with a point of order. This subject matter I think is very relevant with respect to single executive board having management of the properties of the land in the State of Hawaii. There's no difference in the management of the state lands under the land and—Board of Land and Natural Resources as against the management of lands, public lands of the Hawaiian Homes Commission. I certainly will not favor the single executive for the management of both types of our public lands. Because I'm fearful that expressions are being made that the weaknesses of an individual pressures can be brought today where individual would succumb to such pressure. And because of that I have taken the position to support the committee's recommendation and the retention of the board not only of the Land and Natural Resources but the composition of the board with respect to the Hawaiian Homes Commission lands. Certainly those lands should not be left to the decision-making of one individual. Thank you.

CHAIRMAN: Thank you very much, Delegate Kauhane. Now, Delegate Kunimura is recognized.

DELEGATE KUNIMURA: Mr. Chairman, I came here this morning and said to myself that I will sit and keep my peace. But after hearing several indictments made against the present land board, I can no longer maintain this position. We hear we are trying to, by the amendment, lock ourselves in a position where the legislature cannot make any corrective legislation. I want to point out to this Convention that the Bishop Estate, the second largest, I believe, land-holding outfit in the State pay their trustees very well. Here we are trying to say that the land board members who are part-time, spending one or two days a week, and getting only per diem, that they haven't done a good work. Members of this Convention, I would like to say that for that measly per diem and the short notices for their meetings, they have done a good job and I would like to follow up the thinking of my colleague and fellow delegate, Delegate Devereux, why can't we leave the Constitution alone and have corrective legislation and maybe we should recommend to the legislature that we have full-time board members paid adequately so that they can manage our great resources. The only resource we can even think about.

CHAIRMAN: Thank you very much, Delegate Kunimura. If there are no further discussions, the Chair will call for the question.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Yes, Delegate Dodge?

DELEGATE DODGE: I don't think we've been too fair to Delegate Mizuha because no one has yet answered the question that he posed. And I would like to do that.

CHAIRMAN: He did not further ask that question. He was satisfied with the question as far as the Chair can ascertain.

DELEGATE FERNANDES: Mr. Chairman. For the record, Delegate Mizuha had to leave to see a physician and he has been excused. He should be back after lunch. Thank you.

DELEGATE DODGE: The simple answer to the question that he asked concerning the difference between the board of education and the board of regents and the land board is simply that the board of education and the board of regents determine policy. The legislature makes no attempt to instruct the university as to what kind of university it should be. The direction, the purpose, the curriculum are all determined by the board and the same is true of the board of education. On the contrary, as Delegate Miyake and others have pointed out, we probably have more controls, more legislation on the books dealing with the function of lands and land disposition than we do controlling any other function of the state government. We're talking about simply a management problem, not a policy-making problem.

CHAIRMAN: Thank you very much, Delegate Dodge.

DELEGATE FASI: Mr. Chairman.

CHAIRMAN: May I recognize first Delegate Taira and then Delegate Fasi.

DELEGATE TAIRA: Mr. Chairman, what I'd like to do is to follow up Delegate Dodge's comment here about policy-making by the board of regents and by the board of education, and what role the legislature plays. I think for the record, we should all understand that both of these boards, the board of education and the board of regents, make their educational policies in their areas of education but these policies cannot be contrary to the policies or board guides which are established by the legislative process. So you are right, Delegate Dodge, these two boards make their policies regarding curriculum and so on. But there are several basic policies which are tied in with the power of appropriation and these policies are set first of all by the legislature. I just wanted to point this difference out. Thank you.

CHAIRMAN: Thank you very kindly, Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I would like to add some little thoughts, I hope, to this whole debate that's going on.

I don't think we are making a determination as to whether or not we are going to have one executive without a board for reasons of efficiency, policy—

DELEGATE YOSHINAGA: Mr. Chairman, I rise to a point of information.

CHAIRMAN: Delegate Yoshinaga, state your point of information.

DELEGATE YOSHINAGA: How far are we going into discussion because if I understand correctly, it's the third time the delegate has stood up now.

CHAIRMAN: This is the second time. Is that correct, Delegate Fasi?

DELEGATE FASI: I believe it's the second or third—I would like to point out—

CHAIRMAN: The Chair would appreciate it if you make your comments very brief—

DELEGATE FASI: I will make them brief. If you recall my first time, I spoke for about a minute. I didn't want to take the time of the body. But I would like to point out that the three points that we are considering in making this change, efficiency, policy and accountability. There's no question that one executive with authority will operate most efficiently. The question of policy of land and natural resources, I believe, is determined by the governor and the legislature by enactments, statutes in general session.

Accountability, I think, is what this boils down to. Responsibility to the needs of the people. Now, we have heard arguments made that if we eliminate the land board, then we should possibly consider eliminating the board of education and also the board of regents. But there is a distinction. The board of regents also have the authority to hire and fire the department head, the president of the university. There's another distinction in the board of education. They have the power to hire and fire the chief or the department head, the superintendent of education. If the land board had the same authority, then the chief or the head of the land and natural resources would be accountable to that board and then you could pinpoint responsibility. That is not the case.

The argument's also been used by Delegate Ching and Delegate Lalakea that in a business corporation, the executive vice-president must go to the board of directors. Of course, he must go to the board of directors, by virtue of the fact that he too can be hired and fired by that board of directors. I say there's no comparison between the boards that were mentioned, the regents and the board of education, as opposed to the board of land and natural resources. So in speaking for the amendment, Mr. Chairman, I think in the name of efficiency and mainly of policy and direct responsibility and accountability to the governor of the State that we pass this amendment.

CHAIRMAN: Thank you very much. No further discussion?

DELEGATE MIYAKE: Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: I would just like to clarify a point raised by Delegate Dodge in that the land board is merely a management board. It does not set policies but I would like to raise this point that with this management comes the power to dispose of public lands and for its benefit. I'd like to read again: "This board has the power to dispose of public land in fee simple, by lease with option to purchase, license or permit and other powers." So this is not purely managing a business type of management. This is the power to sell, dispose of public lands, the only natural resource we have here for the people of Hawaii.

CHAIRMAN: Thank you very much, Delegate Miyake. Are you ready for the—the Chair would like to call for a roll call vote. You wish to speak, Delegate Bryan?

DELEGATE BRYAN: Yes, I understood that you would call on me to close the debate on behalf of the majority of the committee.

CHAIRMAN: The Chair would appreciate that very much.

DELEGATE BRYAN: I believe the majority of the committee feel that both of the arguments have been adequately stated. There's one point that might bear repetition. It was covered very well by Delegate Miyake from the 14th District. And this is that the legislature has seen fit to be very protective of our lands and natural resources. Certainly, this is a worthy cause. The point I wish to make is that this protection is not a constitutional provision. I think most of us agree that it should not be a constitutional provision. But it does point out the importance of this natural resource, and therefore I would like to urge all the delegates to support the committee report and vote no on the amendment. Thank you.

CHAIRMAN: Thank you very much. Clerk, will you please call the roll.

(Roll call having been ordered, the motion to adopt the amendment to Section 2, Article X, was put by the Chair and failed to carry by a vote of 28 ayes and 47 noes, with Delegates Aduja, Ajifu, Alcon, Amaral, Ando, Andrade, Bacon, Bryan, Burgess, Chang, Devereux, Dyer, Fernandes, Hara, Harper, Hasegawa, Hidalgo, Kato, Kauhane, Kawakami, Kunimura, Lalakea, Rhoda Lewis, George Loo, Lum, Matsumoto, Medeiros, Miyake, Nakatani, O'Connor, Oda, Ozaki, Pyo, Saiki, Shiigi, Souza, Steiner, Suwa, Taira, Takamine, Ushijima, Wright, Yamamoto, Yoshinaga, Young, Mr. President and Chairman Kage voting no; and 7 excused, with Delegates Beppu, Frank Loo, Minn, Mizuha, Morioka, Schulze and Takahashi being excused.)

DELEGATE PETER LEWIS: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Lewis.

DELEGATE PETER LEWIS: Mr. Chairman, I'd like

to introduce an amendment to the same Article X, Section 2, and ask for a very short recess to have it passed out. It's already been printed and reviewed by the attorneys.

CHAIRMAN: The Chair will declare a very brief recess.

At 11:30 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:35 o'clock a.m.

CHAIRMAN: The Committee of the Whole, please come to order. Delegate Lewis.

DELEGATE PETER LEWIS: Mr. Chairman, I would like to offer Amendment No. 2 to Section 2 of Article X which in essence would leave the question of a single or multi-head executive up to the legislature as follows:

"The legislature may vest in one or more executive boards or commissions powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be authorized by law; but land set aside for public use, other than for a reserve for conservation purposes, need not be placed under the jurisdiction of such a board or commission.

"The provisions of this section shall not apply to the natural resources owned by or under the control of a political subdivision or a department or agency thereof."

I so move.

CHAIRMAN: Delegate Kamaka is recognized.

DELEGATE KAMAKA: Mr. Chairman, I second the motion.

CHAIRMAN: Would you state your amendment, please.

DELEGATE PETER LEWIS: Mr. Chairman, the amendment is very clear. There are only two changes in the amendment from the present Constitution. Section 2 now reads, "The legislature shall vest in a single executive board." My amendment says the legislature may vest in one or more single executive boards. The second amendment appears in the second paragraph which is merely a technical change. I've taken the words "mandatory provision" and eliminated the word "mandatory."

I think there has been a full discussion on the question of a single or multi-head executive. I would hope that there is no need for further discussion. I think the issue is clear. Under this proposal it would leave the question of a single or multi-head executive for the management of land and natural resources to the legislature.

Presently, our statute, not the Constitution, our statute as well provides that the land and natural resources will be managed by a Board of Land and Natural Resources. This would continue to be the case under my amendment but would merely provide that we would be retaining the status quo as far as the Board of Land and Natural Resources, but would provide the legislature in some future time, if they saw fit, to make the change from a multi-member to a single department head executive. I therefore urge that those delegates who may have been reluctant to permanently write into the Constitution Delegate Doi's amendment, would vote for this amendment which would leave the matter up to the legislature and would not eliminate the land board by action of this Convention.

CHAIRMAN: Thank you very much. I do appreciate the wishes of the mover of the amendment that he feels that the discussion has been fully explored and that the delegates will call for the question immediately.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Yes, Delegate Yoshinaga please.

DELEGATE YOSHINAGA: This morning when I came here there were a number of printed amendments, I had a little time to look at them. I have just one lousy question to ask. When was this amendment presented to us?

CHAIRMAN: This amendment was just passed around just about a minute ago.

DELEGATE YOSHINAGA: So in fact, we're asked to take the word of one man that this amendment contains what he says it contains and it doesn't contain anything else?

CHAIRMAN: That is correct.

DELEGATE PETER LEWIS: Mr. Chairman, I'll be happy to yield to any question as to the elimination of any other words or addition of anything.

CHAIRMAN: I think the lack of response means that there is no question. You have made your presentation very nicely and I think everybody understands. Now, are you ready for the question? Roll call.

(Roll call having been ordered, the motion to adopt the amendment offered by Delegate Peter Lewis to Section 2 of Article X, was put by the Chair and failed to carry by a vote of 29 ayes and 45 noes, with Delegates Aduja, Ajifu, Alcon, Amaral, Ando, Andrade, Bacon, Bryan, Burgess, Chang, Devereux, Dyer, Fernandes, Hara, Harper, Hasegawa, Hidalgo, Kato, Kauhane, Kawakami, Kunimura, Lalakea, George Loo, Lum, Matsumoto, Medeiros, Miyake, Nakatani, O'Connor, Oda, Ozaki, Pyo, Saiki, Shiigi, Souza, Steiner, Suwa, Taira, Takamine, Ushijima, Wright, Yoshinaga, Young, Mr. President and Chairman Kage voting no; and 8 excused, with Delegates Akizaki, Beppu, Frank Loo,

Minn, Mizuha, Morioka, Schulze and Takahashi being excused.)

CHAIRMAN: The amendment is killed. The body has before it the motion to adopt Committee Report No. 35. Are you ready for the question?

DELEGATE KAMAKA: Mr. Chairman.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: In order to expedite the matter, can we handle it without roll call? I don't think there is need for roll call.

CHAIRMAN: Is that agreeable with all delegates? All those in favor of the motion to adopt Committee Report No. 35 dealing with Article X, Sections 1, 2, 3, 4, 5, as submitted by the committee, say "aye."

CONSERVATION AND DEVELOPMENT OF RESOURCES

Opposed, say "no." Motion carried. The Chair recognizes Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I move that this body rise and report its progress, completion of work to the body.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I second the motion.

CHAIRMAN: You heard the motion. All those in favor of the motion, please say "aye." Opposed, "no." Carried. Thank you very much.

The Committee of the Whole adjourned at 11:39 o'clock a.m.

Debates in Committee of the Whole on **HAWAIIAN HOME LANDS**

(Article XI)

Chairman: DELEGATE KAZUO KAGE

Tuesday, August 20, 1968 • Morning Session

The Committee of the Whole was called to order at 9:07 o'clock a.m.

Delegate Kage presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order.

The Committee of the Whole is sitting for the purpose of discussing as informally as possible Standing Committee Report No. 27 as submitted by the Committee on Agriculture, Conservation, Land and Hawaiian Homes. The committee report deals with Article XI, Sections 1, 2 and 3 of our State Constitution.

Before going into the subject matters under consideration the Chair wishes to state that the rules as laid down by Delegate Miyake when he presided over Standing Committee Report No. 23 shall prevail with a few exceptions. This is to avoid confusion as to procedure in the minds of the delegates who may wish to participate in the deliberations. In order to maintain decorum all speakers are requested to stick to the subject matter under consideration, and further all questions for clarification of the committee report be directed to the chairman of the committee. The Chair also will rule that it is permissible to use delegate's names for the purpose of identification.

As it refers to amendments the Chair wishes to suggest that all amendments be turned in to the clerk who will in turn refer it to the legal staff for language and legality. This is for the purpose of expediting matters and to avoid calling numerous recesses. The Chair wishes to congratulate the chairman and members of the Committee on Agriculture, Conservation, Land and Hawaiian Homes for a well-organized and concise report.

If there are no questions as to procedure, the Chair recognizes Delegate Kamaka, chairman of the Committee on Agriculture, Conservation, Land and Hawaiian Homes. Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, I move that the Committee of the Whole adopt Standing Committee Report 27.

CHAIRMAN: Any second to the motion? The Chair recognizes Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I second the motion.

CHAIRMAN: You heard the motion to adopt the committee report and it has been seconded.

DELEGATE KAMAKA: Mr. Chairman, I would like to be permitted to speak in favor of the motion. I'd like to briefly summarize the deliberative work undertaken in reaching the committee's decision.

In order to make the most informed and knowledgeable decision possible within the time available, it has been the constant goal of this committee to seek and receive testimony from all experts, individual citizens and groups interested in the subject matter of Article XI. To better achieve this, public hearings were held here in Honolulu and there were two weekends during the Con-Con tour on the Islands of Hawaii, Maui, Lanai, Molokai and Kauai where numerous witnesses presented their views orally or by written statement. With this background the committee then proceeded to consider the proposals submitted to it.

The committee reached agreement on three points which significantly affected its final conclusion.

First, the committee reaffirms the continuing need for the Hawaiian homes program. Moreover, the committee was impressed with the enduring character of the program which enabled it to serve its purposes despite changes in times, philosophies, social conditions and economic requirements.

Second, the committee is of the opinion that the wording of Article XI neither raises a series of obstacles nor requires expansion to better promote the objectives started with the Hawaiian homes program.

Third, the committee is well aware of the difficult burden facing Hawaii's voters in making an intelligent assessment of the work of this Convention. This committee does not wish to add to this burden by submitting proposals which are not urgent, substantial or fundamental in character.

Therefore, Mr. Chairman, your Committee on Agriculture, Conservation, Land and Hawaiian Homes unanimously recommends the filing of Proposal Nos. 40, 60, 168, 268 and 299 and the retention of Article XI as it is now stated in the Hawaii Constitution.

Your committee, in other words, is unalterably

opposed to any change in the present language of Article XI of the Constitution of the State of Hawaii. Thank you, Mr. Chairman.

CHAIRMAN: Thank you very much, Delegate Kamaka. Is there anyone who wishes to speak—

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes is recognized.

DELEGATE FERNANDES: Will the chairman of the committee yield to a couple of questions?

DELEGATE KAMAKA: If I'm capable of answering, sir, I will be very happy to.

DELEGATE FERNANDES: Delegate Kamaka, has the committee looked into the area of possible grants to the Hawaiian people that are living on their lands for so many years, the right to purchase said lots?

DELEGATE KAMAKA: Mr. Chairman, presuming that it is not the work of the Constitutional Convention to get into the details and assuming also that this is not within the province of whether or not the programs are needed and perhaps the fact that it might be late for implementation, the committee has not gone into this area, feeling perhaps that this be left to administration and legislation.

DELEGATE FERNANDES: Thank you.

CHAIRMAN: Does that answer your question, Delegate Fernandes?

DELEGATE FERNANDES: I have a few other questions. Has the committee considered the fact that without amending the present Hawaiian homes statute that we are definitely going along with the intent that the United States government still prevails full control of our Hawaiian people as far as their lands are concerned?

DELEGATE KAMAKA: Mr. Chairman, I don't think that the committee acted on that matter in precisely the way that the delegate has addressed himself to it. Rather we considered this as part of the compact between the State of Hawaii and the United States of America and we do not believe basically that the federal government exercises the kind of control the question perhaps indicates, but rather administration over matters of the Hawaiian Homes Commission is left to the discretion of the Hawaiian Homes Commission itself, except as to matters which may relate to decreasing the benefits where the United States government would then become involved.

DELEGATE FERNANDES: Mr. Chairman, the reason why I rose to ask this question is that in our present Constitution, it reads "... the extent that the United States shall so require, said law shall be subject to amendment or repeal only with the consent of the United States" In other words, the reason why I rose on this is that the intent that I have here is

complete status quo and I'm wondering as to whether status quo means exactly the word by word we have in the present document. Or are we saying status quo in principle and yet the Style Committee might change such wording in the present document.

DELEGATE KAMAKA: Mr. Chairman, I think that the recommendation of the committee is not subject to any kind of doubt. Let me put it this way. During the various hearings and during formal conversations with people who are concerned with Article XI it was their feeling that Article XI be retained as it is. They say if there's going to be any change they will hope that the state administration or state legislature does not exercise undue efforts in the alleged interest of the homesteaders. They prefer it the way it is.

DELEGATE FERNANDES: The question then is answered that the committee is on record that the exact wording in the present document of our Constitution before us today will remain intact—exact wording.

DELEGATE KAMAKA: Mr. Chairman, that is so.

DELEGATE FERNANDES: Thank you.

CHAIRMAN: Thank you, Delegate Doi.

DELEGATE DOI: I rise to a point of parliamentary inquiry here. The last question asked by the delegate from Kauai would indicate that in this special instance we are to ignore the rules. Is that correct?

CHAIRMAN: Will you please state your parliamentary inquiry—

DELEGATE DOI: As to the function, authority, the jurisdiction of the Style Committee. Now, mind you, Mr. Chairman, I'm not in favor of changing any word in the article, but I do not like the implication here made this morning, that in this special instance of Article XI, the Style Committee cannot touch the language even if in their best judgment they feel that a comma, for example, should be removed. Is that what we're also deciding here?

CHAIRMAN: Delegate Kamaka, in your report, could you answer that question please?

DELEGATE KAMAKA: Mr. Chairman, I'd like to put it this way. The committee does not wish to have any change in substance, obviously. Neither does it anticipate that any grammatical changes or improvement would substantially affect it. While we recognize the rules, the authority of the Committee on Style to make such changes, those changes made will have to be recommended back to the body as a whole for approval. We do not anticipate that there would be need but we would be willing to abide by the rules of the Convention. However, we don't think, practically speaking, that such changes will happen. We don't anticipate that Style will make changes.

DELEGATE DOI: You don't anticipate it but if the Style Committee feels that there is need to change

language, for example, you still retain that the meaning as it stands today that you would not object to it.

DELEGATE KAMAKA: We might object to it that—

DELEGATE DOI: You might object to it from the standpoint of whether the Style Committee change in substance or not.

DELEGATE KAMAKA: But they may have the authority, Mr. Chairman, but whether or not the body will accept the recommendation is quite another thing. We would be—

DELEGATE DOI: Purely a technical matter, is that correct?

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: President Porteus is recognized.

PRESIDENT PORTEUS: Mr. Chairman, as the president of the Convention, I'm prepared to inform the delegates that if there is no change in an article there has been no amendment. And the president will rule in the regular session that if there is no amendment before this body, there is nothing to go before the Style Committee.

CHAIRMAN: Delegate Doi, are you satisfied with the answer?

DELEGATE DOI: Mr. Chairman, I would have to study the question further but I think a "carte blanche" answer to that sort might be dangerous here.

CHAIRMAN: Thank you very much. Delegate

Mizuha, you wanted to speak? Delegate Mizuha is recognized.

DELEGATE MIZUHA: Mr. Chairman, the president has adequately covered the question that I had intended to bring up.

CHAIRMAN: Thank you very much. Any other discussion? If there is no further discussion, no amendments to be offered, are you ready for the question? The question is to adopt Standing Committee Report No. 27. Is the assembly agreeable to a voice vote?

All those in favor of the motion to adopt Standing Committee Report No. 27, please say "aye." Opposed, "no." Motion carried unanimously.

At this time, the Chair recognizes Delegate Kamaka for the purpose to rise and to report.

DELEGATE KAMAKA: Mr. Chairman, I move that the committee rise and report to the body that it has completed its work.

CHAIRMAN: Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I second the motion.

CHAIRMAN: You heard the motion. All those in favor of the motion to rise and to report, please say "aye." Opposed, "no." Carried unanimously.

The Committee of the Whole adjourned at 9:21 o'clock a.m.

Debates in Committee of the Whole on **ORGANIZATION, COLLECTIVE BARGAINING**

(Article XII)

Chairman: DELEGATE ROBERT CHANG

Tuesday, September 3, 1968 • Afternoon Session

The Committee of the Whole was called to order at 2:24 o'clock p.m.

Delegate Chang presided as Chairman.

CHAIRMAN: The Committee of the Whole, please come to order.

This committee is convened to consider Standing Committee Report No. 42 which pertains to Article XII as submitted by the Committee on Public Health, Education and Welfare; Labor and Industry. At this time the Chair would like to recognize the chairman of that committee, Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, in deliberating on the contents of Standing Committee Report No. 42 and Committee Proposal No. 5 attached thereto, in order to expedite our proceedings this afternoon, I'd like to first take Section 1 of Article XII which reads as follows: "Persons in private employment shall have the right to organize for the purpose of collective bargaining." This has to do with employment in a private sector and as shown in the committee report, the position of the committee is that Section 1 be retained without amendments. And after we take care of Section 1, Mr. Chairman, we'd like to go into Section 2 and Proposal No. 5 with full debate on that portion of today's deliberations. So at this time, Mr. Chairman, I'd like to move that Section 1 of Article XII be retained without amendment.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that Section 1 of Article XII be retained as is. Is there any discussion? If not, all those in favor of the motion signify by saying "aye." Opposed, "nay." The motion is carried.

Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, now we come to that interesting portion of our committee report which deals with Section 2 and Proposal No. 5. May I yield at this time to Delegate Yamamoto.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: I move for the adoption of Proposal No. 5 of Standing Committee Report No. 42.

CHAIRMAN: Delegate Uechi.

DELEGATE UECHI: I second the motion.

DELEGATE YAMAMOTO: Mr. Chairman, may I speak for a few minutes?

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: Mr. Chairman, I am in favor of Proposal No. 5. Back in 1950, the Constitutional Convention saw fit to give the private sector of employment the right to organize for the purpose of collective bargaining. Therefore, Section 1 of Article XII was incorporated into the Constitution. Section 1 states, "Persons in private employment shall have the right to organize for the purpose of collective bargaining." For the public sector of employment the delegates at that time did not see fit to give the public employees the right to collective bargaining. But instead they gave a watered-down privilege to organize and to make known their grievances, so Section 2 was written as, "Persons in public employment shall have the right to organize and to present and make known their grievances and proposals to the State, or any political subdivision or any department or agency thereof."

Since 1950, Mr. Chairman, public employees of Hawaii have gone a long way. Significant changes have taken place. In 1962, President Kennedy issued Executive Order 10-9-88 which permitted federal employees to organize unions of their own choosing and required federal agencies to bargain in good faith with those organizations having exclusive recognition.

Collective bargaining is not a new thing insofar as the federal government is concerned. Collective bargaining has existed for a number of years in federal government with even wages being negotiated, dating back to 1924 in the case of the Government Printing Office and in TVA, Tennessee Valley Authority, since the late 1930's.

Today, it's difficult to argue seriously that public employees have working conditions superior to their counterpart in private employment. The public has been conditioned that if collective bargaining rights be extended to public employees, it means strike. Uninterrupted public service is essential to public service

and public employees should not have the right to strike. However, on the other hand, employees by private contractors have the right to strike. This is not justice. Mr. Chairman, the public employees assert that they have a right to collective bargaining. That to be deprived of it would reduce them to the status of second-class citizens. Quasi-corporations, public utility companies, public transportation companies, employees of these companies have collective bargaining rights without any restrictions. They have a right to strike. Their services are vitally needed as public services. It is no different than the services of the fire department or the police from our city. By these amendments of collective bargaining given to public employees, as prescribed by law, the mechanics can be spelled out by the legislature. The right to strike is a matter of legislative determination. Therefore, I do urge you, fellow delegates, let us give public employees a fair shake and not rate them as second-class citizens, they are by and large dedicated workers. I ask you to vote for the committee's proposal. Thank you.

CHAIRMAN: Delegate Dyer and then Delegate Harper.

DELEGATE DYER: Will the delegate yield to a question?

CHAIRMAN: Will you address the Chair with the question?

DELEGATE DYER: Yes, what I'd like to know is, from the delegate, with your concurrence, what is wrong with the present language as far as public employees now having the right to organize and present their grievances to the legislature. What is wrong with the present language and what would this Committee Proposal No. 5 really add?

CHAIRMAN: Delegate Yamamoto, do you wish to yield to that question?

DELEGATE YAMAMOTO: Mr. Chairman, we have delved on that problem many times and there are different opinions. Some have stated that the government employees can go into collective bargaining and others have gone on the negative end. Therefore, this proposed amendment would clearly define the status of the public employees. This is the stand that I have made.

DELEGATE DYER: May I ask another question? Under this proposed amendment what would the public employees be able to do that they cannot do now, under the Constitution as it now stands?

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: Mr. Chairman, as far as government employees are concerned, we have different facets insofar as civil service status employment, and these are some of the ramifications which the legislature must go into. But insofar as salaries are concerned, wages and salaries, we are now at the whim of the legislature.

The government employees are subjected to different departments, the executive, the legislative and of course the civil service and other agencies. By this provision, the legislature can implement bargaining procedures where the government employees' organizations can sit with the administration or any other body that the legislature so fits to prescribe and go into bargaining agreement. This is the gist of it, Mr. Chairman.

CHAIRMAN: Thank you. Delegate Harper—

DELEGATE LUM: Mr. Chairman, in relation to the question asked by Delegate Dyer—

CHAIRMAN: Delegate Harper, do you wish to yield?

DELEGATE HARPER: Sure.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: From the particular report given to us by the attorney general's office, the legal definition as defined here, "Collective bargaining. A procedure looking toward the making of a collective agreement between the employer and the accredited representative of his employees concerning wages, hours and other conditions of employment."

CHAIRMAN: Delegate Harper.

DELEGATE HARPER: Mr. Chairman, I support the committee's position. I'm not a member of the committee. I didn't think there was much problem of solving need in this area, Mr. Chairman. However, since my attention has been personally focused in this area where I come in contact daily with people who work for the government, I have come to the realization that these people, the government workers, as far as bargaining is concerned, in fact, have to date no rights at all.

Let me cite, Mr. Chairman, as an example of what I say, the plight of the cop. This is an example. This man everybody hates and holds in contempt when he tries to settle any trouble. As a young patrolman, a recruit, he may be twenty years old, about six months or so prior trained, then after a short period of time spent in apprenticeship he sets out on his own and he's broken every criminal and mental element there is in our society today. He faces physical harm daily, he faces death frequently, he's paid for forty hours a week and most weeks he works sixty hours. In the course of his day he's called upon to have the patience of Job and the wisdom of Solomon. He must make daily decisions. The value judgment decisions that we call upon law school graduates to make he has to make for us in our daily lives. He has to outguess the supreme court. The cop must fill all these requirements and at the ridiculously lower salary and the lowest pay of an organized public worker—I mean organized worker in non-public society. I cite this situation, Mr. Chairman, as the example of what does happen where a group of working people are prevented or near prohibited from

organizing for collective bargaining.

Government workers today have two things they can fall back on. The first thing they can do is go to the legislature and collectively beg for what they want. For even a small cost-of-living increase this is what they have to do. Or, they can collectively threaten those legislators who don't go along with them. Both of these resorts are negative resorts.

Mr. Chairman, I feel we should get positive. Let's put in public industry the same rights, and same opportunities as with other people in private industry. I feel let's grant the government workers full bargaining suffrage, Mr. Chairman, let's replace collective begging with collective bargaining.

CHAIRMAN: Delegate Uechi is recognized.

DELEGATE UECHI: Mr. Chairman, I rise to speak in favor of the amendment. The 1950 Convention delegates considered the issue of collective bargaining for private and public employees. Those opposed to the inclusion of this provision pointed out that if the right to organize was so basic and widely accepted, why was it necessary to include it in the Constitution. These arguments were produced and submitted for consideration of those supporting the position not to include collective bargaining for public and private employees. And these are, firstly, the right is already protected by statutory requirements.

Secondly, that the right is already included in the various sections of the Bill of Rights. Thirdly, that the right is not fixed or well-defined. Fourthly, that the right if included in the Constitution would prevent the State from protecting itself of the abuse by unions of employers, and lastly, that the right is not found in many constitutions throughout the country. These arguments notwithstanding, the 1950 Constitutional Convention adopted the committee proposal to establish collective bargaining for private employees.

The crisis that was predicted by those who oppose collective bargaining for private employees did not arise. Today, the question that we are concerned with is, "Should this right be extended to public employees?" We do know that this question of collective bargaining for public employees is not fixed. It's ever changing for a decade now. Many proposals several states have included collective bargaining for public employees in their state statutes. Just recently, the Vice-President of the United States in an address to the National Association of Letter Carriers, Vice-President Humphrey said, "There is no excuse for denying the right of collective bargaining to anyone just because he works for the public." And he, in his speech, stated that there was a need for a federal employee management relations act to supplement Executive Order 10-9-88. So here we find that there are various jurisdictions which have included in their statutes the right to collective bargaining for public employees. Why is collective bargaining for public employees necessary as a constitutional provision? Does not the present Constitution, as stated in Section 2, permit bargaining

for public employees? We questioned the attorneys in our committee and they have answered it in the affirmative. However, the committee recommends—excuse me, the committee does not recommend an inclusion of a new section. It only clarifies the intent of the committee in the area of public employees having the right to bargain collectively and that is the reason why we are including the term "collective bargaining" specifically for public employees.

In our committee, the first attempt to give collective bargaining rights to public employees was as stated in our committee report, a combination that is the inclusion of the public employees with Section 1. However, because of much opposition and haggling over the term "collective bargaining" and what it encompasses, the committee felt that Section 2 should be amended to provide as it reads in our committee report. Does collective bargaining have inherent in it the right to strike? The committee feels that collective bargaining is a process by which the employee representatives sit down with management to work out terms and conditions of employment with the parties for a specific period of time. The strike, as was the concern of few delegates, is only employed when this collective bargaining process breaks down. However, to prohibit strikes by law is no guarantee that employees will not go on strike. History has proved it. However, in the opinion of the attorney general, as stated in the amendment, the right to strike will not be affected. That is, statutes today prohibit the public employees to go on a strike. This particular statute would not be affected by this provision in the Constitution. However, I'm sure the questions, many questions are in the minds of the delegates this afternoon. What would happen if collective bargaining procedures were established by the legislature? One, the employees would have the right to select the organization of their choice to represent them before their employer. This organization would in effect be the negotiating body for this particular group of employees. I have had the privilege of appearing before the legislature as a lobbyist on many occasions. However, one of the concerns of legislators many times expressed to me was, why don't all of you employee organizations get together and come out with something that you can agree on. This in effect is collective bargaining given to public employees. Public employees would have the right to select their voice, their organization to represent them before the administration and also to the state legislature. After the bargaining agent is selected by the employees, what would happen to those who do not wish to become members of this particular association or union? We find that in public employment the requirement of a union shop or the employees being coerced or forced to join a union—

CHAIRMAN: Delegate, you have one more minute.

DELEGATE UECHI: Thank you. However, we'll find that the employees will be given the choice not to join or to join an employee organization representing their interest. So in closing, may I recommend to the delegates that you consider seriously this right, this human right given to public employees that they might too bargain collectively with their employer. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Ariyoshi and then Delegate Lewis.

of appropriations of public funds by the Legislature, to name a few.

DELEGATE ARIYOSHI: Mr. Chairman, I have a question that I would like to put to the Chair. I see here a letter dated September 3, 1968, addressed to the honorable Hebden Porteus and signed by Mr. Bertram T. Kanbara, Assistant Attorney General, and also approved by Bert T. Kobayashi, Attorney General. May I ask the Chair whether or not the contents of this letter will be incorporated as part of the records of the Committee of the Whole proceedings?

Where a statute had conferred the right of collective bargaining on a certain group of public employees, the court recognized that the employees "have received the benefit of civil service status and must necessarily accept whatever curtailment such status causes in the scope of their bargaining rights." *Erie County Water Authority v. Kramer*, 167 NYS 2d 557, 556; aff'd. 157 NE 2d 712; see *City of Springfield v. Clouse*, 206 SW 2d 539 (Mo.).

CHAIRMAN: Yes, it will be incorporated into the records of the committee, and I so direct the clerk.

Your inquiry is prompted by Committee Proposal No. 5, which proposes to amend Section 2 of Article XII of the State Constitution to read as follows:

DELEGATE ARIYOSHI: Thank you.

The Honorable Hebden Porteus
President, Constitutional
Convention of Hawaii of 1968
Honolulu, Hawaii

"Persons in public employment shall have the right to organize for the purpose of collective bargaining as prescribed by law."

Dear President Porteus:

This is in reply to your inquiry of August 30, 1968, as to (1) the "legal interpretation" of the words "collective bargaining," and (2) whether Committee Proposal No. 5 of the Committee on Public Health, Education and Welfare; Labor and Industry would "force" the Legislature in the future to provide for bargaining on classification and wages and the right to strike for public employees.

In view of the less than crystal clarity of the scope and extent of the term "collective bargaining," as pointed out above, resort may properly be had to the report of the Committee for clarification. *In re Pringle*, 22 Haw. 293.

Standing Committee Report No. 42 dated August 28, 1968 reports on Proposal No. 5:

(1) "Collective bargaining" has been defined as:

"a procedure looking toward the making of a collective agreement between the employer and the accredited representative of his employees concerning wages, hours, and other conditions of employment." 51 CJS, *Labor Relations* (1967 ed.), sec. 148.

"By this amendment it is clear that the term 'collective bargaining' as used in Section 1 of Article XII (which provides that: 'Persons in private employment shall have the right to organize for the purpose of collective bargaining.') and in Section 2 as proposed is not identical. In the case of public employees the rights of collective bargaining will be restricted to those areas and in such manner as will be determined by the legislature. Therefore, the right to strike is for legislative determination.

* * *

The term is not of fixed and unvarying meaning and its true scope and extent must depend on the context in which it is used.

In the private sector, the provision of the National Labor Relations Act guaranteeing employees the right to engage in self-organization, collective bargaining, and other concerted activities for mutual aid or protection includes the right to strike. 51A CJS, *Labor Relations* (1967 ed.), sec. 331 (a). However, the right is not absolute, and the Act itself regulates and imposes restrictions thereon. *Ibid.*

"This amendment does not affect any existing laws on public employment, which will remain in effect until changed by the legislature." (pp. 3,4)

It is clear therefrom that the scope and extent of the right of collective bargaining for public employees, including the right to strike, and the manner in which it is to be exercised, shall be as determined by the Legislature.* The extent to which the right will be given, restricted, regulated or withheld is a matter that the Legislature in the exercise of its judgment would decide.

Public employment, unlike private employment, is subject to an "elaborate system of laws constituting the policy of the state in the domain of public employment;" 51 CJS, *id.*, sec. 33 at pp. 629-630, such as the laws providing for the civil service system, compensation, separation of legislative and executive powers, and the necessity

*As a matter of style, this thought might be more aptly conveyed by providing that: "Persons in public employment shall have such rights to organize for the purpose of collective bargaining as may be prescribed by law."

(2) In reply to your second question, it is obvious from the foregoing that Committee Proposal No. 5 would not "force" the legislature in the future to provide for bargaining on classification and wages and the right to strike for public employees.

As in enacting any other kind of legislation, the Legislature would be expected to weigh the public interest and all other relevant considerations and exercise its discretion in making its determination.

Very truly yours,

/s/ Bertram T. Kanbara
BERTRAM T. KANBARA
Assistant Attorney General

APPROVED:

/s/ Bert T. Kobayashi
BERT T. KOBAYASHI
Attorney General

CHAIRMAN: Delegate Lewis and Delegate Ando next.

DELEGATE RHODA LEWIS: Mr. Chairman, I can think of no area in the law where it's more important to say what we mean than in writing the Constitution. I have been very much puzzled in this particular area which we're now debating, by two things. One is that the wording that is presented, the committee proposal states, "Persons in public employment shall have the right to organize for the purpose of collective bargaining." Shall have the right, and then it says, "... as prescribed by law." Now, in the committee report it is stated, this does not really mean that there's a definite right, it will be restricted to those areas and in the manner determined by the legislature. Why not say that, why not say what we mean? Let's remember we're going before the voters and we have to get approval of everything we write here. Certainly, if we were to say what we have in the committee report, that we only mean that what is being conferred is such right as the legislature may see fit to establish, that would be one thing. But the language of the proposal as is now written certainly seems to say you have to take your committee report and your attorney general's opinion and do a lot of hard thinking to get to the point because if you read it cold it certainly seems to say, "This is a right and the legislature may regulate it somewhat but the right is conferred." Now what is the right that is conferred.

My second objection is to the use of the term "collective bargaining." Now, the speakers are using the term "bargaining procedures." That's pretty good terminology. But collective bargaining, and we know that from the attorney general's opinion, means that it is looking towards a making of an agreement, a contract. Now, Mr. Chairman, let's remember we are putting this in the Constitution, not a law, not a mere executive order, not a rule, but in the Constitution. And do we really intend to say in the Constitution, a person in public employment can deal with the

government by contractual arrangements the way you can in private industry? Obviously that is not so, and again, why can't we say what we mean. The attorney general points this out and it is pointed out by the court. At this point I think I should interpret. I have found only two constitutions that have this type of language and neither one of them really points it up as being in public employment.

The New York Constitution, the old one, they didn't put through their new one, simply said employees shall have the right to organize and bargain collectively through representatives of their own choosing. But the court got around that, all right. The court said, "Well, the constitution says the employees may bargain but it doesn't say the employer has to bargain with them." Sounds pretty ridiculous, doesn't it? But that was what the court was driven to, to get away from something that obviously couldn't be solved. In Missouri, "The employee shall have the right to organize and to bargain collectively through representatives of their own choosing." It didn't mention public employees. Well, the court held that it does not apply to public employees. And the court pointed out what I am trying to put before this honorable body, that you cannot arrive at contractual agreement with a government body unless you are going to destroy our old concept of legislative power and sovereignty. The court quoted from President Franklin D. Roosevelt from which he said, "All government employees should realize that the process of collective bargaining as usually understood cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations." That was a quote from President Roosevelt.

At another point, the court noted that the real purpose of collective bargaining is to reach agreement and result in binding contracts when they said that "in the government fields, this could not be." It is a familiar quote from the court, it is a familiar principle of constitutional law, that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void. And I cite, and I'll skip the citations, "If such powers cannot be delegated, they surely cannot be bargained or contracted away." And I'll admit I'm a little bit confused. The matter of making such standards, that is a regulation governing personnel, involves the exercise of legislative powers.

In short, Mr. Chairman, we are here considering the extension for public employees of such rights as the legislature may confer upon them. That's what the committee report says—through bargaining procedures, negotiations, the type of procedures which goes on in the private sector up to the point where you get to make a binding contract but not the whole law. So we need different language—

CHAIRMAN: One minute, Delegate Lewis.

DELEGATE LEWIS: Yes. We need different language. We need to say, "Such as the legislature may establish." And we need to avoid the terminology "collective bargaining." Let us stand in Section 1 in its full strength as representing the right of private employees and let us not try to confuse ourselves and the public by repealing that term in Section 2 in the public area.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: Mr. Chairman, point of order. I have a proposal to amend Committee Proposal No. 5. Essentially it is to perfect the committee's Proposal No. 5 to bring it in line with the committee's intent. If you will advise me as to when it is appropriate to present this, I shall be happy to present this to the Convention.

CHAIRMAN: Well, Delegate Ando, do you feel that the Committee on Style could not—

DELEGATE ANDO: I do not feel that this would be a function of Style because as you read it there is substance being considered here.

CHAIRMAN: Then an amendment is in order at this time.

DELEGATE ANDO: Mr. Chairman, I move to amend Committee Proposal No. 5 with this—it's been circulated—XII (1) which would read: "Persons in public employment shall have such rights to organize for the purpose of collective bargaining as may be prescribed by law."

CHAIRMAN: Is there a second to that motion? Delegate Lum.

DELEGATE LUM: Second.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: Mr. Chairman—

DELEGATE DEVEREUX: Point of information.

CHAIRMAN: Yes, Delegate Devereux?

DELEGATE DEVEREUX: Will this preclude questioning former speakers who spoke prior to Delegate Ando's proposing the amendment?

CHAIRMAN: If we are considering this amendment. I think the whole—

DELEGATE DEVEREUX: I tried to rise a couple of times to pose some questions to Delegate Yamamoto and I wasn't recognized by the Chair.

CHAIRMAN: I think the concept here is in line, so the answer is yes, it will be appropriate.

DELEGATE DEVEREUX: Thank you.

CHAIRMAN: Delegate Ando.

DELEGATE ANDO: Mr. Chairman, I submit this proposal after reviewing the committee's report because I was concerned with the phraseology, "the right to organize for the purpose of collective bargaining." I learned a new phrase when I came into this Convention, the word—the phrase meaning "the word of art." I learned that collective bargaining has its set meaning in our legal brotherhood and that if we are to grant in our Constitution the right within the word of art, it concerns me whether in implementing the constitutional provision, whether the legislature shall have the power to just grant portions of the word of art "collective bargaining." Our committee report is, however, crystal clear as to what we intend. My proposal here is to make the language of this proposed constitutional amendment crystal clear. I said it in the Committee on Style that if a committee report is necessary to make perfect what we're trying to say in our Constitution, something ought to be done with the proposal. And this I'm submitting hopefully to bring about the clear definition, that the legislature will grant such rights within the word of art "collective bargaining," that if the legislature hopes to give to the public employee. Thank you.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I speak in opposition to this amendment. The real meaning of this amendment will be to take away even what rights government employees do now have under Section 2 of Article XII. Under the present section they have a right to organize but under this amendment it says very clearly in elementary, high school language, persons in public employment shall have such rights to organize for the purpose of collective bargaining as may be prescribed by law. "Such rights," if there be no rights at all, if there is no prescription by law and I submit, fellow delegates, that this amendment will take away everything from the government workers that they do now enjoy. I'm looking at this from the point of view of a jurist and I believe Sister Lewis will agree with me when she reads this amendment.

CHAIRMAN: Thank you, Delegate Mizuha. Delegate George Loo and then Delegate Hitch, and then Delegate Yoshinaga.

DELEGATE GEORGE LOO: Mr. Chairman, I have a couple of questions that have been in my mind and I would wish that somebody could answer them.

CHAIRMAN: Will you state your question.

DELEGATE GEORGE LOO: The first question is whether or not, at the present time, the governor has the authority to give the public workers the right of collective bargaining as President Kennedy did.

CHAIRMAN: Is there anyone who—Delegate Lewis.

DELEGATE RHODA LEWIS: I want to answer that. It was Delegate Devereux who called this to my

attention.

DELEGATE DEVEREUX: Before Delegate Lewis answers, may I pose one question I was trying to get from Delegate Yamamoto. He stated that the presidential order had provided for collective bargaining rights. I wish to ask, did in fact the presidential order even mention the term "collective bargaining"?

CHAIRMAN: Delegate, do you wish to yield?

DELEGATE RHODA LEWIS: I will be glad to yield to Delegate Devereux to answer the question since Delegate Devereux recalled this opinion to my attention. This is opinion 68-16 of the attorney general, August 7, 1968, in response to an oral request as to whether the present Sections 1 and 2 of Article XII preclude the legislature from authorizing collective bargaining? And the answer was in the negative. In other words, there is absolutely no obstacle in the present Constitution for any legislative action authorizing collective bargaining. That was approved by the attorney general.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate George Loo.

DELEGATE GEORGE LOO: That was my second question. My first question was whether the governor has the authority to grant the public workers the right to collective bargaining.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: As chairman of this committee, will you let me try to answer that question?

CHAIRMAN: Yes sir, proceed.

DELEGATE TAIRA: First of all, if you will look at the language of Section 2, Article XII of our Constitution as it stands today, and I'm going to quote from Section 2 because all of us had better be aware of what we have in Section 2, "Persons in public employment shall have the right to organize ..." the right to organize, that's one right they have "... and to present and make known ..." that's the second right the public employees have, "their grievances and proposals to the State." They have the right to organize, and to make known and to present. There is nothing in Section 2 which says public employees shall have the right to negotiate, which is an area of discussion that—and our committee understood this very well—it's missing in Section 2. The idea of across-the-table negotiations between public employees and the people who are in the management category of our state and county governments. This idea of negotiations, across-the-table negotiations, is intended in the proposal before this Convention. Now as to whether, because of the absence of the term "negotiation" in Section 2, whether the legislature can proceed to give by statute the right to our public employees to carry out negotiations, I'm not an

attorney, but I think our legal staff would be able to give a better reply to that.

CHAIRMAN: Thank you, Delegate Taira. At this time, the Chair would like to declare a very short recess in consideration of our steno so she might have a rest. Recess is declared.

At 3:05 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 3:36 o'clock p.m.

CHAIRMAN: The meeting will please come back to order. Delegate Hitch is now recognized.

DELEGATE HITCH: Mr. Chairman, the longer I listen to the arguments and explanations of the proponents of this proposal, the more disturbed I become at some of its implications and I would like to share with you those disturbances. We are told that collective bargaining is a process by which employees organize themselves into bargaining units, select representatives of their own choosing and bargain collectively with their employer in order to consummate an agreement with respect to wages, hours and other conditions of employment.

Now, I don't know how, under this system, employees of the state and county government, public employees in Hawaii would organize themselves into bargaining units but I can visualize a situation in which there would not be a single monolithic union representing everybody and therefore, I can visualize a situation in which a group of employees will sit down with the labor department management and negotiate an agreement with respect to wages, hours and working conditions in the Department of Labor; and another group of employees sit down with the Department of Planning and Economic Development and reach a different agreement with respect to pay, with respect to hours, with respect to vacation, with respect to holidays, with respect to pension plans, et cetera. I have difficulty in visualizing the authority of what has variously been referred to as management or the administration having the authority to reach such a binding agreement without having it subject to the approval of the legislature. I would visualize the depth of any equal-pay law statewide for our state employees under a situation like this. I'm simply saying that I think that the implications of this as far as I am concerned, have not been explored adequately, and I would appreciate being illuminated by the committee that has apparently looked into all aspects of this, if I'm worrying about things that I should not worry about.

CHAIRMAN: Delegate Nakatani.

DELEGATE NAKATANI: Mr. Chairman, I rise to support this amendment, Mr. Chairman, and the question of Delegate Hitch that brought up the mess that we'll be facing because of several organizations that represent the government employee. But if you can look

into the other areas in private industry, for example, there is such a thing as an employers council. That they get together and negotiate with one union. There's a contractors association, there are several contractors that form an association and they get a spokesman that negotiate with the union. And this procedure can be used in government where the labor organizations can form a council and negotiate and they can choose, the council can choose their spokesman to represent their organization.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: Delegate Lum, yes.

DELEGATE LUM: I am confused as to what is the question before the house.

CHAIRMAN: Thank you for calling it to my attention. The question before the house is the amendment to the committee proposal stating that persons in public employment shall have such rights to organize for the purpose of collective bargaining as may be prescribed by law.

DELEGATE MIZUHA: Mr. Chairman, I rise to a point of information. That is the amendment which Delegate Ando submitted, which in my explanation of that amendment dilutes the right the government employees have under the Constitution at the present time. I can't understand the—

CHAIRMAN: Delegate, it is on the floor for discussion. Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, I should like to ask Delegate Yamamoto to yield to a few questions relating to his first statement when we started the discussion on this section.

CHAIRMAN: Will you address the question to me and I—

DELEGATE DEVEREUX: The first question is—

DELEGATE KAGEYAMA: Mr. Chairman, I rise to a point of information. Delegate Yamamoto's motion is to recommend the proposal which is an amendment to the Constitution and we have that discussion before us. Delegate Ando now brings the question between Delegate Yamamoto or Delegate Ando would confuse the situation here so that I would like to dispose of the amendment to the main motion.

CHAIRMAN: I would like to state that earlier he had indicated that the subject matter on collective bargaining for public employees, the concept is what we're talking about, so the questions are in order. And the Chair so rules.

DELEGATE DEVEREUX: Mr. Chairman, my question pertains to the subject of collective bargaining. My first question is, does in fact the presidential order use the term "collective bargaining"? As Delegate

Yamamoto stated, that presidential order provided for collective bargaining for federal employees.

CHAIRMAN: Delegate Yamamoto, did you wish to yield to that question?

DELEGATE YAMAMOTO: Could you repeat the question? I didn't get it.

DELEGATE DEVEREUX: You mentioned in your statement before this body that the presidential order had provided for collective bargaining for federal employees. I asked the question, does it in fact provide and use the term "collective bargaining"?

DELEGATE YAMAMOTO: I did not make that statement. May I read the statement that I made.

DELEGATE DEVEREUX: I must not have heard correctly, Mr. Chairman.

DELEGATE YAMAMOTO: No, I did not. May I read the statement? "In 1962, President Kennedy issued Executive Order 10-9-88 which permitted federal employees to organize unions of their own choosing and required federal agencies to bargain in good faith with those organizations having exclusive recognition." That's all.

DELEGATE DEVEREUX: Mr. Chairman, I misunderstood the statement he made and I thank him for the answer. I would like to ask him if this federal provision provides in this executive order the right to strike or the right to bargain on classification and pay.

CHAIRMAN: Does the delegate wish to yield to that question?

DELEGATE YAMAMOTO: I'm not too familiar with the legality of that executive order. Will counsel be able to answer that question if they may?

DELEGATE NAKATANI: Mr. Chairman.

CHAIRMAN: Delegate Nakatani.

DELEGATE DEVEREUX: Mr. Chairman, may I ask that we ask for the answer to that at a later time and let me finish my question. I have one more, please.

The final question is, when you were asked the definition of the term "collective bargaining," or something to that effect, one of your answers was, we are now at the whim of the legislature as far as pay is concerned. Am I to understand from your answer that you would expect collective bargaining in the future to provide negotiation on pay?

CHAIRMAN: Delegate Yamamoto, do you wish to yield to that question?

DELEGATE YAMAMOTO: Mr. Chairman, I would like to answer in my own capacity. The language of the amendment is clear. Insofar as that area is concerned, it is left up to the legislature.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I rise to speak against the proposal.

CHAIRMAN: On the amendment?

DELEGATE DYER: The amendment, yes. First of all. As I see these proposals they are simply going to provide and enter a wedge for giving the government employee the right to strike. Now, I want to elaborate upon that, if I may. We have in our Constitution now, in Section 2, language that gives persons in public employment the right to organize and to present and make known their grievances and proposals to the State or any political subdivision or any department or agency thereof. As I understood from earlier questions of Delegate Yamamoto and I think that this proposal that we're now considering simply changes the language a little bit, as I understood it, the purpose of this proposal really is to enable the legislature to provide collective bargaining procedure. And it's been indicated that if this proposal goes through that employees will have the right to choose their own representatives for the purpose of collective bargaining.

Now, we are not told actually with whom this representative is going to bargain. Language has been used such as bargaining with a management representative. Who this is going to be, I don't know. My common sense tells me that there are at least two alternatives, either the representative of the employee is going to bargain directly with the legislature, or else the representative of the employee is going to bargain with someone high up in that particular agency. Let's assume that he is not going to be bargaining with the legislature because, for the life of me, I can't see the legislature actually authorizing direct bargaining with itself. So let's assume for the sake of discussion that this law would authorize the employees' representative to deal with those higher up in the agency. So they sit down and the employees' representative presents his position and the management then present theirs. And eventually an agreement is reached. Now, what do you actually gain at this particular point? As I see it, nothing because certainly the management end of it cannot commit the Hawaii state government to higher wages without the consent of the legislature if wages is what they have been bargaining over. So that as I see it in the long run even if agreement is reached between the employees' representative and someone high up in the agency, it's all going to come back to the legislature anyway for final decision as to what the employees get, so what is this proposal adding?

Now, look at it from another viewpoint. Suppose that in this bargaining between the representative of the employees and someone high up in the agency, an agreement cannot be reached; then as I understand it, unless government employees are going to be given the right to strike, then you would have an impasse, so again nothing is really gained by this proposal except one thing, as I see it, and that is that under the

language of these proposals, the language is broad enough as I see it, to authorize the legislature to authorize government employees to strike. And here I guess you come into an area where we all have our individual philosophies and our individual approach to the problem. And I always thought that I was a liberal Republican but maybe I'm more conservative than I think. But I, for the life of me, cannot see authorizing public servants to strike. I can't see the police or fire department on strike, I can't see the members of the tax office on strike, I can't see the employees of the judiciary on strike, I can't see any of the other government employees on strike because they're public servants. And I think that the vice of all of these proposals, and I think probably that perhaps at least in the minds of some of the sponsors this is what they may have had in mind, but the vice of them is that if these proposals go through, there will be legal mechanism whereby government employees in this State can be authorized to strike. Thank you.

DELEGATE HUNG WO CHING: Mr. Chairman.

CHAIRMAN: Delegate Hung Wo Ching.

DELEGATE HUNG WO CHING: Mr. Chairman, I support Judge Dyer's concept and I am against any amendment to Section 2. I want to remind the delegates that the government employees of our State are very well represented by the HEA, UPW, AFT, HGEA and the ILWU. And subscribing to Delegate Hitch's statement, who is going to be the bargaining agent should we have collective bargaining. Now, I also want to remind the delegates that unlike private industry, employees of the state government are now enjoying a 5% incremental pay annually regardless of their productivity. Regardless of their productivity. That's a very big word but whether or not he can cut the mustard we know that it is impossible to stop them from being employed because of seniority, because of protection by their represented agent. This across-the-board raise is much greater than in private industry when you consider all the other fringe benefits that go with it. You have the dental services for the families, insurance plan, we have the best and the highest rate of pension for all employees, and above all they are now enjoying civil service protection. I do not know and understand what extra additional protection they need. If there should be a strike against private industry, that company or industry closes. But if the public employees go on strike as Delegate Dyer so well stated, where are we going to continue to receive public service. The people who enter into public service, I would say, are a breed of another kind. They are dedicated public servants, they want to do this work, realizing full well when they enter in service what they are getting into. Now surely we cannot leave our community in the hands of strikers, leave our community in the hands of those who will not be responsive to the needs of our community by striking. Legally or illegally. Now, let us be realistic about it. If we are to leave this issue to our legislature, do you think that the legislature can resist the political pressures not to give in or to accommodate those who wish to have collective bargaining, plus the right to

strike, and a strike is just another stepping-stone in this whole area of getting collective bargaining. Whether or not the phrase "the right to strike" is used, it is either implied or expressed and we will get there. It is just a stepping-stone, I want to remind you, what will happen in the future once we allow this collective bargaining to take place. So I am against any amendment. Thank you.

CHAIRMAN: Thank you, delegate. First Delegate Kamaka and then Delegate Hansen.

DELEGATE KAMAKA: Mr. Chairman, I rise to speak against the amendment and against the committee's proposal. Very briefly, in all the rights to grant rights, whether to felons, to minors, to residents, to nonresidents, to students, to aspiring nonresiding political candidates and now to government employees to bargain collectively, and as an authority, Mr. Chairman, I believe that employment by government is not a right, it is a privilege and in our desire to leave many matters before the discretion of the legislature, it appears that this liberal action body has overlooked if not totally ignored any discussion or decision whether any of these so-called rights can be tied to any duty. It seems to me that collective bargaining does and will mean the right to strike. Facing the political realities of legislative activity, the right to strike will be legislatively enacted. My crystal ball isn't that foggy.

Let's look for a moment at the right to strike. Forget, if you will, the selection of the bargaining agent for government employees. They can do that now if they want to. It seems to me that a more important matter is that each wants equal duty and obligation. I believe that duty of each government employee is to continue to perform the services for which he or she was hired. Our government employees, unlike private employees, have security. I ask what will happen to the merit system, what will happen to classification, what will happen to our compensation plan, what will happen to their retirement system? There are other benefits and advantages they have. I believe that it is incumbent upon us to recognize that government employees also have their duties and obligations. To me these duties and obligations include a continuity of services, as such, in the health, education and welfare of our community. To me this means that they will have no unqualified right to strike. This proposal is a means to that end. Let's not fool ourselves. No matter which way you slice it, Mr. Chairman, collective bargaining means the right to strike.

CHAIRMAN: Delegate Hansen.

DELEGATE HANSEN: Mr. Chairman, I have three questions I'd like to ask. Could I ask them and then speak on the subject?

CHAIRMAN: Yes, ma'am.

DELEGATE HANSEN: The first one is to Delegate Wright who I believe has a definition of "public employees." I'd like to ask him if he could define public employees for us. He had a legal definition that he was showing. I wish he'd state it for the record if

this is in order.

CHAIRMAN: Delegate Wright, do you wish to bring forth this paper?

DELEGATE WRIGHT: Yes, Mr. Chairman. This is from the Legislative Reference Bureau. And it briefly states: "Generally speaking public employee refers to those persons being paid from public funds for services rendered. There are two types of public employees, those under the civil service and those who are non civil service. Those in civil service are subject to the rules and regulations promulgated by the state or county civil service commission. Non civil service state employees are listed in Chapter 320, Revised Laws of Hawaii, 1955, Supplement 1965."

CHAIRMAN: Thank you. Delegate Hansen.

DELEGATE HANSEN: My second question is to Delegate Yamamoto. In Executive Order 10-9-88 of 1962, President Kennedy signed this to encourage government unionism but he carefully circumscribed this encouragement by barring any compulsion and he said in the order, and I quote: "The employees of the federal government shall have and shall be protected in the exercise of the right freely and without fear of penalty or reprisal to form, join and assist any employee organization or to refrain from such activities." Is there any guarantee that this will—they'll have the right to refrain if this is put into the Constitution?

CHAIRMAN: Delegate Yamamoto, do you wish to yield to that question?

DELEGATE YAMAMOTO: Yes, I will.

CHAIRMAN: You're recognized.

DELEGATE YAMAMOTO: The wording, which is the amendment in toto, will leave these matters up to the legislature.

DELEGATE HANSEN: The third question will be to the chairman of the committee. Has there been any grassroot movement from the people? Have you heard any testimony from government employees other than the management that wants collective bargaining? Or have you just heard testimony only from the management and from labor—the leaders?

CHAIRMAN: Delegate Taira, do you wish to yield?

DELEGATE TAIRA: Yes, Mr. Chairman.

CHAIRMAN: You're recognized.

DELEGATE TAIRA: The question was whether, during our committee hearings, we had individual employees who came to testify favoring collective bargaining for government employees or not. Is that the question?

We had representatives from the various government

employee organizations, from the teachers' organizations, but to the best of my recollection, no one individual appeared as a person being an employee of this State or the city and county or any of our county governments to give his views as an employee of the State or county government.

CHAIRMAN: Thank you, delegate.

DELEGATE HANSEN: Mr. Chairman, may I speak against this proposal?

CHAIRMAN: Proceed, Delegate Hansen.

DELEGATE HANSEN: To my mind, to see a need for a change, you have to either show a need because of abuse, or abuse as under the present system, or you have to show that everyone who is concerned with the problem is involved and feels the dire need, or you have to prove that it would be beneficial or not potentially harmful. To my mind, I contend that this provision, this committee report and all these amendments meet none of these requirements, and in fact there is no need, there has been no desire expressed by the individual lay member or the individual government employee to have collective bargaining and there's no benefit, but on the other hand it's potentially a Pandora's box or an opening for a chaotic action as has been expressed in its right to strike.

President Kennedy's Executive Order 10-9-88 encouraged government unionism, but he circumscribed that by saying that it should be tempered with the right to refrain. If there is no right to refrain I would like to point out that this most important—it would evolve into the form of compulsory unionism for government employees. And when you have a definition of government employees, we see that a government employee is anyone that receives any form of paycheck from the government or from the public funds. That would mean legislators, Con-Con delegates, the governor, everyone would be classed a public employee. If there was no right to refrain, everyone would be compelled into joining a union if this is carried to the extreme. Then again we see that when you say this then—when you see the possibilities, then where do you owe your allegiance when everyone that works for the government, or works for the public, is a member of the union, when the government says no and the union says yes, who do you follow, where do you owe your allegiance?

I think we've seen the leaders in this case. I think we've heard them and the answers are coming out of our ears. But they have not answered these definite questions and have not shown us that the people want this. They want to support dues—or to pay dues to support and what not—and have not answered the question that who would their first loyalty go to, the people or the union. I think this has resulted in a sort of a paralysis of the government by those who have sworn to uphold it. I would like to ask again, who in fact wants collective bargaining?

And let's look at this executive order that was issued

by President Kennedy again. When he issued this in 1962, since that time, a fantastic or intensive membership drive has been initiated by the unions to get people into the membership, but they still have a right to refrain, to say, "No, we don't want it," or, "We do want it." Since 1962, in spite of all these intensive actions to gain membership, less than one-third of the federal employees have signed up. And I maintain that this is not an overwhelming need or shows that anyone really in fact wants it by and large, then.

If this committee report was to go into effect and the legislature would adopt the attitude that you do not have the right to refrain, then we would have union members or government employees paying dues into political education funds that would go to support a candidate of a particular party. If the party that was not in power was not supported by the union, was not in power, in fact an opposite party was in power, these members would still be forced to pay contributions toward their eventual downfall and their future defeat. And I would like to ask people what is the answer here. I say, if those that are affected do not want this and have no interest in this provision, if there is no real need for the change, and if it is shown that it has been and is substantially harmful, then I cannot understand why this proposal was even introduced or brought into committee.

In 1845, the *London Times* said, "The greatest tyranny had the smallest beginning, from presidents overlooked, from ideas treated with ridicule, from powerless men oppressed, to the parliament of overbearing men, from these spring a tyranny which generations of wise and good men may have to perceive and lament and resist in vain." I think we're making a mistake today if we write into the Constitution irrevocably. And perhaps this is just a small beginning but nevertheless one which may develop into something so serious in consequence that it may choke and strangle the future of our State. Thank you.

CHAIRMAN: Thank you. Delegate Jaquette will be recognized.

DELEGATE TAIRA: Will the delegate from my adjoining district yield because—

DELEGATE JAQUETTE: I will yield to Delegate Taira.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Thank you very much. In answer to Delegate Hansen's query, I overlooked one thing. My staff tells me that there was an individual who testified at our hearings. He was Robert Repas and he is a professor of labor and industrial relations at our university campus here, on leave from Michigan State University. And I assume that he would be considered a public employee.

CHAIRMAN: Delegate Jaquette.

DELEGATE JAQUETTE: Mr. Chairman, the arguments against the proposal are very convincing. I would like to add one more. It's been said that public employees are second-class citizens. I object to that. I don't believe they are and they have a remedy which employees in private industry do not have. Employees in the public sector can organize to lobby, they can organize to elect or defeat at the poll the representatives at the legislature who in the final analysis determine their pay. Employees in the private sector do not have this privilege. I do not believe that public employees need the right for collective bargaining to have their proper say.

CHAIRMAN: The Chair recognizes Delegate Fasi.

DELEGATE FASI: Mr. Chairman, I rise to speak in favor of the proposal. We're talking about the power to strike. I don't care what we write into the Constitution. The power to strike is there now. There was no right to strike in the State of New York when the schoolteachers decided that they were underpaid. There was no right to strike in Detroit when the police department had the power and used that power. Half the police department stayed home on sick leave. They were not fired. Nothing could be done. They had the power.

The question here I think is academic. The question is, do we provide language in this proposal which would leave it up to the legislature as to whether or not the right to strike itself should be given to the employees? And whether the legislature does give them that right, to me is of no import. I think it is incumbent upon all of us to recognize that the public servant is not, as Delegate Jaquette points out, a second-class citizen. But the public servant here in Hawaii is cognizant of what's going on on the mainland throughout all the states. That they will take it upon themselves no matter what we write in the Constitution, to go on strike as they did in Detroit with the police department, as they did in New York and other places with schoolteachers. The point is, when the legislative bodies of the state or the city and county fail to meet the needs, for example on the city level or the police department, which is pertinent to this discussion. The police department of Honolulu, with a starting pay of \$3.18 an hour—I'm surprised they haven't gone on strike yet. They can, no matter what we say or do, no matter what we write in the Constitution. The point here is as the proposal is written, that it gives the legislature opportunity to debate and discuss in great detail what rights should be prescribed by law. And this is why I urge the delegates here assembled today to vote for the proposal that's reported by the committee.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: I would like to speak in behalf of Delegate Yamamoto who has proposed to his committee to make an amendment to the existing Constitution. And the amazing part, Mr. Chairman, is that the amendment only furthers the Constitution by putting in the words "as prescribed by law." And the basic question in this Convention from the beginning of

the Committee of the Whole has been proposal of agreement that the matter is up to the legislature. And I'm amazed at the opposition when the words "as prescribed by law" are inserted in the amendment. There's no basic change made in this Constitution except for the strike amendment as prescribed by law. What objections have you to say that we are defenders of the Constitution, to make this amendment to the legislature?

So that collective bargaining, and we have gone far beyond the proposal of the Constitution, we don't say strike, higher wages, we're saying that the rights of the individual to be given to correct the error and present the arguments to the government is one of the basic rights of the civil rights as under the Bill of Rights proposed in this Constitution. Collective bargaining through organization, that civil service make their own rules and regulations, not the legislature, or the city council or the legislative body. And many of the rules and regulations of the civil service are administered by the department heads who are nothing but political appointees of the governor or the mayor or the chairmen of the respective counties. They become a political tool of the administration. So when it comes to the promotion, Mr. X is not permitted because he would buck the administration or he's not part of the administration or he's not part of the great wheel that makes the government go. They're not recognized so that there are discriminations in promotion. As far as the delegates state, let the public opinion today, if the government workers were to strike and if the government workers are right, then the public opinion will fight it down, but if the public opinion or the workers are wrong then the public opinion would undoubtedly caution the organization that methods and is prepared that the so-called strike if you want to have a strike. Let us say why should the government have always the immunity of the law for which I cannot understand. It's good for the private industry as far as land reform, as far as collective bargaining, but when it comes to the government, "My dear government, you are immune to application of the law." And so is the government but not in the people, and the people is the whim of the government for which they have organized for a democratic society and therefore the government of the people and by the people shall prevail.

And I think there's nothing wrong in this amendment as proposed by Delegate Yamamoto. The greatest argument to make it come good is that we can leave it up to the legislature for which the very idea is being made to propose to the legislature for the detail operation and the lack of response.

DELEGATE TAIRA: Mr. Chairman, I rise on a point of information.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Are we now here discussing the amendment that was offered by Delegate Ando or are we on the main proposal?

CHAIRMAN: We're on the amendment by Delegate

Ando but also discussing the concept of collective bargaining by public employees.

DELEGATE TAIRA: Mr. Chairman, the concept could be going to outer universe if we don't watch out.

CHAIRMAN: It was my thought that when we return to the original proposal, that our comments would have been exhausted. Delegate Lum.

DELEGATE LUM: Mr. Chairman, I'm confused now as to—supposing I was interested in seeing the language of maybe Amendment 7 or Amendment 6. If we're going to decide on the concept as well as the amendment before us, what happens to the actual language that I may prefer on another amendment?

CHAIRMAN: The language is pertinent to the amendment and this is the primary thing, but we are discussing the concept of collective bargaining by the public employees in general.

DELEGATE LUM: For clarification then, if we vote on Amendment No. 1 and we vote for it, we cannot do then the wording for Amendment 6 or 7?

CHAIRMAN: It would be in order if so desired.

DELEGATE LUM: To accept the amendment?

CHAIRMAN: Yes.

DELEGATE LUM: Okay, but suppose we defeat Amendment 1, can we still put in the language for Amendment 6 or 7?

CHAIRMAN: Let me see.

DELEGATE BRYAN: Mr. Chairman, may I make a suggestion? I suggest that we take a short recess and ask the people who have proposed various amendments to meet in the corner and maybe come out with one or two amendments.

CHAIRMAN: A short recess is declared.

At 4:15 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:26 o'clock p.m.

CHAIRMAN: The committee will please come back to order. Are there any other delegates who wish to speak?

DELEGATE NAKATANI: Mr. Chairman, I would like to, for the record, Mr. Chairman if I may, to correct my position that I'm supporting the amendment. It's not so. I was supporting the committee's recommendation.

CHAIRMAN: It shall be so noted. Delegate Ueoka.

DELEGATE UEOKA: Mr. Chairman, government is

everybody's business. At the present time we have within the State of Hawaii, organizations such as the HGEA, HEA, AFT and one other organization, I believe, the UPW. Collective bargaining implies under normal conditions that there would be an election and the winning organization will represent all the employees within this particular department or within the particular political subdivision of our State. And I'm wondering whether or not after an election takes place, that some of the smaller organizations will be wiped out as a result of the election, which means that some sector of the community will be denied the right to participate. I'm wondering whether someone can answer this question.

DELEGATE UECHI: Mr. Chairman.

CHAIRMAN: Delegate Uechi.

DELEGATE UECHI: May I answer that question?

CHAIRMAN: Proceed.

DELEGATE UECHI: With regard to those employee organizations, the representatives from the various employees' organizations came to the committee hearing, testified in behalf of this particular provision. All the organization representatives testified in favor of it, so with regard to whether one organization would be submerged should an election take place, yes, this will happen. However, those who represent the smaller organizations also went on record to support this amendment providing for collective bargaining for public employees so there is agreement that this should be incorporated in the Constitution.

With regard to Delegate Hansen's question on whether employees would be required to participate, this provision will be one that will have to be determined through legislation and that is the reason why the committee inserted that particular phrase that the legislature will then establish procedures to incorporate collective bargaining for public employees so this could be in the process of establishing the procedure. This could be stipulated in the provision in accordance with law.

CHAIRMAN: Thank you, delegate.

DELEGATE DOI: Mr. Chairman.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: I want to direct my remarks and then ask a question to the very narrow question of the amendment that is before us, the amendment proposed by Delegate Ando.

Earlier, we heard Delegate Mizuha say that this amendment will dilute the present provisions of the Constitution on this particular subject. I agree. The question I want to ask Delegate Ando is whether in his opinion it does dilute the present provisions of the Constitution on this subject and if it does or it didn't—if it does not—was it your intention to so

provide it?

CHAIRMAN: Delegate Ando, do you wish to yield to that question?

DELEGATE ANDO: Mr. Chairman, I'd be happy to respond to that question. Certainly the intention of this amendment is not to dilute the rights of the individuals of our State in public employment. But to extend to them by expressing in our laws that the legislature from time to time can improve upon the rights that we the people of Hawaii like to confer upon our public servants in terms of the area of labor-management relationship. I would refer you to a letter received by this Convention from the attorney general that was circulated. On page 3, there's a footnote that the attorney general put, quoting precisely the language to the amendment that I had proposed to this Convention expressing the intent of the committee's proposal.

Section 2 of our current Constitution provides those persons in public employment the right to organize and to present their grievances. The right to organize for professional and other responsibility is not to be ever denied in our Constitution. The essential question is the right to organize for the purpose of collective bargaining. It would be a real tragedy if this Convention would precisely write the language of what right within concept of the word of art of "collective bargaining" our people in public employment would have. I think this should be left up to the work of the legislature and I, for one, am not ever one to malign the intent of the legislature. I believe the legislature is always one that perfects our society and makes it ever more livable and a happy place to live in.

CHAIRMAN: Thank you. Delegate Doi, did you wish the floor?

DELEGATE DOI: Mr. Chairman, the question was asked, moved by the desire to know what we're voting on. The question as to what actually the proposed amendment does, has not been answered. We have heard as to its intention but I want to know as one delegate here, what does the proposed amendment do? Does it dilute it? I got the impression from the discussion on the floor that it does. I got the impression that the substance has been changed.

CHAIRMAN: Delegate Ando, do you wish to yield to that question?

DELEGATE ANDO: We have the word of a former jurist that it does. We have the word of the attorney general of the State of Hawaii that this is precisely the language that is sought by the committee.

CHAIRMAN: Thank you.

DELEGATE YOSHINAGA: Mr. Chairman.

DELEGATE DEVEREUX: Mr. Chairman.

CHAIRMAN: Delegate Devereux, the Chair would like to recognize Delegate Yoshinaga who has not

spoken yet and then I'll recognize you. Delegate Yoshinaga.

DELEGATE YOSHINAGA: The delegate was asked several questions which I think not only are pertinent but are vital in this matter and as stated by one who asked the question, there was some hedging done. I wish that the delegate would answer very clearly exactly the questions asked: One, what does the language of the amendment do? And two, what did he intend to do by the amendment?

CHAIRMAN: Does the delegate wish to yield to that question?

DELEGATE YOSHINAGA: Then, Mr. Chairman, what is this amendment all about?

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: Mr. Chairman, in a telephone conversation today with Attorney General Bert Kobayashi, I asked him practically the same question. Not as an advocate of the proposal but merely for an answer to the question. He made this statement and I wrote it down and I read it back to him to make certain that I was correct in his answer. The answer was that delegates should spell it out and make it clear. Otherwise, the court may have to do this in the event a case is brought to it. Now, we've had questions asked this afternoon and the answers have been a bit confusing. I'm not certain that any of us really know what is meant by the wording in some of these amendments.

I would like to say here that I am concerned that this amendment is not in addition to the existing language in the Constitution. I feel that the existing language in the Constitution does provide avenues for individual employees of the State to air their grievances, to have access to legislators for airing their grievances or to any of the agencies involved, whereas I believe that this amendment as I read it merely gives the right to organize for the purpose of collective bargaining. Those employees who are not involved in the organization process or who do not desire to join the employees organization would have no voice unless a special effort is made by the state legislature to provide them with such a voice. But in the Constitution, their voice would be denied if this amendment as it is written is passed, at least in my opinion.

CHAIRMAN: Thank you, Delegate Devereux.

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: It's very seldom that I rise to say that I'm in a state of confusion. But looking over Committee Report 42, page 5, it clearly shows to me that the vice-chairman that just spoke made her comment very clear that she is not in favor of collective bargaining as quoted there. I've noticed that other people that have risen to speak against the amendment I

presume is on the floor which none of us really knows what it's all about and if we don't, we should take a vote and that will show who knows what it's all about.

I rise to say that I'm in favor of collective bargaining. I rise to say that many years ago there was another gentleman carrying the same name that spearheaded the Little-Wagner Act. I rise to disagree with some of the statements made where private industry people cannot utilize collective bargaining in the areas of voting. They sure can. They showed it many a time.

But the question before this honorable body is that some of us are for collective bargaining and some of us are not for collective bargaining. So we only can take that simple word, I am for or I am not for and vote accordingly. I think we can move along. Now, I know it's been said that we don't want to rush the matters before this honorable body but the question in my mind is two words, "collective bargaining." We've got an attorney general's statement, we've got people here that prepared amendments on amendments and I think, Mr. Chairman, if we could take the first amendment and act in all sincerity that if you understand it you vote for it, if you don't understand it vote against it, and say go to the next one and believe it or not by the time we get through, you'll see that all those in favor of collective bargaining have come through and those who are against collective bargaining will show their votes too.

So, Mr. Chairman, may I ask in all sincerity, let us act with the amendment that's before us which we now know we are in a state of confusion that we don't know what it's all about.

CHAIRMAN: Delegate Dyer and then Delegate Ando.

DELEGATE DYER: I want to use this afternoon, if I may, my privilege to speak a second time. I will not take more than a minute and a half. I don't think the issue is as simple as the distinguished gentleman from Kauai indicated. As I have already indicated, it's implicit in this proposal authorization to the legislature to authorize the right to strike. Now, under and beyond that, nothing has been said this afternoon about what else the legislature might enact and as I see this proposal it's also possible under the language that is used for the legislature to enact either a closed shop or a union shop or an open shop. And I think that some thought might be given by the delegates present here today, before they think in terms of authorizing the legislature to enact not only the right to strike but a closed shop for government employees. And I'd like to answer Delegate Fasi if I may. He indicated they're going to strike anyway and I say there's a vast difference between doing something lawful and doing something that is unlawful, and with that I'll sit down.

CHAIRMAN: Delegate Ando, do you wish this floor?

DELEGATE ANDO: Mr. Chairman, there is no question, I hope, before this Convention that I voted in

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the committee for the issue of collective bargaining and my signature is affixed to Standing Committee Report No. 42. I'm pleased that the attorney general has cited in the footnote this amendment. But in view of the concern on language and the lack of clarity in the minds of some of the members of this distinguished body, I seek the committee's permission to withdraw this amendment.

CHAIRMAN: You're withdrawing the amendment? Who was the seconder?

DELEGATE LUM: I, sir.

CHAIRMAN: Delegate Lum, you seconded? The motion to amend has been withdrawn. Now the proposal before the house is the committee proposal as submitted.

DELEGATE DEVEREUX: Mr. Chairman, a question for Delegate Fernandes, please.

DELEGATE FERNANDES: Mr. Chairman, I will not yield because I think there's enough said. Thank you very much.

DELEGATE DEVEREUX: Mr. Chairman, then I should like to make one thing very clear. A statement was made that my signature on the committee report indicated I'm not in favor of collective bargaining. The statement on the committee report is that I am not in favor of the term "collective bargaining" as it is used in the proposed amendment by the committee. I am not against the concept of collective bargaining. I wish that clearly understood. I think, if the delegates will look at Amendment No. 5, they will see that this is true.

DELEGATE FASI: Mr. Chairman, point of information.

CHAIRMAN: Yes, state your point, please.

DELEGATE FASI: We've had one amendment withdrawn. What are the delegates talking on now? Committee proposal or—

CHAIRMAN: The committee proposal is now before the house.

DELEGATE GOEMANS: Point of order.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: I'm glad to see that there are others that are today confused. I was confused some days before that. I still don't understand exactly what voting on concepts means but I'm trying. It does seem to me however, that if we have seven amendments to a committee proposal, that the amendments must go in order before we get to the committee proposal. We now have disposed of, I believe, by leave of the body, to withdraw Proposal No. 1; that gives us Proposal No. 2 by Delegate Ando, three proposals by Delegate Lewis and two other proposals. Now, I think we have to dispose of those first if my understanding of

parliamentary law—

CHAIRMAN: Delegate Goemans, they are on the desk but haven't been offered by the movants yet.

DELEGATE DEVEREUX: Mr. Chairman, I would wish to withdraw Amendment No. 5 in favor of Amendment No. 7 proposed by Delegate Lewis.

CHAIRMAN: Delegate Rhoda Lewis is recognized.

DELEGATE RHODA LEWIS: I move the adoption of Amendment No. XII(7).

DELEGATE MEDEIROS: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Medeiros.

DELEGATE MEDEIROS: Mr. Chairman, you were about to act on the committee report to begin with, when Delegate Goemans stood up. Am I correct to ask if the last recess and the purpose for the last recess was all of those who have proposed amendments from one to seven were to get together and propose one amendment with all of their collective thoughts together and if this is so, am I correct in saying it?

CHAIRMAN: Yes, there was some discussion on—

DELEGATE MEDEIROS: What was the result of that recess?

CHAIRMAN: The members of the Committee on Public Health sought to do the same earlier and the conclusion was not reached.

DELEGATE MEDEIROS: If this is so, then I say that we act on each and every amendment that we have before us now.

CHAIRMAN: No, some are being withdrawn.

DELEGATE MEDEIROS: The ones that won't be withdrawn will be acted upon, am I correct?

CHAIRMAN: If the proposers so indicate.

DELEGATE MIZUHA: Mr. Chairman, I withdraw any other amendment I have on the floor at this time.

CHAIRMAN: That will be No. 6.

DELEGATE RHODA LEWIS: Mr. Chairman, may I then renew my motion to offer No. 7? It reads as follows:

"Section 2 of Article XII is amended by adding a sentence as follows:

"Persons in public employment shall have the right to engage in collective bargaining procedures as established by law, in the areas therein prescribed."

DELEGATE O'CONNOR: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate O'Connor seconds the motion. Delegate Lewis.

DELEGATE RHODA LEWIS: This amendment would leave in the section that is there now and would add a further provision as stated here. "Persons in public employment shall have the right to engage in collective bargaining procedures as established by law, in the areas therein prescribed."

CHAIRMAN: Is there any discussion? Delegate O'Connor.

DELEGATE LUM: Mr. Chairman, point of information.

CHAIRMAN: Delegate Lum.

DELEGATE LUM: I want a clarification from the Chair. The question before the house now is the acceptance of Proposal No. 5 which asks for an amendment to Section 2. And the amendment here says that Section 2 of Article XII is amended by adding—am I to understand by this particular action that this sentence would be added on to the proposed amendment to the actual section in Article XII?

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: It will be added to the language in the present Constitution and it's my understanding that we can offer any proposal that is germane to the subject matter. So in lieu of the committee proposal this would become the committee proposal when adopted. That is the addition to the present constitutional language of this sentence.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I rise to speak in favor of the amendment which is designated XII (7), and the reason I am in favor of this particular form of amendment is that it leaves the words "collective bargaining" to be interpreted within our own State by our own state court and by our legislature. I would suggest that using the words "collective bargaining" alone in our Constitution for a second time after they've already been used in Section 1 of Article XII would limit their use. I might point out to the delegates that when Section 1 of Article XII, which has to do with persons in private employment, is looked at by a court or by anyone, there is a large body of law which applies; namely, the Wagner-Taft-Hartley Acts, the National Labor Relations Act. And I would suggest that the words "collective bargaining" as used in Section 1—this has been pointed out before—be words of art which have been interpreted by courts and which are contained in those pieces of legislation.

I would further suggest, Mr. Chairman, that in Section 2 of Article XII, we use words that apply only to our own public employees which we can define here

in the State of Hawaii. And I think that the addition of the word "procedures" to collective bargaining in Delegate Lewis' proposal sufficiently changes those words to allow us in the State of Hawaii to set our own statutes and to make our own interpretations legally of this particular provision.

CHAIRMAN: Before recognizing Delegate Yoshinaga, the Chair would like to request that we confine our remarks just to the language in this amendment. Delegate Yoshinaga.

DELEGATE YOSHINAGA: Did somebody second the motion?

CHAIRMAN: Yes, Delegate O'Connor seconded the motion.

DELEGATE YOSHINAGA: I would like to ask Delegate Rhoda Lewis a question, to begin with.

CHAIRMAN: State your question.

DELEGATE YOSHINAGA: Are you withdrawing your proposed amendments on the subject matter, No. XII (4) and XII (3), and relying on XII (7) then?

DELEGATE RHODA LEWIS: Mr. Chairman, am I required to withdraw the amendments?

CHAIRMAN: No. It is at your discretion, Delegate Lewis.

DELEGATE RHODA LEWIS: I was not withdrawing them absolutely. I was putting this as the best form in my opinion.

DELEGATE YOSHINAGA: All I want to know is this. I'm not asking whether you're required to do it or anything else. All I'm asking you is, are you withdrawing 3 and 4 and relying on 7? Yes or no. I'm having a hard time keeping track of all the amendments.

CHAIRMAN: The Chair will declare a short recess.

At 4:50 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:01 o'clock p.m.

CHAIRMAN: The committee will please come to order. Delegate Yoshinaga.

DELEGATE YOSHINAGA: Mr. Chairman, I want to apologize to Miss Lewis. I don't want her to get the impression that I was trying to force her to withdraw her amendments. All I wanted to do was find out how many she had so I can get ready and let my 18-year-old daughter in Waipahu know it's going to be a long night. If she has five more, it's okay with me. I just want to know how many.

CHAIRMAN: Thank you, delegate. Delegate Lewis.

DELEGATE RHODA LEWIS: I simply wanted to answer the delegate. I have now reviewed my other amendments. Unfortunately, each time I scratched them up, I lost a copy. Those will be withdrawn if this No. 7 should pass.

CHAIRMAN: Delegate Bryan, do you wish the floor?

DELEGATE BRYAN: Mr. Chairman, I think it's been amply demonstrated that the whole area of collective bargaining is somewhat of a legal jungle this afternoon, and perhaps one way out is to look carefully at this Amendment No. 7. It appears to me that this amendment says what the committee was intending. I might also mention that the importance of collective bargaining might be blown home to all the delegates when we realize that we are public employees. We're not enjoying an 8-hour day. For that reason, I suggest that we vote now and positively on this amendment. Thank you.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, I rise to a point of inquiry. I think it's implicit on us as delegates to this Convention in writing up documents or amendments to amend the basic document that controls the government operations of our State. It is implicit upon us that we write language as unequivocal and clear as possible for the lay public who are going to ratify the amendments, that they understand some of the proposals that we're going to bring before them. And I think one of the questions that bothers me and bothers a lot of people here, the question that I am a little disturbed hasn't been asked as yet. What is implied in the term "collective bargaining." I heard opinions expressed here by prior speakers that in due interpretation the term "collective bargaining" implies the right to strike. And if this is true, I think we should very clearly say so in any amendment using the term or any committee proposal using this term. I think to determine this is very important. If it is not implied that the right to strike be included in this word or to be construed as such, then we should say so in the language. If we want to prevent a certain category of government workers from striking, we should also say so; the right to strike is limited to a certain category of government employees. But we should be very explicit because I think if this question bothers us here, you can imagine how much it's going to bother the average man that has to ratify portions of this Constitution.

CHAIRMAN: Delegate Fasi is recognized.

DELEGATE FASI: I want to raise a point of clarification. Mr. Chairman, I believe that this Amendment 7 is out of order to begin with. We have before the body a committee proposal which is the main motion. Delegate Lewis assured me during the break that this does not amend the committee report at all. It goes direct to the present Constitution and adds to Section 2 of Article XII. That being the case, I submit that this amendment at this time is out of order.

because it does not amend the main motion which is the committee proposal.

CHAIRMAN: Delegate Lewis, is this your intent as Delegate Fasi has indicated?

DELEGATE RHODA LEWIS: Mr. Chairman, this amendment is offered in lieu of the committee proposal language. It is a form of amendment to strike out and substitute another form of amendment and that is what is being offered.

CHAIRMAN: Delegate Fasi, the Chair rules that this is in order. It is a substitute motion and will be added to the original provision in the Constitution. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, the delegate from Kalihi has asked several questions. Although I was not a member of the committee, I will endeavor to answer his questions by referring you all to Committee Report No. 42, on page 3, in the middle paragraph.

It specifically says there that the term "collective bargaining" as stated in Section 1 of Article XII with reference to private employees is not identical to the term "collective bargaining" that is used in the original committee proposal. Delegate Lewis' amendment further dilutes whatever term—whatever was inherent in the term "collective bargaining" in Section 1 by saying "collective bargaining procedures" and that was alluded to by Delegate O'Connor. The committee report clearly explains to anyone who is concerned as to what the committee intended with this sentence in the paragraph. "In the case of public employees the rights of collective bargaining will be restricted to those areas and in such manner as will be determined by the legislature. Therefore, the right to strike is a matter for legislative determination." And I think this amendment proposed by Delegate Lewis, and I support this amendment, should be a matter of great delight to our brother and sister legislators. They will determine the areas in which collective bargaining may proceed with reference to public employees and they will definitely pass legislation which says whether or not public employees will have the right to strike in various areas of the state and county employment.

CHAIRMAN: Delegate Bryan.

DELEGATE BRYAN: Mr. Chairman, the previous speaker has stated some of what I had hoped to state but I would like to point out that the determination or the definition of collective bargaining is a difficult one and therefore to have this defined by the legislature which is provided for in this amendment is a wise course for this body to take. Thank you.

CHAIRMAN: Delegate Dyer and Delegate Kawasaki to follow.

DELEGATE DYER: I simply wish to point out that under the latest proposal by Delegate Lewis, I do believe that the language used is broad enough to permit the legislature to authorize government

employees to strike and also to provide for government employees either a union shop or a closed shop.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: I'm very glad that the delegate from Kauai did clarify this point. I wish he had done that immediately after Delegate Ching implied that collective bargaining would include the right to strike and I guess some other delegate did make this inference. Now, I think this clears the air now. I think we know how to vote but I must comment here that this is a beautiful piece of buck-passing back to the legislature.

CHAIRMAN: Delegate Uechi is recognized.

DELEGATE UECHI: Mr. Chairman, I rise to speak against the amendment. With regard to the proposed amendment, I believe the amendment is to add the sentences as proposed here. However, it still retains Section 2 of the Constitution as it now exists. I urge all members of this body to vote down this particular amendment. I agree with the delegate from Kauai that it dilutes the term "collective bargaining" and I speak in favor of the committee proposal as presented to this body. Thank you.

DELEGATE GOEMANS: Point of order.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: I understand what Delegate Lewis has intended and I think I understand what Delegate Fasi was saying but I don't think as this Amendment No. 7 is worded, it can be voted on intelligently. If it is considered a motion to strike and insert that, we would strike the new Section 2 in the Committee Report No. 42 and insert the sentence contained in Amendment No. 7. There would be no first sentence in Article XII, Section 2, that having been removed by the Committee Report No. 42. I don't think that was Delegate Lewis' intention and I think that should be clarified.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: If permitted, I would like to explain this amendment. The delegate from Oahu who just spoke has been opposed to this amendment. I think I should make it clear that the committee proposal does not in any way give to a public employee more right—

DELEGATE FASI: Mr. Chairman, point of clarification.

DELEGATE GOEMANS: Mr. Chairman, I asked an inquiry and this is not responsive to that inquiry.

DELEGATE MIZUHA: If the Chair so rules that my explanation is not acceptable to the members of this Convention, I'll sit down.

CHAIRMAN: I would like to ask the movant of the amendment to reply to that. Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I have offered this as a substitute committee proposal. And if it were adopted it would go in as a provision saying that Section 2 of Article XII, it certainly is the present Section 2 of Article XII in the Constitution, is amended by adding a sentence as follows; and the Style Committee could rewrite the whole section as a better means of putting the proposal before the public. I do disagree with the suggestion that the committee proposal has struck out the sentence that was in the Constitution and therefore there is nothing to which I can add a sentence. The committee proposal has not been adopted. I am moving that we reject the committee proposal by substituting this as a committee proposal.

CHAIRMAN: Thank you, Delegate Lewis.

DELEGATE GOEMANS: Delegate Lewis, could you word then what you would consider the final wording of Section 2 under your Amendment No. 7?

CHAIRMAN: Delegate Lewis, you wish to yield to that question?

DELEGATE RHODA LEWIS: Section 2 would read as follows: "Persons in public employment shall have the right to organize and to present and make known their grievances and proposals to the State, or any political subdivision or any department or agency thereof. Persons in public employment shall have the right to engage in collective bargaining procedures as established by law in the areas therein prescribed."

I can see it would be improved if we put in "also shall have the right" but I believe the Style Committee could do that.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, it would appear then that Delegate Lewis' amendment has the effect of amending the Constitution itself rather than amending Committee Report No. 42. However, I do think this is out of order. However, it has been read, it can be viewed intelligently and I think it can be voted on. I don't think it's a good practice however to consider the Constitution, the main motion before the body, when we're considering the entire committee report. The entire committee report is the motion before the body and it should be considered so and should be amended as such. In this case, the Constitution is being amended. I think we can vote on it if it's the will of this body as read by Delegate Lewis but I think it is a bad procedure, but with the intent of going on with the business, I think we should vote on it.

CHAIRMAN: Delegate Fasi.

DELEGATE FASI: Mr. Chairman, that's exactly the point that I made earlier. I think we need a ruling because we are setting a precedent. We get a

committee's proposal and if we follow this procedure, we in effect then are going to bypass the committee proposal and go direct to the Constitution which this amendment is doing right at this moment. And I think we need a ruling one way or the other to establish precedent.

CHAIRMAN: Mr. President.

PRESIDENT PORTEUS: Mr. Chairman, as I understand it you have ruled. My understanding is your ruling is correct. You stay with it, we can get to a vote.

DELEGATE KAGEYAMA: Mr. Chairman, I think Delegates Fasi and Goemans are correct. May I have the privilege of speaking? I think the amendment should read as follows, Mr. Chairman. That the Proposal No. 5, Section 2, Article XII—

DELEGATE MIYAKE: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: If any delegate wishes to challenge the ruling of the Chair he is welcomed to do that. There's no debate.

CHAIRMAN: The Chair has ruled that the amendment is in order and I think the intent is clear. I'd like to suggest that we proceed to a vote.

DELEGATE KAGEYAMA: In that case, Mr. Chairman, I'll question the legality of the amendment later on. For the procedure of the rule, as President Porteus has pointed out, the rules and regulations are the bible of this Convention. The bible of this Convention is not Robert's *Rules of Order* but whatever the Convention has adopted.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, the amendment proposed here by Delegate Lewis is offered in the interest of clarity but I'm confused. I'm confused more so than the proposal of the committee. It's been explained here that the phrase "collective bargaining" is a word of art and has a certain meaning and therefore they add the word "procedures" but they still use the words "collective bargaining." And as I read it further, it says "collective bargaining procedures as established by law." In other words, is collective bargaining going to be established by law but there is no clarification of the words "collective bargaining." On the other hand, the committee proposal as we have it carries with it a letter from the attorney general's office which interprets collective bargaining, and it says that "the extent to which the right would be given, restricted, regulated or withheld is a matter for the legislature in the exercise of its judgment would decide." In other words, the legislature and the proposal itself says "collective bargaining as prescribed by law." Whatever the legislature prescribes, this is what collective bargaining is going to mean.

I don't see any confusion in the proposal of the committee and I think that the amendment here makes it more difficult to—it really confuses the situation. I think that what the delegates ought to bear in mind is that if the committee proposal is adopted, it would mean (1) that the legislature will decide exactly what collective bargaining means. Secondly, the legislature need not take any action. To constitute this proposal will not force the legislature to take any action in which case there would not be any definition of any rights of the employees and they can have these. Further rights of collective bargaining can be had only if the legislature prescribes it by law.

CHAIRMAN: Are you speaking against this amendment, Delegate Ariyoshi?

DELEGATE ARIYOSHI: Yes.

CHAIRMAN: Are you ready for the question? The question before the house is the amendment offered by Delegate Lewis to substitute itself for the committee proposal and it states: "Persons in public employment shall have the right to engage in collective bargaining procedures as established by law in the areas therein prescribed."

DELEGATE GOEMANS: Why don't you read the whole Section 2 upon the passage or—

CHAIRMAN: And this will be added to the existing provision in the Constitution which states, "Section 2. Persons in public employment shall have the right to organize and to present and make known their grievances and proposals to the State, or any political subdivision or any department or agency thereof."

DELEGATE KAUHANE: Mr. Chairman, I rise for a point of inquiry here. Originally we had a motion that was duly made and seconded to consider the committee's proposal and that motion is pending subject to amendments that have been permitted. We now come with another amendment by way of a substitution to reach right into the heart of the Constitution rather than the proposal. Now, which should prevail? The committee proposal should be voted upon first or this one be voted upon first?

CHAIRMAN: The Chair rules that this is a substitute motion and it is now prevailing. Mr. Clerk, call the roll.

(Roll call having been ordered, the motion to adopt the amendment offered by Delegate Rhoda Lewis to Committee Proposal No. 5 failed to carry by a vote of 13 ayes and 62 noes, with Delegates Akizaki, Alcon, Amaral, Ando, Ansai, Ariyoshi, Bacon, Beppu, Burgess, Donald Ching, Dodge, Doi, Dyer, Fasi, Fernandes, Goemans, Hansen, Hidalgo, Hitch, Ho, Kage, Kageyama, Kamaka, Kato, Kauhane, Kawakami, Kawasaki, Kudo, Kunimura, Lalakea, Larson, Peter Lewis, George Loo, Matsumoto, Medeiros, Menor, Minn, Miyake, Morioka, Nakatani, Noguchi, Oda, Ozaki, Pyo, Saiki, Shiigi, Souza, Steiner, Suwa, Taira, Takahashi, Takamine, Uechi, Ueoka, Ushijima, Wright, Yamamoto, Yim,

Yoshinaga, Young, Mr. Chairman and Mr. President voting no; and 7 excused, with Delegates Amano, Andrade, Hara, Harper, Kaapu, Frank Loo and Schulze being excused.)

CHAIRMAN: The noes have it. The motion is lost. Is there any other discussion to come before the body?

DELEGATE RHODA LEWIS: Mr. Chairman, a short recess please.

CHAIRMAN: A short recess is declared.

At 5:27 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:32 o'clock p.m.

CHAIRMAN: The meeting will please come back to order. The Chair would like to place before the body the committee proposal as presented by the chairman. I would like to ask you if you're ready to vote on it at this time.

DELEGATE DEVEREUX: Mr. Chairman, are you asking for this body to vote on the committee proposal without any further discussion?

CHAIRMAN: No, the floor is open for further discussion. I assumed that we have had a lot of discussion at this point and perhaps the body would like to vote on the proposal.

DELEGATE DEVEREUX: Mr. Chairman, I should like to speak against the proposal.

CHAIRMAN: You're recognized for that purpose, delegate.

DELEGATE DEVEREUX: Mr. Chairman, much discussion was held on this issue in the course of the committee hearing and statements were received and considered by many sources.

I do not believe the proposed amendment to Section 2, Article XII as it is worded is in the best interest of the government employees nor the rest of the citizens of the State. The present section as it stands, permits and encourages implementation of the privilege of public employees to negotiate with the management in areas which are properly subject to negotiation. Before going into my objections to the proposed amendment, I would like to review briefly the unprecedented progress our State has made in this area to date.

In 1939, Mr. Chairman, all employees in the public service of the Territory of Hawaii and its political subdivisions were included into the civil service system. The historic Hawaii personnel legislation was the result of a cooperative effort by public administrators, legislators and representatives of employee organizations. This progressive pattern has continued for 29 years. The Hawaii State policy is contained in the State's management-employee relations manual. In this,

responsibility is clearly delineated and directions firmly set forth as follows, and I quote: "Furthermore, this administration is responsible for creating sound management-employee relations in that developing a work environment in which employees working together will be stimulated to give their utmost in the service of the public."

To fully realize, Mr. Chairman, the evolution of employee-management relations in our State, we may well reflect on the situation which existed in Hawaii during earlier territorial days. World War II set into motion political and economic forces that were to shatter the historical framework. Mainlanders and former plantation workers poured into construction and service trades. As war veterans returned, the atmosphere in Hawaii underwent a profound transformation. Many of you in this room understand what I am talking about.

This environment provided a perfect setting for employee organizations which were to gain rapidly in political and economic strength. Until statehood became a reality, much of the relationship between government and employee was of a disorganized and informal nature. Management too often retained the paternalistic attitude which was the holdover from the plantation economy days. Between that time and the present, Mr. Chairman, the progress which has been made is little short of remarkable. There has been much reference in committee discussions to the State of Wisconsin's policy on collective bargaining although little has been said on the floor of this Committee of the Whole.

I command to the attention of this Convention, the presently proposed amendment to the rules and regulations governing employment in the state civil service system. Section 10, sub-part F sets forth the regulation concerning employee-management relations. The privileges therein granted to public employees are so broad and sweeping that I believe it goes far beyond those of the public employees of the State of Wisconsin. Under our proposed regulations, for example, management is required to advise and consult with employees before changing any major policy or procedure. How many public employees in how many states enjoy this privilege? And all this has been accomplished in such a relatively short period of time with no necessity for changing the basic provision of the Constitution.

Even though a young and growing State, we have done an outstanding job in meeting average means of the 50 states' public employment benefits. For example, our retirement system, which has been mentioned before, the public employees, ranks among the highest in the nation. The attorney general has issued a formal opinion which you heard about earlier today but there is nothing in the present provision of Section 2 to prohibit collective bargaining. If we were to endorse collective bargaining in the areas of position classification, promotion, transfer, et cetera, we would destroy the merit system.

The employee organizations today are invited to sit on task forces and committees whose recommendations

are instrumental in revising classification structures.

Mr. Chairman, my objections to the proposed amendment may be summarized as follows: (1) The present section permits the legislature to proceed with the development of employee-management relations in an orderly and constructive manner. That this has been and is being done is self-evident. (2) The proposed amendment in effect, in my opinion, will mandate the legislature to take action on the issue of collective bargaining. Without precedent in other states, without a legal definition except one which depends on the context in which it is used, without any aggrieved having petitions for hearing, what is our responsibility to the State of Hawaii?

My answer is that we should not force the fully-elected representatives of the State to a course of action which they may now take of their own volition. It has been said this is the trend. Our legislature has amply demonstrated this interest in meeting the needs as they arise. I submit that if collective bargaining per se is provided for in our Constitution and ratified by the people and if it is eventually implemented to its fullest extent, one of the most significant of the impacts would be a revision not of the major responsibility of public administration and of the legislation for public employment. A revision which will be beyond recognition. A further important impact would be upon the taxpayers of the State. Where salaries and benefits are increased possibly beyond the ability to pay, then in order to meet the cost taxes will have to be increased or other vital government services will necessarily have to be curtailed or denied.

Finally, I wish to make it clear that I do not object to the principle of collective bargaining, nor do I object to extending the privilege to public employees to negotiate on issues which do not conflict with the public interest. I firmly believe, Mr. Chairman, that continued progress toward our mutual goal of making Hawaii the No. 1 State can best be served by according the legislative body the flexibility to move with the trends of times.

The Constitutional Convention has a grave responsibility to the people of the State. We cannot be placed in a position of altering the Constitution to accommodate any single group of citizens. The right of public employees to petition, to lobby before the legislature and its committees and indeed the right to seek collective bargaining is not now denied them. From the days of the drafting of the first Constitution of the United States, Mr. Chairman, it has been uniformly held that constitutional mandate should not encroach upon legislative prerogative. I submit to you that the proposed amendment would be in direct conflict with this principle of American heritage.

Members of this body, I urge you to vote this proposal down. Thank you.

CHAIRMAN: Thank you, Delegate Devereux. Delegate Mizuha.

DELEGATE MIZUHA: Mr. Chairman, I wish to speak in support of this amendment with my understanding of what the proposal says.

My understanding of this proposal is that the public employee shall have the right to organize and to engage in collective bargaining as prescribed by law. The reason for this is that there isn't a great body interpreting what collective bargaining is with reference to public employees. And I want to make it clear that my vote for this proposal is to give them not only the right to organize but to engage in collective bargaining as prescribed by law.

CHAIRMAN: Thank you, delegate. Are you ready for the question?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I wish to speak in support of the committee proposal. I shall not go back as many years as the prior speaker. I'll go back to 1950 when our present Constitution was put together and has been acclaimed as one of the finest constitutions in the United States.

Somehow through Article XII the workers of Hawaii received tremendous recognition in the State's governmental document. Section 1 clearly provided people who work for a living with the right to organize for purposes of collective bargaining. However, as an afterthought, a serious afterthought, there was a Section 2 added relating to public employees and in spite of the many statements made here of how great things are for government employees, in spite of the positive positions taken here that government employees are given a great thing in Section 2, I am a person of the belief that Section 2 gave absolutely nothing to the government employees of the Territory of Hawaii at that time. All Section 2 does is to give the employees the right to organize. However, it goes on and says they have the right to present and make known their grievances, their proposals to the State or any political subdivision of any department or agency thereof. That is not a grant of right by the Constitutional Convention of 1950. That right is granted to us by our great country and clearly spelled out in the Constitution of the United States of America.

So in effect, all we said was they shall have the right to organize for what purpose nobody knows. Obviously for no purpose at all. All that the committee proposal designs here today or hopes to accomplish is to give the government employees some rights, for it may be wonderful to tell the government employees of the affluence they enjoy today in Hawaii.

Many, many people enjoy great affluence today but they are not all government employees. There are several government employees who do suffer. There are government employees who do worry, for in 1953 government employees who thought they had too little already were deprived of great rights, rights such as sick

leave, holidays, vacations and so forth. There was a stoppage of employment of government employees at that time. There was stoppage of promotions and pay raises. There was, at that time, a great fear among government employees for although they were not getting much for their great services for the people of the Territory of Hawaii, they were being punished because of economic conditions and political conditions that existed at that time.

And so, in 1954, a great political revolution swept throughout the Territory of Hawaii and that revolution was in part carried by the government employees, along with organized labor, the Democrats and independents. And in the short years since 1954, from the bankrupted terms of the territorial government to the affluence that we speak of today, the government employees of the Hawaii State and county have made a few gains.

And here we meet in the greatest body of the State of Hawaii and argue about a fundamental right for government employees. All that the government employees ask here is the right of an expression in our Constitution, the finest document in the land, we hope when we get through, that they too shall have the right not only to organize but to use that organization for collective bargaining purposes so they can better their standard of living, so they can walk and live and study and play in Hawaii like all employees.

Mr. Chairman, all they ask is that right from this Convention. That right will have to be implemented by legislation and if the legislature fails, perhaps that right will be taken into court for court action, I do not know. But that is all government employees are asking.

There are many employees who have no right to grievances as I said, granted to them by our parent organization, our parent document, the United States Constitution. But talk to the government employees, talk to the ones who have grievances, talk to the ones that had any problems with the department heads, talk to any government employee who wanted anything and was denied that by our own state and county government and you'll find many employees that don't know of this so-called right in Section 2 and we find out that this so-called right to present their grievances and their proposal are not rights at all.

I urge all of you here, if you do nothing else in this Convention, to adopt one principle that declares to anyone who works in Hawaii that in Hawaii at least we recognize that there may be some differences between the private employees and the public employees but that the people of Hawaii, through our constitutional delegation, are trying to make people equal here whether they work for the private industrial empire here or for the government of the State and county. Thank you.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I speak in favor of Committee Proposal No. 5. The purpose and intent of Proposal No. 5 is to protect the right to

organize for the purpose of collective bargaining. As a matter of constitutional right, however, that right is subject to reasonable regulation by the legislature. That's why the insertion of the words "as prescribed by law" or probably some would like to have the words "in accordance with law." Certainly, Mr. Chairman, the legislators should be prevailed upon to take their stand on this matter of providing the necessary regulations as prescribed by law. This is one of their responsibilities and they should not shirk this responsibility in providing the necessary regulations for collective bargaining by government employees. Perhaps the words "as prescribed by law" mean that the right of collective bargaining and right to organize don't exist until the legislature prescribes and recognizes that right. And therefore the legislature should at this time recognize this right and establish regulations for the right for collective bargaining. To recognize the right to organize for the purpose of collective bargaining is a matter of policy. It does not mean that the legislature can take away that right nor remove that right, of the public employees to organize and bargain collectively. This proposal is for the purpose, the full purpose of protecting the rights of public employees to organize for this specific purpose of collective bargaining. I urge that the proposal submitted by the committee be approved.

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: For what purpose do you rise, Delegate Kageyama?

DELEGATE KAGEYAMA: I rise for the suggestion for a decision.

CHAIRMAN: If you vote for the motion, you're voting to delete the existing provision in Article XII, Section 2, and insert a new provision which says, "Persons in public employment shall have the right to organize for the purpose of collective bargaining as prescribed by law." If you vote against it, you're voting for the existing provision. Mr. Clerk, please call the roll.

(Roll call having been ordered, the motion to adopt

Committee Proposal No. 5 was put by the Chair and carried by a vote of 57 ayes and 17 noes, with Delegates Ajifu, Bryan, Devereux, Dodge, Dyer, Hansen, Hitch, Jaquette, Kage, Kamaka, Lalakea, Larson, Rhoda Lewis, George Loo, Lum, Ozaki and Steiner voting no; and 8 excused, with Delegates Amano, Andrade, Hung Wo Ching, Hara, Harper, Kaapu, Frank Loo and Schulze being excused.)

CHAIRMAN: The ayes have it. The motion is carried.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: I rise to a point of personal privilege. Could the standing committee be instructed, in the preparation of the Committee of the Whole report, that the statement concerning Proposal No. 299, page 1 of the committee report be modified to correctly reflect the fact? The committee report states that Proposal No. 299 offers no amendment to Article XII to the Constitution. The point of fact, Proposal 299 offered to delete Article XII of the Constitution and place it under Article I, the Bill of Rights. I prefer that was noted.

CHAIRMAN: The records will so indicate. Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, that will be so noted. Mr. Chairman, I move that this committee rise and report progress made to the Convention.

DELEGATE DEVEREUX: Mr. Chairman, I second the motion.

CHAIRMAN: It has been moved and seconded that this body rise and report to the Convention. All in favor, say "aye." Opposed, "nay." Motion is carried.

The Committee of the Whole adjourned at 5:52 o'clock p.m.

Debates in Committee of the Whole on **STATE BOUNDARIES, CAPITAL, FLAG**

(Article XIII)

Chairman: DELEGATE ROBERT CHANG

Friday, August 30, 1968 • Morning Session

The Committee of the Whole was called to order at 9:15 o'clock a.m.

Delegate Chang presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order.

This committee is convened to consider Standing Committee Report No. 37 dealing with Article XIII of our Constitution as submitted by the Committee on Revision, Amendment and Other Provisions. At this time, I would like to call on the committee chairman, Delegate Kato, to move for adoption of the report.

DELEGATE KATO: I so move, Mr. Chairman.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: I second the motion.

CHAIRMAN: Thank you. Delegate Kato.

DELEGATE KATO: Mr. Chairman, Standing Committee Report No. 37 relates to Article XIII. Very briefly, the article is very short as it relates only to the state boundaries which were delineated and designated by the Statehood Admissions Act, location of the capital city being Honolulu, and the adoption of the Hawaiian flag as the state flag. Your committee heard only a few proposals regarding this article. After full discussion we felt that the language and the coverage of Article XIII was more than adequate and that no change was necessary. There was almost unanimous consent for the acceptance of the committee report and I ask that the members of this body accept this report and retain Article XIII in its entirety.

CHAIRMAN: Thank you, delegate.

Is there any other discussion on the report? Delegate Shiigi.

DELEGATE SHIIGI: Mr. Chairman, I rise to support the proposal, No. 37 on Article XIII, Sections 1, 2 and 3. I strongly urge you to adopt this as status quo.

Last evening, after returning home from our late session, I prepared a lengthy ten-minute speech to speak on this article because it was my conception that we

were going to bring up the boundaries along the seashore. But this morning, I was told by the chairman that this is not true. Therefore, all my hard work is sort of down the drain but he has given me the privilege to speak on this next Tuesday. Therefore, I would like to just add to our chairman's request that we adopt this report because there is no need for changes. Some proposals were made to add to this article the state song, "Hawaii Pono"; the state flower, the hibiscus or aloalo; the state bird, the nene; the state seal. But as stated in the committee proposal these symbols are presently given recognition by statute and it was felt not necessary to clutter our Constitution.

Many of us agree that we have a good Constitution and only minor changes were necessary. So in closing, may I just read you a poem. The word "aloha" was asked to be included but instead of including it in the Constitution I would like to include it in our journal this morning.

"Aloha means we welcome you
It means more than words can say
Aloha means good luck to you
Good night at the close of day

"It's just like a love song
With its haunting sweet refrain
Bringing you joy, bringing you pain

"Aloha means farewell to you
Until we meet again."

So fellow delegates, if you wish to bid us aloha, let us expedite our work without much shibai and repetition and adopt Committee Proposal No. 37 unanimously. Thank you.

CHAIRMAN: Thank you, delegate, for your warm words.

Delegate Aduja is recognized.

DELEGATE ADUJA: Mr. Chairman, I am also a member of this committee but I have a little problem in this Section 1 and I would like to ask a question of the chairman.

CHAIRMAN: State your question.

DELEGATE ADUJA: It is my belief that when we say "status quo" or "no change," that the Style Committee will not play around with it. But I notice

there are certain areas in Section 1 that has "Territory of Hawaii," "territorial waters," and "Act." I believe that some changes should be made to conform to our State and this is what I want to find out from the chairman whether or not this will be an exception that the Style Committee could play out—along with it to make it more consistent with our present State.

CHAIRMAN: Delegate Kato, would you like to answer that?

DELEGATE KATO: Yes, I will, Mr. Chairman. I believe that the language contained in Section 1 is correct because reference is made to the fact these waters shall be included in the Territory of Hawaii on the date of the enactment, of this act. In this case, reference being made to the Admissions Act where statehood was granted by the Congress of the United States. I don't think that language is wrong.

CHAIRMAN: Thank you. Is there any other discussion on the motion?

DELEGATE YAMAMOTO: Mr. Chairman.

CHAIRMAN: Delegate Yamamoto.

DELEGATE YAMAMOTO: I speak for the committee's report. As a member of this committee, I did propose Proposal No. 316 which caused a little furor on our Big Island. The editor of our local paper, Hilo paper, stated that when this proposal goes through, they are thinking in the sense that the capitol will be moved to Hilo and Hilo will go to Kailua, Kona. Well, after much deliberation of myself and meditation and with the advice from the Oahu delegates here, I consider this is not necessary. At that time when this proposal was proposed I felt that the referendum may come into the Constitution. But as you know on Standing Committee Report No. 44, we don't have that. I know we have a new county building on our island, a brand new one, and a very beautiful state building here with the center open to the sky. The only thing I can say that is lacking here is this, that the splendor of Madame Pele should be in the center of the Capitol building. With this I say to you, delegates, vote for this committee proposal.

CHAIRMAN: Thank you, delegate. Any other discussion?

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I'd like to express—not speaking against the committee report, but I'd like to express similar feeling as Delegate Aduja, that with this particular section, it would seem to me that there are various changes which might be looked over by the Style Committee. For example, I would like to ask the chairman what the word "appurtenant" means in this section and if he would think that the average citizen would understand this in our Constitution.

CHAIRMAN: Delegate Kato, would you like to answer that?

DELEGATE KATO: Appurtenant, I think can be defined as being, in this case, the attached or surrounding reefs of the islands in question.

DELEGATE LARSON: Do you think, Mr. Chairman, that the average citizen would understand this particular word?

DELEGATE KATO: Probably not. However, this is language that is commonly used and I think it more or less fits the thought that is in mind so far as what is included or not.

DELEGATE LARSON: I will accept your comments. It would be my feeling only, Mr. Chairman, to express the desire that I think it would be desirable, not only with this section but with other sections of this Constitution, that the Style Committee might have a chance to, as with the other sections, look this over as to wording making no substantial changes. Thank you.

CHAIRMAN: Delegate O'Connor.

DELEGATE O'CONNOR: Mr. Chairman, I might point out to Delegate Larson that as this Constitution was originally written by the 1950 group, this section was written quite differently than it now exists, and said: "The State of Hawaii shall include the islands and territorial waters heretofore constituting the Territory of Hawaii." The first amendment to our Constitution is the present Section 1 of Article XIII which is worded as it is worded at the behest of the Congress of the United States.

Delegate Larson does have cause for alarm, though, because I might point out to this body that the words "appurtenant reefs and territorial waters," have been interpreted by three California judges sitting in the Ninth Circuit Court of Appeals to mean that the State of Hawaii does not own the waters between the islands. These are international waters, because three California judges say so. And I would ask the chairman of the committee if the committee considered whether or not this body might take some action to do something about the decision rendered by the three California judges.

CHAIRMAN: Delegate Kato, would you like to answer that?

DELEGATE KATO: Well, the committee did not go into the judicial interpretations of what was included within the territorial or state boundaries. As far as the Chair is concerned the language was in the Admissions Act, no State can change the state boundaries without the approval or consent of Congress. Congress itself, when it gave the status of statehood to the Territory of Hawaii, had the power at that time to delineate what the boundaries were. As far as Delegate O'Connor's question is concerned, however, we did not discuss what was included or not included.

DELEGATE ADUJA: Mr. Chairman.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: I don't know whether it's in order, but I believe that this section should go to the Style Committee. For instance, I look at the word "Act." We don't know what act it means. I know that we attorneys may be able to know what act it is, but I think the addition of the Statehood Act probably would be more easily understood by the layman and even by the attorneys, if necessary.

CHAIRMAN: Well, unless any amendments are proposed to the provision, I don't think we can send it to the Style Committee. Unless if anyone desires to—

DELEGATE MIYAKE: Mr. Chairman, may we have a short recess, please?

CHAIRMAN: A short recess is declared.

At 9:26 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:31 o'clock a.m.

CHAIRMAN: The Committee will please come back to order.

The Chair will call on Delegate Kato for an explanation.

DELEGATE KATO: Relevant to the language of Section 1 of Article XIII, and the phrase "enactment of this Act," for the record, the "Act" being referred to in this section is the Statehood Admissions Act of Congress.

CHAIRMAN: Is there any further discussion on the motion?

All in favor of the motion please signify your approval by saying "aye," opposed, "nay." The motion is carried.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Mr. Chairman, I move that we rise and report to the Convention that Committee Report No. 37 was considered and that we have adopted the report and report same to the Convention.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I second the motion, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that the report be adopted, that we rise out of the Committee of the Whole. All in favor of the motion, please say "aye," opposed, "nay." The motion is carried.

The Committee of the Whole adjourned at 9:31 o'clock a.m.

Debates in Committee of the Whole on **GENERAL AND MISCELLANEOUS PROVISIONS**

(Article XIV)

Chairman: DELEGATE ROBERT CHANG

Tuesday, September 3, 1968 • Evening Session

The Committee of the Whole was called to order at 8:00 o'clock p.m.

Delegate Chang presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order. This committee is sitting to give consideration to Standing Committee Report No. 44, relating to Article XIV, Sections 1 through 14 as submitted by the Committee on Revision, Amendment and Other Provisions.

At this time, the Chair will recognize the chairman of that committee, Delegate Kato.

DELEGATE KATO: Thank you, Mr. Chairman. I wonder if it would be in order if I were to take the sections that are not recommended to be changed in order that we may be more orderly and probably expedite the proceedings?

CHAIRMAN: The Chair rules that that is in order.

DELEGATE KATO: I would therefore move, Mr. Chairman, that we adopt Section 1 of Article XIV as it reads in the present Constitution.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: Mr. Chairman, may I yield to Mr. Menor—Delegate Menor.

CHAIRMAN: Delegate Menor.

DELEGATE MENOR: Mr. Chairman—

DELEGATE DODGE: My problem was this. I have an amendment to offer to Section 1.

DELEGATE KAUHANE: I rise to a point of information, Mr. Chairman.

CHAIRMAN: Yes, Delegate Kauhane?

DELEGATE KAUHANE: If Mr. Dodge is hesitating, I'll second the motion.

CHAIRMAN: Delegate Kauhane seconds the motion. Delegate Kato.

DELEGATE KATO: Yes, Mr. Chairman. That

amendment slipped me. This section, of course, is a mandate that the employment of persons in civil service shall be governed by the merit principle. There were no proposals introduced. However, there was an amendment to it in committee. I think it is in order at this time to have the amendment offered.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: Yes, Mr. Chairman, there is an amendment on the desks of all of the delegates. It is entitled XIV (4), and it would add a sentence to Section 1 that:

“Any residency requirement imposed by law in the condition of employment, public or private, shall not exceed one year.”

I move for the adoption of the amendment.

CHAIRMAN: Is there a second to that motion? Delegate Menor.

DELEGATE MENOR: Mr. Chairman, I second that motion.

CHAIRMAN: Delegate Dodge, proceed.

DELEGATE DODGE: Mr. Chairman, the reason for this amendment, and it was discussed in committee and lost by a very close vote, is it appears inconsistent to have—it being possible to become a citizen of the State of Hawaii after one year of residence and yet not be able to work for your own government or not be able to work in certain private areas solely by reason of laws that are now in the books. We have a three-year residency requirement for civil service employees and although there are exceptions that are possible to that, in case you cannot find competent people, nevertheless it distinguishes between kinds of residents. There are all kinds of citizens.

We have a section, Section 105-1 of the Revised Laws which imposes a three-year residency requirement on all officers and employees of public utilities, regardless of what kind of a utility it is. We have a—I'm not sure whether it's a statute or a regulation, imposing a two-year residency requirement on somebody before he can be a real estate salesman. It seems to be completely inconsistent with what we did the other day deleting the three-year residency requirement for department heads and permitting any citizen of Hawaii to become a department head and yet withholding that

privilege from those who would wish to work for the government in a civil service capacity or those who would wish to work for one of the utilities or become a real estate salesman.

I suggest that it is something that is appropriate for the Constitution because it expresses what I think is a very sound public policy as far as not discriminating between persons in our society.

CHAIRMAN: Is there any other discussion?

DELEGATE NAKATANI: Mr. Chairman.

CHAIRMAN: Delegate Nakatani.

DELEGATE NAKATANI: I'd like to speak against the amendment. Looking back when I served on the civil service commission, at one of the conferences, I recall that this subject came about by recommendation of the executive branch of the State. And at that time the conference itself, the civil service conference, was against the recommendation of the executive branch to lower residence from three years to one year. And of course, at the time, the problem of recruitment in a professional area which some of the departments were facing, the conference itself has taken this into consideration and has recommended to the legislature to correct this and today we have under the statute, where the departments have problems in recruiting the professional people, that they can waive this residence clause. If we do eliminate the requirement from three years to one year, and knowing that many of our residents, the youth, are looking for employment in civil service, if you look at some of the records where exams are given by the civil service commission of the State or even by the city and county or the county itself, that hundreds are applying and taking exams and waiting for employment in civil service, I think we have an obligation as delegates to protect the residents of Hawaii in this area. And basically this will cause some problem where our people, the residents of Hawaii, will be deprived employment in civil service. So I do hope that the delegates will vote against the amendment.

CHAIRMAN: Delegate Menor.

DELEGATE MENOR: Mr. Chairman, with due regard to Delegate Nakatani's remarks, I would like to say that for too long now Hawaii has labored under an archaic law—and I speak for the amendment. I think it is a law which discriminates against a segment of our citizen population. A law which has delegated this segment of our population to a status of second-class citizens. Our Constitution today grants to a new citizen of our State, after maintaining residency here for one year, the right to vote. In this respect he becomes an equal partner with citizens of longer standing in Hawaii and he acquires that one privilege that is basic to our society, the right to vote.

But here, Mr. Chairman, the reasonable facsimile ends. There is a law in the books today, Mr. Chairman, which prevents our newly-installed citizens from entering public employment. This law says to the citizens, "Yes,

you're good enough to vote but because you have been in Hawaii less than three years, you're not good enough to work for our state government." It seems ironic to me, Mr. Chairman, that here in the State which has prided itself in minimizing discrimination between our citizens and has passed laws to eliminate discriminatory practices, here we are in fact condoning discrimination of a sort which goes contrary to the kind of guarantee of equal treatment that our Constitution seeks to guarantee to all citizens of our State. The provincial view that these jobs should first be reserved to "local people" is in my estimation an antiquated one. In fact this view went out when the first jet aircraft came to Hawaii. Furthermore, I believe that such a view would greatly prejudice the heretofore popular view that Hawaii welcomes not only our citizens from the mainland United States but also those who come from foreign lands as immigrants to seek a better life here in Hawaii. While some may argue that this matter is a matter for the legislature to take up, it seems to me that such a basic expression in our Constitution, the equal privilege of employment in our state government, is not repugnant to the basic language of our Constitution.

Therefore, I urge my fellow delegates to vote for this amendment in order that we may right a wrong that has been of long standing and restore equality of treatment to our citizens. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Kato.

DELEGATE KATO: I do not wish to prolong the discussion on this particular amendment except to say that I concur with Delegate Nakatani and of course, I speak against the amendment.

I agree with the delegate from the 14th that this matter may be more properly handled in the legislature and all of the reasons that he gives as to why this particular law is no good, I think applies when we are in legislative sessions. I did not notice any concerted move on the part of any of the members of my committee to have this law amended while we were in session and I wonder about the time limits of it particularly since this is handled statutorily now.

Now, reference was made to the fact that last night we reduced the residence requirement for our public officers and officials. I think that point is well taken. I would like to also point out that the amendment reducing the residency requirement for officers amends a provision that is presently found in this Constitution and is not on the statutes.

CHAIRMAN: Delegate Ho, do you wish the floor?

DELEGATE HO: Yes, Mr. Chairman, I rise to speak in favor of the amendment. Mr. Chairman, we have in the books of the State of Hawaii a law which forbids discrimination in the hiring of employees. Mr. Chairman, I suggest to you and I suggest to this Convention that the biggest violator of that law is the State of Hawaii. And as far as as long as that practice which we follow under these laws remains, Mr. Chairman, I suggest that

discrimination will remain in the State of Hawaii.

Mr. Chairman, it has been suggested that the legislature can take care of this problem or that the legislature is best suited to take care of this problem I can only suggest, Mr. Chairman, that there are those among us here tonight who know how hot it can get in the kitchen down there. And if this were the case, I can assure you it may take many, many years before a situation which we here this evening with one stroke of a vote can put to rest forever. Thank you, Mr. Chairman.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha.

DELEGATE MIZUHA: I rise again to remind the delegates that they defeated two of my amendments on the basis that it was purely a legislative matter. And I'm amazed that those who voted and spoke against my amendments spoke on the grounds that it was a legislative matter. And here you have a simple matter like a residency requirement. The delegate who sought to introduce it I know did not support the amendment that I had. Likewise, the two who spoke in favor of this proposition in the Constitution, one of them spoke about one of my amendments being a legislative matter and I must agree with him now and I agree with all of those delegates who believe that legislative matter belongs in the Constitution.

DELEGATE DOI: Mr. Chairman, point of order. Mr. Chairman, I'm awfully tired of this type of talk. This is about the third time I've heard this speech today. There's no one in this hall, Mr. Chairman, who can say what is legislative and what is constitutional. The question is whether this particular provision should be in the Constitution or not. Let's not waste our time debating this question.

DELEGATE MIZUHA: Mr. Chairman, I was rudely interrupted by the delegate from Hawaii. I heard him speak in my committee at one time that this was a legislative matter. But it is a matter of opinion and they use their opinion against me and now I'm expressing my own opinion about a possible amendment to the Constitution. I think I'll remind the delegates here that someday the chickens will come home to roost and they have not.

CHAIRMAN: Thank you, delegate. Is there any other who wishes to speak? Are you ready for the question?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: May I ask Delegate Dodge a question?

CHAIRMAN: State your question to the Chair and I will refer same.

DELEGATE YOSHINAGA: Why is this applicable to private, or the word "private" in there?

CHAIRMAN: Delegate Dodge, will you yield?

DELEGATE DODGE: Mr. Chairman, it is in there because we have a statute which requires a three-year residency requirement for any officer or employee of a public utility no matter what kind of public utility, whether the electric company, the bus company, the telephone company, the gas company. And we also have, I think, by regulation although I'm not certain about this, it may be by statute, a two-year residency requirement for real estate salesmen.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: What's the constitutional effect of this particular requirement in a private sector?

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: The constitutional effect would be that the legislature could still impose a one-year residency requirement on public utility officers and employees if they wish to do so or on civil service employees but they could not have that residency requirement in excess of one year. In other words, in excess of the time that it takes you to become a citizen of Hawaii.

DELEGATE YOSHINAGA: What about its application to other private employment?

DELEGATE DODGE: I don't think it needs to get specific because any private employment could not have the residency requirement imposed by the legislature. What the private employer wants to impose is something that is a matter of state policy. The legislature could not.

DELEGATE YOSHINAGA: What I'm trying to find out is, can the legislature pass a law, say that "all private employers shall have a residency requirement of eleven months"?

DELEGATE DODGE: On private employers?

CHAIRMAN: Gentlemen, please address the Chair. I would appreciate that.

DELEGATE YOSHINAGA: Well, just assume that I'm addressing my questions to you then. No matter how I turn or no matter how I raise or drop my voice.

CHAIRMAN: Delegate Dodge, did you wish to answer that question?

DELEGATE DODGE: Well, if you're asking for my legal opinion, the answer would be "no" because I do not believe that that would be within the scope of what is normally accepted to be the police powers of the State.

CHAIRMAN: Any other discussion? Delegate

Ariyoshi, you're recognized.

DELEGATE ARIYOSHI: Mr. Chairman, because we do have a resident statute calling for residency of three years in our books today and because I want to clarify the effect of the passage of an amendment such as this, may I inquire of the movant in this case as to whether or not his intentions—or what his intentions are if this were to become part of our Constitution. Whether the three-year residency should be declared null and void or whether it would merely cut down its application to limit—restrict it to one year.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: It would have the effect when it became operative as a constitutional provision. It would have the effect of reducing the present residency requirement from three years to one year.

CHAIRMAN: Is there any other discussion to come before the body? Delegate O'Connor is recognized.

DELEGATE O'CONNOR: Two comments, Mr. Chairman. I'm a little confused and because of my confusion I think that I am against the amendment.

First of all, the other day, we argued at some length concerning the provisions of the executive and it was the consensus of this body that the governor of this State should be a resident of this State for five years. And this was one of the qualifications that we laid down in the Constitution. As I understand Delegate Dodge's amendment, are we now saying that the governor's chief advisors and the men who really run the government may only be residents of the State for one year? Additionally, in the typical method of tacking a rider on to a bill, we are taking Section 1 of Article XIV which in the Constitution is entitled "Civil Service" and now has to do with the employment of persons in the civil service and we're putting on a sentence having to do with residency requirement of employment, public or private. First, I would suggest that this is a type of amendment which will make no sense if added in this particular section of the Constitution. If we're here to write a Constitution it should be done in a workmanlike manner. And I would suggest that maybe one of the reasons that the committee defeated this particular amendment is because it should not fit in the section for which it is proposed. Secondly, I would suggest that if we insist that the chief executive of this State be a resident for five years, that his chief advisors also should be residents for some specified time longer than one year, and for that reason, Mr. Chairman, I will vote against this particular amendment.

CHAIRMAN: Thank you, delegate. Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, may I respond to Delegate O'Connor's statement? It is true that we put a five-year residency requirement in for governor but it is also true that in that same article we changed the residency requirement for cabinet officers and board members from three years to one and deleted any residency requirement for the presidency of the

university.

As to the placement of this particular sentence, it was offered in the committee only as a sentence without any particular place to go. It seemed appropriate to suggest that it would follow the section dealing with the merit system because that is really what we're talking about and if it is improperly placed under Article XIV, the Style Committee can put it where it belongs. Quite possibly it might belong in the Bill of Rights but where it is in the Constitution is not as important as the fact that we state it as a state policy.

CHAIRMAN: Thank you, delegate. Delegate Yoshinaga.

DELEGATE YOSHINAGA: Mr. Chairman, I have to try again. The language of this amendment is in the negative but does it purport to grant to the legislature the power to impose residency requirement in all private sectors of employment which shall not exceed one year?

CHAIRMAN: Delegate Dodge, will you yield to an answer?

DELEGATE DODGE: I'm not sure that I understand the question but this does not impose any residency requirement. It just says that any legislative act that does cannot have that term longer than one year. It equates employment opportunity with citizenship. It makes employment opportunities available to any citizen of Hawaii.

DELEGATE YOSHINAGA: It doesn't answer my question but is there any authority now for the legislature to impose any residency requirement upon private employers?

DELEGATE DODGE: We have it in the statute, Section 105-1, as far as public utilities which are private enterprises.

DELEGATE YOSHINAGA: I'm not referring to the ones already mentioned. I'm referring to all private employment. This doesn't say public utilities, et cetera, et cetera. It says private. I'm talking about all private.

DELEGATE DODGE: I think this is the same question the delegate asked a few moments ago and I suggested that the answer to it was that it would not be possible, as being beyond the police power, for the legislature to impose a one-year requirement of all private employment.

CHAIRMAN: Thank you. You have another question, Delegate Yoshinaga?

DELEGATE YOSHINAGA: Doesn't this word in here, "private," then in effect might tend to render the rest of the provision unconstitutional?

DELEGATE DODGE: I see no reason why it should, Mr. Chairman.

DELEGATE YOSHINAGA: I was going to vote for this but it's so fouled up I'm going to vote against it.

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I would like to briefly speak in favor of this amendment. My energy is rapidly waning as the evening goes on so I'm sure I'm not going to get too many words out in support of this. But basically, I think the point that I believe Delegate Ho from the 15th brought up was, why do we have a residency requirement in the first place? I think this is a point to reconsider. And do we then, if it is deemed desirable to have a residency requirement—why do we need a three-year residency requirement? Is this to protect the working population? Do they need such protection? I would think this would be regarded in the mainland as an insult.

Secondly, I would bring to your consideration that many of Hawaii's young people and neighbors go to other states throughout the United States and on the mainland to work. I would bring to your attention that most states do not have such a restrictive residency requirement as Hawaii. I maintain that such a residency requirement in this respect is rather provincial and serves to isolate Hawaii rather than bringing it into the fold and encouraging active involvement of its citizenry who have been here for at least one year as to its working conditions and employment within the State. So I therefore would urge the other delegates to support this particular amendment.

CHAIRMAN: Thank you, Delegate Larson.

DELEGATE MIZUHA: Mr. Chairman.

CHAIRMAN: Delegate Mizuha is recognized.

DELEGATE MIZUHA: I just want to point out an important fact which is forgotten by the proponent as well as the opponents of this amendment. Traditionally in Hawaii, we have the three-year residency requirement for all employees for public utilities. Theoretically the public utilities have a franchise from the State and they operate under the public utilities commission. The three-year provision was mainly to protect those graduates from Kamehameha School who were preferred employees of Hawaiian Electric and Hawaiian Telephone. And the three-year residency requirement was necessary to avoid the kind of competition they would have from mainland technicians. After all, they couldn't come to Hawaii and wait three years before they applied for a job with Hawaiian Telephone and Hawaiian Electric. I'm being practical now. Since the Hawaiian Homes Commission Act is a sacred cow of this Constitutional Convention, I believe the three-year residency requirement with the public utilities of Hawaii as established by law is a sacred cow also and I would like to see our Hawaiian boys get preferred positions with Hawaiian Electric and Hawaiian Telephone. Thank you.

CHAIRMAN: Thank you, delegate. Is there any other discussion on the proposed amendment? The Chair will state that a vote for the motion—the amending

motion will place under Section 1 of Article XIV a new sentence: "Any residency requirement imposed by law as a condition of employment, public or private, shall not exceed one year." A vote against will mean this will not be placed in the provision. Mr. Clerk, please call the roll.

(Roll call having been ordered, the motion to amend Section 1 of Article XIV relating to one-year residency requirement was put by the Chair and failed to carry by a vote of 25 ayes and 49 noes, with Delegates Aduja, Akizaki, Ando, Ansai, Bacon, Bryan, Burgess, Donald Ching, Fernandes, Goemans, Hansen, Hara, Hasegawa, Kage, Kato, Kauhane, Kawakami, Kawasaki, Kudo, Kunimura, Frank Loo, George Loo, Lum, Matsumoto, Minn, Mizuha, Nakama, Nakatani, O'Connor, Oda, Ozaki, Pyo, Saiki, Shiigi, Souza, Sutton, Suwa, Taira, Takahashi, Takamine, Uechi, Ueoka, Ushijima, Wright, Yamamoto, Yoshinaga, Young, Mr. President and Chairman Chang voting no; and 8 excused, with Delegates Amano, Andrade, Hung Wo Ching, Fasi, Harper, Kaapu, Kamaka and Schulze being excused.)

CHAIRMAN: The noes have it. The motion is lost. Any other discussion on the original motion? If not, are you ready for the question? All those in favor of the motion—

DELEGATE BACON: Mr. Chairman.

CHAIRMAN: Delegate Bacon.

DELEGATE BACON: Could you explain to me what we're voting on now? Just on Section 1?

CHAIRMAN: The motion as proposed by the chairman of the committee to adopt Section 1 as is. Is that correct, Delegate Kato?

DELEGATE KATO: Yes, Mr. Chairman. To retain Section 1.

CHAIRMAN: All in favor of the motion, signify your approval by saying "aye." Opposed, "nay." The motion is carried. Delegate Kato.

DELEGATE KATO: Mr. Chairman, I move that we retain Section 2 in its entirety.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: For this particular section, a proposal was introduced to amend Section 2 to provide that the retirement system would be a—or should be a retirement trust fund with the administration of said fund to be under the terms and conditions set by the legislature. Your committee did not have too much discussion on this inasmuch as we received a communication from the attorney general's office indicating that so far as this section was concerned,

statutorily the retirement system fund is treated as a trust fund and that the amendment or the proposal to amend Section 2 adds nothing to the present language in the legislature. He also felt that it might be a weakening of the employees' vested rights if the Proposal 306 was substituted for the present Section 2. Under these circumstances, your committee decided to retain Section 2 in its entirety.

CHAIRMAN: Thank you, Delegate Kato. Any other discussion on the motion? If not, the motion before you is to retain Section 2 of Article XIV as is. All in favor of the motion, signify your approval by saying "aye." Opposed, "nay." The motion is carried. Delegate Kato.

DELEGATE KATO: Thank you, Mr. Chairman. I wonder if I might skip Section 3 because an amendment to it is contained in the committee proposal and go on to Section 4. I move that Section 4 be retained in its entirety.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I second the motion.

CHAIRMAN: Is there any discussion? Delegate Kato.

DELEGATE KATO: I think the section is pretty well explained by its terminology. This is the oath of office to be taken by public officers and the oath itself is set out in the section. The attorney general during the past legislative session indicated that there was nothing unconstitutional about this particular wording of the oath of office. I would urge that we retain this section.

CHAIRMAN: Any other discussion on the motion? The motion as stated is to retain Section 4 as is. All in favor of the motion, please signify your approval by saying "aye." Opposed, "nay." The motion is carried. Delegate Kato.

DELEGATE KATO: If I might go to Section 5, Mr. Chairman, I move that we retain Section 5 in its entirety.

DELEGATE DODGE: I second the motion, Mr. Chairman.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Yes, Mr. Chairman, this section was put in originally in the Constitution to facilitate the cooperation between the State of Hawaii and other states as well as with the United States. Because of this particular provision, the State is able to enter into agreements with the other states such as the WICHE Conference, with the National Conference of Commission of Uniform Laws, as well as National Council of State Governments. I think this section is needed and I would urge that this be retained.

CHAIRMAN: Any further discussion on the motion? The motion is to retain Section 5 as is. All in favor of the motion, please signify your approval by saying "aye." Opposed, "nay." The motion is carried. Delegate Kato, you're recognized.

DELEGATE KATO: Mr. Chairman, I wonder if it might not be in order if I were to take Sections 6, 7, 8, 9, 10 and 11 and move that these sections be retained without any change? I so move.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I second the motion.

DELEGATE KATO: These sections, Mr. Chairman, were put in the Constitution originally to show compliance or an agreement on the part of the State to comply with all of the federal requirements as set out in the Statehood Enabling Act which was not passed incidentally back in 1950. However, the Admissions Act does require the inclusion of these sections and I think that we should retain these to show the evidence of our agreement with the United States government.

I would like to say that Section 9, relating to the tax exempt status, was not put into the Admissions Act in 1959. However, the United States government of course reserves the right to have tax exempt status for its land, so under these circumstances, Mr. Chairman, I move that we retain all of these sections without change.

CHAIRMAN: Nos. 6 to 11, Delegate Kato?

DELEGATE KATO: That's correct.

CHAIRMAN: Is there any other discussion on the motion?

DELEGATE LARSON: Mr. Chairman.

CHAIRMAN: Delegate Larson and then Delegate Kageyama.

DELEGATE LARSON: May we have a short recess please?

CHAIRMAN: A short recess is declared.

At 8:45 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:47 o'clock p.m.

CHAIRMAN: The committee will come back to order. Is there any further discussion on the motion to retain Sections 6 to 11. Delegate Kageyama.

DELEGATE KAGEYAMA: I would like to raise a point of information on Section 9 to the chairman of the committee. I would like to inquire of the chairman of this committee, Delegate Kato, in regard to Section 9

whether such lease of land from the United States or federal government is subject to the local tax whereas the church, upon leasing the property, is subject to local tax. The State also has that provision where such land of the State, if this be for private use, is subject to a local tax. So the question now is how far does the federal exemption go in regard to leases of federal land for private use?

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Mr. Chairman, reference is being made to any local taxes on United States lands that are leased to private individuals. I believe the Congress of the United States did provide that these lands could be taxed and they are being taxed at this time by the State.

DELEGATE KAGEYAMA: The provision says consent of the United States.

DELEGATE KATO: That's right. That is why they passed the law to provide for this.

DELEGATE KAGEYAMA: Thank you, Mr. Chairman.

CHAIRMAN: Thank you, delegate. Any other discussion on the motion?

DELEGATE FERNANDES: Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: As to Section 10, as long as the record clearly spells out that we concur with the Hawaii National Park as it is and that if any more lands are needed they would have to get the approval of the Hawaii people. The record clearly spells it out.

CHAIRMAN: Thank you, delegate. If there is no further discussion, the motion before you is to retain Sections 6 to 11 in Article XIV as is. All in favor of the motion, signify your approval by saying "aye." Opposed, "nay." The motion is carried. Delegate Kato.

DELEGATE KATO: Thank you, Mr. Chairman. I move that we retain Sections 12, 13 and 14 without any change.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Mr. Chairman, I think these sections are self-explanatory.

CHAIRMAN: Is there any question or any discussion? If not, all in favor of retaining Sections 12, 13 and 14, signify your approval by saying "aye." Opposed, "nay." The motion is carried. Delegate Kato.

GENERAL AND MISCELLANEOUS PROVISIONS

DELEGATE KATO: Going back to Section 3 now, Mr. Chairman, I move that Committee Proposal No. 6 relative to Section 3 be adopted.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Kato, any discussion?

DELEGATE KATO: I would like to yield to Delegate Sutton.

CHAIRMAN: Delegate Sutton is recognized.

DELEGATE SUTTON: I would like to give just one small bit of background. This particular loyalty oath is one which was framed by the attorney general's office so as to comply with recent decisions of the Supreme Court. What we had in mind was to have the basic concept of something that would not per se be unconstitutional. We were advised by the attorney general's office and worked this language up feeling that we would have something here which would express the feelings of the citizenry against the great and terrifying fear throughout the free world of the communist states and at the same time that we were allowing our citizenry a chance to affirm their loyalty to their country and to show this loyalty by proper oath. But an oath which would require an overt act by the individual as such and not where he indirectly had gone to some meeting and found himself a member of a subversive organization and did not realize what he himself was doing so that it would be a direct and overt act by the individual.

We feel that this particular loyalty oath is something which will assure our citizenry of a constitutionally-supported proposition from the point of view of the United States Constitution and yet at the same time affirm our belief as Americans and people under the American flag and proud to be under the American flag and proud to be Americans.

CHAIRMAN: Thank you, delegate. Any other discussion? Delegate Larson.

DELEGATE LARSON: I would like to move to amend the committee proposal as stated in my particular amendment which is numbered XIV (5), which states:

"Section 3 of Article XIV of the State Constitution in Committee Proposal No. 6 is amended by deleting the words 'or employment' which appear as the last two words in Section 3."

DELEGATE DOI: Mr. Chairman, I second that motion.

CHAIRMAN: Delegate Doi seconded the motion.

DELEGATE KATO: May we have a short recess?

CHAIRMAN: A short recess is declared.

At 8:54 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 8:55 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come back to order. There is an amending motion to delete the words "or employment" in the last sentence of the new proposal. Delegate Larson, you have the floor.

DELEGATE LARSON: Mr. Chairman, may I speak on behalf of my amendment, if you please. May I have permission to read a short section from Standing Committee Report No. 44 which provides the explanation for the present change or amendment of Section 3. This is on page 5: "Opinions were received from the attorney general's office and the Legislative Reference Bureau confirming the invalidity of said section. Your Committee discussed this matter thoroughly and dwelled at length on the question of whether or not specific provision for a disqualification of disloyalty should be provided in the Constitution or should be as prescribed by the legislature. After due deliberation, your Committee decided that a specific disqualification provision should be in the Constitution and accordingly agreed to amend the section to read as follows." I don't think I need quote the section, but basically, the section has been changed from disqualifications for disloyalty on the basis of belief and/or action to disqualifications for disloyalty on the basis of actions only. I think this alone, to change the provision, will show that we have come a long way since 1950 in the days of McCarthyism, and the days of trying a person on the basis of their political belief rather than political overt action. Going on to finish up the reading of page 6 of the standing committee report, "There was much concern about the constitutionality of all the proposals submitted to the Committee and the above proposal was suggested by the attorney general's office. Your Committee was assured that the proposal meets the test of constitutionality and accordingly recommends its adoption."

Mr. Chairman, nowhere in the standing committee report are there any statements as to why such a disqualification clause ought to be in the Constitution. I've heard the delegate from the 14th District mention to prove our loyalty to our country we need a disqualification for disloyalty in the Constitution. This would be the first question that I would like answered. Why should we have this in the Constitution? I infer from the committee report that the committee's main concern was in rewriting this clause to make it constitutional rather than whether it need be in the Constitution or whether we need it in Hawaii of 1968 at all.

Mr. Chairman, I would like to also state that the idea of having this in the Constitution is in itself in question in my opinion. I think we are thusly, by putting this in the Constitution in Section 3,

constitutionalizing our fear of subversives in the State of Hawaii. I doubt whether we need to do so. I too, Mr. Chairman, have met those people who would believe that there would be a subversive, a communist if you wish, behind every bush, every hala tree or down at the University of Hawaii. I have yet to meet such subversive or such communist. Mr. Chairman, I would like to also question the effect of this particular provision on disqualification for disloyalty. What is disloyalty? Would it or could it be at some future time an act—

DELEGATE DEVEREUX: Mr. Chairman, point of information.

CHAIRMAN: Yes, Delegate Devereux.

DELEGATE DEVEREUX: Is the delegate speaking for his amendment to delete the words "or employment" or is he speaking on some other subject?

CHAIRMAN: Delegate Larson, could you please confine your remarks to your proposed amendment?

DELEGATE LARSON: I thought I was, Mr. Chairman. I will from now on. I'm sorry. With all due deference to the members of this committee, I would like to ask you, and this is very germane I feel to my amendment, what is disloyalty? Could it be at some future time a simple act such as resisting the draft or such measures that are presently going on down at the university and in our State? Now then, if disloyalty could be classified by such as a very ultra-conservative court in our State or by the Supreme Court for such a simple act as draft-resisting, then I might ask your consideration as to whether this provision in Section 3 is not just a bit harsh. It says basically that if a person has taken any overt action which might be classified under the basis of disloyalty, that he will be forbidden from not only public office but public employment in our State for now and ever after. Now then, Mr. Chairman, I would like to submit to you, again thinking that this is germane, that in 1950 only 20% of all the workers in our State were public employees, whereas in 1967, almost one out of four employees in our State worked for the state, federal or other governmental agencies. Also I would like to point out to you, in the time span between 1950 and 1967, the State of Hawaii public employment has doubled.

Now I ask you, we have passed provisions giving voting rights to felons after they have been released from prison but for a person who commits a political crime perhaps which could be classified as draft-resisting or some other act as this, that after he has served his time in prison, he shall never have the right for public employment again. I ask you, isn't this harsh? I believe it is, especially when we consider the fact that in all probability the public sector of employment is not only going to remain the same but probably going to equate in the next decade or two decades and that in a sense this is penalizing the person from now to ever after, who will never again be allowed to work as an office typist for the State or an auto mechanic. Again, it would seem to me that we're overly constitutionalizing our fear in this particular provision. I would urge for

the deletion at least of the words "or employment" at the end of Section 3.

CHAIRMAN: Thank you, Delegate Larson. Delegate Steiner, and Delegate Lum will be recognized afterwards. Delegate Steiner.

DELEGATE STEINER: Mr. Chairman, I rise to speak in favor of the majority report, Committee Proposal No. 6, which seeks to amend Section 3 of Article XIV. Along the way I hope to answer some of the questions posed by the delegate who just previously spoke.

Mr. Chairman, the language presently in the Constitution reads, "No person who advocates, or who aids or belongs to any party, organization or association which advocates, the overthrow by force or violence of the government of this State or of the United States shall be qualified to hold any public office or employment."

Mr. Chairman, the office of the state attorney general has informed your Committee on Revision, Amendment and Other Provisions that this language does not meet the test of constitutionality. We have an opinion rendered July 29, 1968, which points out debates of the Supreme Court, United States Supreme Court decisions in the Elfbbrandt case, the Keyishian case and the Robel case, all decided in 1966 or 1967, that the language would be too broad. The principle laid down in these three cases, Mr. Chairman, is, "The right to public employment cannot be barred to a person for mere association with a subversive organization or one considered to be subversive." The First Amendment of the United States Constitution assures freedom of association. It is the opinion of the Hawaii attorney general's office that our language is also too broad as it would apply to an inactive member of a subversive organization, a member who is unaware of the organization's unlawful ends or even one who disagrees with these unlawful ends.

CHAIRMAN: Delegate Steiner, might I remind you that we're discussing the amending motion to delete the words "or employment." I would like to ask that you confine your remarks to that amending motion, please.

DELEGATE STEINER: Mr. Chairman, if the motion stands to amend or in effect would be to amend the language presently in the Constitution, I do believe my remarks are germane. I'll accept the ruling of the Chair which is—

CHAIRMAN: Proceed.

DELEGATE STEINER: Thank you, Mr. Chairman. Faced with this opinion, Mr. Chairman, your committee proposed amending language which you will find on page 6 of Committee Report No. 44. There are therefore two questions which must be answered by the delegates in this Committee of the Whole. First, if the delegates wish a provision in our Constitution which would prohibit a disloyal person from holding public office or employment; and secondly, if the first

question be answered in the affirmative, will the language suggested in the Committee Report No. 44 serve this end and at the same time not be in violation of the United States Constitution. I believe both questions can be answered in the affirmative.

Let's start with the second question. The language presented was reviewed by our staff attorney. It has been drafted in such a manner so as to avoid the problems raised by a recent and also prior United States Supreme Court decision touching in this area. It will not bar from public employment an inactive member of a subversive organization, one who took out a card 20 years ago and has done nothing about it ever since, or a member who does not believe in any of those purposes of such an organization or one who aids an organization in some harmless endeavor, one who sells tickets to the communist ball. As it is drafted, it would not purport to cover a professor or teacher of Marxist theory. There was a question, Mr. Chairman, that such a person might have to worry under the present language as to whether he would be aiding a subversive organization. This language does cover persons who knowingly and intensely do or attempt to do or act, calculate to overthrow the government. In addition, you will note, it covers those persons who conspire to do such acts. The prohibition against conspiracy covers the situation if two or more persons get together for the common purpose of planning to overthrow our government.

Regarding the main question, the answer is we do need such a provision in our Constitution. First and logically, we look to our government to serve us and to defend on our behalf all our rights guaranteed under the Constitution and by law it obviously follows that our government should not be staffed by those working subversively to do away with it.

Secondly, it was felt there was a need for such language in 1950. I cannot believe that this need is any less today. I don't believe the number of our enemies has lessened. I don't believe they are growing any less powerful. I suggest, for example, to the delegates Communist China which loses no opportunity to castigate this country and what it stands for. Since 1950, such country has achieved the capability of nuclear power.

In closing, I suggest also that those who consider themselves our enemies or are considered as such by some have not deviated from their purposes of putting an end to our system of government. For those who would believe that they are growing more peaceful, I suggest the situation in Czechoslovakia where this very minute the forces of liberalism and free expression are being stifled.

Mr. Chairman, in direct answer to the question and the amendment put by the previous speaker, I see no difference between a person holding a public officership, governor, senator, representative, member of the bench, member on one of the boards and commissions, I see no distinction between them and the people who actually staff our government. If one who is in charge of some function such as—this may not be appropriate

but it serves to illustrate the point—the Board of Water Supply, one who is tending that function should put in a dangerous substance into our water system, it could have as bad an effect as anything else that could be done. Mr. Chairman, I urge the adoption of the amendment as set forth in the committee proposal and against the proposed further amendment.

CHAIRMAN: Delegate O'Connor is recognized, then Delegate Kato.

DELEGATE O'CONNOR: Mr. Chairman, first I would speak against the amendment offered by Delegate Larson. The present wording of Section 3 of the Constitution contains the words "any public office or employment" at its end. And the committee proposal also contains the same words. I think the common definition for the two phrases would, for the public office, include anyone who held an elective or appointive office which had a title or in which he exercised a certain managerial control. The employment section would of course apply to the staff, the civil servants, those people who work in the executive branch, the legislative branch and the judiciary branch who are employees. I fail to see any rational difference in making this section applicable to one and not making it applicable to the other. I listened carefully to the arguments in support of the amendment and if you are going to make this section applicable to those who hold public office it will be absolutely not to make it applicable to those who work for the public office holders.

Speaking to the section in general, Mr. Chairman, I would suggest that the word "disloyal" does not adequately describe the new wording proposed by the committee. This is not a section which is now being directed towards someone who has simply been disloyal to the country, this is a section which is, by its very words, applicable to those who do a specific act in an attempt to overthrow the government, who actually conspire, who do something more than simply espouse a disloyal theory. As we all know, and I think we've all had associates or friends who have at one time or another been involved with an organization which was later for one reason or another declared subversive by either the federal government or by the state government for some reason or—

DELEGATE GOEMANS: Point of order.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: Is this discussion germane to Amendment No. 5?

CHAIRMAN: Your point is well taken, Delegate Goemans. It is not. Delegate O'Connor, could you wait until we've voted on the amending motion and then remark on the committee's proposal?

DELEGATE O'CONNOR: May I suggest, Mr. Chairman, it is absolutely germane since these comments must go to those who are employed as well as those who are public office holders.

CHAIRMAN: If they are germane, then they'll be in order. Please relate them.

DELEGATE O'CONNOR: I will relate them. Mr. Chairman, I suggest that these type of individuals who made some sort of a slip in their youth perhaps should absolutely be allowed later on, when full realization occurs, to hold public employment or to hold public office. But I would suggest, Mr. Chairman, that that type of act is not the act considered by the committee and it's not the act which the committee proposal goes to. And I would suggest, Mr. Chairman, that the committee's proposal that the specific acts mentioned certainly should bar a person from public employment and should bar a person from holding public office and therefore, I would suggest, Mr. Chairman, that we defeat the amendment and vote in favor of the committee proposal.

CHAIRMAN: Delegate Kato. Delegate Larson, let me ask if there's anyone else who wishes to speak. Delegate Doi.

DELEGATE DOI: Mr. Chairman, I would like to direct a question to the chairman of the committee, if I may.

CHAIRMAN: State your question.

DELEGATE DOI: The question is this, whether the legislature could pass a law, for example, to say that after ten years have elapsed after the particular act has been committed that he is forgiven, that thereafter he may hold public office or employment—whether he could hold public office or employment? Is this possible?

CHAIRMAN: Delegate Kato, will you yield to that question?

DELEGATE KATO: Mr. Chairman, I will yield to that question of course. I'm not sure about the possibility that was mentioned by the delegate from Hawaii, Mr. Chairman. Of course, the language seems quite clear; however, I should like to point out that when reference was made to draft-dodgers not being able to find public employment in the future, I think they would treat a draft-dodger like any other convicted felon and until such time as he is given a pardon he will not be eligible for public employment. On the other hand, if he is, I believe that he can be given employment. I'm not sure of your question, however.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Do I understand you to mean that the legislature, under this language, may later pass a law to say that he can be forgiven after a time lapse of maybe even thirty years?

DELEGATE KATO: It is my opinion that the legislature cannot under this language.

DELEGATE DOI: That's how it appears to me, Mr.

Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, I, with due respect to the delegate from Hawaii, it appears that we're discussing two matters at the same time. It's easy to see how we can get confused thereby. The matter before us is this particular amendment. Now, I think if we want to go into discussion on the Committee Proposal No. 6, then we should get rid of this amendment or vote in favor of the amendment. But dispose of the amendment one way or the other, then get into discussion on Committee Proposal No. 6.

CHAIRMAN: Is there any further discussion on the amendment? Delegate Larson, did you wish the floor again?

DELEGATE LARSON: I would like to make a couple of other comments here. I'm not concerned with the language of this particular provision. I'm not even debating whether it should be in the Constitution or not. I'm concerned with merely the penalty. The main effect of this provision is for a person who has committed a political crime to ever—after serving his imprisonment and so forth whatever penalties by law—to ever forbid this person for public office or employment. Now with response to several questions brought out, why wasn't I concerned about public office as well as employment. To me, public office when I read this would seem to be a position of great responsibilities. Secondly, there would seem to be few positions of public office that a person would aspire to compared with general employment. I'm much less concerned with a few public offices as I am with a person after he has served his time, so to speak, being able to work again. So I thought I would confine my amendment to "or employment." This is why I confined it to the "or employment" and not public office also.

Now, secondly, conspiracy is just another word for associating, if you wish. And what is conspiracy to overthrow the United States? I think this is a fantastic and difficult definition which would be germane to this particular provision—

DELEGATE SUTTON: Mr. Chairman, point of order.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: This gentleman has not been to law school. I think there are lawyers here who would know what the word "conspiracy" means.

DELEGATE LARSON: I think there are people in this State who would say conspiracy would relate to those who would like to fluoride the water in our State. And I think, likewise it's a subject open to interpretation and with no fixed and absolute definition. Now then, going on, I would like to mention that when we speak of disloyalty or conspiracy, forgetting draft-dodgers for a moment, considering when President Johnson came and spoke at the University of Hawaii in

front of Kennedy Hall just last year and when there were protesters against him that were arrested, could at some future time these people be classified as attempting to overthrow the United States, and if so they would be subject to not only the appropriate penalties, jail sentences and so forth but they would be subject to lose their right of employment in the State forever. I do feel this is overly harsh. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Larson. Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, I rise to speak against the amendment. In the first place, Mr. Chairman, in my opinion, public employment is not a right, it is a privilege. We all know that many privileges which go with public employment in the State of Hawaii. It seems to me that the question here is what kind of employees and public officers do we wish. And I believe, as others have said, that those who are employed by government should be the same type of loyal citizens as those who are elected to official positions or appointed to official positions.

It seems to me also that if a person enters into a so-called conspiracy or whatever we may call it to overthrow the government of the United States, as a general rule, if he is eligible for public employment, he is a fairly intelligent individual or at least we hope he would be and he would know what kind of an effort he was entering in to. Any such action is a grave action and certainly any person who enters into such action realizes the gravity of his action. I would think that if he has been guilty of this type of, call it political crime if you will, this isn't what I would call it but if those who wish to call it political crime it's all right with me, but any such person who enters into such a political crime should not expect after any given period of time to have all of the privileges of public employment returned to him now that he comes back and says, "I am so sorry please." It seems to me that he must pay for the action that he has taken and if one of these payments is lack of ability to retain his position in public employment, then this is one of the penalties that he must face. Every one of us who makes a grave error in our lives at one time or another must face the penalty one way or another the rest of our lives. And in this instance, Mr. Chairman, I would urge that what we want, especially in view of the great number of people who are employed by government that the delegate mentioned to us that we want the best that is possible for us to get as public employees for the State of Hawaii.

CHAIRMAN: Thank you, delegate. Are you ready for the question? The amending motion before the committee is to delete the words "or employment" from the committee proposal. I assume you know what it is so I won't state it. The Chair would like to determine if there are ten or more delegates who wish a roll call. If not I'll take a standing vote. All in favor of the motion to amend, please rise. Thank you. All those opposed, please rise. Thank you. The noes have it. The motion is defeated.

Is there any further discussion on the primary motion as stated by Delegate Kato? Delegate Bacon.

DELEGATE BACON: Mr. Chairman, I have an amendment which will add a new section to the article in question. May I take it up now or later?

DELEGATE KATO: Mr. Chairman, I believe there is a motion pending now for the adoption of the—Section 3 as amended in Committee Proposal No. 6.

CHAIRMAN: Yes, is this on Section 3? Any other discussion?

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: We're still on Section 3, is that correct?

CHAIRMAN: Yes.

DELEGATE YOSHINAGA: I would like to ask Delegate Kato a couple of questions.

CHAIRMAN: State your question.

DELEGATE YOSHINAGA: In Section 3, the terms "knowingly" and "intentionally" are used to modify the word "act." Does the terminology "knowingly and intentionally" also apply to the words that follow, "attempts" and "conspires"?

DELEGATE KATO: That is correct.

DELEGATE YOSHINAGA: Is it anywhere so stated in the committee report? The reason I ask is I haven't been able to find it in the committee report and I wondered whether there was a deliberate structuring of the language here so that "knowingly" and "intentionally" would apply to "any act" but would not apply to "attempts" or "conspires."

DELEGATE KATO: It was the intent of the committee that they applied to the "attempts" as well as "conspiracy" section.

DELEGATE YOSHINAGA: So that the language in effect says, "...who, knowingly and intentionally... attempts to overthrow... the government"—

DELEGATE KATO: That is correct.

DELEGATE YOSHINAGA: —and it also says, "...who, knowingly and intentionally... conspires with any person to overthrow the government."

DELEGATE KATO: Yes.

DELEGATE YOSHINAGA: Thank you very much.

CHAIRMAN: Thank you, delegates. If there's no further discussion, the motion before the house is to adopt the committee's proposal to insert a new Section

3 in place of the existing provision. All in favor of the motion, please signify your approval by saying "aye." Opposed, "nay." The motion is carried.

DELEGATE KATO: Mr. Chairman.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: I move that we adopt a new section to be numbered later relating to the code of ethics in government as contained in Committee Proposal No. 6.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I second the motion, Mr. Chairman.

CHAIRMAN: Chairman Kato.

DELEGATE KATO: I yield to Delegate Oda.

CHAIRMAN: Delegate Oda is recognized.

DELEGATE ODA: Thank you, Mr. Chairman. Mr. Chairman, because of the essence of brevity here I would like to make a very brief statement in support of the Committee Proposal No. 6, with reference to the code of ethics. Mr. Chairman, members of this honorable body, the clamor of the general public and leading civic organizations in this State and throughout the nation, is to assure and to secure a positive position that future governmental policies and judgments become as free and as void of private and individual interest. We need but a few moments to consider the numerous correspondence each of us received in behalf of its adoption. The days of governmental distrust must come to an end.

Though this proposal may not seem to be one of an all-encompassing one in nature, the assurance by the state legislature in 1967 in passage of the Code of Ethics bill and with each and all of the counties complying and agreeing with the code of ethics into their charters is worthy enough of its acceptance. We as delegates to this Constitutional Convention fully realize that our Constitution serves the welfare of every individual in this State. To prove that we hold this to be true it then becomes a necessity that we unanimously adopt this proposal. This proposal exempts no one involved in government. Therefore, as a member of this committee and as a delegate interested in fostering good government, I urge each and all of you to support the proposal urged by this committee. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Sutton is recognized.

DELEGATE SUTTON: I wish to concur with the thoughts expressed by the worthy delegate from Wahiawa. However, I would like to withdraw my No. 2 amendment in favor of Amendment No. 7 and move for the adoption of Amendment No. 7 as a substitute for the committee report, which reads as follows:

"Article XIV is amended by adding a new section to be appropriately numbered and to read as follows:

"Section _____. There shall be codes of ethics for appointed and elected officers and employees of the State and the political subdivisions, including members of boards, commissions and other bodies. The codes of ethics for the legislative and executive branches shall be adopted by the respective legislative bodies or in the charters of the political subdivisions, and for the judicial branch shall be adopted by the Supreme Court."

CHAIRMAN: Is there a second to that motion?

DELEGATE MIZUHA: Mr. Chairman, for the purpose of discussion, I second the motion.

CHAIRMAN: Delegate Mizuha seconds the motion. Delegate Sutton.

DELEGATE SUTTON: The basic concept is exactly the same as has been enunciated by the committee chairman. However, I wish to point out the additional words that have been added and the basic concept that has been changed is that the judicial branch shall have rules adopted by the Supreme Court. For those in this assembly who are not lawyers, I would like to say that the judicial profession is controlled by an even higher code of ethics than anything that exists in any other locale. We have the Canons of the American Bar Association, we have the Canons of Ethics of the Association of the Hawaii Bar. The rules of the Supreme Court are for all intents and purposes also Canons of Ethics. To have the judiciary fall under any other type of code than these canons would be a misapplication of what is an inherent proposition within the judicial profession.

It has, first, the tradition of many, many years ruled and controlled and followed a very, very high precept of ethics for itself. And therefore this amendment will provide that the rules of the Supreme Court shall control the judiciary. The wording is a little different and therefore this is an amendment by substitution according to Robert's *Rules of Order*. And the wording is a little different because being on Dr. Ando's Style Committee, I'm trying to seek that type of wording which will be most appropriate to submit to the electorate which will have to approve this.

CHAIRMAN: Any further discussion? Delegate Medeiros.

DELEGATE MEDEIROS: I request a short recess for the steno to take a five-minute break.

CHAIRMAN: The point is well taken. A short recess is declared.

At 9:32 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:40 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come back to order. We have a substitute motion offered by Delegate Sutton on the code of ethics. Is there any further discussion on the amendment? Delegate Dodge and then Delegate Kawasaki.

DELEGATE DODGE: I rise to speak against the amendment offered by Delegate Sutton, and in favor of the committee proposal. If the delegates will look at the committee report, on page 5, about the middle paragraph, it says, "Since the judiciary has its own canons of ethics, the matter of exempting the judicial branch from this provision was discussed at length. It was the decision of your Committee that the judiciary should not be given specific exemption in the Constitution. However, this does not preclude the legislature from recognizing the sufficiency of the judicial canons of ethics." And I much prefer the broader language of the committee proposal to that offered by Delegate Sutton for this reason. His amendment would say a code of ethics for the judicial branch will be adopted by the Supreme Court. Now a code of ethics may also include in its provisions the enforcement or the day-to-day housekeeping of the code of ethics or the canons. And I would not think it wise to have the canons of judicial ethics or the judiciary code of ethics administered and enforced by the very body that the canons apply to. Now there is in Committee Report No. 40 from the Judiciary Committee, a reference to a commission or an agency authorized by law for the purpose to certify to the governor that some judge has acted in such a manner as to constitute wilful misconduct in office, wilful and persistent failure to perform duties and things that are covered by the canons of judicial ethics. I would prefer to leave it to the legislature to say that the canons of judicial ethics as proposed by the Supreme Court shall be the code of ethics for the Supreme Court but that the enforcement of that code would be a function of this commission or agency that is referred to in Standing Committee Report No. 40. And I don't think that would be possible under Delegate Sutton's proposal. I think that the two ought to be related and I think that is possible under the committee proposal and not possible under Delegate Sutton's proposal.

CHAIRMAN: Thank you, delegate. Delegate Kawasaki is recognized.

DELEGATE KAWASAKI: Mr. Chairman, Delegate Dodge has substantially covered the same point that I want to bring up and I speak against the adoption of the amendment offered by Delegate Sutton. I feel no reason to place a separate category of people in an exalted position and say that they may have a canon of ethics. If they have a canon of ethics that could supplement what is covered on the code of ethics. But I believe there's no reason to exempt that body from the coverage of this ethics provision.

CHAIRMAN: Thank you for your brief remarks. Is there any other discussion before the committee?

You've heard the substitute motion. All those in favor of the motion, please signify by rising. Thank you. All opposed, arise. Thank you. The noes have it. The motion is defeated.

Is there any further discussion?

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, time after time I've heard in this Convention that our State Constitution is basically a sound document, a short document, and therefore a good document. Now, we come up with this code of ethics and we are told, well I am told in committee, that it would really not have too much effect upon the state public officeholders. And that the only reason we should include this in the Constitution is as a good selling point to the public when we go up for their final vote. I don't think this should be the rationalization for accepting anything within our Constitution. I don't think the Constitution should be played with as a political tool by saying, "Look what I gave you folks—a code of ethics." I would like someone to show me why it would do some good to the State, what will it change—will it change the status quo in any way and if so, how? If you can show me this, then I'll vote for the code of ethics. Until then, I'll vote no.

CHAIRMAN: Delegate Kawasaki has asked for the floor.

DELEGATE KAWASAKI: Mr. Chairman, I am only too well aware of the fact that we have legislation that covers state employees and appointees, boards and commission members under a code of ethics. And I think the code of ethics is a good one. It needs improvement to be sure, but I think by its provision in the Constitution of a code of ethics requirement covering all officials, including elected officials, I think tends to—one thing, I think it takes care of a problem that many people in the County of Honolulu have been concerned with. The City and County adopted its own code of ethics but very glaringly omitted the inclusion of the members of the city council and the mayor and there has been much criticism against this omission. And I believe requiring a code of ethics to cover all elected officials, appointed officials, members of boards and commissions and employees, I think would be a blanket coverage that will be very salutary in terms of restoring public confidence in the quality of employees we have throughout the State. And I believe that this would not hurt to have this included in the Constitution document. We intended, as co-chairman with Delegate Kato, serving on the conference committee that hammered it out, the final language of the code of ethics bill passed in 1967, we considered covering the entire State, including all counties. And we did encounter some opposition by respective county officials to covering their counties. And we had assumed that they would on their own volition either alter their code of ethics, if it did not cover elected officials, we waited for a short period of a year or so and this attempt was

never made and I think this code of ethics proposal submitted by the committee would take care of the situation so all counties would be covered and every official who is elected would also be covered.

CHAIRMAN: Thank you, delegate. Delegate Aduja is recognized.

DELEGATE ADUJA: I speak in favor of this proposal. As you all know, Mr. Chairman, the legislature attempted on several occasions to have a code of ethics. We sponsored and we passed a very good code of ethics but somehow down the line the legislators were not included and when we spoke, and I was a member of the Judiciary Committee, I felt that particular mention of the legislator was included there but somehow by typographical error or something it was omitted. That's the reason. And I believe that in fairness to the legislators who are in favor of the code of ethics, and I am one of them, I feel that this proposal will indeed remove whatever bad items were brought about by the legislature and I wholeheartedly support this amendment at this time.

DELEGATE KAWASAKI: Mr. Chairman, a point of clarification. Members of the state legislature are included in the state code of ethics. It's only in the City and County of Honolulu that the code of ethics covering the City and County of Honolulu does not include the mayor and the members of the city council.

DELEGATE ADUJA: Mr. Chairman, I do not wish to answer to debate but about two nights ago I spoke before a group and I told them exactly what Mr. Kawasaki said today, and I understand it will be because they say that the legislature—the legislator is not included in the code of ethics. And I spoke to Mr. Kato, then judiciary chairman, and he also said that the legislators are not included in the present code of ethics. If I'm wrong, I'd like to have Delegate Kato please tell us about this.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Mr. Chairman, although the legislators are included in certain sections, they are not included in the section called conflicts of interest and also I believe in appearances before state boards and commissions. I think this proposal will take care of that situation, however.

DELEGATE KAGEYAMA: Mr. Chairman.

CHAIRMAN: Delegate Kageyama.

DELEGATE KAGEYAMA: I rise to support the amendment to the code of ethics. And to "Kanalua" Burgess may I be able to convince you that the passage of this code of ethics is mandated by the voters if they so approve that all government workers shall have a code of ethics. And I think in the Constitution, a code of ethics would bring some sort of uniformity of code of ethics in the political subdivisions as well as in the state level. And I believe what was in congress and what the congress is about to do in the way of controlling its

behavior by certain code of ethics and I think Hawaii should lead the way and pave the way for any other state, including the Congress of the United States, that Hawaii itself, the 50th State, is ready to adopt the code of ethics by the consent of the people.

CHAIRMAN: Thank you, delegate. Are you ready for the question?

DELEGATE BURGESS: Mr. Chairman, I have one question.

CHAIRMAN: Delegate Burgess, state your question.

DELEGATE BURGESS: I would like to know if the legislature can accomplish the same thing we're trying to do in the Constitution, and if they can why is this matter more constitutional than legislative?

CHAIRMAN: Delegate Miyake.

DELEGATE MIYAKE: Mr. Chairman, as a legislator, I speak strongly in favor of this addition of this new section providing for a code of ethics covering all elected officers and employees of the State or political subdivisions, and members of the boards, commissions and other bodies. I believe ethics is the foundation of sound, good government. The people expect us to have this in the Constitution and I'm strongly in favor of it. And as answered by Delegate Kato, the chairman of this committee, submitting this amendment for the delegates' consideration, it has been mentioned that unintentionally or otherwise the legislators were left out in the section of conflict of interest in the legislative act. Therefore, to improve the image of elected officers of this State, I strongly recommend the adoption of this code of ethics in the Constitution.

CHAIRMAN: Delegate Donald Ching is recognized.

DELEGATE DONALD CHING: Mr. Chairman, I rise on a point of inquiry. After listening to the debate here, I was wondering if the chairman of the committee could answer this question. Under the language of the proposed amendment to the Constitution, would the present statutory code that is now in effect comply with the language—is it sufficient to comply with the language as called for in the proposed amendment even though there are sections in the present code that do not apply to certain classes of officers and officials?

CHAIRMAN: Delegate Kato, would you yield to that question?

DELEGATE KATO: I wonder if you could repeat that question.

DELEGATE DONALD CHING: My question is, as I read the language here, it came to mind that, would the present statutory provision of our code now in effect comply with the constitutional amendment as proposed here without amendments or would we have to amend the present code to comply with the constitutional amendment proposed?

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Mr. Chairman, I do not believe that this particular proviso does mandate any change in our legislative code of ethics. However, I believe that in view of the adoption of this particular provision, the legislature would be remiss if they did not include the legislators as well as all other officers and employees in one single code and treat everybody alike. May I continue, Mr. Chairman, to just say that although the legislature can adopt a code of ethics as it has done and although there may not be the real necessity for this particular provision, I think having it in the Constitution will ensure the continuance of a code of ethics on our statutes and that it would preclude any kind of a repeal of that statute.

CHAIRMAN: Thank you, Delegate Kato.

DELEGATE O'CONNOR: Mr. Chairman.

CHAIRMAN: Delegate O'Connor and then Delegate Kawasaki.

DELEGATE O'CONNOR: In an attempt to answer Delegate Ching, I would suggest that if we do adopt this new section and if we retain Section 4 of the Bill of Rights, and if the legislature in its wisdom saw sought to discriminate against one section or one group of either appointed or elected officers and treated some other group differently, if the group that was discriminated against would have an excellent case under Section 4 in that they would be denied equal protection of the laws one way or the other. And I would suggest that that statute could be stricken down as being unconstitutional and probably the one you've got right now is unconstitutional if we pass this.

DELEGATE DONALD CHING: May I—

CHAIRMAN: Delegate Kawasaki, would you yield to Delegate Ching? Delegate Ching.

DELEGATE DONALD CHING: Just another point of inquiry, Mr. Chairman, if Delegate O'Connor wants to answer the question. Which group would be discriminated against?

DELEGATE O'CONNOR: Well, if you left the honorable body of the legislature out of—legislators out of some of the provisions that you have made applicable to the appointed or other elected officials, then I would suggest that the other people would be discriminated against in that their requirement for ethics, their requirement to adhere to a certain code of ethics is greater than those of the honorable body of the legislature.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, a further point of clarification. The code of ethics that was enacted in 1967 does cover legislators. Unless there be any question about this, there is one section relative to former employees of government agencies appearing

before a government body or agency and being compensated for that. This section prohibits employees but excludes legislators who may be attorneys who, for a fee, and as members of the legislature appeared before a board or a commission or agency of government with compensation. This is the exclusion I think people are talking about, and I think this was an omission again by the people who hammered out the final language and we certainly hope—we will attempt to rectify this situation by also covering legislator-attorneys who for compensation appear before boards and commissions or government agencies. We would try to rectify this error but this is the only exclusion as far as legislators are concerned. Any other section of that code of ethics does cover legislators. This is Section 9 if my memory serves me correct.

CHAIRMAN: The Chair recognizes Delegate Alcon.

DELEGATE ALCON: Mr. Chairman, point of inquiry, that the phrase "employees of the state" include teachers and university professors?

CHAIRMAN: Delegate Kato, did you hear that question?

DELEGATE KATO: Yes, it does.

CHAIRMAN: It does. Okay, are you ready for the question? The Chair would state a vote "aye" for the motion will mean a new section in Article XIV on the code of ethics, and a vote "no" will not include it. Are there any who wish a roll call vote? If not, the Chair will ask for a voice vote. All in favor of the motion, signify your approval by saying "aye." Opposed, "nay." The motion is carried.

Delegate Bacon is recognized.

DELEGATE BACON: May I offer an amendment now to add a new section to the article—

DELEGATE GOEMANS: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: I am cognizant of the fact that the purpose of the Committee of the Whole is to set the matter into form for final action in the body. However, I think that at this time it would be pertinent to raise a matter of procedure which I think would expedite things now and in the future. We have now acted on the committee proposal which was submitted to the Committee of the Whole in its entirety. There's nothing further to do. We have concluded our consideration of Standing Committee Report No. 44 which was referred to this committee. I would certainly submit to the ruling of the Chair if he does want to consider further matters, but I should think that we would take into consideration in view of this development tonight, that henceforth it would be better procedure for the Committee of the Whole to consider the amendments first in the entirety before going on to the body of the proposal before the body which is the

main question. We have now concluded consideration of the main question. That's why there's nothing further to amend, logically speaking. If you rule that we do consider this and further amendments, I will go along with it but I would like to make that point.

CHAIRMAN: Well, the procedure that has been followed by the Chair was to consider each section one by one and the Chair would like to rule that it is in order to offer new amendments.

DELEGATE UEOKA: Mr. Chairman, I have one question to ask and I would like to know whether any one of these amendments has been submitted to the committee and had been considered by the committee.

CHAIRMAN: I'd like to refer that question to the committee chairman, Delegate Kato.

DELEGATE KATO: Delegate Bacon's amendment was considered by the committee.

DELEGATE UEOKA: Mr. Chairman, if that be the case I think we should all learn what the deal is and accept that the committee had considered the proposal and it should not be reconsidered.

CHAIRMAN: Delegate, your point is well taken, but each delegate has an—

DELEGATE DEVEREUX: Mr. Chairman, point of order.

CHAIRMAN: Delegate Devereux.

DELEGATE DEVEREUX: At the beginning of this Convention, Mr. Chairman, we were all informed that any delegate had the right to offer an amendment on the floor of this Committee of the Whole regardless of whether his proposal had been defeated by the committee or not.

CHAIRMAN: I was just about to say that. Thank you, Delegate Devereux. Delegate Bacon.

DELEGATE BACON: May I proceed, Mr. Chairman? The amendment which I have to offer is listed as XIV (6), and this adds a new section to Article XIV. It reads:

"The State shall preserve and enhance the heritage and culture of the Hawaiian people and encourage continued support of Hawaiian traditions."

—"as a tradition" I think, I've written over it. Mr. Chairman, I move for the adoption of the amendment.

CHAIRMAN: Is there a second to that?

DELEGATE MEDEIROS: I second the motion, Mr. Chairman.

CHAIRMAN: Delegate Medeiros is recognized for purpose of a second. Delegate Bacon.

DELEGATE BACON: Mr. Chairman, the hour is late but I do intend to make a short statement.

DELEGATE KAUHANE: Mr. Chairman, I rise to a point of information.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Is it proper at this time to raise parliamentary procedure to ask that—to request that the amendment be recommitted to the committee for their consideration?

DELEGATE BACON: I have no objection, Mr. Chairman.

CHAIRMAN: It would be appropriate unless the body wishes to dispose of this matter now.

DELEGATE BACON: Mr. Chairman, this is a matter which I feel is of utmost importance and it is not a laughing matter as many of the other people have criticized me for bringing it up.

CHAIRMAN: Proceed with your remarks, delegate.

DELEGATE BACON: Mr. Chairman, I offer this amendment because I feel that it is one of the most important amendments which can come before this body. We begin with the importance of this if you will look in the Preamble, the Constitution of the State of Hawaii states there that the "people of Hawaii are mindful of our Hawaiian heritage..." They state this right in the Preamble, Mr. Chairman, and yet the State is not really mindful of their Hawaiian heritage. There is nothing in that Preamble which will make it mandatory that the culture and the heritage of the Hawaiian people shall be maintained or preserved. Even at the risk of stating the obvious, Mr. Chairman, Hawaiian culture is indigenous and distinctive to this State, and it is imperative that concerted efforts be made immediately to halt the rapidity with which this culture is disappearing. Hawaii still has a long way to go in this area of cultural preservation as compared with the efforts of other countries like Egypt, Rome and Greece and other states such as Virginia in its efforts to maintain colonial Williamsburg. The creation of Ulu Mau Village, the attempted and projected restoration of Lahaina, the Falls of Clyde, and various ancient Hawaiian heiaus are comparatively recent attempts which often are forced to depend on private donations for completion.

Since Hawaii has tremendous potential in the visitor industry, and since many visitors are interested in our cultural heritage, it is especially important that the State enact provisions to guarantee the preservation of our Hawaiian culture. For a major resort area and visitor area, we are woefully lacking in historical parks and preserves which allow visitors glimpses into our past. A constitutional amendment to this effect, such as in the proposed amendment, would insure preservation of this Hawaiian culture.

The heritage, culture and traditions of a people tend

to become diluted in practice and to disappear as the generations become further removed from their original culture. While this is normal and while modernization is not only desirable and inevitable, there are also compelling reasons why a people's heritage should be preserved. In our State, this need for preservation is especially acute as witnessed by the literal decimation of the Hawaiian people after the coming of the white man.

Mr. Chairman, I read recently a statement by David Marlow, a famous Hawaiian historian, who said in general that the fish will come in from the sea with a great wave and when they come they will be like the people from the other shores, they will eat us up, and that is what has happened. In 1853, according to one set of figures, it showed that the percentage of the Hawaiian people was dropping rapidly. The statistics are undeniable, Mr. Chairman, and in the same publication it shows an article by Hardy Hutchinson who predicts that out of the approximately 500 pure Hawaiians remaining none will remain by the end of the century. Therefore, I suggest and I maintain that efforts be made now to preserve in our Constitution the direction that Hawaiian heritage and culture will be preserved.

There have been studies on Hawaiians and part-Hawaiians by various trusts and other groups and they show that these individuals need the encouragement on which to base their identity. Mr. Chairman, in many cases, Hawaiians—and I'm a part-Hawaiian—are made a butt of jokes in this State. And I for one believe that with the help of this Constitutional Convention steps can be taken to prevent this. There are things being done, Mr. Chairman, by the state legislature. In 1959, there was started a cultural preservation program. I checked with the program, I checked to find what they are doing, I checked with the members of this committee. The two members who answered me by telephone gave me all the support in the world, Mr. Chairman, they feel that this amendment should be inscribed in stone as a sign of direction for the State that the Hawaiian heritage and culture will be preserved. And the committee report states that things are being done. This is not accurate, Mr. Chairman. There is not enough being done.

The committee was formed because of the appalling rapidity with which the ancient Hawaiian background and heritage of these islands are disappearing. Many important aspects of Hawaii's history, art and culture will be lost within the next few years if they are not now protected and preserved. The aim of the committee has been to preserve these basic values and to coordinate efforts to this end. The major institutions involved in this work have been the Bishop Museum, the University of Hawaii and the Hawaiian Historical Societies. However, it is quite apparent that in terms of the great job which faces them, in terms of the great value of what I'm talking about, that this is not enough. This is not enough, Mr. Chairman, and I feel and again I say that preservation and enhancement of Hawaiian culture should be engraved in this Constitution, it should be written in stone so that it would remain there, changes will not come.

Hawaiians, especially those of earlier days, were noted for their hospitality and spirit of aloha. Urbanization and modernization has tended to undermine this Hawaiian graciousness. Preservation of our Hawaiian heritage will do much to help restore this spirit of aloha which is symbolic of this State.

Mr. Chairman, much has been said of what the legislature can do. This is not just a job for the legislature. It is a job for the Constitutional Convention, it is a job for the legislature, it is a job for every man, woman and child in this State. This is a very important thing. We have given in our Constitution, if you will check, special note of things for 18-year-olds. We've put something in there for people who are non compos mentis. We have talked about organized labor, slums, even punishment of disorderly visitors in the legislature. I maintain that we can put this in our Constitution, that the interest is there and that the people of this State, if this matter is put on the ballot, will vote—will give this the highest vote of any article presented to the general voting public. This, I predict, Mr. Chairman, because there is tremendous support for this matter in this State. The only question now is that the committee members who signed the committee report, can they change their votes to vote "aye" for this. I ask the committee members of this Convention to vote from your heart for this matter. Thank you.

CHAIRMAN: Thank you, Delegate Bacon. Delegate Kato.

DELEGATE KATO: Yes, Mr. Chairman. Although I'm in sympathy with the ideas expressed by the delegate from the 8th District, I think that some corrections should be made to what he has stated. I believe that he stated that the committee report indicates that something is being done in the public schools and he felt that it was not true. I had a conversation with the superintendent of the Department of Education, and he told me today that in the elementary grades they are teaching a course in Hawaiiana. He also indicated that there are elective courses at the high school level.

Speaking of not doing enough or not doing anything, he indicated that plans are being made and they are ready to enter into agreement with the Bishop Estate to gather more information so that they may more adequately teach Hawaiian culture and heritage. Legislative action was taken during the past session in HCR 30, which was adopted, to do exactly what is being proposed by this amendment. I think that the legislature is very mindful of our Hawaiian heritage and I do not think that this particular proposal is needed. Furthermore, I'd like to say that if we are going to include the Hawaiian culture, why not include the cultures of all of the immigrant peoples of this State because I think they have a right to have a place in the history of this State. Thank you.

CHAIRMAN: Thank you, delegate. Delegate Aduja is recognized.

DELEGATE ADUJA: Mr. Chairman, so that the

record will show that I'm voting against the amendment and the reasons for same, I have a strong spirit of aloha for the Hawaiian people. As you will notice, there were several proposals introduced and also the committee discussed them, for instance, "Hawaii Pono" and aloha. But somehow the committee felt that the Constitution is not the place for this particular type. If you will notice, the United States Constitution does not have anything that covers the Indians who, after all, were the first Americans on American soil.

I say to you that the Hawaiian Homes Commission, I believe, is sufficient to bring forth the heritage and culture of the Hawaiians in general. I believe, and this is true, my experience with Mr. Piianaia, that the Hawaiian Homes Commission, the crew at the Hawaiian Homes Commission are teaching the Hawaiian culture to the limits of their ability.

Now, I think the speaker—the introducer of this particular proposal has indicated through his minimum experiences and also from speaking to other individuals, and in fact, the very Preamble of our Constitution today mentions Hawaiian heritage. I don't think there is any need to add any more sections in our Constitution to tell the rest of the people outside that we are all not in favor or in favor of the Hawaiian heritage and culture. We believe in the Hawaiian heritage and culture but we feel that the legislature is more the place to bring forth this cultural requirement. And therefore, I shall vote against the amendment, against this proposal because I feel that there is no place for it in this Constitution. We want to make it a very light Constitution, not a heavy one like other constitutions in these United States. Thank you.

CHAIRMAN: Thank you. Any further discussion on the motion? I'll give you another moment, Delegate Bacon. Does anyone else wish to be recognized? If not, Delegate Bacon, one last word.

DELEGATE BACON: How long do I have? Because I do feel that the previous speaker has—

CHAIRMAN: According to the rules, you have five minutes.

DELEGATE BACON: Fine. I do feel that my fellow delegate exemplifies what I was trying to get at. He's missed the point. He talks about the Hawaiian Homes Commission. That is not getting at what I'm trying to say here. He talks about the Preamble. These are mere words, Mr. Chairman. What I think of is to engrave right in stone, in your Constitution if it's important enough, engrave this direction in your Constitution and put it there because it's valuable enough. It's valuable enough for a disappearing and rapidly changing culture because in a very short time, as people say now, we will not even be able to have a luau on this island because there will not be any keawe wood.

These things, Mr. Chairman, are very important. There are many things which can be said about this and I feel that we have excellent witnesses who came before

the committee, and I mean excellent witnesses who all supported this proposal. A letter from the Molokai Hawaiian Civic Club, they support the proposal. The president of the Molokai Hawaiian Civic Club said that if she knew that this State would take that much interest, she would not have thrown the Hawaiian cloaks into the grave when she buried her mother a few years back. And this is the kind of thing that I'm trying to get at, I'm trying to say to the State and to this Constitutional Convention. In relation to the chairman of the committee, he said why not all cultures. I'm not against that, Mr. Chairman, but I'm speaking to this point because these islands are the homes of the Hawaiians. Everyone else who has come here is a visitor in his house. And these islands belong to them. And I do believe that they deserve a place in our State Constitution and I strongly suggest that all delegates support this, and I ask for your help. Thank you.

CHAIRMAN: Thank you, Delegate Bacon. The motion before the house is to include a new section in Article XIV to be entitled "Hawaiian Heritage." A vote "aye" will signify your approval for including it. A vote "no" will exclude it. The Chair would ascertain whether or not a roll call is desired.

DELEGATE BACON: May I ask for a roll call, Mr. Chairman?

CHAIRMAN: When ten or more delegates ask for a roll call, the Chair will so indicate. The Chair determines a need for roll call. Mr. Clerk, please call the roll.

(Roll call having been ordered, the motion to add a new section to Article XIV was put by the Chair and failed to carry by a vote of 26 ayes and 46 noes, with Delegates Aduja, Ajifu, Akizaki, Ando, Ariyoshi, Beppu, Burgess, Donald Ching, Dodge, Doi, Dyer, Goemans, Hara, Hasegawa, Hitch, Ho, Jaquette, Kage, Kato, Kauhane, Kawakami, Kawasaki, Kudo, Kunitamura, Larson, Peter Lewis, Frank Loo, George Loo, Matsumoto, Morioka, Nakatani, Noguchi, O'Connor, Oda, Pyo, Saiki, Shiigi, Suwa, Takamine, Uechi, Ueoka, Ushijima, Wright, Yoshinaga, Mr. President and Chairman Chang voting no; and 10 excused, with Delegates Amano, Andrade, Hung Wo Ching, Fasi, Harper, Kaapu, Kamaka, Rhoda Lewis, Schulze and Takahashi being excused.)

CHAIRMAN: The noes have it. The motion is lost.

DELEGATE DYER: Mr. Chairman.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: I'm going to move to recess, I'm tired and we have the initiative and referendum still to take up—

DELEGATE FERNANDES: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Fernandes.

DELEGATE FERNANDES: Mr. Chairman, prior to the weekend, the president informed us of our schedule. I think all members were aware of what we're going to face. And I think if any decision is going to be made as well as whether we're going to adjourn or recess it should be left up to the president to make this determination. I think all members should respect the time schedule set by the president prior to our three-day vacation.

CHAIRMAN: Delegate Dyer.

DELEGATE DYER: If there's a second to my motion, I would like to vote on it.

DELEGATE HANSEN: I'll second that motion, Mr. Chairman.

CHAIRMAN: The Chair would like to declare a short recess to check with the president.

At 10:24 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:30 o'clock p.m.

CHAIRMAN: Committee will please come to order. Delegate Lalakea, you're recognized.

DELEGATE LALAKEA: Mr. Chairman, I move to amend Committee Proposal No. 6 by adding a new section titled "Initiative and Referendum" as appears on Amendment XIV (3). It is a two-page item and reads as follows:

"Section _____. Initiative and referendum. The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

"Application. An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by qualified voters of each county, equal in number to one percent of those who voted in the preceding general election, as sponsors, and shall be filed with the lieutenant governor. If he finds the application in proper form, he shall so certify. Denial of certification shall be subject to judicial review.

"Petition. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten percent of those who voted in the last preceding general election in at least three-fourths of the counties, it may be filed with the lieutenant governor.

"Initiative election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing

the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred and twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

"Referendum election. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first statewide election held more than one hundred and eighty days after adjournment of that session.

"If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. An initiated law becomes effective ninety days after certification by the lieutenant governor, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification.

"Restrictions. The initiative shall not extend to any statute authorizing or repealing the levy of taxes, to dedication of revenues, nor shall it be used to make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to any statute authorizing or repealing the levy of taxes, to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health or safety."

CHAIRMAN: Is there a second? Delegate Lum.

DELEGATE LUM: I second the motion.

CHAIRMAN: Delegate Lalakea, proceed.

DELEGATE LALAKEA: Thank you, Mr. Chairman. Initiative and referendum as we all know has had a long history in our United States. It has had over sixty years of experience in many states. I know of hundreds of people in my district and I am sure that most of you delegates will also find this true in your district, hundreds of people who are in favor of initiative and referendum. As you know, initiative is a means by which people may propose and enact laws, and referendum a means by which the people may approve or reject acts of the legislature.

There have been four major objections to initiative and referendum and I would like to cover them quickly tonight. The first objection is that militant and activist groups can use the I and R to their advantage.

According to this amendment, as I have here, I find that this is difficult to do. It is patterned after the successful Alaska initiative and referendum article and requires three steps. First, it must be applied for and in making this application, at least one percent of the qualified voters in each county must first say that there is a need for this measure. Second, they must go out and get a petition signed by ten percent of the qualified voters in at least three-fourths of the counties; and then finally in order to pass, it must be put to a ballot and passed by a majority. I think in no way can you imply that this follow-up initiative and referendum may be taken over by a small activist or militant groups. It must represent a clear desire of a broad segment of our population before it can have any meaning.

Now the second objection that I hear of is that monied interest can take over the power of initiative and referendum and work it to their advantage. Well, I would cite an example in 1964 in California, and there are many examples which point out that money alone does not sway the desires of the people. In 1964, a Californian brought out an issue to establish a state lottery. Supporters of the lottery listed campaign expenses in excess of \$529,000 for the lottery. The opponents of the lottery spent only \$12,000. In other words, something like less than 46 times less. And the voters sided with the opponents against the lottery and rejected the measure.

A third objection that I hear is that it is something that erodes the responsibility of the legislature. Again, this is not true. The legislature becomes even more responsive. I think we here in this body have become very responsive because time and time again we hear what are the people going to say when they get this measure before them. We are indeed responsive and I think by having initiative and referendum we'll have the same kind of feeling prevail in our legislature. It will become more responsive. There are further safeguards also in which measure on page 2, the last paragraph under "restriction," it points out that initiative and referendum shall not apply to money matters, to taxation, to the judicial and to call it emergency laws.

And the fourth and last point, some claim that initiative and referendum is antiquated and it is not needed. I must point out that out of twenty states in our union that have initiative and referendum not one of these articles has been repealed. Furthermore, every election year, most of these states show on their ballot some measure under initiative or referendum that has been brought to a ballot by the people.

Delegates, I urge you to support this amendment. I know that this measure was refused by the committee of which I am not a member, and somehow I feel somewhat like a cartoon that I saw in the paper where a— which pertains to the gun control law. There was a congressman and a lobbyist talking together saying, "Nobody wants this except the people." I will apply the same statement here to initiative and referendum. Nobody wants it except the people and I am certain, as spoken by another delegate just before me, that if initiative and referendum is given to the people that

you will find overwhelming support for the measure.

Sixty years of experience show that people act carefully and responsibly on initiative and referendum measures. I urge you that we follow the twenty states of the nation and give our people here in our State initiative and referendum, that we follow the eleven out of thirteen western states and give our people initiative and referendum. And that we further follow within our own State, the County of Maui and the County of Hawaii, who in their county charters have given their people the right of initiative and referendum. Delegates and Mr. Chairman, I urge you to support this Amendment No. 3 to provide initiative and referendum in our Constitution. Thank you.

CHAIRMAN: Thank you, Delegate Lalakea. Delegate Kage is recognized.

DELEGATE KAGE: Mr. Chairman, I speak against the amendment to amend Article XIV by adding a section on initiative and referendum. If our representatives and our senators were gutless and are being mercilessly influenced by lobbyists of minority groups, then I say that there is a need for a section on initiative and referendum in our Constitution. Initiative is a legislative device to initiate legislation. There are two kinds of initiative, constitutional and statutory. With the technological advancements in the field of communication and transportation, dialogue between our legislators and the citizens has improved. Today, because of the technical advancements and a more affluent and a more intelligent and a more informed public, our legislators are more responsive to the people and I believe that any citizen who is interested in initiating a piece of legislation may do so to an elected representative. In fact, I would dare to say that our legislators would welcome any suggestion for new legislation. This is more sensible, less expensive, and less cumbersome procedure.

Referendum is a legislative device to refer to the people an act passed by the legislature, which act because of the indecision of our legislators is being referred to the people for approval. Here again the arguments against the initiative hold. In addition a referendum provision in our Constitution would afford our legislators a means to pass the buck to the people. The legislators need not stand up and be counted. The procedure—this process, the process of referendum may create an irresponsible legislature. Our Constitution has, at present, a provision for a constitutional referendum. We tend to accentuate the bad characteristics of our legislators. The good is often forgotten and buried. If we were to make a survey of the fifty state legislatures, you will find that our legislators, politicians if you wish, are among the best educated, best informed, and most concerned in the nation. Sure they're not perfect, but let us not write into our State Constitution a provision that will not only be cumbersome to execute but may create a sanctuary for irresponsible, spineless legislators.

Initiative and referendum are nice-sounding words and I know that their advocates mean well. Contrary to their definition initiative and referendum have a negative

reaction. It is not so much not affording the public to initiate and to accept or reject legislation but the fear and the distrust that our legislators will not do a good job. Let us not condemn the system nor the body. If there is a rascal we can reject him at our next election.

Mr. Chairman and fellow delegates, I urge you to vote "no" to the amendment to Article XIV adding a new section on initiative and referendum. Thank you. Kokua.

CHAIRMAN: Thank you, Delegate Kage. Are there any others who wish to speak? Delegate Bryan is recognized.

DELEGATE BRYAN: Mr. Chairman, I believe that the first problem with the proposal in this amendment is that it would clutter our ballot and I would like to reply to one of the remarks made by the proponent. He says that no one wants it but the people. Mr. Chairman, I submit that logic begets logic. If no one wants it but the people, we should rise on our principle and vote it down.

CHAIRMAN: Thank you, delegate. Any other discussion? Delegate Wright.

DELEGATE WRIGHT: I rise to speak against the amendment. However, I would like to make it clear that I am for initiative and referendum. Let me explain.

I don't believe the amendment signifies substantially the meaning of our citizens acquiring such a privilege. Mainly, what I'm trying to say, Mr. Chairman, is this, that I don't think initiative should be at such a point made so easy where it can be used as an instrument against our government. However, myself, I had submitted Proposal 33 regarding initiative and referendum putting some safeguards and making it comparable, giving the people which is a privilege converted to a right to express their feelings in government. Now, I can state examples of past incidents that were made available by our government and our county. One, Model Cities. Whereas Model Cities was brought to the Kalihi-Palama area and also the Waianae-Nanakuli. I can state openly, which was stated by legislators of our Hawaii State and by our congressional representatives in congress, now that the format and the process which the Model Cities would sell to these particular areas was much insufficient and not adequately, whereas all can understand the trueness of the program. Now, those that opposed the Model Cities program had no recourse whatsoever because the way it was presented to the community, whereas organizations controlled at the beginning, then taken over by low-income movers to dominate this program, the property owners and businesses alike had no knowledge of such programs as Model Cities and what was to be in store. But nonetheless, the program has passed. I think initiative could have been a way of recourse.

Another one which I know of that could have been beneficial towards the state legislature is our prison. Our legislators have gone over this subject many times in

planning which cost us somewhat—cost thousands of dollars, yet to this day our legislature cannot rightfully designate an area because of controversy. Now, no one wants it in their backyard.

Mr. Chairman, I won't go any further than what I have stated but I would like to go on record that initiative has its place in our community today with its complexities and compound problems are rising, but I believe and I will state briefly, in my proposal I tried to make it comparable that of our gubernatorial in the last or whenever it should be of the last gubernatorial action comparable of 8% that of the senatorial districts, make anywhere as eight senatorial districts shall have 14,000 somewhat 400 plus votes or total of the State or senatorial districts shall be somewhat 103,000,200 plus somewhat votes. I feel that if people want initiative which they have expressed in my area very much so, then I think they should work at it as much as a legislator works to be in office. I think that they must put initiative within themselves whereas we know a greater majority would partake and there not be that of a minority. Thank you, Mr. Chairman.

CHAIRMAN: Thank you, Delegate Wright. Are there any others who wish to speak? If not, are you ready for the question? A vote "aye" will signify that you would like to include a new section in Article XIV regarding initiative and referendum. A vote "no" will exclude it. The Chair would like to ascertain whether there are ten or more members who wish a roll call. Raise your hands. How many wish a roll call?

DELEGATE AJIFU: Mr. Chairman, I rise to point of order.

CHAIRMAN: Delegate Ajifu.

DELEGATE AJIFU: Mr. Chairman, I think it seems evident that there seems to want a vote for—I think if there is roll call vote wanted they should call for that and require that minimum number required in the rule.

CHAIRMAN: The Chair notes that there are less than ten members who want a roll call vote so we shall proceed with the voice vote. All in favor of the motion, please signify your approval by saying "aye." All those opposed, say "no." The motion is defeated. Delegate Sutton.

DELEGATE SUTTON: Fellow delegates, it is getting rather late and I would beg your indulgence for a little attention to what is labeled as No. 6 to Article XIV. This is a very simple amendment—No. 1, rather. It reads as follows:

"The legislature shall provide by law for the protection and education of the citizens of the State against harmful and unfair business practices."

We live in a State that has the highest cost of living—

CHAIRMAN: Did you wish to move for the adoption of this amendment?

DELEGATE SUTTON: I move for the adoption of this amendment.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: Second.

CHAIRMAN: Proceed.

DELEGATE SUTTON: We live in a State that has the highest cost of living of any state in the union except Alaska. And Alaska is a very unique situation being in the polar regions, exceedingly cold and not blessed by nature as we are. We had extensive committee hearings and Chairman Kato was exceedingly gratuitous in allowing us the maximum exposure. Every major labor union in the State of Hawaii supported the basic concept. Some wanted to go even further and have a constitutional amendment to establish a consumer protection department. However, the basic concept was supported by all major labor unions. We had before us witnesses from the Department of Welfare. Mr. Among, a cabinet member in Governor Jack Burns' administration, supported this amendment 100%. The evidence was that somebody on welfare was not able to protect himself from the frauds that occur and there was not sufficient assistance from the legal aid department nor from us attorneys. And that it was necessary for the individual to receive some type of help such as a consumer protection department would afford.

By an increasing demand by consumer buyers everywhere that they be given a voice in working out our various problems affecting money and buying, it becomes very important to assume the public's position by a statement of policy in our Constitution. I submit the consumer in Hawaii is a partner in our economic system with the right to both the information and protection in buying. There are many frauds which need exposing and need correction. Things like bait switch in which a lower priced product is advertised. But customers would always switch to a higher priced one. Extra service charges tacked on to credit cards, short weight or short measure and other deceptions most of which cannot be remedied by the little man unable to afford high priced legal talent. The honorable Mayor Georgia Jones, the only woman ever to sit on the Federal Trade Commission, who had been appointed twice to the Federal Trade Commission came here to Hawaii for the American Bar Association meeting and in the anti-trust seminar she stated point blank that Hawaii needed more consumer education and protection. We have seen Lieutenant Governor Thomas Gill defeat me in a debate and win the congressional election because he understood the necessity for consumer protection and I did not. I now do what we do in California, I went to Stanford Law School and we learned the type of pleading, which is the pleading of confession and then avoidance. I am confessing and I hope avoiding. Thank you very much.

CHAIRMAN: Thank you, Delegate Sutton. Delegate George Loo is recognized.

DELEGATE GEORGE LOO: Mr. Chairman, I rise to speak against this amendment and for the committee proposal—committee report which recommends the—adverse sort of amendment be filed. At the outset, Mr. Chairman, I think that each member in this Convention is in favor of consumer protection and is in favor of consumer education. But that is not the question before us. The question before us is, is this proposal necessary? I maintain, Mr. Chairman, that this proposal is not necessary. For one reason, in the last several years, the legislature has been working on the problem of consumer protection. For example, the attorney general was designated in 1965 as consumer counsel for the State. As consumer counsel, he is empowered to represent and protect the consumer, investigate violation of consumer protection laws and to enforce them. The attorney general may go to court to enjoin unfair or deceptive business practices and may ask the court for civil penalties of not less than \$500, nor more than \$2,500, for any unfair or deceptive business practice.

Starting in 1965, personnel were added to the attorney general's office to help him perform his function as consumer counsel. In 1968, the legislature authorized four new positions to assist him in his function as consumer counsel, to increase consumer protection. The amount of authorization came out to \$66,284. In 1965, the supervision of correct weights and measures was placed in the Department of Agriculture. Prior to that time, the supervision was in each county.

It is now unlawful to fire an employee solely because he has been garnisheed. Telephone solicitation of sales, except by handicapped persons, has been outlawed. Commercial debt adjusting has been prohibited. Full disclosure of the total price of an item is now required when a down payment or no down payment is announced by an advertiser. A real estate recovery fund has been established which will allow an injured party to recover up to \$10,000. Previously, an injured party could recover only up to \$2,500. A label with the words "product previously frozen" is required on any product that has been previously frozen and thawed. And lastly, a buyer is allowed to cancel a house-to-house sales contract if it is done within 48 hours of the time the buyer signs the contract.

It is not necessary also because the legislature, in its belief that the best consumer protection is informed customers, has been endeavoring to find ways to educate the citizens of the State against harmful and unfair business practices. For example, the house adopted a resolution in March, 1968, which requests the Department of Education to make a study of its consumer education in school. The Department of Education was requested to report to the legislature not later than 20 days before the convening of the 1969 session.

The argument that the proposal, if included in the Constitution, might help is not valid for the following reasons: This proposal does not furnish adequate guidelines for us legislators. It provides a means to harass the legislature without accomplishing any

beneficial result. And further, it adds to the number of proposals which the public must ratify. By adding to the number of proposals, it might be the straw that breaks the camel's back. The proposal would only clutter up the Constitution and burden our electorate with another unnecessary proposal.

In conclusion, Mr. Chairman, I ask you and the rest of my fellow delegates to vote down this amendment.

CHAIRMAN: Thank you, delegate. Delegate Shiigi.

DELEGATE SHIIGI: Mr. Chairman, today has been a very confusing and tiring day. We still have a very important issue ahead of us but I would like to just say a few words.

The opportunity to speak this morning was not granted to me because a fellow delegate decided that unless there was an amendment to an article we were not supposed to speak. Therefore, my beautiful speech was deleted but I would like to say at this time that our Committee on Revision and Amendment on Article XIV has been batting one thousand so far. We've been doing very well, we've retained everything and added an amendment in Section 3. Therefore, I'm speaking against this particular amendment and I wish all of you will agree with me by not voting for this amendment and completing our work for the Revision and Amendment Committee by continuing a vote of 1,000 batting average and no strike-outs. Thank you.

CHAIRMAN: Delegate Aduja is recognized.

DELEGATE ADUJA: Mr. Chairman, I speak against this amendment not because I'm not in favor of the concept but I feel like everyone else that it does not belong in the Constitution. I believe that, as Delegate Loo has stated, we have already many of this protection against unfair practices. However the biggest, I think, lack in this area is the education where all that Delegate Loo has stated could be placed in the hands of our consumers. I think that the AFL-CIO is in the right path by putting out, if you have read it, a September edition fully realizing and dedicating this particular issue to consumer protection. The BBB, I believe, with its new addition and new program will continue to educate the public on these unfair practices and I believe that the *Star-Bulletin* and the *Advertiser* will see fit to print most of these things so that our community will be able to be educated.

Therefore I say to you, Mr. Chairman, that the legislature will find a way to at least put out some money in the next session or so to educate our community in all these areas where already there are laws and laws that will be introduced and passed. Thank you.

CHAIRMAN: Thank you, delegate. Are there any others who wish to speak on the motion? Are you ready for the question? Then a vote "aye" on the proposal—Delegate Sutton.

DELEGATE SUTTON: Roll call, please.

CHAIRMAN: The Chair will declare, unless there are ten or more delegates who wish a roll call, I shall ask for a voice vote. Please raise your hand if you wish a roll call. There being an insufficient number, the Chair will ask for a voice vote. A vote "aye" will include a new section in Article XIV on consumer protection and education. A vote "no" will exclude it. All those in favor of the motion as proposed, please say "aye." All those opposed, say "no." The noes have it. The motion is defeated.

Delegate Kato is recognized.

DELEGATE KATO: Mr. Chairman, I move that we adopt Standing Committee Report No. 44.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I second the motion.

CHAIRMAN: It has been moved and seconded that

Standing Committee Report No. 44 be adopted. All those in favor say "aye." Opposed, "no." The motion is carried. Delegate Kato.

DELEGATE KATO: Mr. Chairman, I move that we rise and report to the Convention that progress has been made with respect to Standing Committee Report No. 44 and Committee Proposal No. 6.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I second the motion.

CHAIRMAN: It has been moved and seconded that this committee rise and report. All those in favor of the motion, please say "aye." Opposed, "no." The motion has been carried.

The Committee of the Whole adjourned at 11:03 o'clock p.m.

Debates in Committee of the Whole on **REVISION AND AMENDMENT**

(Article XV)

Chairman: DELEGATE KAZUO KAGE

Saturday, September 7, 1968 • Morning Session

The Committee of the Whole was called to order at 9:38 o'clock a.m.

Delegate Kage presided as Chairman.

CHAIRMAN: Will the Committee of the Whole please come to order.

The Committee of the Whole will be discussing this morning as informally as possible Standing Committee Report No. 49 as submitted by the Committee on Revision, Amendment and Other Provisions. The committee report deals with the Preamble and Article XV, Sections 1, 2, 3 and 4 of our State Constitution. The Chair feels that there is no need for us to review the rules as it affects the standing committee, so if there are no questions as to procedure, the Chair recognizes Delegate Kato, chairman of the Committee on Revision, Amendment and Other Provisions. Delegate Kato.

DELEGATE KATO: Mr. Chairman, reference is made to Committee Proposal No. 8. I move that we adopt the fourth paragraph of Section 2 of Article XV as stated in the said committee proposal.

CHAIRMAN: Any second to that motion?

DELEGATE KAWASAKI: Mr. Chairman, I second the motion.

DELEGATE KATO: Mr. Chairman.

CHAIRMAN: Yes, Delegate Kato. You may proceed.

DELEGATE KATO: There are two amendments contained within this particular paragraph. The first relates to the powers and privileges given to the delegates at any constitutional Convention. The second relates to the provision that in the event the legislature shall not provide for enabling legislation providing for the districting, et cetera, of the next constitutional convention, the next convention will follow the legislation that provides for this particular convention. In other words, we're substituting the year 1968 instead of 1950 as the guideline. I'd like to yield at this time, Mr. Chairman, to Delegate Kawasaki who introduced the proposal relating to the powers and privileges of delegates at any constitutional convention.

CHAIRMAN: Delegate Kawasaki.

DELEGATE KAWASAKI: Mr. Chairman, I rise to speak in favor of the proposal recommending the amendment to Article XV, Section 2, paragraph 4. The end effect of the amendment is to write into the Constitution, giving the next constitutional convention, its subcommittees and its delegates the right that they enjoy in this convention which is granted to them by legislative sanction or by enactment of legislation in the last session of the legislature.

CHAIRMAN: May I disturb you for just one minute. I think the way the report came out of the committee is not too clear so I would recommend very highly that you tell the delegates just exactly what we're speaking about. In other words, the addition is naturally on the fourth line. Maybe they'd like to underline—and then also 68 instead of 50. Would you like to give them background so that they will know exactly what you're talking about?

DELEGATE KAWASAKI: I see, all right. I also refer my remarks to the fourth line on the committee proposal, first page. The amendment is the inclusion of the words, "have the same powers and privileges." These words—and what it does is actually to write into the Constitution that the next constitutional convention, its subcommittees and its delegates, would have the same powers that are enjoyed by the members and the respective subcommittees of this particular convention. This right, which is comparable to the rights enjoyed by the legislative subcommittees and their members, has been granted by rights of legislative sanction or by the enactment of legislation providing these rights for this body here. And I think this should be written into the Constitution because it just appears to me that this body is in importance comparable to the legislature and its committees and its members. This is the body that writes the Constitution, amends the Constitution. That document which, in essence, provides the kind of legislature we're going to have and its mode of operation. And I just wanted to make sure that these rights and privileges, for example, the right to require testimony, to administer oaths, for that matter to issue subpoenas, if necessary, to punish members coming before subcommittees for any contempt or conduct on their part. These rights I think should be written right into the Constitution and this is all it does and I recommend the Committee of the Whole adopt the proposal making this recommendation.

CHAIRMAN: Thank you very much, Delegate Kawasaki. Is there anybody else who would like to speak? Delegate Bacon is recognized.

DELEGATE BACON: I would like to ask the previous speaker a question.

CHAIRMAN: Would you address the question to the Chair, please.

DELEGATE BACON: I'm not well versed in the history of this type of thing but I would like to ask, what is the rationale for granting privileges to the legislature and to this body to be exempt from arrest during attendance of the session of these bodies in going to and returning from the same? I've heard much comment about this and I would like the history or the rationale, the basis of this kind of thing.

CHAIRMAN: Delegate Kawasaki, would you like to answer that question?

DELEGATE KAWASAKI: Yes, I think Delegate Bacon was on the floor as a member of the staff in the senate in the last session when this problem was discussed. As a matter of fact, I voted against it actually. I understand, going back historically, this provision was provided in the books for the then Territory, now State, to obviate perhaps a situation where a member of the legislature going to a session can be detained when his presence is needed badly on a vote or in a discussion in the floor of the legislature at the time. This is a historical reason, I am told, that prompted this kind of provision in our statute books. And I believe a legislative proposal in the last session was introduced and passed on this same rationale that we would not want a delegate going to a constitutional convention to be detained unnecessarily by some arresting officer on the street, if you will, when his presence may be needed badly at the convention. And I think this is historical reason, this is what I've been told and ironically I voted against this provision but which carried by only two "no" votes in the session. So this same right was granted to members of the constitutional convention.

CHAIRMAN: Thank you very much. Delegate Amaral is recognized.

DELEGATE AMARAL: This section here, it says, "The same manner and have the same powers and privileges." Does it also apply to salaries and per diem and so forth?

CHAIRMAN: Delegate Kawasaki, would you like to answer that question?

DELEGATE KAWASAKI: No. I don't think it does. The salary and the budgetary allocation for the holding of the constitutional convention is by practice, I think, a decision made by the legislature, prior to the convening of the next constitutional convention because the budgetary requirements might differ from constitutional convention to constitutional convention and your salary allocations, of necessity, would have to be determined by what the budgetary provisions are.

CHAIRMAN: Thank you very much. Anyone else wishes to speak? If not, are you ready for the question?

DELEGATE UEOKA: Mr. Chairman.

CHAIRMAN: The Chair recognizes Delegate Ueoka.

DELEGATE UEOKA: I'm wondering whether the language used here won't create a problem. Here, we're trying to look forward several years from now and it states here, "the same number of delegates from the same area." I'm wondering whether or not within the next few years the complexion might change. Shifts in population or otherwise and I think it's going to create some problems.

PRESIDENT PORTEUS: Mr. Chairman.

CHAIRMAN: President Porteus is recognized.

PRESIDENT PORTEUS: May I make reference to the 1950 convention in relation to this particular matter. The question was raised in 1950 as to what would happen if the voters decided that they wanted a constitutional convention and then the legislature did not pass an act providing for the number of delegates in the district. In effect, the voters would have acted but the legislature would have the power of veto by not providing the mechanics. It was assumed by many of the delegates that the legislature wouldn't hesitate to do this. But some of the delegates felt that there ought to be a backstop requirement. In other words, if the legislature didn't act, there at least would be the same pattern that was used in 1950 for the next one.

So essentially it is that this body would not be trying to say that you have to have the same pattern we have now. It's just as if the legislature did not provide for an up-to-date realistic pattern, there would be nothing that would stop the holding of the election for the selection of the delegates and the convening of this convention. I believe that it must be the committee's rationale that if it were a valid position in 1950, it's worth retaining it. As you know, the legislature did make very extensive changes.

CHAIRMAN: Thank you very much. Delegate Kato, do you have anything else you would like to add to that particular inquiry?

DELEGATE TAKAHASHI: Mr. Chairman.

CHAIRMAN: Delegate Takahashi is recognized.

DELEGATE TAKAHASHI: I would like to ask Delegate Kawasaki, you referred to the matter of privileges, the same power and privileges to the convention. Shouldn't the matter of privileges be referred to delegates to the convention rather than to the convention?

CHAIRMAN: Delegate Kawasaki, would you care to answer that question?

DELEGATE KAWASAKI: Yes. Well, I think though that it shouldn't be limited, circumscribed to only privileges and powers of individual delegates. What about a body of delegates which constitute a subcommittee. A

subcommittee may want to even subpoena witnesses if they refuse to appear.

DELEGATE TAKAHASHI: As I recall the legislative act that you're referring to, the privileges which were extended under the particular act, the privileges covered by Section 8 of Article III, which are privileges directly granted to members of the legislature and they're individual privileges. If your language is broad enough to cover privileges to delegates to the convention, I'm satisfied with this. If it's not then I think there should be some amendments made here to cover privileges to delegates to the convention.

DELEGATE KAWASAKI: Do you have any suggestions?

CHAIRMAN: Delegate Kawasaki, would you address the Chair?

DELEGATE KAWASAKI: Any amendment that you may want to propose which is rational, I believe—

DELEGATE TAKAHASHI: I'd like to get an opinion from the attorneys here before I propose any amendments.

CHAIRMAN: The Chair declares a short recess.

At 9:45 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:52 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order. Just before taking a recess, Delegate Takahashi raised a question. We were able to get together with the staff, the legal staff and at this time I would like to call upon Delegate Kato.

DELEGATE KATO: Mr. Chairman, there was some concern about whether or not the powers and privileges related only to the convention and not to the delegates themselves. The opinion from the attorneys indicates that the powers and privileges can be applied to the delegates inasmuch as they are a part of the convention so I would ask that this particular proposal remain unamended.

CHAIRMAN: Thank you very much. Delegate Takahashi.

DELEGATE TAKAHASHI: Mr. Chairman, I accept the opinion of the attorneys. I'm satisfied.

CHAIRMAN: Thank you very kindly. Any further discussion? Are you ready for the question? Let's take a voice vote on this. All those in favor of the amendment as recommended by the Committee on Revision, Amendment and Other Provisions, amending the fourth paragraph of Section 2 of Article XV, please say "aye." Opposed, say "nay." Motion is carried. Delegate Kato.

DELEGATE KATO: Thank you, Mr. Chairman. I

move that paragraph 6, Section 2 of Article XV be adopted as contained in Proposal No. 8.

DELEGATE YAMAMOTO: Mr. Chairman, I second the motion.

CHAIRMAN: Thank you.

DELEGATE KATO: By way of explanation, Mr. Chairman, the committee made two changes here and I'd like to take up the first change if I may. This change was to provide that the majority of votes cast in the affirmative for the ratification of any constitutional amendment or revision shall be thirty percent instead of thirty-five percent if said election is a special election as contrasted with the present requirement of thirty-five percent. The thirty-five percent of the majority of votes cast for any particular question in a general election remains the same.

CHAIRMAN: Thank you very much.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: I would like, at this time, to offer an amendment to the sixth paragraph of Section 2 to read in the manner set forth in Amendment No. 1, as follows:

"Section 5. If an amendment or revision proposed by a constitutional convention is in conflict with an amendment or revision proposed by the legislature and both are submitted to the electorate at the same time, and are approved, then the revision or amendment proposed by the convention shall prevail. If conflicting amendments or revisions are proposed by the same body, submitted to the voters at the same election, and are approved, the amendment or revision receiving the highest number of affirmative votes shall prevail."

CHAIRMAN: Delegate Larson.

DELEGATE LARSON: I'd like to second the motion.

DELEGATE DODGE: What this amendment does is delete the thirty-five and thirty percent vote requirement. It's interesting that this question about—and it substitutes for that a majority of those voting on the question. It's interesting that this particular proposal was never brought to a vote in the 1950 convention. There were only two proposals that were voted on. One was to have the percentage requirement twenty-five percent and the other, the final vote of the convention, to have thirty-five percent. There was a one-vote difference. The twenty-five percent lost by a vote of thirty to twenty-nine.

But of fifty states, only thirty-nine have provisions for a constitutional convention. Of those thirty-nine, seventeen make no provision for what vote is required,

presumably requiring only a majority vote on the proposal or permitting the legislature to decide how many votes may be required. Thirteen states provide for only a majority of those voting on the proposal. One state requires a sixty percent majority and one state a two-thirds majority. Five states require a majority of those voting at the general election to have approved the amendment. And only one other state, Nebraska, has the same percentage requirement that we have in our Constitution.

Now as far as legislative proposed amendments are concerned, only forty-nine states have a provision for the legislature to propose amendments. And of these, thirty-nine require only a majority vote of those voting on the question. Two require a two-thirds majority, one a sixty percent majority. Five require a majority of those voting at the election. And only one other, again Nebraska, has the same provision that Hawaii does.

I might call the delegates' attention to the fact that the act providing for the submission to the voters of the 1950 convention or Constitution required the approval of only a majority of those voting on that question. Article XV, Section 2, requires, and this is the proposal that goes every ten years, "Shall we have a constitutional convention?" That requires only a majority of those voting on the question. The act providing for the charter for the City of Honolulu required only a majority of those voting on the charter to approve it. And I believe the same thing was true on the outer islands although I am not sure.

The submission of the Honolulu charter was at a special election and the voter turnout was only 30.2 percent. That is, 30.2 percent of the registered voters. The charter was approved by only twenty-one percent of those who were registered. In numbers, by twenty-two thousand out of a total of about a hundred and seven thousand registered voters. Had there been such a thirty-five percent special election majority requirement for the Honolulu charter, we just wouldn't have a charter in Honolulu today because it would have required an additional fifteen thousand votes to have approved it. And yet, the charter has been acclaimed as one of the best in the country. We just wouldn't have it today had we had this kind of a requirement. And I suggest that there are a great many of us who wouldn't be here today, sitting in this convention if there had been a thirty-five percent, if we had to be elected by a thirty-five percent requirement. I know I didn't get thirty-five percent of the votes.

The Model State Constitution recommends a simple majority vote on either legislative proposals or proposals as a result of convention action. The proponents of an extraordinary majority such as we have here contend that such requirements contribute to constitutional stability and I wholeheartedly agree with that statement. It's a very, extremely conservative approach. It preserves the fundamental nature of the document by encouraging use of the legislative process for enacting social, economic and political changes. In addition supporters submit the values proposition that some minimum number of the total electorate ought to be required for

alteration of the fundamental law. Those are the arguments in favor of the percentage requirement. On the other hand, the critics of the extraordinary majority requirement argue that such requirements violate the principle of majority rule and I certainly agree with that, permitting a minority to block the totals for constitutional change.

I wanted to point out that by requiring a majority of those voting on the question to equal the majority of a total cast or some other percentage such as we have, is to assume that those voting in the election, but failing to vote on the question, are voting "no." And as a matter of fact that's how the arithmetic works out. It is a "no" vote. As one political scientist observes, often overlooked, however, is the fact that some who do not cast ballots are fully aware of the proposals but may not care whether they are accepted or not. This is not necessarily a sterile position. It may actually constitute a real opinion or interpret in that this silence may be the voter's willingness to acquiesce in whatever decision is reached by those who do participate. Such an attitude would explain the difference in total number of votes cast on various proposals appearing at the same election. But the net effect of a person who doesn't vote is actually a "no" vote when we have a majority requirement such as this.

Excepting states having constitutional initiative for amendment, the dangers of a simple majority, if there are any, are reduced because amendments in Hawaii can come only as a result of legislative deliberation either in one session of the legislature by a two-thirds vote or in two successive sessions by a majority vote, or as a result of convention deliberation. So, well, there may be some argument, although I am not sure that I would agree with it, as far as initiative proposals which we do not have in Hawaii and we're not going to have in Hawaii. There may be some arguments for a percentage requirement in that kind of a situation but whatever is voted on by the people as a result of either deliberate convention action or deliberate legislative action, a simple majority of those voting on the question should be sufficient to carry. When extraordinary majority requirements prohibit the people from making needed constitutional changes, then such changes as sought by executive-legislative attempt to skirt constitutional limitations and by judicial interpretation, such conditions violate the principle that constituent power belongs in the first instance to the people.

I urge the delegates to vote for this amendment and provide that a simple majority of those voting in a constitutional amendment be sufficient to approve it and place it into effect. I think all of us here are concerned over the work of this convention and the very real possibility, in view of the light voter turnout for delegates, that we may not reach the thirty-five percent of the votes cast in the general election. It is an extremely limiting provision and I don't think it has any place in modern democratic society. I urge you to vote for it.

CHAIRMAN: For the sake of clarification, since Delegate Dodge has two amendments, I would like to

ask a question of the clerk. Is this particular amendment identified as Amendment No. 1?

CLERK: Yes, it is, Mr. Chairman.

CHAIRMAN: So we are speaking to Amendment No. 1.

DELEGATE DODGE: And we're going to defer Amendment 2.

CHAIRMAN: Right. Delegate Lewis is recognized.

DELEGATE RHODA LEWIS: Mr. Chairman, I rise in opposition to the amendment. In Hawaii, we've had two occasions that made some constitutional amendment had been submitted under this very provision. I'm not referring to the amendments that were submitted at the time the State was admitted. I'm referring to the amendment in the boundaries of one representative district which was ratified in 1962 and to the amendment concerning the board of education, for one thing, that was ratified in 1964. Now by sufficient voter education, the voters tend to get out to vote on these matters. That is the precise point in having this requirement. The purpose is to see to it that those who go to the polls on general election day will take their ballots on the constitutional question and vote, having made up their minds as to their views. Now, those who are proposing amendments will see to it that there is a voter education program if we retain this requirement because certainly we here are aware that that is part of our problem. A big job remains ahead for the Submission and Information Committee. The newspapers and other media are very helpful on these matters. Under the proposed amendment, this is the kind of thing that can happen. That there be no voter education program, no attempt made to get help from the public media. But the proponents can see to it that enough of their friends are cooperative and go in and put in their ballots and we could even have a constitutional amendment approved by a vote of a couple of thousands who may be a few hundred who are the type that are always aware of what goes on and happen to be opposed. That does not seem at all a healthy thing.

Certainly, whatever we do will have no effect whatsoever on the problem that confronts us at the general election of 1968. It looks as though it is going to be a long ballot and education program is going to have to be conducted. We are talking about the future. We're talking about whether we're going to have the type of voter education program and require the type of turnout which we had in the past and which we're going to have to have in 1968, now or whether we're just simply going to say that really the only thing that matters is that the legislature put it on the ballot or the convention put it on the ballot and as long as we can prod a few friends into going and putting in some ballots to approve it, that's all that's required.

This thing was very thoroughly debated in 1950 when a much milder amendment was offered by Dr. Harold Roberts, a delegate to the convention in 1950. As the proponent of this amendment has said, that was

to substitute twenty-five percent of those voting in the general election for the thirty-five percent which is now required. I would assume those delegates who opposed the amendment were our honorable president who would speak for himself and Judge Nils Tavares, who, in my opinion at least, contributed a great deal to the 1950 proceedings. He never spoke unless he had the thing well thought out and knew just what he was talking about. Judge Tavares, or Delegate Tavares—he was not a judge at the time—said that he believed that in a state as small as this, "we can educate our people sufficiently assuming that we have the requisite majority and the requisite minimum numbers."

Mr. Chairman, I submit that that prediction has proved to be true.

CHAIRMAN: Thank you very much, Delegate Lewis. Delegate Yim is recognized.

DELEGATE YIM: Mr. Chairman, I have a question, in fact two questions to ask the mover. My question, Mr. Chairman, is this, whether the present provision of our Constitution on this subject in the general election whereby 200,000 voters participated, the Constitution now states that a majority must be at least thirty-five percent. And the thirty-five percent in this example is 70,000, must approve any amendment. Is this true?

CHAIRMAN: Delegate Dodge, would you like to answer that question?

DELEGATE DODGE: That's the way the arithmetic—

CHAIRMAN: Delegate Dodge, would you like to address the Chair, please?

DELEGATE DODGE: I'm sorry, Mr. Chairman. That's the way the arithmetic works out.

CHAIRMAN: Thank you. Are you satisfied with that answer?

DELEGATE YIM: Then my next question is, under the proposed amendment by Delegate Dodge, in the general election if 200,000 participated and, say, 80,000 participated in voting on the proposed constitutional amendment, all that is needed to pass the amendment is 41,000 under the proposed Dodge amendment. Is that correct?

DELEGATE DODGE: That is correct.

DELEGATE YIM: Then, Mr. Chairman, I rise to speak against the amendment. I can see a possibility of those that's controlling the state government wishing to pass certain—to amend the Constitution, purposely keep the education to the public as to the matter to be amended to a minimum whereby only about ten percent of a possible vote of 200,000, which means 20,000 voters, 11,000 of our people can amend anything in our Constitution. It's no doubt that the Constitution's so basic that there ought to be a minimum number of people participating. In the main, what we had

experienced in the past on such subjects, those who are more affluent, those who are more educated, those who are in the higher income are the ones participating in voting. I can anticipate the possibility that in my illustration, that these 11,000 people participating, representing only a small segment of a certain class of our people can change any matter in our Constitution to the disadvantage to our total population. For this one reason, I would be against the amendment.

CHAIRMAN: Thank you very much, Delegate Yim. No further discussion? Are you ready for the question? Delegate Doi is recognized.

DELEGATE DOI: Mr. Chairman, I'm not on the committee but I do want to express my thoughts here. I think Delegate Dodge presented his case very well. Before a proposal is presented to the electorate for a vote, that proposal is worked on by delegates or legislators who were duly elected to represent the people of Hawaii. And therefore, there is no real denial of proper representation. It appears to me that under the committee proposal those who are against the particular proposal will have two advantages and the advantages are somewhat unfair.

First, they could go out and urge the citizenry to vote against the particular question or proposal and secondly, they could go to the citizenry and urge them not to go out and vote. Those who are proponents of the proposal can only urge that they go out and vote in favor of the proposal. I think, Mr. Chairman, those who work against the committee's proposal, have an undue and unfair advantage. I'm going to vote in favor of the amendment proposed by Delegate Dodge.

CHAIRMAN: Thank you, Delegate Doi. Does anyone else want to speak before—Delegate Hitch is recognized.

DELEGATE HITCH: Mr. Chairman, I doubt very much, whether the informational activities of this convention, through its Committee on Submission and Information, would be any less intense or any smaller in magnitude under the guardian proposal as it would be under a 25, 30, 35, 40, 45 or 50 percent requirement. Perhaps the chairman of that committee would like to speak to this point.

CHAIRMAN: You are asking the committee chairman to answer that question?

DELEGATE HITCH: I said perhaps he might like to.

CHAIRMAN: Delegate Kato, would you like to answer that question?

DELEGATE KATO: Mr. Chairman, is he asking me a question?

CHAIRMAN: He put it in a positive—Delegate Hitch, would you like to—Delegate Hitch, would you like to go ahead and restate your concern? Delegate Kato did not catch your point.

DELEGATE HITCH: I couldn't hear you, sir.

CHAIRMAN: Delegate Kato did not hear your question. Would you like to explain, repeat your concern?

DELEGATE HITCH: It's really lack of concern. I feel that under the Dodge proposed amendment which requires a simple majority for ratification of a provision in the Constitution of those voting on that question, if in effect in the Constitution, instead of a requirement of thirty percent or thirty-five percent or whatever other percent, I say that I doubt that in the event that the Dodge amendment were adopted, that the informational activities of this convention through the Committee on Submission and Information, would be any less intense which seems to me to have been the main reason put forward against the Dodge amendment, namely, you're requiring a simple majority, nobody's going to go out and educate the public. So, it's really a lack of concern rather than a statement of concern.

CHAIRMAN: Thank you. Delegate Kato.

DELEGATE KATO: Mr. Chairman, in answer to that particular proposition put forth by Delegate Hitch, I'd like to say that I'm sure that whoever is on this Submission and Information Committee will do their best to see that the voters are educated. I would like to add, however, that it might have a deterring effect on anybody, be it the convention or the legislature, to propose amendments if they keep in mind the fact that there is this particular percentage requirement and they will need at least thirty-five percent of the votes cast on any question at any general election. I'd like to also support Delegate Lewis that the percentage requirements didn't really hurt us when we proposed amendments by the legislature in two previous general elections.

CHAIRMAN: Thank you very much. Delegate Jaquette is recognized at this time.

DELEGATE JAQUETTE: Mr. Chairman, of course I cannot speak for future submission and information people, but I would think that the efforts to educate the public and the efforts required to get a positive vote would increase with the size of the majority required. Obviously, if you require a sixty percent approval, it would take more effort to get people educated, get them interested and get them out to the poll than if only a ten percent vote were required. However, I believe that the job is primarily informational to overcome apathy rather than one of selling.

CHAIRMAN: Thank you very much. Delegate Lum is recognized.

DELEGATE LUM: Mr. Chairman, I've been sitting here listening to the discussion so far and I take the opposite point of view here. I'm afraid of the time when we may make a constitutional amendment to the executive branch and perhaps because of the lack of education, this would automatically be defeated with the percentage here. Because if there were no education

program on that particular amendment, it would definitely die because nobody would be interested in it. Whereas, without this thirty-five percent restriction knowing that it could possibly pass if nothing was done, I'm sure the executive branch would go out and therefore educate the public. But as it is now, an issue may die before it even has a chance of being amended. So I take the exact opposite point of view of those who say that thirty-five percent will make a program here. If it hurts the administration, where it possibly could, they may not even go out and present this well to the people.

CHAIRMAN: Thank you. Delegate Steiner is recognized.

DELEGATE STEINER: Mr. Chairman, I rise to speak against the amendment and for the position of the committee of which I am a member. I think one of the concerns here, special concern is information. It occurs to me that if you just make it a bare majority, we have—the government has the resources, the money to spend on education. It can choose to spend a lot of money and choose not to spend. Therefore, under the present system, the burden of having an amendment to the Constitution falls upon the government to justify the case to at least thirty-five percent of the voters, in this instance, reduced to thirty percent. If we go the other way suggested by Delegate Dodge, those who are outside of government who wish to oppose this would have the financial burden of fighting it. I think it's better this way and I urge that we vote against this.

CHAIRMAN: Thank you very much. Are you ready for the question? The question before the committee is Amendment No. 1 as proposed by Delegate Dodge. All those in favor of the motion, please say "aye." Opposed?

PRESIDENT PORTEUS: Mr. Chairman, division of the house.

CHAIRMAN: Yes. The Chair would like to request, all those who are in favor of the amendment numbered No. 1 as introduced by Delegate Dodge, please rise. All those opposed, please rise. The motion dies. Now we are back to the amendment as presented by the committee. Are you ready for the question? Delegate Burgess, did you want to speak on this particular amendment that you have?

DELEGATE BURGESS: Yes, Mr. Chairman.

CHAIRMAN: We are going to take that up after we dispose of this particular recommendation by the committee. All those in favor of the motion to accept the committee report, please say "aye." Opposed, "no." Carried.

DELEGATE KATO: Mr. Chairman.

CHAIRMAN: Yes, Delegate Kato.

DELEGATE KATO: I believe that the vote just taken was on the percentage requirement only. There is

another amendment to the sixth paragraph of Section 2.

CHAIRMAN: You are correct.

DELEGATE KATO: And I refer the members to page two of the standing committee report. The sixth paragraph is contained in its entirety in the last paragraph of that particular page. You will note that the proviso that begins on the fifth line from the bottom of the page has been deleted. Mr. Chairman, I move that this committee approve the committee action taken on this paragraph by deleting the proviso contained in paragraph six.

CHAIRMAN: Delegate Yamamoto is recognized for the purpose of seconding the motion.

DELEGATE YAMAMOTO: I second the motion.

CHAIRMAN: You may proceed, Delegate Kato.

DELEGATE KATO: Thank you, Mr. Chairman. By way of explanation, this particular provision has been found to be unconstitutional by the United States District Court for the District of Hawaii and is no longer operable. I would recommend that this amendment as contained in the committee proposal be adopted.

CHAIRMAN: All those in favor of the motion, please say "aye." Opposed, "no." Motion carried. Are there any other amendments to the committee report?

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess.

DELEGATE BURGESS: I move—

CHAIRMAN: Delegate Burgess, I think I know of your amendment. Before we get to your amendment, shall we dispose of your particular amendment, Delegate Dodge? This is Amendment No. 2.

DELEGATE DODGE: It's my understanding that that is going to be deferred, Mr. Chairman.

CHAIRMAN: Thank you very much. For the information of the rest of the delegates, Amendment No. 2 has been deferred. And will be referred back to the committee. The Chair recognizes Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I am referring to the amendment sheet numbered Preamble. I move to amend Committee Proposal No. 8. Committee Proposal No. 8 is hereby amended by adding the new amendment to read as follows:

"The preamble of the Constitution is amended by deleting the words 'State of Hawaii' from the first line and substituting 'Aloha State' therefor. As amended the preamble shall read:

"We, the people of the Aloha State, grateful for Divine Guidance, and mindful of our Hawaiian

heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth do hereby ordain and establish this constitution for the State of Hawaii.’”

CHAIRMAN: Any second to the motion?

DELEGATE HIDALGO: I second the motion, Mr. Chairman.

CHAIRMAN: Delegate Hidalgo seconds the motion. Proceed, Delegate Burgess.

DELEGATE BURGESS: The purpose of the amendment is to strike out the words in the first line, the words, “State of Hawaii” and substitute in their place, “Aloha State,” thereby reading, “We, the people of the Aloha State, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth do hereby ordain and establish this constitution for the State of Hawaii.”

Mr. Chairman and members of the convention, many of you may think that this is just a minor amendment, just a frivolous amendment and I feel that—

DELEGATE LUM: Point of information.

CHAIRMAN: State your point.

DELEGATE LUM: I’m trying to find out where in Committee Proposal No. 8 it refers to the Preamble?

CHAIRMAN: It states on the last page, page 4, second paragraph. Proceed, Delegate Burgess.

DELEGATE BURGESS: As I was saying, I assure you that if I thought this was a minor amendment, I would not be standing here and proposing this amendment. I feel that a purpose of the Preamble is to introduce the Constitution or what is to follow by first identifying the State, giving an idea of what kinds of concepts we have. What our philosophy is. And if you read the present Preamble, you find that—or we say that—we are grateful for Divine Guidance. This is one way of identifying the State. Mindful of our Hawaiian heritage is another way. And we go on and say that we have an understanding heart for all the people on the earth and so on and so forth. I think the most encompassing word that we can use to really identify the State of Hawaii is the word “aloha.”

Now we will come to the age-old problem of what is the definition of aloha. Many people have many different definitions. Some say it is an understanding heart toward all the people. Some will say it’s love. Some will say it is farewell. Some will say it is honor and many other things. To me aloha is simply the feeling you have when you meet an old friend and you say, “Aloha, brother, how are you.” But whatever you take as a definition, it will always be a good feeling toward someone else, an informal feeling and I think

this is what Hawaii is. And I believe that if we use it in the Constitution, introducing them to what the State is, I think this will be a constant reminder to the people of what Hawaii has been and what we hope Hawaii will be in the next years which this Constitution will be in effect. This is why I urge all of you to support the amendment. Thank you.

CHAIRMAN: The Chair recognizes Delegate Kato.

DELEGATE KATO: Mr. Chairman, there were a couple of amendments proposed in committee relating to this term aloha. The chairman and the members of the committee felt that there need not be any reference to the word aloha in the Preamble inasmuch as the feeling of aloha is not really one that can be expressed in words. We heard a witness testify on what aloha meant and she spent the half an hour just explaining that. And I don’t think inserting the words “Aloha State” instead of the words “State of Hawaii” will do much. I feel that the committee action was appropriate and I ask that this amendment be voted down.

CHAIRMAN: Is there anyone else who would like to speak? If not, are you ready for the question? The Chair recognizes Delegate Hidalgo.

DELEGATE HIDALGO: I rise to speak a few words supporting the amendment. As you know, recently, at the Democratic party convention where our hard-working senator in Washington, Senator Inouye, made that famous speech and it was a big plug for the State. In that speech he defined the State very beautifully, the word “aloha.” Aloha, meaning “I love you.” The most beautiful and probably the most accepted phrase that anyone can put in any state constitution be it in German, or French, Spanish or Japanese, Chinese, Korean, Filipino, or Samoan, this is the term so many use throughout the world. This is the main idea where the commonly known name of Hawaii is the Paradise of the Pacific, the bridge between the East and the West. I think by adopting this, we can at least show the world that we here in Hawaii are people who would like to start better understanding especially at this time when you find troubles all over the world. In Hawaii we could say to all the people in the world from each of us in Hawaii, we can say, “Aloha, I love you.” Thank you.

DELEGATE FRANK LOO: Mr. Chairman.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Loo is recognized. After Delegate Loo, then we can have Delegate Goemans, and then Delegate Kauhane.

DELEGATE FRANK LOO: Mr. Chairman, I rise to speak in favor of the amendment. Certainly, the committee report mentions the word “aloha” and “aloha spirit.” But I think that was used in a slightly different concept. In other words, you put in the Preamble in another way. Here we tie it in with our official designation of aloha state. On our license plate you see the words “aloha state.” And the legislature has

already adopted the term aloha state as our official designation for our State of Hawaii. And every state in the union has an official designation. So therefore, there would be no problem about what aloha state means. It means the State of Hawaii. Therefore, instead of going over the arguments given by the other proponents of this motion, I would like to add that thought that the aloha state is the official designation of the State of Hawaii. Therefore, I urge the rest of the delegates to vote in favor of this amendment.

CHAIRMAN: Delegate Loo, the Chair appreciates your brevity. Delegate Goemans is recognized.

DELEGATE GOEMANS: Mr. Chairman, I'm speaking against the amendment. I think "aloha" is a beautiful word. A beautiful concept. A concept that should be subject to constant reaffirmation. However, I think by striking "State of Hawaii" and inserting "Aloha State," what we gain in charm we lose in dignity. If aloha does encompass the phrase "understanding heart" among other things, I should think we could accomplish the same purpose by amending the Preamble to read, "With aloha toward all the peoples of the earth."

CHAIRMAN: Delegate Goemans, are you proposing another amendment?

DELEGATE GOEMANS: I'm not.

CHAIRMAN: Would you please confine yourself to the amendment please.

DELEGATE GOEMANS: The point I'm making, Mr. Chairman, is that I believe "aloha" has a place in the Preamble but I don't think this is the place. Therefore, I would direct the question toward the proponent of the amendment whether he would be favorably inclined toward withdrawing, be willing to withdraw his amendment and introducing a new amendment to read, "And with aloha toward all the peoples of the earth."

CHAIRMAN: Delegate Burgess, would you like to answer that question?

DELEGATE BURGESS: Mr. Chairman, that very amendment was submitted to the committee.

CHAIRMAN: Would you like to just state whether you would like to accept or not to accept.

DELEGATE BURGESS: Well, I'd like to say why I won't accept the—

CHAIRMAN: You will not accept the suggestion?

DELEGATE BURGESS: Right, because this was already considered by the committee and I think if the committee had decided that in this use it would not be appropriate, then we should not take it up on the floor and have a big fight over it. The feeling I got from the committee was that they would tend to favor using the word "aloha" in the Preamble. It was just a matter of finding the proper place for it. If we say that aloha

means love, and we say that with love toward all of the people of the earth, there was a question asking us how can we love the enemies we are fighting against in Viet Nam. But if we say that we the people of the aloha state, here I think we cover more of the arguments against this. We can let each person find his own meaning for aloha and use it in his own conscience.

CHAIRMAN: Okay. Thank you very much. Delegate Kauhane is recognized. Would you care to speak, Delegate Kauhane?

DELEGATE KAUHANE: Yes sir. Although I would rather like to answer "no." But, Mr. Chairman, in my hesitance to arise as soon as you addressed me, I was in meditation. Meditating because to take an opposite position of the proposal because I feel for the delegate who is trying to expound the spirit of aloha in his honest attempt to include the spirit of aloha in the Preamble.

If the spirit of aloha is being carried out with full intent and purposes, I would have no objection. But you and I have seen and read in the newspaper that the spirit of aloha has been abused to such a point that the spirit of aloha was something meaning, "Yankee go home," in some areas. So, I'm afraid, because of not having a clear-cut definition except what we have believed to be the spirit of aloha, the spirit of love, the spirit of friendliness and all that it embraces, if this is the true connotation of all of the people of the State of Hawaii in this particular being the love, friendship, then I say there is no quarrel to include it. I have my reservations in trying to say that, "We the people of the aloha state," that this meaningful word of aloha as has been used throughout for good as well as for its commercial purposes may not be befitting to all of us to be proud to say, "We the people of the aloha state" in our Preamble. It would be more reasonable to feel that the accepted, "We the people of the State of Hawaii" because there is no area of nonacceptance throughout the countries of the world when we say that we are from the State of Hawaii.

Let us read some of the statements made by many of our visitors about this state of aloha. Because the state of aloha sometimes as used by commercial promoters has lost its true meaning and effect. As a Hawaiian and as a member of one of the largest and the strongest, I wouldn't say the largest, it was at one time, but the strongest advocate of the preservation of the Hawaiian culture, that sometimes we—in our last convention that we held on Kauai—were ever mindful and fearful at the same time that the uses, continued uses by commercial promotion of the word "aloha." We may try and dramatize the education for tourists who come to Hawaii and the dramatization of Waikiki that they have used in violation of this basic preservation for custom and traditions of the people of Hawaii. When I say the people of Hawaii I mean my native Hawaiian people of Hawaii, where they have clothed individuals for promotional purposes in the regaining of the aliis of Old Hawaii by having them run up and down Kalakaua Avenue as a promotion. This is what we are trying to bring to your attention, the spirit of aloha degrading

the customs of my aliis in their promotional ventures. It is not only on Kalakaua Avenue. You find it out at the International Airport. When I go down sometimes I find that individuals through promotional campaigns by one of our promotional agencies where many of us who served in the legislature provided appropriations for this manner, usage of an individual dressed up in the regalia of Old Hawaii and having him approach the gangplank of the offcoming passengers of the airline. I would like to say that this is degrading the spirit of aloha in the true common sense.

DELEGATE BURGESS: Mr. Chairman.

CHAIRMAN: Delegate Burgess, what are you rising for?

DELEGATE BURGESS: I think we are discussing the word "aloha" in the Preamble of the State Constitution. Not whether a person will go running down the street with the regalia of Old Hawaii. I see no connection between what Delegate Kauhane is saying with regards to whether we should include it in the Preamble or not.

CHAIRMAN: The Chair realizes that. I think Delegate Kauhane is—

DELEGATE KAUHANE: Mr. Chairman, my illustration in objecting to the use of the word "aloha state," I cannot only say aloha state. I have to use the word "aloha" in order to justify my illustrations why the words "aloha state" should be included in the Preamble.

CHAIRMAN: You may continue, Delegate Kauhane, I did not rule you out of order.

DELEGATE KAUHANE: I do want to continue, Mr. Chairman. Here, a man that is proposedly to represent aliis of Old Hawaii, he is gowned in the full regalia of Old Hawaii. Again the spirit of aloha has been degraded, has not been uplifted, nor has it been preserved. Because as I remember my Hawaiian history, any one of the aliis in the Kamehameha dynasty has never walked up to any one man nor to any other location in that advertising position. People came to him, not he in the dramatization of the spirit of aloha.

So because of all this dramatization, the evil dramatization of the word "aloha," I'm speaking against the inclusion of the word "aloha" in the aloha state in the Preamble even though the legislature has adopted aloha state as synonymous to Hawaii, which is very good. The same as you would say in some other symbol but the true meaning of aloha if it is to be preserved as it should be then I think justifies it. But I can't see today that the word "aloha" should be made a part of, in my personal opinion, to be used as a mockery to be brought as in the Constitution of the State of Hawaii.

CHAIRMAN: Thank you very much, Delegate Kauhane.

DELEGATE ANDRADE: Mr. Chairman.

CHAIRMAN: Delegate Andrade is recognized.

DELEGATE ANDRADE: I rise to speak in support of this amendment. Number one, Hawaii is a unique State. Number two, Hawaii is a model State. Number three, when I lived in New York City in 1964 and 1965, I found that the word "aloha" culminated hatred, opposition amongst all people. The word "aloha" was magic in itself. This word "aloha" in the Far East awakened the people to our fiftieth State and to me, fellow delegates, by the addition of the word "aloha" in our Preamble will not only be an outstanding addition to our Preamble, it will be an example throughout the world and throughout the United States. My fellow delegates, I support this amendment wholeheartedly and if you will look on your desks, you'll all have a fan donated to you with the magic word on it, "aloha." My friends, our state representatives and senators from Hawaii are outstanding through the nation because of this one magic word, "aloha." Therefore, my fellow delegates, I ask all of you to support this amendment this morning. I thank you.

CHAIRMAN: Thank you very much.

DELEGATE HITCH: Mr. Chairman.

CHAIRMAN: Delegate Hitch. After Delegate Hitch is through, then the Chair will recognize Delegate Kamaka.

DELEGATE HITCH: It's my impression, Mr. Chairman, that about the only people who read the Constitution are constitutional lawyers so I think that we should keep them in mind in considering this amendment. This perhaps would increase their interest in life a little bit. I can visualize other state constitutions if they were to follow our example. Starting out, "We the people of the Shawnee state," "We the people of the sunflower state," "We the people of the sunshine state," "We the people of the state of ten thousand lakes," et cetera. On the other hand, I think that the Constitution should be somewhat more dignified than this and I would not be in favor of the amendment.

CHAIRMAN: Thank you very much. The Chair recognizes Delegate Kamaka.

DELEGATE KAMAKA: Mr. Chairman, very, very briefly, I rise to speak against the amendment. Calling our State the aloha state will not make it so. But mean it, then it will be so.

CHAIRMAN: Thank you very kindly. Delegate Bacon is recognized.

DELEGATE BACON: I will support the amendment although I feel that it is an adjustment or a compromise to what I talked about the other night. I don't feel that the point went over but I will support this amendment.

CHAIRMAN: Thank you. Delegate Hasegawa, did you want to speak?

DELEGATE HASEGAWA: Yes, Mr. Chairman.

CHAIRMAN: After Delegate Hasegawa is through then the Chair will recognize Delegate Larson. Delegate Hasegawa.

DELEGATE HASEGAWA: A point of information. I'd like to know whether there is any legal involvement in the identification of the State as an aloha state and also as a State of Hawaii in our Preamble.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: I can't think of any, Mr. Chairman.

CHAIRMAN: Did you get the answer?

DELEGATE KATO: The answer is no.

CHAIRMAN: Delegate Larson is recognized.

DELEGATE LARSON: Mr. Chairman, a question of the movant if possible.

CHAIRMAN: State your question, please.

DELEGATE LARSON: The question is, I'm concerned with the question earlier raised by the delegate from the 16th District. I've been pondering the words or the meaning of what he said and also in talking with another delegate, and I would like to ask the movant whether previously in committee he was in favor of the use of the term "aloha" and substituting that for the words, "and with aloha towards all the people of the earth," instead of "an understanding heart." Perhaps this is an unfavorable subject to bring up in this day and age of heart transplant but—

CHAIRMAN: Delegate Larson, I think without the movant answering that question, I think that that question was answered. Did you get an answer to that—

DELEGATE LARSON: I heard him answer that the committee had considered this proposal, had turned it down. But I just was curious whether the movant's position previous to this particular amendment was for this amendment as to having the word "aloha" instead of "an understanding heart." I wonder if he is just concerned with putting the word "aloha" in the Preamble somewhere. Previously he did think this other place was a better position in the Preamble.

CHAIRMAN: Delegate Larson, when that question was asked by Delegate Goemans, Delegate Burgess said it was not acceptable.

DELEGATE LARSON: Thank you.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I was on that committee and I was among those who voted down every proposal that was made to insert the word "aloha" in the Preamble. But I did it only because I couldn't figure out a good

place to put it. I think it ought to be in there. I don't think there is any doubt in anybody's mind that we are the aloha state and I rather suspect that this may be the only amendment that gets the approval of 87,000 voters which is what we're going to need on every one.

CHAIRMAN: Thank you. Delegate Alcon is recognized.

DELEGATE ALCON: May we have a short recess?

CHAIRMAN: A short recess is declared.

At 10:50 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:00 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane is recognized.

DELEGATE KAUHANE: Mr. Chairman, I would like to further state in my opposition to the amendment that—

CHAIRMAN: Before we get started, this is your second round, you understand. Perhaps, during the recess a few of the delegates got together and perhaps what they came up may be to your liking so, would you like to have the discussion that took place during the recess explained. Then you may, if you wish to speak, you may speak after that. Would that be all right?

DELEGATE KAUHANE: That would be okay.

CHAIRMAN: Thank you very kindly. The Chair, before recognizing Burgess—the Chair recognizes Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, during the recess, I have been advised by most of the great minds of the Convention of the proper place we should insert the word "aloha." After a thorough discussion, we have come up with this amendment, well, with a substitute. I would like to withdraw or substitute the following proposal for the one that I originally proposed. Just to save time for—

CHAIRMAN: Would you state your amendment?

DELEGATE BURGESS: That, "We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm the spirit of aloha, our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth do hereby ordain and establish this constitution for the State of Hawaii."

CHAIRMAN: You have a comma after the word "aloha," is that right? Is there anyone who would like to second that amendment?

DELEGATE KAUHANE: Mr. Chairman—

CHAIRMAN: Is there anyone who would like to second, first?

DELEGATE KAUHANE: Mr. Chairman, I rise to be recognized, Mr. Chairman. In view of the substituted amendment having been proposed, I second.

CHAIRMAN: You wanted to second the motion?

DELEGATE KAUHANE: Yes.

CHAIRMAN: Well, I give you the privilege. If there is any question in the minds of the delegates, the Chair rules that this particular amendment given orally is in order. We'll make an exception to the rule because it's just a matter of a few words. It doesn't change the substance. Delegate Devereux is recognized.

DELEGATE DEVEREUX: Mr. Chairman, may we have the wording again, please? Where it is inserted.

CHAIRMAN: Yes. Delegate Burgess, would you like to explain your amendment?

DELEGATE BURGESS: I would like to. First, I would like to read again. On the second line of the proposal reading Preamble on the upper right hand corner, second line ends with the word "reaffirm." I propose to insert the following, "the spirit of aloha," thereby reading "reaffirm the spirit of aloha, our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples"

CHAIRMAN: Delegate Devereux, did you get that? Thank you. Delegate Ushijima is recognized.

DELEGATE USHIJIMA: Could I direct a question to the chairman of the committee?

CHAIRMAN: State your question, please.

DELEGATE USHIJIMA: Being mindful that I want divine guidance in this matter, is this amendment satisfactory to the committee?

CHAIRMAN: Delegate Kato, would you like to answer that question?

DELEGATE KATO: The committee didn't meet on this particular amendment, Mr. Chairman, so I cannot answer that. If you're asking for my opinion—

DELEGATE USHIJIMA: May I have divine guidance from the chairman of the committee as to how we should vote on this matter?

DELEGATE KATO: Let me just say that—

CHAIRMAN: I think he has no license to advise you one way or the other.

DELEGATE KATO: Mr. Chairman, I'd like to answer that. It won't be divine guidance however. I believe that the spirit of aloha that's been talked about is included in the term "Hawaiian heritage." And I cannot see the insistence in putting in this particular phrase, "the spirit of aloha." Now, if you feel it should be in there, perhaps you should vote for the amendment.

CHAIRMAN: Thank you.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: Will the movant yield to a question? The question is this, what is your definition of "spirit of aloha"?

CHAIRMAN: Will you make that very, very brief.

DELEGATE BURGESS: Mr. Chairman, I won't even make an attempt to make such a definition. This is why we have such beauty in the word in that it is, as Delegate Andrade said, it is a magic word, one which people can put in their own feelings.

CHAIRMAN: Okay. Thank you very kindly. Delegate Bryan.

DELEGATE BRYAN: Would it be helpful if we ask the committee to convene for not more than five minutes?

DELEGATE ADUJA: Mr. Chairman.

CHAIRMAN: Delegate Aduja.

DELEGATE ADUJA: I would like to say also that I am a member of this committee and contrary to some of the statements, I'd like to say that we attempted on several occasions in committee to put in the words "spirit of aloha" and at all times, it was voted down. Two other areas that we had decided, "grateful for Divine Guidance" and "mindful of our Hawaiian heritage and aloha." That was changed. The first one was the "spirit of aloha." We decided to take out the "spirit" out of it—

CHAIRMAN: Would you speak into the mike.

DELEGATE ADUJA: The original was to have it after "heritage," "the spirit of aloha." And then it was amended to read "aloha," only remove the "spirit" because we do not wish to have a ghostly appearance in aloha. But both were voted down. We tried to state it also in the removal of the "understanding heart" and put the "spirit of aloha" back. This also was voted down. And this is the attempt of those minority including myself that we'd like to put the spirit of aloha in this Preamble, feeling that regardless of where you stand, regardless of how you feel towards your

fellow man, "aloha," "the spirit of aloha" or the meaning of aloha could really be translated the way you feel towards your fellowman. And I think, and I'm speaking for the amendment, that the word "aloha" has a proper place in our Constitution and the Preamble is the really important part, being the beginning part of our Constitution. And I shall vote for whatever amendment there is that contains the word "aloha."

CHAIRMAN: Thank you very much.

DELEGATE GOEMANS: Mr. Chairman.

CHAIRMAN: Delegate Goemans.

DELEGATE GOEMANS: Point of information. Although I am against the practice of voting on concepts, perhaps here we could get informally an expression of how many people favor the concept of the inclusion of the word "aloha" in the Preamble and if it were a sizable number, perhaps they could then, among themselves, decide on one particular place to place the word and then we could vote on the question.

CHAIRMAN: Thank you very much. Before asking the question of the delegates, the Chair would like to ask Delegate Burgess, the proponent for this particular amendment, if this is agreeable to you on the concept.

DELEGATE BURGESS: Well, if this will save time, go ahead.

CHAIRMAN: Thank you. Delegate Kato, are you in favor of the—

DELEGATE KATO: I have no objection.

DELEGATE YOSHINAGA: Mr. Chairman.

CHAIRMAN: Delegate Yoshinaga.

DELEGATE YOSHINAGA: I have a violent objection about the whole thing this morning. It seems to me like, from what I've heard, the word "aloha," the term "spirit of aloha" has been abused this morning here. It seems to me that the committee took up this matter, the committee has given us a detailed report on the proceedings before that committee, the kind of words used here, "aloha," "spirit of aloha," or "aloha." Perhaps we would be in a position to make some kind of a determination. Now we start here on this floor with an amendment descriptive of a state, aloha state. We are ending up here with a concept, one word "aloha." In between we had "spirit of aloha." I'm not sure that this is exactly the kind of responsible position we should take when we don't know what we're doing. Just adding words in a paragraph, adding other words, throwing that word out and adding couple of other words someplace else. I think that this matter deserves a lot more consideration. I have a couple of questions to ask.

CHAIRMAN: Please state your question.

DELEGATE YOSHINAGA: One definition of

"aloha" has been by some great democratic senator someplace, "I love you." In other kinds of descriptions, it seems to me a broad statement that aloha state has been adopted by the legislature, some kind of legal definition or the other, work here in our Preamble of which I am not too familiar, yet it seems to me like a few times I've read it made good sense to me. What does the word "aloha" mean as compared to "divine guidance"? What does "aloha" mean as compared to "mindful of our Hawaiian heritage"? What do the words "spirit of aloha" mean as compared to the term "understanding heart"? What is this thing the chairman agreed to? He opposed the amendment, he has agreed to concept "aloha." What are we doing here?

DELEGATE KATO: Point of order, Mr. Chairman. I am not agreeing to any concept. I am not agreeing to the concept at all. The question posed to me was whether or not we would decide on whether or not this concept was agreeable to the entire body.

DELEGATE YOSHINAGA: I am sorry, sir. So, the chairman is going to not agree to the concept of the word "aloha" but the procedure as to whether we're going to take that up?

CHAIRMAN: Right. If it's all right with you, Delegate Yoshinaga, the Chair is going to rule that we will take in consensus, if you vote "aye," that means you are willing to go on the concept of the word "aloha" going into our Preamble. If you vote "no," that means you would like to vote upon the amendment as presented by Delegate Burgess this morning. Is that clear?

DELEGATE YOSHINAGA: Yes, but what follows from there?

CHAIRMAN: After that, consensus is taken, if the vote is majority "aye," then the concept of the word "aloha" would be taken up by the committee. If it's voted down, then the body will come back and discuss the amendment as presented by Delegate Burgess.

DELEGATE YOSHINAGA: So, if the majority vote is "aye" then the concept goes to the committee.

CHAIRMAN: Right.

DELEGATE YOSHINAGA: Thank you very much.

CHAIRMAN: Delegate Dodge. I'm sorry, Delegate Fasi.

DELEGATE FASI: In the spirit of aloha, Mr. Chairman, I agree that the word "aloha"—

CHAIRMAN: Delegate Fasi, if I may interrupt. I think it's much, much better for us to vote on this particular proposition that we have before the house. The Chair has ruled that the word—

DELEGATE KUNIMURA: Point of information.

CHAIRMAN: Delegate Kunimura.

DELEGATE KUNIMURA: Is this the intent of the Chair, to hold a committee meeting right now?

CHAIRMAN: This is the Committee of the Whole meeting, sir.

DELEGATE KUNIMURA: And is this going to be the procedure hereafter?

CHAIRMAN: This is the procedure when I'm presiding.

DELEGATE KUNIMURA: —on the floor that the Committee of the Whole convene into a regular committee meeting. I think we should vote on the amendment whether it survives or it dies. Let this body decide.

CHAIRMAN: Delegate Doi.

DELEGATE DOI: Mr. Chairman, if you're interested in time, it might be well for us to vote on the proposal now. The reason I say this, we may approve the concept but the concept might be placed wrongly in that particular paragraph and then we would assert our right to repeat again, don't you see, and then get into another long debate.

DELEGATE FASI: Mr. Chairman, point of information.

DELEGATE GOEMANS: Mr. Chairman, point of order, point of order.

CHAIRMAN: Delegate Goemans, state your point.

DELEGATE GOEMANS: Is the delegate appealing your ruling?

CHAIRMAN: Are you appealing the ruling?

DELEGATE DOI: Mr. Chairman, there is no ruling. It's a silent attempt here it seems like by default which seems to be flowing in the direction of a consensus vote on the concept. There has been no clear ruling.

DELEGATE GEORGE LOO: Mr. Chairman.

CHAIRMAN: Delegate Loo.

DELEGATE GEORGE LOO: May I ask a question as far as your ruling goes, an explanation?

CHAIRMAN: Yes.

DELEGATE GEORGE LOO: You say, if the "no" vote prevails then we will vote on this amendment. Shouldn't it be that if the "no" vote prevails, this amendment is out of order and everything else goes by the wayside because we have already voted on the concept whether to include "aloha" in the Preamble. And if it's turned down, why bother to have an amendment if the majority of the votes that's against including the Preamble.

CHAIRMAN: If the affirmative vote prevails, then this amendment dies. If the "no" prevails then we will vote on the amendment as introduced by Delegate Burgess.

DELEGATE KAUHANE: Mr. Chairman, I rise to a parliamentary inquiry.

CHAIRMAN: State your inquiry.

DELEGATE KAUHANE: Is it possible for me to request the Chair for a recess so that we can get this matter ironed out before—instead of all of us participating?

CHAIRMAN: A two-minute recess is declared.

At 11:14 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 11:16 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Chair recognizes Delegate Goemans.

DELEGATE GOEMANS: Mr. Chairman, I'd like to move to withdraw my motion for consideration of the principle of inclusion of the word "aloha." And because it proves too difficult to handle these things as principles.

CHAIRMAN: Thank you very much. Is it all right with the seconder? Well, whoever it was. We now have before us the amendment as proposed by Delegate Burgess. Are you ready for the question?

DELEGATE KATO: Mr. Chairman.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Will you state the question please?

CHAIRMAN: The amendment is, "We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm the spirit of aloha..." this is the amendment, "our belief in government," et cetera, et cetera, et cetera.

DELEGATE KATO: We are voting then on the specific amendment?

CHAIRMAN: Right. All those in favor of the motion to amend, please rise. All those opposed, please rise. The motion dies. Are there any other amendments? If not, the Chair wishes to recognize Delegate Kato.

DELEGATE KATO: Mr. Chairman, it is my understanding that Proposal No. 8 has been adopted by the accumulative action of the Committee of the Whole. I will therefore move that we rise and report to the Convention that we have considered Proposal No. 8 and ask leave that we consider Article XV in the standing

committee report at a later date.

CHAIRMAN: Yes, Delegate Dodge.

DELEGATE DODGE: I second the motion, Mr. Chairman.

CHAIRMAN: You've heard the motion. The motion is to rise, report progress and beg permission to sit again. All those in favor of the motion, please say "aye." Opposed, "no." Carried.

The Committee of the Whole adjourned at 11:20 o'clock a.m.

Wednesday, September 11, 1968 • Afternoon Session

The Committee of the Whole was called to order at 4:35 o'clock p.m.

Delegate Kage presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order.

DELEGATE KAUHANE: Mr. Chairman, before you proceed—

CHAIRMAN: Delegate Kauhane, what are you rising for?

DELEGATE KAUHANE: I'm rising for the purpose of seeking the Chair's willingness to call for a short recess so that we can get the Committee of the Whole report on our desk. Because of our moving out last night some of our materials have been taken away.

CHAIRMAN: A recess of two minutes is granted.

At 4:36 o'clock p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 4:38 o'clock p.m.

CHAIRMAN: The Committee of the Whole will please come to order. We are resolving ourselves into the Committee of the Whole to continue our discussion on Standing Committee Report No. 49 and Committee Proposal No. 8.

At this time, I would like to recognize Delegate Kato.

DELEGATE KATO: Thank you, Mr. Chairman. If I recall, the report has been discussed thoroughly and completely and so has the committee proposal. However, there was an amendment which has not been considered by the committee. The amendment has been discussed by the committee and I'd like to at this time yield to Delegate Dodge who will offer the amendment.

CHAIRMAN: Delegate Dodge is recognized.

DELEGATE DODGE: Mr. Chairman, I'm not certain whether the amendment that I had previously proposed has been moved and seconded. I believe that it had not been, so I, at this time, move to amend Committee Proposal No. 8 by—

DELEGATE YOSHINAGA: Mr. Chairman, I second the motion.

CHAIRMAN: Delegate Dodge, according to procedure would you not withdraw your original amendment?

DELEGATE DODGE: So the record will be clear, I withdraw Amendment No. XV-2 which had previously been on the clerk's desk.

CHAIRMAN: The Chair will rule that the original amendment offered by Delegate Dodge is withdrawn.

DELEGATE DODGE: And I move to amend Committee Proposal No. 8 by addition of a new section which would read as set forth in the Amendment No. XV-1 and because I had a previous XV-1, I think the clerk should mark that XV-1-A. The amendment reads as follows:

"Amend Article XV by adding a new section to read as follows:

"Section 5. If an amendment or revision proposed by a constitutional convention is in conflict with an amendment or revision proposed by the legislature and both are submitted to the electorate at the same time, and are approved, then the revision or amendment proposed by the convention shall prevail. If conflicting amendments or revisions are proposed by the same body, submitted to the voters at the same election, and are approved, the amendment or revision receiving the highest number of affirmative votes shall prevail."

CHAIRMAN: That motion has been seconded by Delegate Yoshinaga.

DELEGATE DODGE: Very briefly, Mr. Chairman, the purpose of this amendment is to take care of the situation which we have found ourselves in 1968; namely, a conflicting proposal by a legislature and a conflicting proposal by a constitutional convention. And also to take care of the situation of a conflicting proposal by one legislature being voted down at the same time that a conflicting proposal from another legislature the next session. And this handles it and it is not in conflict with what we are doing as far as the 1968 general election is concerned. I urge the adoption.

CHAIRMAN: Delegate Kato, you have any remarks you'd like to make?

DELEGATE KATO: Yes, Mr. Chairman. The committee considered the amendment and the sense of the committee was that it was in favor of this amendment.

CHAIRMAN: Thank you very much. Any discussion? If not, all those in favor of the motion, please say "aye." Opposed, say "no." Carried.

DELEGATE KATO: Mr. Chairman.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: I move for the adoption of Standing Committee Report No. 49 and Committee Proposal No. 8, as amended.

DELEGATE DODGE: Mr. Chairman, I second the motion.

CHAIRMAN: You heard the motion to adopt Standing Committee Report No. 49. All those in favor of the motion please say "aye." Opposed, say "no." Carried unanimously.

DELEGATE KATO: Mr. Chairman.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: I move that we rise and report to the Convention that we considered Committee Report 49 and Proposal No. 8 and beg leave to sit again.

CHAIRMAN: Not to sit again.

DELEGATE DODGE: Mr. Chairman, I second the motion.

CHAIRMAN: All those in favor of the motion to report completed deliberations, please say "aye." All those opposed, please say "no." Carried.

The Committee of the Whole adjourned at 4:43 o'clock p.m.

Debates in Committee of the Whole on SCHEDULE

(Article XVI)

Chairman: **DELEGATE ROBERT CHANG**

Monday, September 16, 1968 • Morning Session

The Committee of the Whole was called to order at 9:21 o'clock a.m.

Delegate Chang presided as Chairman.

CHAIRMAN: The Committee of the Whole will please come to order. The Committee of the Whole is sitting to consider Standing Committee Report No. 67 containing Committee Proposal No. 13 submitted by the Committee on Revision, Amendment and Other Provisions. The Chair would like to state that we will accept the motion to adopt the report and then the committee chairman will be discussing each section under transitional provisions consecutively. Delegate Kato, you're recognized.

DELEGATE KATO: Thank you, Mr. Chairman. I move that this committee adopt Committee Proposal No. 13.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I second the motion, Mr. Chairman.

CHAIRMAN: Proceed, chairman.

DELEGATE KATO: Thank you very much, Mr. Chairman. Article XVI from Section 2 on relates to the transitional provisions. These were necessary insofar as the transition from Territorial status to statehood status was concerned. I'd like to call your attention to the second section of Article XVI relating to continuity of laws. We changed the first paragraph and the second paragraph of that section by deleting what we thought were unnecessary language. More specifically, we changed the language by deleting as to laws enforced, "acts of the Congress relating to the lands in the possession, use and control of the Territory of Hawaii." And we also changed the two paragraphs by adding the words "amendments to this constitution," making all laws remain in force up to the time of the amendments that are to be adopted, we hope, by the people, that are being proposed by this Convention.

May I proceed to the next section, Mr. Chairman? Section 3 was retained inasmuch as it was felt that there may be debts and liabilities that are still owing and outstanding to the State and we should not preclude the State from being able to collect on any such debts or liabilities.

Section 4 was deleted relating to bond acts on the recommendation of the Director of Budget and Finance. What this section does, Mr. Chairman, is approve the continuance of any Territorial bonds that are authorized but unissued. It was felt that this no longer serves any purpose. It should be noted further that the legislature has lapsed all unauthorized and unissued bonds of the Territory.

Section 5 is the provision relating to the continuance of executive officers of the Territory and its political subdivisions. This section has served its function and is no longer required.

Section 6 relates to the duties of the lieutenant governor's office. This was taken care of by the Reorganization Act of the legislature in the first statehood session and is no longer needed.

We are recommending that Section 7 be retained. There was some question as to the carry-over of Territorial citizenship status to statehood status. The problem arises, Mr. Chairman, because the Constitution provides that to be eligible to be a judge, an attorney has to have ten years of Territorial and statehood citizenship. We will not reach that date until August 21, 1969, and technically no one will be eligible to be appointed as a judge since he could not be qualified if we did not retain this carry-over of Territorial citizenship status to statehood.

Section 8 relates to the reorganization of the Territorial agencies into departments. This has been satisfied by the Reorganization Act earlier.

Section 9 relates to the condemnation of fisheries. We recommend that this be retained. The attorney general has informed us that there were cases pending so far as the condemnation of fishing rights are concerned and there were outstanding other konohiki fisheries.

Sections 10, 11, 12, 13, 14, 15 and 16 include provisions for first officers and elections. These sections provide for the methods for holding elections, taking office of the first state and congressional offices, also for the terms of the first governor, lieutenant governor and the members of the first state legislature as well as the convening thereof. These sections have been satisfied and are no longer needed.

Section 17 relates to the salaries of the first elected legislators and we're recommending that this be retained. It's our understanding that the Committee on Style will

incorporate the transitional provisions on legislative salaries that have been adopted by the Committee of the Whole of this Convention.

Section 18 relates to the salaries of the first appointed justices and judges until otherwise provided by the legislature. Since the legislature has acted in this area, we are recommending that it be deleted.

There is a paragraph, if you will notice, Mr. Chairman, at the end of the Constitution relating to the effective date of the Constitution. We felt that this should be retained, if I might read this: "This constitution shall take effect and be in full force immediately upon the admission of Hawaii into the Union as a State." We felt that there was strong historical significance so far as this paragraph was concerned and we recommend its retention.

We changed or we added in Committee Proposal 13 a new section relating to the committee report from the Taxation and Finance Committee on biennial budgeting. If you will recall, the biennial budgeting according to report and intent was that it would not take effect until the 1971-72 fiscal biennium. The section that we proposed to add will take care of that situation so that the biennial budget shall not be effective and preparations may not be made until the 1971-1972 fiscal biennium.

That's all I have by way of explanation, Mr. Chairman. If there are any questions, I'd be happy to answer them.

CHAIRMAN: Are there any questions from the floor? Delegate Taira.

DELEGATE TAIRA: Mr. Chairman, I would like to have something clarified. Mr. Chairman, not being of Latin heritage, I find it rather difficult to decode the term *mutatis mutandis*. Can someone enlighten us to the real meaning of this term and whether this is really necessary in our Constitution? Not necessarily the chairman of the committee who presented the proposal but someone here.

DELEGATE FERNANDES: Mr. Chairman, I yield to Delegate Kato.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: Mr. Chairman, I suspected this matter would be coming up and I hope I am prepared enough to answer the question. If you will look at Committee Proposal No. 13 and take the term *mutatis mutandis* in its context, perhaps the meaning will become clear. By that phrase it is meant that all laws shall remain in force, and substituting the definition, shall remain in force with the necessary changes in point of detail, meaning that matters or things are generally the same but to be altered when necessary as to the names, offices and the like.

CHAIRMAN: Delegate Taira.

DELEGATE TAIRA: Thank you very much. I think that is exactly what my wife who has Spanish heritage told me.

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, that was not Spanish, that was Latin. That comes from the Latin word *mutandi, mutandus, mutandi, mutari*. Latin is a dead, dead language. Dead as it can be. It killed all the Romans, now it's killing me.

CHAIRMAN: Thank you for shedding more light on the subject. Any other questions from the floor? Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, referring to paragraph 19 on the last page, relating to biennial budgeting, I think this may be proper but what the Committee on Taxation and Finance proposed and the Committee of the Whole adopted and has now passed second reading, was a change in Sections 4 and 5 of Article VI which not only prescribes biennial budgets but also prescribes biennial appropriations with a mid-term review of the appropriation. And I wonder if that should be included in this new section so that it might read and I'll defer to all the lawyers on this, "Anything in this Constitution to the contrary notwithstanding, the provisions relating to biennial budgets and appropriations in Article VI shall take effect beginning with the 1971-1972 fiscal biennium."

CHAIRMAN: Delegate Kato, would you like to comment on that?

DELEGATE KATO: Well, I'm all for clarification, Mr. Chairman, if the committee chairman on the substance of this particular new section wishes to clarify further, I have no objection to it. May we have a short recess?

CHAIRMAN: Recess is declared.

At 9:32 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 9:55 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come back to order. Before recognizing Delegate Hitch, the Chair would like to state that the printshop facilities have been moved to Iolani Palace and the Chair would like to ask the kokua of the body in submitting all amendments. So if there are no objections, I'll ask Delegate Hitch to present his amendment at this time.

DELEGATE HITCH: If the delegates will turn to the second white sheet of Committee Proposal No. 13, the last page, the new section to be added is at the bottom of that page. I would like to offer an oral amendment to change the wording in this fashion so that this new section would read, and you can correct it on copies: "Anything in this Constitution to the

contrary notwithstanding, the provisions relating to biennial budgeting" and at that point insert "and appropriations," so that we're covering both budgeting and appropriations—"budgeting and appropriations in Article VI shall take effect." Now if you will scratch the rest of the language that exists on page 2, I'll substitute about an equal number of words, "shall take effect for the biennial period beginning July 1, 1971." So that the entire new section would read: "Anything in this Constitution to the contrary notwithstanding, the provisions relating to biennial budgeting and appropriations in Article VI shall take effect for the biennial period beginning July 1, 1971."

CHAIRMAN: Delegate Hara is recognized.

DELEGATE HARA: I second the motion.

CHAIRMAN: Thank you. Is there any further discussion on this amendment? If not, all in favor of the amendment, please say "aye." Opposed, "nay." The motion is carried. Delegate Sutton.

DELEGATE SUTTON: Would you be kind enough please to turn to the last paragraph stating effective date that follows Section 18? It reads as follows: "This constitution shall take effect and be in full force immediately upon the admission of Hawaii"—

CHAIRMAN: One moment, Delegate Sutton, this is in the Constitution itself, is that correct? Perhaps the delegates have not found their copies as yet.

DELEGATE SUTTON: If you will look at the Constitution. I'm not able to help you on page because mine is page 31 but I use a "courtesy of the house of representatives" copy. This is the same article we're talking about of the transitional provisions.

CHAIRMAN: Proceed.

DELEGATE SUTTON: If you'll read under "Effective Date," it reads as follows: "This constitution shall take effect and be in full force immediately upon the admission of Hawaii into the Union as a State." I would like to add to that the following language. I will repeat it slowly so that you can take it down. "Amendments made by the 1968 Constitutional Convention shall become effective upon ratification by the electorate."

CHAIRMAN: Did you so move?

DELEGATE SUTTON: I so move and Mr. Bacon, I think, is seconding.

CHAIRMAN: Is there a second? Delegate Bacon.

DELEGATE BACON: I second the motion.

DELEGATE FERNANDES: Mr. Chairman, recess.

CHAIRMAN: A recess is declared.

At 10:00 o'clock a.m., the Committee of the Whole

stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:03 o'clock a.m.

CHAIRMAN: The Committee of the Whole will please come back to order. Delegate Sutton, you're recognized for remarks.

DELEGATE SUTTON: That language—may I repeat it again because I would like to also to have it: "Amendments made by the 1968 Constitutional Convention shall become effective upon ratification by the electorate," and add this additional, "unless otherwise provided herein."

We have decided to leave the effective date into the Constitution, and that is in the committee report, because of its historical significance. I'm fully aware that we have a procedural proposition which makes amendments effective upon ratification. However, this is an appropriate place to add the additional sentence where we have the title of effective date. It is also true that our titles are not part of the Constitution. However, for an individual reading the Constitution and relying thereon, the effective date is a significant situation. This is the first Constitutional Convention that has ever been held in Hawaii when we were actually a State. The other convention was held nine years before statehood was granted. It was a particular type of ratification by the Congress of the United States of what had been, up to that time, a document without any significance. Here we have an actual constitutional convention. We will have at least 37 amendments. We have just made an exception as Dr. Hitch made on the biennial budgeting and appropriation. We provide for that exception. All others will go into effect upon the effective date of ratification. At the present time, it is the plan of Submission and Information and the plan of the president that these 37 amendments would go on the ballots for the ensuing election. Assuming for the sake of argument that they are passed on November 5th of this year, these constitutional amendments, unless otherwise provided, will then go into effect therein. This article is a clarification of something we are leaving in for historical purposes. It's a clarification of something we are leaving in for historical purposes and it gives clarity to our entire document. Thank you.

DELEGATE DODGE: Mr. Chairman.

CHAIRMAN: Delegate Dodge.

DELEGATE DODGE: I didn't get the last word of the proposed amendment. Is it "herein," the last word? I would suggest that the word is inappropriate. It should be "therein."

DELEGATE SUTTON: As the movant, I accept this amendment, to change the word from "herein" to "therein."

DELEGATE DODGE: Mr. Chairman, there's one other—in Delegate Sutton's remark he said that, I think he made reference only to the article on taxation and

finance as having a different effective date, Article VII, the amendments to Article VII on local government have a three-year delay.

DELEGATE SUTTON: I'm fully aware of that.

DELEGATE MIYAKE: Mr. Chairman, point of order, please. There is no second to the motion.

CHAIRMAN: There is a second. Delegate Bacon has seconded the motion.

DELEGATE MIYAKE: Oh, excuse me. I rise to speak against the amendment.

CHAIRMAN: Proceed.

DELEGATE MIYAKE: Mr. Chairman, under Article XV, under Revision and Amendment, the paragraph titled "Ratification; Appropriations," the language there provides for the effective date as to any amendments made to the Constitution, State of Hawaii. We are not working with a brand new Constitution for the State of Hawaii. We are working here at this Convention with amendments. And the effective dates of these amendments are specifically stated in language provided for in that paragraph on ratification, appropriations in Article XV. Therefore, I see no need for this amendment proposed by the delegate from the subdistrict of the 14th District.

CHAIRMAN: Any other discussion? Delegate Kato.

DELEGATE KATO: Yes, thank you, Mr. Chairman. The matter was considered by us when we looked at the effective paragraph of this Constitution and we felt that Article XV, section relating to ratification was appropriate. The statement has been made that it relates only to procedural matters and has no substance. I call the attention of the body to the second paragraph of the ratification section of Article XV which indicates, "The provisions of this section shall be self-executing," so I think this handles the substantive end of the question that has been raised.

CHAIRMAN: Delegate Rhoda Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I rise in opposition to the amendment. I would like to ask the movant a question. I ask the Chair to transmit a question to the movant. There have been some amendments by legislative proposal. Was there any provision in those proposals stating that they would take effect upon ratification?

CHAIRMAN: Delegate Sutton.

DELEGATE SUTTON: No, there was not, but there were only one or two amendments. At one time, there were three amendments that were submitted to the electorate but here we will have at least 37 amendments and very significant amendments. And the entire process of issuance of bonds and the entire dependence upon the bond purchasing committee would be dependent upon a new debt limit and the complete revision of our

taxation and finance. We have made major revisions in this Constitution and therefore, the fact that one amendment here and there did not have this effective date proposition, I don't think should deteriorate against the argument that we need to clarify that last statement which is being left in for historical purposes.

CHAIRMAN: Delegate Lewis.

DELEGATE RHODA LEWIS: Mr. Chairman, I feel that we have no need for concern, that the Constitution is clear and it is the general principle that an amendment, when it is adopted becomes a part of the document amended and is to be read in the light of the whole document. Therefore, I find no conflict between the provision that the Constitution shall take effect when the State is admitted. This of course is self-evident now that the State has been admitted. I find no conflict between that provision and the other provisions that amendments must be ratified by the voters and it seems to me perfectly clear that when all the requisites have been met, they have become a part of the Constitution unless, of course, the Convention has deferred the effectiveness of them for some reason.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, at the risk of being charged with not having an adequate appreciation of Hawaiian history, I do question the retention of the present language in the last sentence of the Constitution. I have a feeling that if any person who knew nothing about government, who knew nothing about constitutional law, knew nothing about anything, but maybe he had a high school education, should he read this Constitution and say, that section is out of date and antiquated and should be deleted when you're updating the Constitution, they say the last sentence has already served its purpose and to retain it would be ridiculous. I'm told that this is being retained for historical reasons and historical purposes so I'd like to know what they are.

DELEGATE KATO: Point of order, Mr. Chairman.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: We're on the amendment now, are we not?

CHAIRMAN: The discussion should be on the amendment proposed by Delegate Sutton. Before recognizing Delegate Sutton, is there any other who wishes to speak on this amendment? If not, Delegate Sutton, you have the floor.

DELEGATE SUTTON: A brief recess, please.

CHAIRMAN: Recess is declared.

At 10:15 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:17 o'clock a.m.

CHAIRMAN: The committee will please come back to order. Delegate Sutton.

DELEGATE SUTTON: Mr. Chairman, I withdraw the amendment and I make a motion for deletion—

CHAIRMAN: Before you make another motion, Delegate Sutton, the seconder agree to that?

DELEGATE BACON: I have no objection.

CHAIRMAN: The amendment has been withdrawn. Delegate Sutton.

DELEGATE SUTTON: I make a motion to delete the entire last sentence there so that there will be no statement of effective date and the language, "This constitution shall take effect and be in full force immediately upon the admission of Hawaii into the Union as a State," shall be deleted. May I have a second, please.

CHAIRMAN: Is there a second? Delegate Hitch.

DELEGATE HITCH: I second that motion.

CHAIRMAN: Seconded by Delegate Hitch. Delegate Sutton.

DELEGATE SUTTON: I don't think we need any argument because Dr. Hitch has already made the argument. I'm ready for a vote.

CHAIRMAN: Okay.

DELEGATE DYER: I'm not, Mr. Chairman.

CHAIRMAN: Delegate Dyer is recognized.

DELEGATE DYER: I'm certainly not ready for a vote. My thoughts aren't completely clear as yet but we know now when the original Constitution takes effect. If we knock this out, when does it take effect? And also would we then be perhaps, you might say, combining with the amendments that we now created, we might be—well, I'm not expressing myself very well. What I want to say I think is this, that we might then run into a proposition that we would be combining the original Constitution and all the amendments that we have adopted this time into one package, take in effect at the same time which is certainly contrary I think to the intent of everybody. I oppose this amendment.

CHAIRMAN: Delegate Hitch.

DELEGATE HITCH: Mr. Chairman, I'm probably out of my field in this legal area, but I would wonder if by any stretch of the imagination in retaining this language, this Constitution would then after ratification, refer to everything in it including our proposed amendments that are ratified by the electorate. Are those to take effect retroactively to August 21, 1959?

DELEGATE DYER: Is this a question addressed to me?

CHAIRMAN: Well, it's addressed to the Chair, I assume. Does anyone wish to answer this?

DELEGATE KAUHANE: Yes, Mr. Chairman. Mr. Chairman, I rise to—

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: I rise on a point of information, Mr. Chairman.

CHAIRMAN: State your point of information.

DELEGATE KAUHANE: If the delegate has raised a question and needs an answer and there's been a reluctance on the part of the qualified people to give him this answer, let's turn to the attorney general's representative or the attorney for this Convention for an answer.

CHAIRMAN: Delegate Ariyoshi was rising.

DELEGATE ARIYOSHI: Mr. Chairman.

CHAIRMAN: Delegate Ariyoshi.

DELEGATE ARIYOSHI: Mr. Chairman, the answer is "no."

CHAIRMAN: You wish to be recognized, Delegate Yoshinaga?

DELEGATE YOSHINAGA: I don't know. It's just the attorney general that Delegate Kauhane requested. It's okay with me.

DELEGATE KAUHANE: Mr. Chairman.

CHAIRMAN: Delegate Kauhane.

DELEGATE KAUHANE: Mr. Chairman, I rise not to be belittled in this area. There's been some areas of confusion here. As a layman, when I review this, I can see where its application may not be useful at this time. But we have a division of opinions expressed here. Some are for the deletion and against the proposed amendment offered by Delegate Sutton purely on a personal basis, and I would like to have an independent body to give us the decision and the opinion coming from the staff of the attorney general's office.

CHAIRMAN: A brief recess has been declared.

At 10:20 o'clock a.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 10:25 o'clock a.m.

CHAIRMAN: The Committee will please come back to order. Delegate Sutton is recognized.

DELEGATE SUTTON: I had occasion to talk both with the representative of the attorney general's office and to the man who was secretary of the 1950

Convention, and the man who today is president of this Convention, D. Hebden Porteus. And accordingly I withdraw my motion.

CHAIRMAN: Thank you. Agreed to by the second? Okay. Any further discussion on the original motion to adopt the report? If not, all in favor of the report, please say "aye." Opposed, "nay." The motion is carried.

CHAIRMAN: Delegate Kato.

DELEGATE KATO: I move that we rise and report

our progress.

CHAIRMAN: Delegate Kamaka.

DELEGATE KAMAKA: I second the motion, Mr. Chairman.

CHAIRMAN: All those in favor of the motion, please say "aye." Opposed, "nay." The motion is carried.

The Committee of the Whole adjourned at 10:26 o'clock a.m.

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