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MINUTES OF COMMITTEE MEETINGS

8 DEC. 1967

MINUTES OF COMMITTEE MEETING

The Committee to Make a Study of the Constitution of South Carolina, 1895, met in the Wallace Room of the State Board of Health Building, Columbia, South Carolina, on Friday, December 8, 1967.

The following members were present:

Senators-

Richard W. Riley
Marion H. Smoak
John C. West, Lieutentant Governor

Representatives-

J. Malcolm McLendon
W. Brantley Harvey, Jr.

Governor's Appointees-

Miss Sarah Leverette
T. Emmet Walsh
W. D. Workman
Huger Sinkler

Staff Consultant-

Robert H. Stoudemire

The meeting was called to order by the Chairman at 10:30 a.m., and Mayor Pro Tempore Ouzts was welcomed to the meeting.

MR. WEST: The first order of business is the approval of the minutes of the meeting before last. Our Administrative Assistant says he has read them. Is there a motion that we approve them?

MR. WORKMAN: I so move.

MR. WEST: Are there any objections? If not, they are so ordered.

I might make one preliminary observation right here. Did Mr. Blatt write to any of you about the matter of election of certain state officials?

He wrote and expressed concern about the tentative action taken at the last meeting in which we eliminated the public election of the Secretary of State, the Treasurer and the Comptroller General. I have had unofficial visits from two of the gentlemen in question, who occupy those positions, who express considerable opposition to the proposal.

I think we would prefer not to make any public debate about it but they did ask that we give some additional thought to our action.

The Secretary of State pointed out that only less than six are appointed for some forty states. I think roughly the same is true of the State Treasurer.

I bring this to your attention because Mr. Blatt did write to Bill and me, expressing his concern about the action. An additional fact is, and I don't want to sound politically scary, but in New York's experience, I think we ought to make an assessment to determine if inconsequuential things might build up opposition which coupled with others might nullify the overall effectiveness of our work.

I don't know what the pleasure of the committee is, but we will make available to you a letter from Mr. Blatt.

MR. WORKMAN: Let me ask this in that regard, with the understanding that everything we have done so far is tentative, is their concern related to the appointment by the Governor or election by the Legislature?

MR. WEST: Frank Thornton is the most positive one. He stated very frankly that he favored public election beyond any doubt. Without threatening us in so many words, he said he would fight the thing from every stump in the State if we tried to change it, but he didn't want to do that. He felt very strongly that the Secretary of State ought to be elected.

Grady Patterson expressed the same sentiment in milder form.

MR. SINKLER: But Frank won't even be affected, because this wouldn't affect anybody before 1974.

MR. WALSH: I haven't talked with but one of them. The impression that I got was that once you got elected there was never any choice to the people thereafter. I think we ought to reconsider the whole thing in view of our decision, whether it ought to be amendment or whether . . . .

MR. WORKMAN: Well, I think it ought to be made plain to the individuals who are concerned with this as to our motivation, because within this group we have a concern that Bob brings out from time to time. That is what effect the two-party politics will have on the government in South Carolina as to what has been true for all these many years.

In each of these instances I think that our approach has been aimed in minimizing the partisan consequences which might come about.

MR. WEST: Yes, I pointed that out to both of them and, of course, their answer to me was that -- we believe we can get elected but we aren't so sure who could get elected Governor -- Republicans trying to elect a Governor and make it purely patronage.

MR. WORKMAN: Well, now that's a double-edge sword, because it could well be with the fall-out or the opposition which starts at the national level -- it comes down and you can have state level -- you could have at the one end a Republican sweep if they ran a slate, and in opposition the Governor's race may be controlled -- the Republicans may have a good candidate for Governor and conceivably sweep in an entire ~~slate without~~ regard to the qualification of the lesser members, so this is one thing, at least, that was in my mind.

On the other hand, if the Democrats stay in and then the Republicans start opposing these things on a piece-meal basis, you've got another consideration coming.

My motivation and what recommendation I have here is that by giving the appointive power either to the Governor, with confirmation by the General Assembly, which stabilizes it -- it doesn't let a Governor go wild, or, giving the election to the Legislature, you're still keeping it among the people in the "know". There is less chance of putting an inferior person into office by virtue of some popular upheavel that might clean house.

MR. SINKLER: I think all of us expressed that view. I wanted it to be as close to Civil Service as possible. I think this was some of the language I used.

MR. STOUDEMIRE: I think to prove this point, really, that Mrs. Eddings, a lady, a person that was really not known out of Richland and Lexington Counties, almost defeated a man who had been building up for this job for twenty years.

MR. WALSH: Let me say one further thing, I believe in the will of the people enough to feel that when you elect a President of the United States, whether he be a Republican or Democrat, that he ought to carry with him enough power to transform the expressed will of the people in the action, and on the big level you generally associate the election of Governor as being the guiding and administrating light, but as it is now you might elect a Republican Governor who could transform . . . .

MR. WORKMAN: My suggestion would be, as the need arises explain our thinking to these individuals if they come to us personally. In the meantime, just defer any change until we get down to such point that we begin to crystallize whatever paper we will give.

MR. HARVEY: What was the contents of the Speaker's letter?

MR. WORKMAN: He indicated that some of the Constitutional Officers, notably the Secretary of State, seemed concerned about our recommendations and preferred that the style not be changed and suggested that we reconsider it. My answer would be that everything is still under consideration, not crystallized, but our thinking on this particular matter is as we have just discussed it.

MR. SMOAK: Did he indicate that he felt that way too?

MR. WORKMAN: He indicated sympathy with the point of view of the Secretary of State without necessarily saying that we have done wrong.

MR. WEST: I don't believe a motion is necessary, Bob, if you will just note this as one of the items to be discussed before any tentative or final draft is approved.

MR. SINKLER: Well, I told them it was a civil service approach to the thing is really what we did. I think I was more or less willing to let the thing stay as it was as far as those two offices were concerned; although, I probably endorsed the change for the Comptroller General because I wanted to get that post-audit thing in -- whether we call it Comptroller General -- I don't care what we call it -- but I want that aspect of the job in here.

Mr. Chairman, I don't know whether this is appropriate or but -- probably it's another digression -- one thing that came to my attention this last time, and I sorta' hesitated to bring it up, because I think that I find myself in one hundred percent agreement with what my friend Bill Workman said, but to my surprise I wasn't entirely in favor of this business of this convention.

In theory I think he is absolutely right but from a practical standpoint I don't think it is possible for two reasons. In the first place, I don't think the General Assembly is ever going to call a convention. In the second place I doubt the caliber of the convention. If we are going to end up by calling a convention, then all we've got here is something just completely

more or less academic. It struck me that we ought to, in the final analysis, and I've been thinking about this, perhaps finish the job and present the package and make no recommendation whatsoever as to the matter of how it should be implemented and leave that to the Legislature which created the committee.

MR. WEST: I believe that we agreed, and I still concur in its strategy, not to get sidetracted by a methods proposition. I think if we do our job properly we will have fulfilled the responsibility, namely, of giving what we hope will be an acceptable draft. I think probably we owe an obligation to say which we think is the most expeditious, but I don't think our whole work should rise or fall on that recommendation or its adoption. Certainly I would feel that we ought to postpone that until the very final thing.

MR. WALSH: We agreed that that whole matter would be too silly to discuss. Now, whether or not what you're talking about . . .

MR. SINKLER: Don't worry about that.

MR. WALSH: I believe that it's a vital and essential educational process for the people to know what they can get if they went through the Legislature by methods and what they might get if they were to have a constitutional convention.

I am not all agreeing with Huger's statement that we wouldn't have a good caliber convention. Again I'm perfectly willing to trust the people. I think you will find they might take a different approach to the convention, but that's a matter I think we ought to discuss in great detail.

MR. STOUDEMIRE: I may fill you in on this. Thus far I have dodged it but almost every press boy I see inquires of me about the method we are going to use and I have a standard phrase "that the committee is going on the basis of determining what they want to recommend by way of . . . . before determining the method" and that I think perhaps when you get through that a number of people may even change their minds how they might feel now and so on and I have been thus far ducking the thing.

MISS LEVERETTE: This may not be relative but I have often wondered what the climate was -- it must not have been very good or favorable in the General Assembly -- when this 1950 package was handed in with the amendments -- amending the amended procedure -- no action was taken on that?

MR. WORKMAN: The primary concern that came out in the Jefferies' group was to remove anything that would bar limiting the General

Assembly from serving. They did that very expeditiously. They put through an amendment which allowed several officeholders, not only the Legislature, but judges and other people who now hold office, to serve in a Constitution Convention without violating duel officeholding. That was done. But the other thing and any suggestions beyond that got nowhere.

Senator Gressette proposed that he was going to undertake to straighten up certain sections of the Constitution on a piece meal approach, so that some of the objections which appeared in the draft of the Jefferies' Committee would be taken care of -- nothing had been done on that.

MISS LEVERETTE: I just wondered what happened. I was too young to remember.

MR. STOUDEMIRE: I was not too young and I think one big difference there is that this was done perhaps to satisfy the House of Representatives. I don't really think anything was ever considered seriously, because at that time you had one Senator per County. I think everyone knew that you would never get that two-thirds vote to call a Convention.

Now that your Senate has been reapportioned and on a different basis, I think you are on altogether a different ground.

MISS LEVERETTE: Not to prolong this discussion, but I think the climate as far as the people are concerned is different now from what it was at that time toward accomplishing something regardless of how it is done.

MR. STOUDEMIRE: Does everybody have a copy of the Legislative Article? Marion did you bring yours?

MR. SMOAK: I believe so.

MR. WORKMAN: Are we on Working Paper 9, page 12?

Mr. Stoudemire: Yes.

John, I think it would be all right with the committee if I ask Professor Abernathy and also Professor Bain -- not from the standpoint of proselytizing from their views or anything of this nature -- to be here to help me -- Professor Abernathy on the courts to formulize whatever the people might want on local government. Because you see in all of these decisions, when you say, "Bob, draft", it is becoming more than I can say grace over in order to comply with your dead line. So, these two gentlemen would be here to entertain the decisions. Then I

could assign them the job of putting into final form that which the committee agrees upon. Of course you know that Professor Abernathy is not concerned about lobbying for his particular stand one way or the other. If that is agreeable we will go on that basis when we get to that stage of the discussion.

We got down to Page 12, on Working Paper 9 last time. We finished Section 10 and should start with Section 11, "Election returns".

You will recall that we left Section 10 just about as it was except for the wording "upon certification of the election" to govern when a man was actually elected.

Now Section 11. "Each house shall judge of the election returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as may be provided by law or rule."

As Dr. Larson says, this is traditional and valuable and he proposes no changes.

MR. WEST: The provision about "and may compel the attendance of absent members" -- is that of any particular value?

MR. WORKMAN: Let me ask a question on that before we finally dispose of it. I am puzzled from time to time -- when each house shall judge of the election returns and qualifications". That can run headon into the process of declaring election returns where the machinery which is charged with the responsibility of counting votes and determining the guys who's got extra number of votes. Could that be nullified by the House or Senate determining that we are not going to accept this count and we declare that this individual is elected.

MR. WEST: Yes. You know that was true in the Myrick case -- the Myrick-Williams case. I was on a committee that counted and recounted and finally the ultimate test was a result of the Senate . . . .

MR. WALSH: Myrick had more votes but the other fellow got elected.

MR. WEST: They couldn't exactly determine. . .

MR. WORKMAN: The concern is that here we have a touch and go situation where there was a measure of doubt as to what the

numbers were -- a little bit this way or a little bit that way. Under this thing there could be what, in effect, would not be a real question of numbers but the Legislature could, in its wisdom or lack thereof, determine circumstances were such and the climate of opinion was such -- improvising as they go.

But do we think the election in Allendale County was not a fair and valid election, despite the findings of the local election commission? Therefore, we say so and so is elected. This to me carries with it the seeds of destruction of statutory election process.

MR. McLENDON: Bill, isn't your idea about this a little strange? Because this says each House shall judge of the election returns. They're simply going to judge what returns, what numbers, come to them and if it was obvious from the election returns that one man without question had a ten vote lead or a sixteen vote lead, I don't think that the sense of this would be that each House then would be in the position of overturning that decision of the electorate.

I think this simply means that there is a bona fide reason for not being positive -- that was the situation with Myrick and Williams. Nobody knew exactly where the situation was. If it had been definite one way or the other -- I don't think the sense of this is that each House then should, as judge of the election returns, be in position to say Williams ought to be elected even though he is fifteen votes behind. I don't think that's the sense of this at all. Is that what you're saying?

MR. WORKMAN: The primary thing is that we have statutory procedures which determine the outcome of elections, with methods of appeal therefrom on up the line. Now, that being established, I don't see how we can say that the House or the Senate should judge of the election returns because there is a prescribed manner by which the elections returns are judged.

I don't press that and we can move on to something else, but I visualize this as being a possibility when you've got the procedures established, under statute, saying one thing or making one conclusion and the Myrick case was right much in point on the thing -- and the Legislature arriving at another conclusion.

MR. STOUDEMIRE: I would hate to go against a long-term trend where a legislative body is a judge of its own members and I would argue differently with Bill that the election commissioners might not have followed the law and so on.

MR. WORKMAN: Let's pass on then.

MR. WEST: Well, we'll keep Section 11.

MR. STOUDEMIRE: Now Section 12.

"Each house shall choose its own officers, determine its rules of procedure, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause."

Now that's a fairly standard statement. Dr. Larson points out two things which I shall call to your attention. He says since we have dealt with the President Pro Tempore and Lieutenant Governor and so on, it may be clearer if we would introduce this by saying: "Except as otherwise provided in this Constitution, each house shall choose" and so on. It would make that a little bit clearer.

He just points up without a recommendation that some people say -- Michigan at least has a discharge rule --"that would prevent a majority of its members from discharging a committee from further consideration of any measure."

MR. WEST: I don't see any real reason for that.

MR. WALSH: I don't either.

MR. STOUDEMIRE: But I do think his first suggestion might make it clearer "Except as otherwise provided in this Constitution, each house shall choose".

Do you think "Except as otherwise provided"and so on is worthwhile or not?

MR. WORKMAN: It makes for clarification.

MR. WEST: Without objection, we will pass on.

MR. STOUDEMIRE: Section 13 is a very unusual section. Dr. Larson picked it up back in 1790. I checked with Miss Watson and Mr. Thomas and it appears that back in the depression days that this was used -- I hate to say it -- by a gentlemen in my county of Lexington, who was shouting at a House Member from the balcony and so on, and they did have the Sergeant-of-Arms apprehend him and detain him for awhile. Also had a gun drawn -- and so he apologized and I think he only stayed in jail for about a day. Now, that's the only case that I can find that was used. In fact, none of us knew that that was

where

until we started going through it with a fine tooth comb.

The question I would like to ask is this. If you take this out, then if I were in the back of the Senate being disrespectful and disorderly, would you resort to the normal -- I assume you would have the Sergeant-at-Arms throw me out. Then would you have him turn me over to the Columbia police, or what action would be taken?

MR. WEST: I rather like this. Suppose you had some war demonstrators who came in and started making a protest -- relying on freedom of speech -- if we couldn't do something with them in there or send them down to the Chief of Police, why -- I just like this.

MR. SMOAK: Whether we ever use it or not, I think we ought to have it.

MR. WEST: I think so.

MR. RILEY: I like the suggestion in the Model Constitution -- speech and debate in the Legislature. What does the group think about that?

MR. STOUDEMIRE: (Reading from Model State Constitution, Sixth Edition). "Section 4.10. For any speech or debate the members shall not be questioned in any other place."

MR. WEST: Now, I don't know about that.

MR. WORKMAN: That would put us out of business. Editorals and news coverage generally hinge on what's being said by members in the Legislature. In other words -- questioning what they debate.

MR. RILEY: Well, that might be too broad a term.

MR. WALSH: Or subject to civil suit thereafter.

MR. WORKMAN: Would that be the intent. Let's put it in that language.

MR. STOUDEMIRE: Section 14 is ruled everywhere that you cannot be sued for a statement on the floor of the House and I think actually in committees also.

MR. RILEY: How does the Federal Constitution read? It doesn't have the word "questioned" in it, does it?

MR. STOUDEMIRE: No. And it is a long standing rule that a . . . .for a speech that you'd make in the House of Representatives. Therefore, you have your own members to kick you out if you are disregarding this right.

Mr. WEST: . . . . speech that Duncan made in the Senate.

MR. WORKMAN: But it didn't hinge on this point?

MR. WEST: It hinged on the question of malice and publication of the editorial.

MR. RILEY: Duncan sued them too.

MR. STOUDEMIRE: I have no objections to adding other things in here, but the way I understand this now is that -- I can question a member for something he says but I can't do a darn thing about it if he just walks on down the street and doesn't answer.

MR. WORKMAN: I don't believe we can add anything to this.

MR. SINKLER: I really don't believe so. I think you might just open up a lot of litigation.

MR. WEST: Let's leave it as it is.

MR. STOUDEMIRE: Now Section 15. Bills for revenue.

"Bills for raising revenue shall originate in the House of Representatives, but may be altered, amended or rejected by the Senate; all other Bills may originate in either house, and may be amended, altered or rejected by the other."

Dr. Larson points up that the rule is changing throughout the country where any type of Bill can originate in either House. Whether you are satisfied with it the way it is now or whether you want to give some consideration to letting the Senate introduce or not -- what do you think?

MR. WALSH: I think we had better leave it alone.

MR. SINKLER: You've got the enrolled rule act that you can't go back on anyway.

MR. STOUDEMIRE: There is one advantage this has now. It does make clear that the House of Representatives has the direct obligation of getting the money Bills started. I don't believe one House is going to sit back and let the other House start unless you've got a Constitution guiding.

MR. WALSH: Let's keep it.

MR. STOUDEMIRE: Section 16. Style of laws.

"The style of all laws shall be: 'Be it enacted. . .'". It's much better than North Carolina: "The General Assembly do enact". Dr. Larson says this is the standard provision. I assume that our wording is as good as any.

MR. SINKLER: It shows that we have a great deal more idea of English.

MR. WEST: All right we move on to Section 17.

MR. STOUDEMIRE: "Section 17. Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title."

MR. WORKMAN: Let's call on the Lieutenant Governor for his views on bobtailing.

MR. STOUDEMIRE: The first thing I would ask: Do we need every act or resolution, oh excuse me -- that' right, I misread it.

MR. WORKMAN: I think this is a helpful thing to have in the Constitution.

MR. McLENDON: Oh yes, you know you read so much legislation solely by title anyway.

MR. WEST: The suggestion has been made that we ought to consider limiting the appropriation bills to the subject of appropriations. That would eliminate the favorite trick of putting in the following shall be. . . . . the vehicle by which brown bagging passed.

MR. McLENDON: That's right. There is some merit in it and a lot of demerit in it. We get into trouble with those permanent provisions.

MR. WORKMAN: You might give some thought to putting in there a provision that the general appropriations bill shall not contain provisions of permanent law. That doesn't exclude them from including what is necessary at that moment but it means that if this is to be a permanent law. . . . by next session be put back in the appropriations bill.

MR. STOUDEMIRE: Are you saying that they could change a tax rate temporarily then for one year and the next year they'd have to make it permanent?

MR. WORKMAN: If the effect of what is being done in the appropriations bill is aimed at becoming part of the permanent law

whether it relates to the appropriations or not, then I think there should be some obligation to put that into the Code rather than the appropriation, because this is the thing that is constantly confusing those of us who try to cover legislative procedures in order to determine what is in the law.

MR. STOUDEMIRE: That which we know or what I call the standard essay section, which follows the figures in the appropriation bill -- those thirty or forty sections -- now, all of those really would more than likely be accepted as applying to appropriations, would they not? I mean if you say an appropriation bill can only deal with appropriation matters, it would not affect those standard sections, would it?

MR. WEST: Some lawyer might question it.

MR. STOUDEMIRE: You have a lot of "gismos" in there.

MR. SINKLER: You have the permanent Hatch Laws that are written frequently in the appropriation bill, and the only way you could get the taxes after they spent the money, then somebody comes along with a little gumption and says we can't spend this money without the tax.

MR. WALSH: Is that directly related to raising revenues?

MR. RILEY: I agree with Bob. That would be under the subject of appropriations.

MR. STOUDEMIRE: Yes, but some place you get in there sometimes that thing that you give state employees a certain number of days off or that type of thing getting into the permanent bill.

MR. WORKMAN: You change definitions from time to time. This is within the scope of finances.

MR. WALSH: When you go out there and regulate the shooting of rabbits in Berkeley County, that doesn't have anything to do with it.

MR. WEST: Let me give you a classic example of what went into the permanent section regarding sixteen year-old drivers which failed to pass. Mr. Blank slipped the amendment into the permanent section of the appropriation bill on the last day and "bong" it went through.

MR. WORKMAN: That's the point that I make here.

MR. WALSH: That's not right.

MR. RILEY: That's not good.

MISS LEVERETTE: Let me ask a question. These permanent provisions -- do they find their way into the Code?

MR. WORKMAN: Yes. But the correction of what Mr. Blank did was in the hands of the presiding officer. This was nongermane and it was bobtailed legislation. It should have been stricken as frequently things are stricken if they encounter the ire of the presiding officer of either House. What I'm trying to get at is the -- not to much the elimination -- desire to eliminate all that stuff. . . . . antibobtailing procedures will eliminate a great deal of it and that depends upon the personality and attitude of the presiding officers.

What I'm saying is that if we can't clean up the appropriations bill completely, it would be advisable to say that the provisions therein are good only for that year unless they are re-enacted.

MR. McLENDON: You ought to get it out all right.

MR. SINKLER: Well the sales tax went on as a part of the appropriations bill.

MR. WALSH: Anything relating to taxes . . .

MR. SINKLER: They use it of course, frankly, as a vehicle for all this financing.

MR. WALSH: Anything related to taxes is appropriate for the appropriations bill. But when you come to the sixteen year-old drivers, it ought not to be issued that way.

MR. WORKMAN: I agree with you.

MR. McLENDON: We used it as a vehicle to get the school television program extended from Florence to Marion to Mullins.

MR. SMOAK: Wasn't it needed?

MR. McLENDON: Yes, and that was the only way we could get it.

MR. SMOAK: Or you wouldn't have had it?

MR. McLENDON: No, we wouldn't have had it. I don't know that it's all bad.

MR. RILEY: Let me inject a point here what Bill is talking about. We had a problem in the Senate -- no rule other than Jefferson's

Manual which we resorted to during some of these debates. I raised the point, I guess, twenty-five times and John finally ruled with me. He warned them that the . . . were no longer applicable to the point and he was going to eventually rule it out under the Jefferson Manual.

MR. WORKMAN: I'd do it also under Section 17.

MR. WEST: But you see they put in on the amendment: "and amend the title to conform".

MR. WALSH: Let me ask you this. Now, in the appropriations bill it is true like this absurb thing about rabbits -- generally they put that in the title. Your title winds up about that long, but it relates to fifteen or twenty different subjects. Does not that violate Section 17? Do you think that if you took something like that to court that they'd strike it out?

MR. SINKLER: I can't think of any case offhand in which they have knocked down the thing on the title.

In recent decisions there's really no pattern of law -- they have some glib language -- they say it's fine -- they put in there to stop log rolling and all that sort of business. They say it's the standard thing and they quote from all the encyclopedias -- been writing about that for the last hundred years. Of course the veto in the appropriation bill comes from the Confederate Constitution. I don't doubt that this particular 17 came out of the Confederate Constitution. It had some awfully good ideas.

MR. STOUDEMIRE: We were making progress until I found this: There has been a general disposition to construe this section liberally rather than to embarrass the legislation by a construction, the strickness of which is unnecessary to the accomplishment of the beneficial purpose for which it has been adopted.

MR. SINKLER: I can't think of anything worthwhile that has ever been knocked out.

MR. STOUDEMIRE: Now, this might be the reason this title gets in there. While this section is very liberally construed -- yet when the title of an act definitely and specifically limits its object, the court must limit the operation of the act to the subject so expressed in the title.

MR. SINKLER: They have taken a couple of little acts that have knocked out germane. Then he had some sort of case, I have for-

gotten what it was, some silly little bond case which they authorized. The title was completely misleading or didn't go far enough -- some case in Georgetown called Doyle against somebody. They held that the body of the act couldn't go beyond the scope of the title.

MR. WORKMAN: Well the Constitution -- I think what we have there in Section 17 that "Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." There is not much more that you can do.

It is going to devolve on the presiding officer as to whether he will allow it to get through and then on the court as to whether it is properly allowed to get through.

MR. SINKLER: What you could add to it, if you want to strike the hand of the Lieutenant Governor -- you could add in there -- "and this provision shall be implemented by the rules of the Houses". But that's taking away the power to make the rules that you've just given them a few minutes ago.

MR. RILEY: I'll tell you a constitutional provision -- the way I understand it -- the Lieutenant Governor couldn't use a constitutional provision to make a ruling in the Senate because the question of constitutionality of something of that nature doesn't come into it until the act has already been passed. Isn't that right, John?

I don't think we ought to get into rules and ruling in here, because the constitutionality question really doesn't affect the passage in itself, as I understand it.

MR. WORKMAN: It can influence the judgment of the presiding officer. I think he legitimately is vested with the powers of the presiding officer and can say "I do not see that I have the authority under the Constitution to accept this or to sign it."

MR. McLENDON: Sol won't ever take that position. He always takes the position that "I'm not interested in the constitution. We are operating here under the rules of the House and whether it is constitutional or not is not for me to say." He says: "I'm not the judge of the constitutional correctness of what we are getting ready to do. We are bound by these rules as far as I'm concerned. " Then if somebody wants to take up the question of constitutionality later on, that's a matter for the courts.

MR. WORKMAN: I think that is an abrogation of responsibility.

MR. McLENDON: Well, he takes the position that he is not in a position to make a constitutional judgment -- that that's the court's problem, and I think he is right.

MR. STOUDEMIRE: In looking over these annotations, it would appear that the court has been very lenient as long as the appropriations bill continued adding in the title to cover. Like it struck down a license tax of an insurance company that Colonial Life brought and the court says the cause was: "This license is not mentioned in the title."

MR. SINKLER: Judge Legge struck down one.

MR. STOUDEMIRE: But that was not strictly what we're talking about.

MR. WORKMAN: I think we can accept what we've got.

MR. WEST: If there is no further comment, we'll keep Section 17.

MR. STOUDEMIRE: Now Section 18. Formalities of act.

"No Bill or Joint Resolution shall have the force of law until it shall have been read three times" and so forth and so on.

Dr. Larson brings up here a bill shall not become law, from the model, "unless it has been printed and upon the desks of members in final form at least three days."

MR. WALSH: I don't know about adding to the confusion.

MR. McLENDON: There is enough delay in legislation between the time a Bill is put in the hopper untilthe time it gets signed by the Governor. It takes two or three or four months and it is always available. It is always on the calendar for weeks.

MR. SINKLER: This is, of course, to cover -- but what good does it do if the General Assembly has passed the Bill, unless somebody could raise some point and have it reconsidered.

MR. WEST: Frankly, I think the rule of three readings in both Houses is a very good one.

MR. WORKMAN: Well, that is if it concerns a rule to provide certain protection. This is to provide protection for the public, so that the public knows what is going on. Now, so

long as the normal procedures are followed, the rule is meaningless because the procedure itself is fair enough. What the rule ought to do is prevent the abnormal circumstances which do confuse the public about what is going on. I'm talking right now not about the first three months or four months of the Legislature, I'm talking about the last week of the Legislature.

MR. SINKLER: You're talking about that rabbit hunting.

MR. WORKMAN: They have by force of personality and otherwise pretty well eliminated the passing of legislation by adjournment resolution, but the last week of a legislative session usually results in a practical abandonment of this section.

MR. McLENDON: No, Bill -- because it has had to be -- you have to follow it in each House. If the General Assembly, the House and the Senate, the last three or four days takes up something off the calendar which has met these requirements and passed it hastily, that's just the fault of the members not of the system because it has had to pass through this process.

MR. WORKMAN: Well, you know it's the last day of the session.

MR. SINKLER: Bill is talking about bobtailing. A lot of stuff does come down and the purpose of this is that you couldn't give that final reading in the House until the thing was in final form. That's the purpose of it.

MR. WORKMAN: But what you have -- I haven't come to grips with this in the way it's presented. What's contemplated here -- three readings -- three separate days in each House -- which is adequate to acquaint the public with what is going on.

What I have seen happen is that it has been reduced to one reading in each House by the passage of a House Bill which has a meaningless title, and no contents -- to the Senate where it is given two readings -- the guts of the Bill goes in on third reading and it goes back to the House for concurrence and something brand new can be added in one day.

MR. McLENDON: This rule is good.

MR. RILEY: It always concerns me -- this proviso here -- the first and third -- by title only. You don't like the idea of doing away with something. I know somebody always gets mad/the about

general appropriations bill and raises the point -- and demands that it be read. It would take a week to read it. It can be likened to the Commercial Code. If I had really opposed the Commercial Code, I could have killed it in substance by demanding that it be read.

MR. WEST: I'll tell you my secret weapon on that -- the person asking that it be read -- make him read it.

MISS LEVERETTE: I think the bill has something definitely there that makes it very difficult for the public to even know what's going on, much less be in a position to take any effective action.

MR. WORKMAN: . . . hearings on the Darlington Race Track and things like that.

MR. WALSH: Here is one thought that occurs to me -- going back to one or two experiences I had in the House -- and that is that they will get a Bill and pass it on third reading. It will have had any number of amendments on second reading. And yet unless those amendments are put into the body of the act and you have an opportunity to read through and see how they fit, you don't even know if you want to pass the thing -- you might even want to kill it. You might have been for the original Bill.

I have found a number of instances that when it came up the next day for a third reading -- I voted for it just because I was for it the second time only to find that once the thing is really put together, we should have killed it.

MISS LEVERETTE: Well now Emmet, if you think you are confused and you were there -- you get that Journal and you try to put this stuff together.

MR. SMOAK: I just wonder how far we ought to go in trying to write a rule in here -- trying to protect the public and the public's representatives and their representatives are duly elected and are supposed to be there watching what they're doing.

It seems to me that we ought to be thinking about a rule and Constitutional provision that would safeguard the member, and perhaps you want to slow this legislative process down. I'm not really too concerned . . . that reporters and all the people there are going to absolutely have this thing. That's not really the basic concern.

MR. WORKMAN: I think it is.

MR. WALSH: The members can't know as it is now.

MISS LEVERETTE: I'll tell you one thing -- there are complaints voiced by numerous organizations -- and I am not speaking of the League of Women Voters. We seem to be able to keep up fairly well but I have heard it expressed by a number of groups that this situation of being able to obtain a copy of a Bill -- it goes into a committee and you can't get a copy of it until it comes out. Then a Bill that has been amended -- unless you can sit down and read the Journal and then you start going back and forth between the House and the Senate -- now I think this is a question of rule. This is one of the things that has caused a considerable amount of concern.

MR. SINKLER: I 'll tell you one way you can do it -- that is you can provide that in its final form that the Bill shall be printed before it receives the -- and at least one House has got to vote on it or see the Bill in final form. I don't know that is really going to get you anywhere.

MISS LEVERETTE: I know in some states and I think some southern states but I'm not sure -- North Carolina or Georgia -- I think they do that. They have that act printed and available -- where you can see it. They don't give you two weeks to study it but it is printed and available.

MR. WORKMAN: Certain states do require that the printed version be present on the desk with a given phase of the action.

MR. SINKLER: I'm sure that is true in Congress. What they finally do is to send everything to a conference committee for language because they really pay attention to that.

MISS LEVERETTE: You know the net result of that could be that your paid lobbyists, who can be there and who can follow everything -- and your newspapers -- they are in a position to know what's going on. The public lobbyist is not. The public has no way in the world to know what is going on.

MR. WALSH: So often there's nobody interested in the public . . .

MR. WORKMAN: The provisions that are in the Constitution, I think, by intent, would protect this but by application they don't. They put in there that every Bill shall relate to one subject and that subject be carried in the title. This is supposed to put the public on notice that the extension of the term of a magistrate at Goose Creek is going to be changed. So, if that is lived up to and if it's lived up to three readings on three days in each House, if that is followed through, then the public has an awareness of of pending legislation. But the application of these things -- bobtailing on one hand -- with misleading titles and

and substitute amendments -- it means that what happens is in not a great many cases, but in enough cases to keep the public off balance -- a measure is completed before there is an opportunity for public hearing or for public outcry.

I think the legislative experience on brown bagging was a good example of this.

When the Legislature undertakes to do something by devious means, the net result and the loss of faith on the part of the Legislature is frequently a reversal of what they seek to do -- I mean ultimately, not at that moment.

MR. WALSH: I know one or two bills -- and again it's really not the fault of anybody in the Legislature, because except for a handfull of people the other members of the Legislature don't know. They will agree upon some sort of compromise -- there are no copies of that Bill available -- and there are occasions when the thing finally passes that really ought not to pass.

MISS LEVERETTE: That happened to me once. I talked to a member of the delegation and asked him about a particular Bill. He told me -- and it was wrong -- because he was a step behind.

MR. WALSH: The point I'm making is that if the members cannot have the printed materials so they can make an informed judgment, then we are not being represented properly.

MR. SINKLER: There is always a chance to envoke the 24-hour rule and really read it if you want to.

MR. WORKMAN: No, that 24-hour rule can be envoked only at one particular . . .

MR. SINKLER: You mean on a Bill that is amended coming back to the House?

MR. RILEY: It doesn't have to be on the desk.

MR. STOUDEMIRE: The way I read the Constitution -- the second reading is mandatory. But I take it that if nobody calls . . .

MR. RILEY: I don't think so, Bob, and that's the reason I raise that point. I'll tell you, in my opinion, if I had a real rough law suit involving an act, I think that I could raise that point and it would be a right close question.

MR. STOUDEMIRE: Now to get us into the modern era, do we need some type of wording whereby the presentation of a printed Bill could be substituted for a second reading?

MR. WALSH: That's a good idea.

MR. STOUDEMIRE: You see all this business about reading Bills came about before the printing process is what it is now. It seems to me that it is absurb to read a 40-page Bill word by word, if every member got a copy well printed.

MR. McLENDON: Well,what suggestion would you make . . .

MR. STOUDEMIRE: Well, I'm trying to see if we need to make a safeguard that at some stage each member must have a printed copy of this Bill -- rather than demanding that this thing be read word for word. This would still give you a safeguard that you'd have a chance to read it.

MR. McLENDON: If you published it on second reading by unanimous consent, you can amend a Bill on third reading, can't you? So, that wouldn't necessarily help in the mechanics of it.

MR. WALSH: The only point he is talking about is that rather than any requirement that the Bill be read -- have an alternative provision permitting it to be printed at whatever stage it is and put on the member's desk.

MR. STOUDEMIRE: The way I read that last "provided" -- the second reading is mandatory. I don't know whether other people agree with me or not.

MR. SMOAK: We're talking about amendments more than we are Bills, aren't we?

MR. RILEY: No, we're talking about Bills.

MR. SMOAK: Well the Bills are printed.

MR. RILEY: But they're not read.

MR. SINKLER: Every Constitution in the United States has that provision. Every court in the land has held that they're not going back in the Journal -- you can get any Journal you want -- it will say the Bill was read, it doesn't say it was read by title, it says the following Bills were read.

MR. WALSH: We'd better leave it like it is.

MR. McLENDON: I believe, in my judgment, you'd better leave it alone.

MR. SINKLER: The only thing I think you could do is to have the final version of it printed.

MISS LEVERETTE: I agree with that.

MR. SMOAK: The only problem with that is -- what about all these little amendments that you run into -- a dozen or so that don't really amount to anything? Should all these be printed?

MR. McLENDON: We shouldn't lose sight of the fact too that it is a representative government and you've sent these people up there to deal with these things and look at them. You try to inform the public and we always do.

MR. SMOAK: The Senate had eleven days and eleven nights of filibuster in this past session, and my experience is that when something bounces through there and the people don't understand it -- and we have some awfully ornery people -- and one of them will get up and start talking because he doesn't understand it. I did the same thing myself.

MR. WORKMAN: That is usually true with respect to substantive state matters with statewide concern. It frequently is not true with local measures which are just as critical to the people of Aiken or Allendale or wherever it is as some big money matter.

And when something happens -- and I cite the Darlington Race Track -- the Sunday racing down there -- I take the position one way or the other that that thing went through -- a thing like that, it was enacted, actually, and the people of Darlington had no earthly idea that this was in the mill until it was in the law.

Now, this being the case -- nobody in the Senate from Aiken County or Greenville or whatever would have touched it. They would have said it's not my responsibility. It was the responsibility, actually, of the indiviual who represents those people. Now he was elected, but I think beyond that you can't accept as a matter of course they are always going to do like that.

MR. STOUDEMIRE: Actually what I'm trying to do is to bring you up to date and maybe we need to insert in here that the printed Bill may be a substitute for a second reading, or something of this nature -- that if you don't read it word for word that you would not be in an unconstitutional position.

MR. SINKLER: I don't think that's necessarily desirable, I

think that "read in full" is good to protect the guy who wants to get up and stall things.

MR. McLENDON: It serves a good purpose.

MR. SINKLER: I wouldn't agree to that at all and as far as having to get on a sound constitutional basis, you are on a perfectly solid constitutional basis right now.

MR. RILEY: I would disagree with Huger . . . the right to stall. I think a Bill is always pertinent and if I am opposed to the Bill, I think I could get up and read it.

MR. SINKLER: The only point is that I would not like to see Bob's suggestion passed that you could dispense with that second reading. I think that could be harmful because occasionally I think you might want to insist that it be read.

MR. RILEY: That's really not a safeguard because everybody can read and you can have everything printed. I think the biggest danger in the state government system is the difficulty of getting things done. You have to have a lot of that difficulty to make it safe, but I think we've kinda gotten to the point that we overdo that now to where any small group could significantly affect a very vital piece of legislation.

MR. SINKLER: I think the whole purpose of the Constitution -- your safeguards -- that's the only reason to write a Constitution. If you want the majority to control, you don't need to have a Constitution.

MR. McLENDON: If you follow that you would eliminate the filibuster.

MR. RILEY: No, I didn't say to eliminate. I just say to look towards ways of making it more efficient as far as getting things done.

MR. McLENDON: Well, then that's the same argument I was making awhile ago in opposition to this language here in the model code. I think there is enough exposure of all Bills, of legislation and amendments to protect the public.

(Mr. West asked to be excused for a short while to attend another meeting. Mr. McLendon assumed the chair.)

MR. WORKMAN: I disagree with that. Normally, what you say is quite true, but when a member for whatever reason undertakes to conceal from the public what he is up to, he can do it. It

takes some pretty good snooping on our part to get it out.

MR. WALSH: The public has absolutely no opportunity to be heard whatsoever.

MR. McLENDON: You are only absent from Columbia every six months. If there is anything vitally wrong or desperately endangering the public interest with this kind of legislation, you are right back there in January to attend to anything that is that far out of line.

MISS LEVERETTE: You look to what was passed in the last week of this past session.

MR. WALSH: The good lobbyist knows exactly when the temperature is right to get that Bill kicked along.

MR. WORKMAN: It depends upon the people we send down there.

MR. SINKLER: I'll tell you how you can really improve the thing that Bill is talking about is when you get over here to the important thing in this Legislative Article which is the Special Act Rule. That is where you can really do some good, and I think you're wasting your time here.

MR. WALSH: I think the ingenuity of man will be such that he can get around most anything he wants to.

MR. McLENDON: All right, are we ready to move? What do we want to do with Section 18?

MR. RILEY: I move we leave it just as it is.

MR. WALSH: I second the motion.

MR. McLENDON: Is there any opposition? If not, we'll stand on Section 18. Now, Section 19.

MR. STOUDEMIRE: This is the one on mileage, and also that the Legislature cannot increase its salaries.

"Section 19. Each member of the General Assembly shall receive such mileage allowance for the ordinary route of travel in going to and returning from the place where its sessions are held as the General Assembly may provide by law; no General Assembly shall have the power to increase the per diem of its own members; and members of the General Assembly when convened in extra session shall receive the same compensation as is fixed by law for the regular session."

Dr. Larson suggests that mileage is really not a constitutional question and probably should be taken out.

MR. SINKLER: I think it is all right to leave it in there.

MR. McLENDON: If you take it out, somebody will say, well, the legislators are going to give themselves fifty cents a mile.

MR. WORKMAN: There is nothing to prevent them from doing that. And there ought to be something -- that whatever mileage prevails for the State likewise prevails for the legislators. If you take it out -- it makes them free -- they can do like they did during the Reconstruction Days -- get on a train and ride to Charleston and not even got off the train and ride back up here, then draw mileage for as many trips as they could make.

MR. STOUDEMIRE: I believe this was settled a few years ago. Was it not ruled that you have a new Legislature every two years, therefore you could increase the Senator's salary -- hold-over Senator of a four-year term. Didn't that come up before the court?

If not, you have a problem here -- a hold-over Senator should not be penalized when you're giving everybody else a salary raise.

MR. SINKLER: Yes, but . . . . vs. Vaughan threw it out for a lot of them.

MR. McLENDON: Didn't they sue -- didn't some of them sue to get it?

MR. WORKMAN: What they did years ago -- it was fourteen years ago. They had an extraordinary long session. The Legislature ran out of money for living expenses, etc. They voted themselves $700.00 extra pay apiece by way of compensation expense money -- they called it -- for this particular session. A suit was brought by . . . and went to the Supreme Court and half of them had to disqualify.

MR. McLENDON: All of them.

MR. WORKMAN: It was sent up to special court and the court said you couldn't do it. So then came the process of reclaiming and the reclaiming went on for years and years.

MR. McLENDON: The only way they got one senator -- they reduced it to judgment and he didn't realize it -- and he bought a tract

of land with the judgment attached to the land -- he got ready to sell the lot and, of course, the lawyer investigating the title found the judgment and wouldn't clear the title until it was paid.

All right, where do we stand now?

MR. STOUDEMIRE: I raise several questions here. Do you want to express in terms of per diem or do you want to express in terms of salary? You can say this in terms of straight salary which would include a special session or you can leave it as you have it now that when you have an extra session, then you have a per diem basis to go on.

MR. WORKMAN: The per diem is antiquated in my view and the trend is toward annual salary. The complaint was made legitimately by legislators that their work is not confined to this forty or eighty days or whatever it is, but throughout the year. You might question the propriety of some of that work but it's there nevertheless.

So I think we ought to move to the salary basis and make it so that they can be paid an annual salary, leaving in the provision that no Legislature can raise its own.

MR. STOUDEMIRE: What do you want to do about the mileage? (the first four lines in the section).

MR. RILEY: It really doesn't amount to anything but I think we might as well leave it in.

MISS LEVERETTE: (reading from Model State Constitution).

"Section 4.07. Compensation of Members. The members of the legislature shall receive an annual salary and such allowances as may be prescribed by law but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same."

MR. WORKMAN: That's what we are trying to say.

MR. STOUDEMIRE: How about the special session, Sarah?

MISS LEVERETTE: (reading from Model State Constitution).

"Section 4.08. Sessions. The legislature shall be a continuous body during the term for which its members are elected. It shall meet in regular sessions annually as provided by law. It may be convened at other times by the governor or, at the written request of a majority of the members, by the presiding officer of the legislature."

MR. WORKMAN: What we are in right now is the wording of the section which fixes the compensation and mileage of the legislators. Sarah has it in the Model Constitution that which seems to be desired -- mileage and salary rather than any per diem.

MISS LEVERETTE: It takes care of increase and decrease and yet doesn't get into all this detail.

MR. WORKMAN: Read it again.

MISS LEVERETTE: (reads again Section 4.07 in Model Constitution).

MR. WORKMAN: I think that is pretty well put. The allowances give opportunity to put in expense money, if necessary, and if it gets unreasonable, somebody's going to be hauled into court.

MR. STOUDEMIRE: I only have one question. What is going to happen if you call a special session in September on the annual salary basis and someone says that the Legislature now ought to be paid $600.00 dollars for this special session.

Now, will that get us into harassment and into a squabble? Would the annual salary stand?

MR. WORKMAN: I would think that the annual salary would stand, and then depending on the circumstances that there would be . . .

MR. STOUDEMIRE: The allowance would cover the hotel.

MR. WORKMAN: That would be nothing to prevent a special allowance, if it is passed by law, which would include the appropriation bill or the deficiency bill.

If they undertook to use this as a device to increase their annual salary, then there would be a public outcry and you'd wind up in the courts.

MR. SINKLER: I think we should put the word "only" -- shall receive only an annual salary and such allowances as prescribed by law. Then the increase or decrease in the amount of either shall not apply to the Legislature which enacted it.

MR. WORKMAN: The "either" -- you would have there -- a penalty of a special session of a legislature which enacted it. I'm inclined to like the wording as it is.

MR. STOUDEMIRE: It does give you modern terminology. You see all these reports coming out now like the Committee on Economic

Development and so on. This group of business men are saying Legislators ought to be paid $10,000.00 -- $15,000.00 -- $20,000.00 - -

MR. RILEY: You are not disagreeing?

MR. STOUDEMIRE: No, but you see this is not a bunch of Political Science Professors saying this. This is a Study Group from the outside -- the Company Groups saying this.

MR. WORKMAN: I move that the language of the Model Constitution be adopted.

MISS LEVERETTE: I second the motion.

MR. MCLENDON: Let's read it one more time. Listen to it now. We have the motion to substitute the language of the Model Constitution for Section 19. This is the way it reads.

MISS LEVERETTE: "Section 4.07. Compensation of Members. The members of the legislature shall receive an annual salary and such allowances as may be prescribed by law but any increase or decrease in the amount thereof shall not apply to the legislature which enacted the same."

MR. WORKMAN: There is one flaw in the wording --"thereof"-- does it revert to your compensation or to . . .

MR. SINKLER: To either -- just put "either" before "thereof".

MR. WORKMAN: I have a hesitancy to forbid a Legislature to appropriate itself reasonable expense money in the event of a special session. This would prevent it.

MR. McLENDON: We don't want to do that.

MR. WORKMAN: Could you not say -- such compensation -- what does it say, salary?

MISS LEVERETTE: It says "annual salary and such allowances".

MR. WORKMAN: All right --

MR. SINKLER: When you use annual salary, you're ruling out the per diem for special sessions.

MR. WORKMAN: "Allowances" could go for expenses. I say this, Sarah, as you get to the last part of that -- say "and such salary shall neither be increased or decreased." Insert "such salary".

MR. SINKLER: If you want to get money for a special session, I think you've got to go back to what we have now.

MR. STOUDEMIRE: I would simply add one more short sentence: "Additional allowances may be provided for special sessions."

MR. McLENDON: Additional salary and allowances.

MISS LEVERETTE: That would take care of it.

MR. SINKLER: I think Bob has a good idea, I really do.

MR. RILEY: Are you going to work out extraordinary sessions called by the Governor. I don't think special sessions is enough.

MR. SINKLER: We'll let Bob worry about that.

MR. STOUDEMIRE: I would use"additional salary and allowances" for the constitutional term we used back here, for a non-regular session.

MR. McLENDON: Is there any opposition?

MR. HARVEY: Isn't there one other slight shift in changing this to the Model State Constitution. Isn't the interpretation on what we have now that,say a Senator who holds office for four years that if the salary increase passes during his first two years in office that it can be accepted during the entire four years he is in office.

MR. WORKMAN: We think there is a case on that but we are not sure what it is. Lovic Thomas would know.

MR. HARVEY: In other words, if a change is made now in the 97th General Assembly, he can take it in the 98th?

MR. McLENDON: That's my recollection of the result.

MISS LEVERETTE: The Attorney General's opinion reads "The prohibition of this section against increased compensation for members of the General Assembly is not related to the term of office of the members thereof, since the journal of the Constitutional Convention clearly reveals that the prohibition is restricted to the General Assembly which votes such increase."

MR. HARVEY: That is clearly done in this one.

MR. McLENDON: Shall we then accept Section 19 by substituting the Model Code and adding the language which Bob has used? Is

there any opposition to that point of view. If not we'll move on to Section 20.

MR. STOUDEMIRE: "Section 20. Elections 'viva voce'. In all elections by the General Assembly or either House thereof, the members shall vote 'viva voce', except by unanimous consent, and their votes thus given shall be entered upon the Journal of the House to which they respectively belong."

MR. WORKMAN: Does this preclude the adoption of voting machines within the Legislature?

This may be one of these days when we have enough of electronic and other devices -- turned down by South Carolina, but a number of states have them now.

MR. McLENDON: We have a voting machine manufacturing plant in Marion now.

MR. STOUDEMIRE: Shall we say "all elections by the General Assembly shall be recorded"?

It says here "shall be entered upon the Journal".

In all elections by the General Assembly or either House thereof, the members' vote shall be entered upon the Journal of the House to which they respectively belong. Isn't that by unanimous consent?

MR. WORKMAN: No. When they vote by voice, that gives the chance for elections by the sense of the group. Am I correct in that? It doesn't require recording?

MR. SINKLER: No, that means that when -- I think that literally interpreted means that when a Judge is running, you have to call out his name, and I doubt if you got too literal whether you could have one of these automatic things -- everybody to punch a button.

MR. WORKMAN: I don't want to prevent it, if the Legislature would determine. . . .

MR. SINKLER: I don't know, I believe I'd like to prevent it. I don't know if it's a good thing.

MR. STOUDEMIRE: Well, Huger, I think ten years from now the Legislature will insist on having electronic voting.

MR. RILEY: There is quite a difference when your name is on the roll.

MR. WALSH: I do feel that you're going to have to improve your legislative process . . . . improvement is probably in the year of electronic voting. They will record how you vote -- put it on the electronic thing. It's just simply that in three minutes everybody can vote.

Likewise, I think with electronic voting, you'll probably go to voting on more issues. You won't have the "ayes" and "nays" so to speak, in which they are close and you never can tell.

MR. WORKMAN. Well, the voting machines are to serve the legislature and the legislature is not to serve the machines.

MR. WALSH: That's right.

MR. WORKMAN. So these things can be employed under such circumstances as the recorded vote is necessary. It doesn't mean that the machines are there and you've got to use them on everything.

MR. STOUDEMIRE: "In all elections" means what? Would that mean for clerk . . .

MR. SINKLER: Judge or anything else.

MR. RILEY: I guess it is intended to cut out secret ballot. I wouldn't have any objection to putting in "In all elections by the General Assembly or either House thereof, their votes shall be entered upon the Journal of the House. . ."

MR. McLENDON: You may record it, but it may not be until the next morning before you know what the recording is.

MR. RILEY: How about this? "No election by the General Assembly or either House thereof shall be by secret ballot and all votes shall be recorded." That's the only thing we're trying to protect is the fact that people write on a slip of paper and then nobody'll know how they voted.

MR. SINKLER: Well, the A's and the B's and the C's do have an advantage but that's just unfortunate because the House could reverse it if it wanted to and start calling the roll.

MR. STOUDEMIRE: Gentlemen, I would remind you of last year. As I see it, you would not want to prevent electronic voting, because on that Supreme Court Judge vacancy the General Assembly really on some days killed an hour and a half or two hours that they really could have devoted to something else.

MR. RILEY: It messed up six weeks.

MR. STOUDEMIRE: That's right and you could have gone in there "bam, bam, bam" and in ten minutes you would have been gone.

MR. SMOAK: You're not going to have your electronic machines -- you're not going to have a desk for the Senators in the House. It won't work that way.

MR. McLENDON: Does electronic voting come within the purview of . . . How do you strictly interpret within this terminology?

MR. SMOAK: If you want do this and leave the door open for electronic voting, why not just add a phrase or a sentence in there that would authorize it to be done and leave these things with that one exception.

MR. SINKLER: I'll tell you I'm very much opposed to that. I'd just like to leave it like it is. I think it's a good healthy thing to take a little while every once in awhile. It gives great protection to the public to do it this way.

MR. WORKMAN: So long as the vote of the members is made public -- that's the criteria -- that the protection to be sought at, but the delay which accompanies reading 124 names, particularly when you're voting for more than one person, or a series of names, can get time consuming beyond all reason.

MR. RILEY: Sometimes you'll have two trustees or three trustees, all of them are unopposed. . .

MR. WORKMAN: And sometimes you'll have five nominess for two offices.

MR. McLENDON: If you put "or electronically" as the respective Houses may provide -- you're trying to permit voting electronically.

MR. RILEY: Is there anything in the Model Constitution about it?

MISS LEVERETTE: I was just trying to figure out -- they don't specify an election but they do include that the Legislature shall prescribe the method of voting on legislative matters but a record vote shall be taken . . . I was trying to figure out if there was some way you could put an alternative if the House so desired -- an alternative method of voting and still require a recorded vote.

MR. WALSH: There is an electronic machine that you -- every one hundred and twenty-four punches . . .

MR. WORKMAN: Huey Long developed it.

Mr. SMOAK: You could add in there "or except where the votes are taken electronically -- the vote of each member is taken electronically, and the vote just given shall be entered upon the Journal."

MR. SINKLER: You're going to have an electronic device where a guy can sit up in a hotel room and vote.

MR. HARVEY: It seems to me that we are giving too much definite meaning to "viva voce" here. I think that is a right nebulous phrase, frankly. Just by voice you can do anything.

It seems to me that you would comply with this section if everybody in favor of _____, say "aye",and everybody in favor _____, say "aye".

MR. SMOAK: Well, then it could not be entered in the Journal.

MR. WORKMAN: The record vote is what we're shooting at. Let's pass it over and all of us struggle with the language and come back to it.

MR. HARVEY: How about this "The members shall vote by individual recorded vote made public at the time of voting."

MR. STOUDEMIRE: How can we get the roll call in there?

MR. SINKLER: You'd better put the word "present" in there, so they can't vote from the hotel.

MR. SMOAK: What is that?

MR. HARVEY: "The individual recorded vote made public at the time of voting."

MR. STOUDEMIRE: Like we first started -- strike out and go down to "shall be entered" -- in other words, you cannot enter a vote after the presiding officer has declared the results, can you?

MR. RILEY: No.

MR. STOUDEMIRE: In other words, the man over at the Wade Hampton or somewhere else -- if you do it by machine, I would think that the presiding officer would have forthwith declared -- ninety for and twenty against.

MR. RILEY: Instead of saying "viva voce", why don't we just say "vote publicly".

MR. STOUDEMIRE: All right.

MR. WALSH: That's a good idea. What we have now is something more than Huey Long had. We have a device now where you can look up there and see how everybody votes and then they can put a piece of paper on your desk within a matter of minutes.

MR. RILEY: Well the members still vote publicly. . . .

MR. STOUDEMIRE: But I don't believe in Executive Sessions any way.

MR. RILEY: In here it would eliminate the calling of everybody's name. When you vote publicly that would cover unanimous.

MR. STOUDEMIRE: I haven't diagramed this sentence but I think "except by unanimous consent" would keep you from also entering into the Journal, would it not?

MR. RILEY: No. The unanimous consent -- if you have no opposition then you can just say all in favor say "aye" and all oppose "no".

Mr. SMOAK: And you don't have to print the results.

MR. RILEY: All members shall vote publicly -- you can vote publicly by saying "aye" or "no" if there is no opposition -- that's still publicly. Well let's strike "by unanimous consent" -- strike "except by unanimous consent" and then -- "and their votes thus given shall be entered in the Journal of the House to which they respectively belong."

MR. SMOAK: Is that going to require that you list every member of the Senate on all of these confirmations even though it was unanimous?

MR. SINKLER: It sure does.

MR. SMOAK: Well we don't want to do that.

MR. STOUDEMIRE: If Judge _____ is running without opposition you have to have an election to make him officially judge, right? Therefore, you would put the question and everybody would vote positively and then their votes would be recorded positively without a roll call. The Journal would show that all voted "aye".

MR. WORKMAN: Tney would have to actually vote "aye".

MR. SMOAK: No, it wouldn't work that way.

MR. RILEY: If a man doesn't have opposition, I think it is recorded in the Journal that everybody voted for him.

MR. McLENDON: Yes, but you don't know who all was present.

MR. RILEY: I think it lists everybody. They enroll the membership.

MR. STOUDEMIRE: With your permission I'll check this out in the Journal to see how it is done.

MR. McLENDON: The "unanimous consent" needs to be back in there.

MR. WORKMAN: I move that Judge _____ be re-elected for a term of four years by acclamation. . . I don't recall a roll call on that.

MR. RILEY: That's still publicly.

MR. WORKMAN: Yes.

MR. RILEY: I can say publicly "I object". But if I don't then he has been elected publicly. The only thing the "publicly" would be protecting is the secret ballot.

MR. McLENDON: "by unanimous consent" -- if you left it in there you would say you could vote some other way -- use secret ballot by unanimous consent?

O. K. Section is altered. Is there any further discussion? If not, we'll move on to Section 21.

MR. STOUDEMIRE: "Section 21. Adjournments. Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that which it shall be at the time sitting."

MR. STOUDEMIRE: We need an "of" in there, don't we?

MR. WORKMAN: It could go either way, grammatically -- which it shall be sitting -- put "at the time" afterwards.

MR. STOUDEMIRE: Dr. Larson says something about the "Governor has the right to adjourn. . ."

MISS LEVERETTE: Isn't that a split infinitive? "which it shall be at the time sitting".

MR. SMOAK: I just don't see the necessity of all the talk about that thing. I think we could just leave it.

MR. STOUDEMIRE: The only question is that over there in the extra sessions -- with the Governor -- you give the Governor the right to adjourn when they can't get together, I believe.

MR. SMOAK: This provision, it seems to me, the practical significance is that you are going to have times when the House wants to go home and they can't go. Why put that burden on the Governor?

MR. SINKLER: Why give the Governor that power -- that pretty broad power?

MR. STOUDEMIRE: It would only apply to special sessions.

MR. McLENDON: Well, is there any objection to Section 21?

MR. HARVEY: Isn't that "nor to any other place than that in which it shall be at the time sitting." -- Isn't that covered by the thing that says the Legislature shall sit in Columbia?

MR. SINKLER: Yes, but you can move in case of war, etc.

MR. HARVEY: If other provisions are made, then you don't need this thing in here "nor to any other place" do you?

MR. WORKMAN: The other one was related to the regular annual sessions.

MR. RILEY: You could make a motion and say "Let's go down and meet at the beach? Though I guess that would be in violation of the other section.

MR. STOUDEMIRE: Let's look back in the cross reference, and see what that other section says.
MR. HARVEY: That says it shall meet in Columbia.

MR. STOUDEMIRE: Yes, it does.

MR. HARVEY: You'd be violating that section if you just picked up and tried to move.

MR. McLENDON: Well, Bob, check the cross reference and we'll take it like it is and move from there.

MR. STOUDEMIRE: "Section 22. Journal - yeas and nays. Each house shall keep a journal of its own proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall

at the desire of ten members of the House or five members of the Senate, respectively, be entered on the journal. Any member of either house shall have liberty to dissent from and protest against any Act or Resolution which he may think injurious to the public or to an individual, and have the reasons of his dissent entered on the entered on the journal."

MR. WALSH: Where are you reading from?

MR. STOUDEMIRE: Section 22, page 18.

Look down at this thing coming out of the New York Convention, I believe, -- "Each house shall keep a journal and a transcript of its debates. Except for such parts as may require secrecy, the journal shall be published, and the transcript shall be available to the public. . ."

I don't think I have seen that anywhere except in the New York one.

Is it in the Model, by chance? I don't believe it is.

MR. McLENDON: It would be useless anyway.

Is there any objection to that language? If not, we'll take it and move to 23.

MR. STOUDEMIRE: "Section 23. Doors open. The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.

There is no question about "of the House" referring to both Houses.

MR. HARVEY: It is inconsistent, one is capitalized and the other is not. . . .

MR. STOUDEMIRE: The doors of each house shall be open, except on such occasions as in the opinion of either House may require secrecy.

MR. SINKLER: You will improve your English -- in the opinion of "such" House.

MR. McLENDON: Use "such" instead of "of the".

MR. RILEY: I don't know but what both of those Hs ought to be capitalized.

MR. STOUDEMIRE: I think if you capitalized them, then someone might say House of Representatives.

Now, Section 24. Holding two offices.

I would assume that we have already made a decision on this way back yonder where we did something with Notaries Public and so on, did we not? I am going on that basis here, but I don't know if you will agree with me or not.

The Judges had something on this back in the Election Article. The Governor's section had something on this, and it seemed to me that a wording about dual office holding put at one spot somewhere in the Constitution would take care of the whole thing.

MR. McLENDON: I certainly do.

MR. STOUDEMIRE: My thought here, Mac, was simply to make sure that I get this wording that we adopted much earlier. It actually would not handicap the General Assembly.

MR. WALSH: Should we put in that provision "that it would not prevent a member of the General Assembly from participating in and being elected to any Constitutional Convention?

MR. WORKMAN: That was added as a Constitutional Amendment in the section on amendment and revision of the Constitution, as I recall.

MR. STOUDEMIRE: We have already settled that, but just in case we haven't, is it still the consensus that you do not want to prevent an office holder from being a delegate, is that right?

Mr. McLendon: That's right, let's move on to Section 25.

MR. STOUDEMIRE: I suppose we'd better read this (silently).

MR. WORKMAN: Now on Section 24, you are going to check it out and see what we have done elsewhere?

MR. STOUDEMIRE: Yes. I'm going to check it carefully and if it isn't then we will have to make sure it does. I don't see much point in repeating it in every article.

MR. SINKLER: Have we had any trouble under Section 25?

MR. STOUDEMIRE: I don't think now since we have cleared up -- I read these minutes last night -- that the President is acting and therefore he would go -- we would have trouble under this if the man from _____ had actually resigned and put _____ on the spot, wouldn't it? But I think as long as you have the

Presiding Officer of the Senate cleared up, there will be no trouble.

MR. SINKLER: Would presiding officers prefer that that be the Secretary of State?

MR. STOUDEMIRE: I don't know. Dr. Larson suggested over here that from some of the other constitutions that sometimes the Governor or the Secretary of State either one does this -- with the argument that you may have a vacancy -- the other argument, of course, you may have a vacancy in the Secretary of State too.

MR. McLENDON: All right, shall we . . .

MR. STOUDEMIRE: Mac, the only thing I would have to answer Huger's question --I think it might be in order to revert back to this momentarily when John gets back this afternoon to really see if he has any strong feeling.

MR. SINKLER: I think it is better to leave it like it is. What you are really trying to do is to get the vacancy filled promptly and I think the presiding officer is much more apt to do it than the Governor and the Secretary of State. He is going to be the one to keep his house in order. It has never has been abused in South Carolina that I know of.

MR. HARVEY: Do we want to put "shall resign" in writing?

MR. WORKMAN: It was abused when _____ got to be Governor.

MR. SINKLER: Oh it was?

MR. WORKMAN: There was a vacancy in _____County the whole time he served as Governor.

MR. SINKLER: I didn't realize that, but this might have been avoided had the Secretary of State been charged with it.

MR. WORKMAN: This is the sort of thing, we think, Huger, that under this mandate we gave the Governor, would permit the Governor to come in here.

MR. STOUDEMIRE: Bill, I would disagree with you. . . any taxpayer had standing to stop the equal pay, I think a taxpayer would have equal standing here.

MR. SINKLER: The trouble is -- of course the tax payer -- you can delay them so far. But what we're really trying to do there is to get the vacancies filled. We now have something that Bill

has called to our attention which really was an inexcusable abuse.

MR. WORKMAN: What could have happened was that a would-be candidate in _____County -- an intended candidate -- for the Senate seat was deprived of an opportunity.

MR. SINKLER: I was thinking that the average presiding officer was keenly aware of the necessity of filling the vacancies that the Secretary of State fills.

MR. WORKMAN: You remember last year when Senator Hartzog was killed in an automobile accident, this was an occasion, I think it was just the sense of the Senate, that there would be no point in trying to fill that vacancy for what was a comparatively -- I forget the time limit involved -- but he was killed while he was still in office.

MR. RILEY: Isn't that in the Code that you have so many days when an election has to be called?

MR. SINKLER: No,this would control it -- a constitutional thing.

MR. RILEY: Seems like it was a number of days.

MR. STOUDEMIRE: Well, you would very well argue that you -- I think the Court would say, you'd have to allow time for a primary and an election process to take place. If I were to argue back then that this involves three or four months, I think I'd be justified not to fill the vacancy.

MR. WORKMAN: Isn't there a certain time-lapse set forth in the procedure for declaring candidacies, filing, etc.

Well the question now is whether we want to insert a non-legislative officer in the chain of command.

MR. McLENDON: The thing is mandatory. It says he shall do it -- what if you substituted some other man?

MR. SINKLER: It is probably more pressure on the presiding officer.

MR. WALSH: I think so too.

MR. McLENDON: All right, we'll take it as it is. Let's move on.

MR. STOUDEMIRE: Gentlemen, this Oath of Office. This brings us back to the same question of whether we're going to have an

oath of office at some point for all constitutional -- for all officers, rather than repeating the thing over and over. There is only one exception in this one on the third line "and all members of the bar, before . . ." and so on. We still could make this general -- members of the General Assembly, the Constitutional Officers -- or however you word it and all other officers, including the members of the bar and so on shall take and subscribe the following oath".

MR. SINKLER: You'd better not include members of the bar as officers because you'd run into the problem of dual officers then.

MR. STOUDEMIRE: The question I raise then -- should you require a member of the bar to take the same oath as the Governor and the members of the General Assembly?

MR. WORKMAN: Actually, there are a great many of them when they attack the Constitution are failing . . .

MR. HARVEY: Don't you come back to this thing "are members of the bar officers of the court?"

MR. WORKMAN: What is the general procedure on this, Sarah, do you know? On lawyers taking the oath of office -- what's the jurisdiction?

MISS LEVERETTE: I really don't know. I'm in favor of leaving the officers of the bar in there.

MR. WORKMAN: Does the Model have any reference to it?

MR. STOUDEMIRE: Yes.

MR. SMOAK: We ought to require some of them to read it.

MR. McLENDON: I think so -- read the rules of ethics.

MISS LEVERETTE: I don't see any reason for taking it out.

MR. SINKLER: I like Bob's idea of having the one-oath provision.

I move that we have an oath and let it go in, in general things.

MR. WALSH: I second the motion.

MR. WORKMAN: Would it be put in the general section rather than the legislative?

MR. STOUDEMIRE: We'll consolidate it some place. . . .

unless there is some reason . . . against dueling . . .

MR. RILEY: Are we going to leave in all that?

MR. STOUDEMIRE: You know it's a funny thing -- the current editions of the Constitution are extremely short unless you go and pay R. L. Bryan $3.00. Dr. Larson knows better than this, but he apparently picked up an old one . . . . to two . . . . things.

MISS LEVERETTE: I wondered why he put this in.

MR. STOUDEMIRE: Frank Thornton now, doesn't want to issue, until such time as he knows what to do with the 1966 amendments and all this constitutional movement all over the country has just about exhausted his current supply.

MR. McLENDON: Is it our feeling then that we are going to leave in "all members of the bar" -- is that the consensus here?

All right, we'll move on to Section 27.

MR. SINKLER: Wasn't this covered somewhere else?

MR. STOUDEMIRE: Not the bar.

MISS LEVERETTE: Has there been any consideration, before we leave that, of what is over on page 21, "prohibition on the imposition of any additional oath. ."

Mr. McLENDON: You mean this business of "So help me God."

MISS LEVERETTE: That would be the religious one but this prohibiting the requirment of any additional oath.

MR. WORKMAN: You're talking about the Maryland case, I would assume, in which jurors are required to believe in God to be eligible to serve on juries. Supreme Court threw that out.

MISS LEVERETTE: Generally speaking, itn't it true, Bob, that a lot of the Constitutions do now have a prohibition against requiring other oaths.

MR. STOUDEMIRE: Yes, but I don't think that is a pertinent thing. If I object, somebody is going to say that you can't enforce your objection.

MR. HARVEY: The point is there that the Legislature can't come in and say before holding office,in addition to taking this oath, you have to take an oath that you are a loyal and life-long democrat.

MISS LEVERETTE: My understanding is that generally is accepted to day if you have an oath provided in your Constitution -- to prevent anything like that.

MR. McLENDON: And no other oath shall be required.

MR. SMOAK: This is a highly changing era in the law and who knows what's going to be five years from now?

MR. HARVEY: Do you think that the Legislature should be able to come along and propose some other oath.

MR. SINKLER: I think that Brantley's point is not so much the wording of the oath -- it's restricting the office holders otherwise constitution rights.

MR. WALSH: Is that a good thing to leave in?

MR. WORKMAN: You get into -- it will be inserted -- which is the question that Mr. Smoak may be referring to the continuing controversy around the country on anti-Communists oath which is required, not only of office holders and/or public school teachers at given levels.

This has been pretty consistently knocked down -- at any rate to the possibility that there may be a change of attitude. In a change of circumstances, we may want the requirement. . .

MR. SINKLER: Doesn't this oath that you will preserve the Constitution by implication say that you are not a Communist?

MR. WORKMAN: By implication it is but it is a question of whether or not we want to foreclose the right of South Carolina to require an anti-Communist oath.

MR. STOUDEMIRE: The Model says this: "No oath, declaration or political test shall be required for any public office or employment other than the following oath or affirmation: 'I do solemnly swear /or affirm/ that I will support and defend the Constitution of the United States and the constitution of the state of South Carolina and that I will faithfully discharge the duties of the office of Governor to the best of my ability'."

MR. WALSH: The fallacy in requiring the oath that you are an anti-Communist is that under the same circumstances that you require that oath, you could require an oath that you are not a Republican, not a Democrat.

MR. SMOAK: I don't think so. Obviously that wouldn't stand -- court test. . . . On one hand he stands up and says I will prescribe to the provisions of this Constitution and . . .

MR. McLENDON: Stokely Carmichael stands up and says,"I'm a Communist."

MR. SMOAK: And at the same time, he stands up and says, "I'm a Communist. It is ridiculous.

MR. WORKMAN: I think that we can -- that our course here should be one of no action, except to take the oath as we now have it, and make it apply generally to those persons required to take oaths -- not add to the Constitution beyond that. This question has not come up in South Carolina. We are neither borrowing trouble nor avoiding trouble.

Why don't we just go ahead and take this as it is and not struggle with the problem which does not now exist?

MR. McLENDON: That's my reaction to it.

MR. HARVEY: What you're trying to do is to protect the rights of the individual. This is a deficiency in our present Constitution that has been called to our attention.

If we follow your reasoning, Bill, we don't even put anything in here about prohibiting the Governor to suspend habeas corpus or anything like that -- just on the theory that we have never had a Governor attempt to do it.

MR. WORKMAN: It is all a matter of degree. To what extent are we going to establish some rights in anticipation of eminent threats?

MISS LEVERETTE: I can see this -- that if somebody wanted to grab it, they could make something out of it.

MR. WORKMAN: The recourse that I would have -- as matters now stand -- if someone sought to impose an oath on me as the type as he visualizes it, all I would have to do is cite the Supreme Court. . . and that oath goes out of the window.

MR. RILEY: It means you have been passed by -- when it comes time for you to take office and you have a prohibition that you could not personally take an oath. . . .

MR. WORKMAN: It is just a question -- I'm looking upon this as being an unlikely threat.

MR. RILEY: I agree with you on that but if we are looking at the Constitution as preserving basic rights, this, that and the other, we are looking at generalities. It has some appeal to me that the Constitution ought to -- it says what oath you have to take -- you're not to say that you are a good American and etc. It seems to me that is would be a safeguard for us

to go one step further and say "This is the only oath."

MR. STOUDEMIRE: You could do this very simply by adding a short phrase.

MR. McLENDON: Do you have any suggestions?

MR. HARVEY: "No other oath shall be required."

MR. McLENDON: What do you have in mind, Bob?

MR. STOUDEMIRE: I think you should make it preceding the oath, but the simplest and clearest would be to add another sentence: "And no additional oath shall be required."

MISS LEVERETTE: I think you would avoid anybody picking this up and put this religious test on -- somebody could make an issue out of that.

MR. WORKMAN: We have that already in there. "No religious tests shall be required."

We have set up a provision which qualify a person to be an elector and an officer and beyond that I don't think we can move, by statute, to add qualifications which are in conflict -- narrow the scope of the Constitution.

MISS LEVERETTE: You cannot make religious tests -- I'm thinking in terms of that if somebody still had the feeling about the Communist proposition, the public might pick this up whereas what he says "no other oath shall be required" -- it doesn't mention anything like religion or belief.

MR. McLENDON: The issue then is Brantley's motion that we add a sentence to the effect that "No other oath shall be required."

MR. STOUDEMIRE: "Or declaration" -- "No other oath or declaration".

MR. McLENDON: All right, all those in favor of adding that sentence will raise your hand.

One, two, three, four, five. And those oppose.

Let's move on.

MR. STOUDEMIRE: "Section 27. Officers shall be removed for incapacity, misconduct or neglect of duty, in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution."

We have previously increased the right of the Governor to remove. In the Impeachment Section, we cleared that up a little bit also.

Dr. Larson makes a point that the Legislature has this right without a constitutional statement on it.

MR. SMOAK: What's happening?

MR. STOUDEMIRE: That, under law, these things could be done. I believe we broadened the power of the Governor to remove in case of misconduct and so on -- temporarily.

MR. SMOAK: It seems superfluous.

MR. WORKMAN: With the possible exception that the officer's office is established under the Constitution. If an individual is sought to be removed by statute, would he have a case to say that "my office is established by reason of the Constitution and you can't oust me unless there is some authorization in here. To me it looks superfluous.

MR. RILEY: I think that must be the reason it was in here.

MR. SINKLER: Why don't we leave that in, subject to Bob's checking. That really ought to be put under a different heading anyway.

MR. HARVEY: This is not legislative -- this is all officers.

MR. SINKLER: Let's take it out of the Legislative Section.

MR. WORKMAN: This is legislative only to the extent that they have charged the General Assembly, by implication, with providing the means.

MR. STOUDEMIRE: You might want to combine it. As you look at what we have done thus far -- we are building up a section -- a series of statements -- called what you will -- dual, oath, removal, etc.

MR. HARVEY: Kicking-out and all that sort of thing.

MR. SINKLER: Let's take it out of here.

MR. STOUDEMIRE: And transfer it -- be sure it is covered right.

MR. McLENDON: All right then, let's move on to Section 28.

MR. STOUDEMIRE: Gentlemen, I now turn it over to you attorneys.

As I read this Section 28, it's only a thousand dollars, is that right?

MR. McLENDON: As a practical matter, it means whatever a man owns.

MR. WALSH: Why is this in the Legislative Department?

MR. STOUDEMIRE: Let me ask you attorneys -- if you do bring a judgment -- we do live by this thing?

MR. McLENDON: Yes.

MR. STOUDEMIRE: I look at it and it's so out of date -- I mean the amounts of money involved.

MR. SINKLER: Let's take it out.

MR. WALSH: Perhaps we need to consider it in a miscellaneous provision.

MR. WORKMAN: No, this goes in taxation.

MR. STOUDEMIRE: Let me ask you this -- if you took it out -- we struck through it all the way -- and not put it in the Constitution at all, then could a general . . . come back and do a homestead thing by law if he saw fit to do so.

MR. WALSH: Absolutely. Plenary power.

MR. WORKMAN: But this is an exemption from taxes, what have we done on that?

MR. STOUDEMIRE: No, this is not taxes.

MR. McLENDON: It says "That no property shall be exempt from attachment, levy or sale for taxes. ."

MR. WORKMAN: "And that there shall not be an allowance of more than one thousand dollars' worth of real estate and more than five hundred dollars' worth of personal property to the husband and wife jointly".

"That no property shall be exempt from attachment, levy or sale for taxes", etc.

MR. STOUDEMIRE: "That no property shall be exempt from attachment, levy or sale for taxes, or for payment of obligations

contracted for the purchase of said homestead or personal property". I don't think it exempts you from taxes.

MR. McLENDON: That's what it says, you're not exempt from taxes.

MR. SINKLER: Actually, I suppose this is a limitation upon what was otherwise a plenary power.

MR. SMOAK: Where is its origin?

MR. SINKLER: Actually I think it originated in '68 and I'll tell you why it was put in there. It was put there to prevent the Reconstruction Legislature from setting up a system of homesteads that the Blacks would pay no taxes and the Whites would pay all the taxes.

It probably came as an amendment in Reconstruction Days. You don't have an old Constitution, do you?

MR. STOUDEMIRE: Yes, I have the whole thing. Sarah, what does it say?

MISS LEVERETTE: Article II, Section 32. Apparently there is a lot of statutory law on that.

MR. SINKLER: You have a way that you gotta' protect the law, otherwise you wouldn't be able to lend money.

MR. STOUDEMIRE: It probably was put there to protect the Negro. Let me ask one more question. If someone was getting a judgment against me under this grant, would this really give me any protection now?

MR. McLENDON: It gives you a lot of protection, because the sheriffs and the appraisers who set aside homestead -- if you have a house and lot worth seven or eight or nine thousand dollars, and they go out and appraise it and say it's worth a thousand dollars. That's accepted all over the country. Your homestead is really what you're living in and using. The thousand dollars doesn't mean a thing, but it says you have got to appraise it. You're bound by what these homestead appraisers say it is worth.

MR. HARVEY: Really, it is basically statutory.

MR. STOUDEMIRE: If you take it out -- we are going to have an annotation here -- then I would assume that we would make a very strong statement that no one argues particularly with the theory of this thing, but this would be one thing that the

Legislature should move forthwith to re-establish.

MR. McLENDON: You could say: "The Legislature shall provide for Homestead."

MISS LEVERETTE: I have an idea -- I haven't seen these statutes -- but it says:"For statutes enacted pursuant to this section, see the Code."

MR. McLENDON: A whole dozen of them -- they practically re-write this whole section.

MR. STOUDEMIRE: That's a good thing "The Legislature shall provide for homestead exemption"and therefore it could apply to taxes as well as judgments.

MR. SMOAK: Well isn't it about time this whole thing was revised?

MR. SINKLER: I move it be stricken.

MR. WORKMAN: Stricken to be re-enacted statute as necessary.

MR. WALSH: You mean stricken from the Constitution and let the Legislature handle it?

MR. SMOAK: Not to include the phrase that the Legislature shall provide.

MR. RILEY: You can say they shall provide for it. It would order the General Assembly to put something in pertaining to homesteads.

MR. McLENDON: Is this homestead exemption a constitutional subject? I would think it probably is.

MR. STOUDEMIRE: Now, Sarah mentioned there was a statute on it. The question that I raise: "Do you think the General Assembly did that because it thought it was correct -- a good policy or because they were carrying out this provision?

MR. McLENDON: They were implementing this language here.

MR. SINKLER: No, I don't think you ought to do it that way at all. If you are going to do anything, you ought to tie their hands. You ought to say "The General Assembly shall not enact homestead laws beyond this scope."

MR. WALSH: That might be the idea.

MR. SINKLER: That is the way to do it.

MR. WALSH: Congeal it down and say that they shall not enact homestead laws beyond a certain specified thing.

MR. STOUDEMIRE: Some people will say that you ought put in the Constitution -- I don't think that's the place for it -- but there is a growing knowledge or value -- some people advocate that you grant a homestead type thing for people 65 and over. There is a movement along that line.

MISS LEVERETTE: And they put that in in some areas to do away with so much tax exemption -- as a substitute for tax exemption.

MR. WORKMAN: Let me read this one sentence which has me somewhat confused. It is under Finance and Taxation.

"The General Assembly may by act exempt from taxation household goods and furniture used in the home of the owner thereof." - Which is a homestead goods and furniture exemption from taxation.

MR. McLENDON: That's not a homestead exemption. . . . talking about a homestead exemption against the judgment. Somebody sued you for a debt.

MR. HARVEY: Homestead also carried with it other jurisdictions and connotations -- exemptions from certain amount of property tax, doesn't it?

MR. RILEY: We drew that into it.

MR. HARVEY: The danger is that if you say the General Assembly shall adopt a homestead exemption, it sorta' carries maybe going beyond the exemption from levying into the exemption from taxes.

MR. RILEY: Let's check the Code sections?

MISS LEVERETTE: I think we ought to look at the code sections.

MR. STOUDEMIRE: Remove, subject to code check, right?

MR. McLENDON: Let me ask you this -- those code sections were bottomed upon this section of the Constitution. If you eliminate the base, what are you going to do to the acts?

MR. STOUDEMIRE: Now that -- we may have to come back to when we do a final on property taxes.

MR. McLENDON: So the motion, as I understand it, is that we delete it but that any such comments we make or set forth ideas that it is a Legislature function -- that's the reason we've taken it out.

MR. SINKLER: Also that it could be held by existing statute laws.

MISS LEVERETTE: Let's verify that.

MR. STOUDEMIRE: Yes.

MR. WALSH: I think we ought to verify it.

MR. HARVEY: Let me just advance this -- you're talking about comments we are going to get on this -- if they are generally regarded as a safeguard for the small worker against the financier, the money-lender and the lien merchant -- you are going to have some smoting of the breasts.

MR. McLENDON: I think with taking this out of the Constitution without some reference that you're going to run into a howl.

MR. WALSH: I'll say this -- I think initially we ought to leave it out but I think we ought to check all statutory conditions and then take another look at it.

MR. WORKMAN: What public officials would be most concerned with this.

MR. McLENDON: Sheriffs and lawyers.

MR. RILEY: I like the idea of homestead. I like the idea of a man having some rights.

MR. WORKMAN: But we don't want to create a sanctuary into which he can go out and mock the community.

MR. SMOAK: It's not a sanctuary -- it's a legal vacuum.

MR. RILEY: If he could just have enough to where he could exist and not have him put in the streets.

MR. HARVEY: A thousand dollars was intended to be just that.

MR. RILEY: That's right. A thousand dollars back then, I would say would probably be ten thousand today.

MR. SMOAK: And Talmadge running around in Georgia talking about he wasn't going to let them take the cow away from them.

MR. McLENDON: I don't know if we ought to take out any of that -- I know it's statutory.

MR. STOUDEMIRE: The one thousand got in there in '68. . .

MR. McLENDON: What is wrong with a mandatory provision that the Legislature shall provide?

MR. WALSH: . . . take anything you've got and take your automobile too.

MR. RILEY: Why don't we say that the Legislature shall provide a homestead exemption as it regards to levies, taxes, etc. Distinguish between a homestead for taxes and a homestead for . . .

MR. SINKLER: If you're going to do that at all -- I think you're going to have to put some of these provisos in . . .

MR. WALSH: Think of this little thought too -- at this day and time there was no mode of transportation much in South Carolina -- you take a fellow's automobile, you have hurt him worse than if you'd take his bed.

MR. RILEY: Yes, but that's not the theory of homestead.

MR. WALSH: If you take his automobile he can't ever get to work.

MR. SINKLER: The reason I don't like a mandate from the Constitution -- the theory of homestead was very well put awhile ago. It extends beyond that in most states -- it extends to this business to exempting from taxation. It's not the kind of connotation that's used in our Constitution at all.

MR. WORKMAN: Would we establish what we hope to do by saying that the General Assembly may provide for exemptions in these categories; provided, however, that no such exemption shall -- within the bounds that you want.

MR. SINKLER: I think the Legislature is apt to do a much better job.

MR. WORKMAN: If you say that the Legislature may do this within certain limits, we give them the authority so that subsequently their actions in this field cannot be attacked as special legislation because it affects only certain categories of people.

MR. SINKLER: One of the reasons I am opposed to your Constitutional Convention, I am sure that if you ever had a Constitutional Convention you'd have people running for office for the job of -- getting into the constitutional profession.

MR. RILEY: Why don't we just put it this way -- to a vote -- I don't differ but very little with everything that's said, but my final information is towards a provision that the General Assembly shall enact such laws as will exempt from attachment, levying sale on any lien or final process issued . . . to the head of a family residing in this State.

MR. SINKLER: You'd better put in a proviso that it doesn't apply to mortgages, otherwise you'll be going to court.

MR. RILEY: Why would you have to put that in there?

MR. SINKLER: Because you are taking something out that's in there now, which was thought necessary by those who wrote the Constitution in 1895 -- "That no waiver shall defeat the right of homestead before assignment except it be by deed or conveyance, or by mortgage."

MR. McLENDON: This seems to be a very technical discussion. Could we get this research done and look at it again. We need to know first what's in the statute in relation to what's in this Constitution.

MISS LEVERETTE: I would suggest postponing it.

MR. STOUDEMIRE: That suits me.

MR. HARVEY: You are going to run into political trouble taking it out.

MR. McLENDON: You surely will.

MR. HARVEY: There's going to be the "haves" against the "have-nots".

MR. McLENDON: You'll have a political hassle if you take it out.

MR. WORKMAN: The definite words of Speaker Blatt . . .

MR. McLENDON: O. K. then, let's stop at this point, but Emmet has a problem. He wants to sorta' poll the group and see what our intentions are about tomorrow.

MR. WALSH: We ought to decide what we are going to do.

MR. STOUDEMIRE: I asked John before he left -- and he can meet tomorrow. He will be available.

MR. RILEY: I absolutely cannot be here tomorrow.

MR. STOUDEMIRE: Emmet, what is your proposition?

MR. WALSH: Well, I can be here all right, but I'd just like to know if we're going to have enough to have a fruitful meeting, then I'd rather not come.

MR. McLENDON: John says he can be here. He is the only man voted "aye" so far. Dick says he cannot be here and Huger says he cannot. Is there anybody else who has a positive position who can't be here?

MR. STOUDEMIRE: One, two, three four, five, six, and John would make seven.

MISS LEVERETTE: Would anybody else come in tomorrow?

MR. McLENDON: Not likely for Sol and Lindsay.

MR. WALSH: Let's see -- are we going to be taking up things that these seven members could make any fruitful progress?

MR. STOUDEMIRE: If we get through with the courts this afternoon, which I think would be unlikely -- the next thing on the agenda is counties and cities.

MISS LEVERETTE: I would be inclined to say that we ought to have as full a committee as possible on that.

MR. McLENDON: Yes -- it's probably the most important.

MR. STOUDEMIRE: Mr. chairman, how about the -- now we tentatively agreed a long time ago to meet December 29 and 30, which is the Friday after Christmas. Does that still hold? Does any Christmas holiday arrangements interfere with that?

MR. WALSH: Is it possible for us to schedule another day in which we could spend on county government -- now that we have the information here -- when we could have a fuller group?

MR. WORKMAN: I haven't time yet to digest it -- Mr. Bain's study.

MR. RILEY: How about that other committee that is working on this. Do you think we ought to meet with it or have a communication from it. Have they met this summer?

MR. STOUDEMIRE: Yes, they have been meeting.

MISS LEVERETTE: They have a subcommittee that is considering necessary constitutional provisions.

MR. WORKMAN: I would suggest that the chairman request of that subcommittee to keep us informed as to their recommendations on constitutional changes. This crowd has retreated into the privacy of executive session and I don't know what they're doing. We ought to make the overture.

MR. RILEY: My thinking is that if they have had many hours of fruitful endeavor and they do have this pretty well worked out in their minds, it might be a good starting place for us so we could work together.

MR. McLENDON: Let's decide about whether or not we are going to meet tomorrow. There are nine of us here now, counting John.

MR. STOUDEMIRE: Just two absent.

MISS LEVERETTE: We won't have but seven out of . . . .

MR. McLENDON: Well, that's less than half. If we would get to local government tomorrow, we would miss these two gentlemen, plus -- Sol. I think we ought to have Sol in on that discussion. Maybe we could get Jack Lindsay in here -- he's on this committee and he is interested in this but we can't get him to attend.

MR. RILEY: I wish we could get through enough to have another session of recapitulation for a whole day prior to the session getting underway, but I guess that is practically impossible.

MR. WALSH: We might be able to work in another full day's work prior to this 28 or 29.

MR. SINKLER: Let's stay here tonight until we get through.

MR. McLENDON: January the 9th is the second Tuesday.

MISS LEVERETTE: I think a whole day should be given to this local government.

MR. HARVEY: How many sections do we have left.

MR. STOUDEMIRE: You have courts -- you have seven and eight which really go together and if you agree on seven, a lot of that stuff about boundaries and so on -- is or is not necessary -- and 7 is through. The 8 and the amendment section and your miscellaneous. This is about all that's left. Section 8 is municipal and police. There are four things we have delayed

concerning police.

MR. McLENDON: I don't want to make the decision, but it looks like two have to be absent. I would hate for just seven to discuss local government, and we would only be here a half day anyway.

MR. WORKMAN: One thing that is a factor -- if we proceed in the absence of people who have strong feelings about it, it means we will have to do it over again. We'd have to double track and bring them up to date.

MR. STOUDEMIRE: It would suit me fine to delay local government. It would mean that I would have much more time in bringing all these decisions together.

Now, what I thought I would do -- this would take several typings -- but it is my feeling that you really need to see what Article I says without any annotations at the moment, or anything, in otherwords so that you can read right straight down 1, 2 3. I might do the annotations for three, but if so I would keep them over on the side. If you have a note stuck in here after one, it throws you. I think we need to read straight through on each one of these and then put the notes in later.

MR. McLENDON: All right then, by common consent we will not meet tomorrow, but we will meet at least until six o'clock this afternoon.

(The committee adjourned for lunch at 1:10 p. m.)

(The meeting was resumed at 2:15 p. m.)

Mr. McLENDON: Bob has some pronouncement he wants to make about Section 29.

MR. STOUDEMIRE: I don't think it is really controversal because we made about the same type of decision last time pertaining to property tax.

MR. SINKLER: Doesn't that come out of here, Bob?

MR. STOUDEMIRE: Yes. We have already studied it.

MR. SINKLER: Let's take it out.

MR. STOUDEMIRE: Is that agreeable Mr. Chairman?

MR. McLENDON: Now, Section 30.

MR. SINKLER: I think that that provision about allowing -- what they're trying to get away from is contingent contracts.

MR. STOUDEMIRE: Are you talking about Section 30?

MR. SINKLER: Yes.

MR. STOUDEMIRE: Now, this came in the 1895 Constitution and I imagine Dr. Larson's guess is as good as any to set aside Reconstruction abuses.

MR. SINKLER: It is"after services rendered or contract made."

MR. STOUDEMIRE: Well, what do you think about this one?

MR. SINKLER: Let's leave it in. It sorta' beneficial thing that the court could point to if something got too far out of line. That's my feeling.

MR. STOUDEMIRE: I guess it's all right in the Legislative as well as anywhere else, isn't it?

MR. WORKMAN: Yes, because here you are dealing with appropriations.

MR. SINKLER: You are dealing with limitation on legislative powers -- that's what you're dealing with.

MR. STOUDEMIRE: Now Section 31. Public lands. "Lands belonging to or under the control of the State shall never be donated" and so on.

MR. McLENDON: Read Section 31, Bob?

MR. STOUDEMIRE: "Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals. This, however, shall not prevent the General Assembly from granting a right-of-way, not exceeding one hundred and fifty feet in width, as a mere easement to railroads across State land, nor to interfere with the discretion of the General Assemblyin confirming the title to lands claimed to belong to the State, but used or possessed by other parties under an adverse claim."

MR. SINKLER: You need some of that.

MR. McLENDON: Yes, we do need some of it.

MR. SINKLER: Of course it is pretty strong indication that you can get adverse possession against the State, which might not be too desirable. It was aimed against railroad companies.

MISS LEVERETTE: Would this have anything to do with renewals?

MR. SINKLER: No.

MR. STOUDEMIRE: Do you need that part about granting right-of-way to railroads?

MR. SINKLER: No, I don't think you do.

MR. STOUDEMIRE: Let's look down to the words "can be sold to individuals." Is this still what we want to say?

"Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies."

MR. SINKLER: Well, you don't need railroad companies

MR. STOUDEMIRE: "Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals."

MR. SINKLER: Less than the market price if you are going to sell it. I don't know why an individual should pay any more than a corporation.

MR. WORKMAN: This would have no effect on the sale of state property -- political subdivision?

MR. STOUDEMIRE: Perhaps it might.

MR. WORKMAN: We have that right now with the Post Office here in Columbia, which has been acquired by the State -- by the City, to be sold by the State. If you reverse that, could you make special dispensation for one agency of government to another?

MR. McLENDON: We are on Section 31? We took out Section 29, because we had it somewhere else and we left in Section 30, and now we are on Section 31.

MR. WORKMAN: Any citations on this, Sarah?

MR. HARVEY: The only substantial remaining public lands are marshlands.

MR. SINKLER: That's right.

MR. STOUDEMIRE: Could we say, gentlemen that "Lands belonging to or under the control of the State should never be donated, directly or indirectly, to private corporations or individuals." Now jump across and say "Nor shall such land be sold for less than market value" I believe you said, and then quit?

MR. SINKLER: But, of course, market value is a question of fact. I think you want to leave it to the discretion of the General Assembly to convey the title to lands.

MR. HARVEY: I think you want to leave it to them to sell it.

MR. SINKLER: Yes. I think you would want to let them sell it. That doesn't prohibit the State from conveying land to a public agency -- the grantee there they are talking about -- private individuals or corporations.

MR. STOUDEMIRE: What is meant by adverse claim?

MR. SINKLER: Squatter's rights. That's what they are talking about. At one time, I suppose, they did have a lot of squatters all over the State.

MR. WORKMAN: A man could build himself a little cabin right back here on some of this land and stay there seven years and he's got squatter's rights.

MR. SINKLER: He'd have to stay a little longer. And if somebody gave him a deed and he stayed there ten years, he might get title.

MR. McLENDON: I didn't know you could get title against the State by adverse possession.

MR. SINKLER: Now that's a serious thing. I didn't realize that either.

MR. HARVEY: The General Assembly says you could, but they have never seen fit to do it. That's my understanding. Have they, Huger?

MR. SINKLER: Yes. The used to pass laws before these marshlands got to be -- used to pass acts confirming titles.

MR. HARVEY: I think that language there is all right.

"Lands belonging to or under the control of the State

shall never be donated, directly or indirectly, to private corporations or individuals.

MR. SINKLER: I think it might be well to go ahead and write it that way tentatively and then really make a specific determination to come back if they do decide this Lane case which was argued in court two or three weeks ago -- what their decision is -- I think we would probably want to take a look at this thing again.

MR. STOUDEMIRE: I'd want to say strike "railroad companies" on line three.

MR. SINKLER: Let's take that out.

MR. STOUDEMIRE: "Nor shall such land be sold to corporations, or associations, for a less price than that for which it can be sold to individuals." Now leave out this "right-of-way" and go down and pick up with your next "nor" third line from the bottom, the last word -- "nor shall this section be interpreted to interfere. . ."

MR. SINKLER: Say "limit the discretion".

MR. STOUDEMIRE: Yes "limit the discretion of the General Assembly in confirming the title to lands" and so on.

Now, we already have at least three sections on eminent domain and lands and wouldn't this be transferred to go along with the rest?

MR. McLENDON: All right, we'll put it with the eminent domain sections and the other sections and ask Bob to work it in.

Mr. Harvey: Huger, you used the words -- "shall not be sold to individuals, corporations or associations, for less than the market value"-- "fair market value".

MR. STOUDEMIRE: Section 32 is already out.

MR. McLENDON: We won't have any trouble with that.

MR. STOUDEMIRE: Now, Section 33. Marriage of whites and negroes.-- sexual intercourse.

MR. SINKLER: Take it out.

MR. STOUDEMIRE: Omit Section 33?

MR. HARVEY: The last sentence is statutory.

MR. WORKMAN: I wonder about the legality of the statutory increase from fourteen to sixteen?

MR. MCLENDON: I was just wondering about that too.

MR. WORKMAN: I think whatever it is, it ought to come out of the Constitution.

MR. HARVEY: You couldn't lower it below fourteen statutory, but you can raise it.

MR. McLENDON: All right, by common consent, we'll take it out.

MR. STOUDEMIRE: Now, we're down to Section 34. Special laws prohibited.

As you well know these things got into the Constitution because of the accepted use of special legislation. Now we're coming into an Era when people argue that maybe special legislation was not as bad as we thought it might have been. There are times when you can only take care of a given matter by special law, and so on.

Now the Model Constitution sums it up very simply:

"The legislature shall pass no special or local act when a general act is or can be made applicable, and whether a general act is or can be made applicable shall be a matter for judicial determination."

That's all it has to say.

MR. SINKLER: Now in Georgia you can have a special act until the General Assembly pre-empts the field. It is different from ours.

Certainly you can take a lot of this stuff out of here, for instance -- number two ought to be the subject of old Article VIII, whatever new article we give it.

MR. STOUDEMIRE: Well, you would say that the General Assembly shall provide for laws to govern municipalities and pick on up with that however you want to do it.

MR. SINKLER: School districts -- I think that ought to come out.

MR. STOUDEMIRE: It seems to me that the whole section ought to fall and come back with a brief short statement indicating that -- you want general laws wherever you can -- but this would not close the door.

MR. WORKMAN: I am puzzled about how we got these special school districts in existence.

MR. SINKLER: Well, because you've got -- the court held in the early twenties that consolidation was not incorporation, and then the question came up again -- you had two sections of the Constitution which dealt with school districts -- this provision of . . . . Then there was the provision in what was old Article XI -- The General Assembly had amended Article XI to take care of special situations -- issue bonds -- then they came along and changed the districts. . . You didn't know where you were. They took care of it over in XI until they came to the point of repealing the mandatory schools -- public school law -- and when they amended that and took out all of that section in Article XI, then they, in effect, reinstated this provision relating to special school districts, which had been knocked out under court decision by these other things.

You take the case of Smith vs. something -- in Lexington County --The other day when we had problems over there, we just really didn't know how to do it because we felt that this provision had been reinstated, so we did everything we could do and finally got all the county boards to take a little piece of Edgefield and a little piece of Saluda -- we did it under the general law, then we also did it by special act too.

I think you could take it out of school districts. I really think you ought to make it as simplified as possible.

The only thing I think you might consider doing is that you might require special laws to be put on a separate calendar of some sort, so that the Legislature could look at them a little diferently. You'd have to catalogue this special -- some sort of way of giving a little better notice.

MR. McLENDON: Doesn't the Senate have that? Don't you all have your calendar broken down that way?

MR. WORKMAN: They have local and statewide, but he is talking about special legislation rather than local legislation.

MR. McLENDON: Who would determine in the legislative body what is special legislation and what isn't?

MR. SINKLER: I think the act states whether it is special or general.

MR. WORKMAN: What about this device of characterizing by population under the 1940 census and so on -- which is special legislation in general terms.

MR. SINKLER: I think you'd really just better go back -- of course you can establish school districts by general laws -- you can do it. You can do most anything by general law. I sorta' think you'll have to say that you are going to permit special laws in certain areas.

MR. WORKMAN: The whole arrangement of this section is bad.

MR. STOUDEMIRE: Oh, yes.

MR. WORKMAN: When we get down to Section IX which is the general statement -- what happened to VIII?

MR. HARVEY: They did have twelve of them.

MR. STOUDEMIRE: I think they have been turned around and redone and then redone again. It takes hours to research them and to do the amendments too.

MR. WORKMAN: Well the whole picture of the thing is in IX, isn't it? That no special laws will be drawn when a general law can be made applicable.

MR. STOUDEMIRE: The proposed California Constitution Committee is doing about the same thing we are doing and ended it up with this simple statement:'

"A local or special statute is invalid in any case when a general statute can be made applicable."

That compares to about thirty-five special itemizations.

MR. WORKMAN: Well the California approach assumes the thing has been done, what we're trying to do is to prevent it being done illegally.

MISS LEVERETTE: Well, your model does that.

MR. SINKLER: The only reason that the model has used that language is because of the Georgia court which has held it. The General Assembly is going to do anything it wants until they come along and pass a general law, then the special act falls and they legislate special.

South Carolina has always said not"when a general law is applicable" but "when a general law can be made applicable." There is quite a difference in the wording.

The model just picks up our IX really, just a little different phraseology.

We are not going to cover school districts anywhere, are we?

MR. HARVEY: Why did Huger say that the General Assembly shall enact no special or local laws and then go back and say they shall enact no special or local laws relating to school districts?

MR. SINKLER: I want to give them the power to in certain areas. Otherwise, I think you're going to have a lot of endless law suits. I want to climinate some of the law suits that will come up.

MR. HARVEY: This specifically excludes . . .

MR. SINKLER: No, this says you can't enact a special law.

MR. HARVEY: And you want to change it?

MR. SINKLER: I think so.

MR. HARVEY: What would be your interpretation on this game zone business? Can you incorporate just a general sentence?

MR. SINKLER: You're going to have to have your game laws with the situation the way you've got it.

MR. HARVEY: You don't have to make exceptions?

MR. SINKLER: That would have to be an exception.

MR. STOUDEMIRE: I don't agree with you. I think you could show that the situation of deer in Colleton County is different from the situation in Greenville County. Therefore, you're going to have to have a special act.

MR. SINKLER: The first case involved some sort of stream or something like that in Berkeley County. The court held that the prohibition under IX prevented a special law. I think it was the first or one of the early cases that covered it -- just dead against it. Just the opposite of what you say now, the court held specifically that the prohibition in IX prevented a special law.

MR. HARVEY: The prohibition in VI, I guess.

MR. SINKLER: No. Well, that was put in there.

MR. HARVEY: VI is the prohibition, IX was put in there. . .

MR. SINKLER: To overcome it, I assume. IX wasn't in the original, was it? Of course the reason that was put in there, they didn't want these big game preserves.

MR. STOUDEMIRE: VII used to be "No special law shall be enacted to provide for the protection of game."

MR. HARVEY: They took out " to lay out, open, alter or work roads or highways."

MR. McLENDON: They passed one to open that highway to Mayesville, if you remember.

MR. HARVEY: Why not put a general prohibition here as in the Model State Constitution, and then when you come to financing schools or something, put your exceptions in there.

MR. SINKLER: We don't talk about incorporation of school districts. I don't care about changing the names of persons or places, although West Columbia is illegally named West Columbia.

MR. WORKMAN: And so is St. Stephen.

MR. SINKLER: We once had a test suit by the Honorable _____ who held that it shouldn't affect it if you were living in Barnwell' even if West Columbia was properly named Brooklyn or New Brooklyn or whatever.

MR. McLENDON: Well, they changed the name of Elgin.

MR. WORKMAN: St. Stephens dropped the "s" from its official designation to make it St. Stephen.

MISS LEVERETTE: What's the proper name of Clarks Hill?

MR. WORKMAN: Clark Hill.

MR. McLENDON: We have an area called Temperance Hill. Seven or eight years ago we passed an act to call it Temperance.

MR. SINKLER: I think you ought to have your general prohibition but I think you ought to have some sections to cover this. The game things they way they are -- now I'll tell you why you don't want to have a general exception -- you could conceivably -- some of the these states have special laws making it twice as much of a crime to shoot a bird on somebody's preserve, so you don't want to turn the General Assembly loose and let them pass special laws in that area. It's a matter that ought to be covered the way it's covered now by this amendment -- one of the provisos -- the first provisos.

I think you oughtto have the power to incorporate school districts by special legislation.

MR. STOUDEMIRE: Will you give me an example of the need to incorporate a school district by special legislation? I just don't follow you.

MR. SINKLER: Well, we certainly had a need to do it in that Aiken situation we had a few years ago. The School District of Aiken had been established and obviously consolidated under the general law. Then they attempted to add part of Saluda and part of Edgefield which I think was really a swap of white and colored students. I think Aiken had a debt limitation of twenty per cent, and Saluda had a debt limitation of eight per cent. When they had passed this legislation creating an attendance area, trying to merge but not to merge, we soon had to get a court decision as to whether it was any good or not. The court held that it wasn't any good -- it was an attractive merger, therefore we lowered that eight per cent applied, so meanwhile the people over at Aiken . . . . bond issue to go through. . . and we got caught in the money collapse of '66. We had a time, but we finally got legislation through -- delayed process -- we did it by special law and we also did it by the process of having the school boards meet them. . . . and done by general legislation too.

I don't have any objection to special legislation in that area, I really don't.

MR. HARVEY: Wouldn't the statement that general legislation could not be made be applicable in that case?

MR. SINKLER: You've got a question of fact for the court. You've got a general statute. It's a problem. I don't care what you do with it, I just want to point out what has happend to Section 6 of

of Article XI, it has been amended thirty or forty times. It finally was amended to generally, so that the Legislature did have power to create school districts by special acts -- they got taken out of the Constitution when they repealed the mandatory public school law -- inadvertently got taken out of the Constitution -- so it reinstated to incorporate school districts, which was really out of the Constitution by reason of this other amendment, for at least fifteen years, I think.

MR. WORKMAN: The opening sentence of Section 34. "The General Assembly of this State shall not enact local or special laws concerning any of the following subjects" -- now, you come down here to IX and it says the same thing generally.

MR. SINKLER: I would say it this way "In all cases, where a general law can be made applicable, no special law shall be enacted, except in the following instances." And go ahead and whatever you decide is desirable, I think it is desirable to allow school districts to be incorporated.

MR. WORKMAN: In other words, you would reverse this procedure. Instead of saying that "No special laws shall be made . . ." -- you say "Special laws may be made only under certain conditions".

MR. STOUDEMIRE: You are going to have situations which you cannot foresee which you can only solve by a special law.

You give special zoning laws to surround Keowee Atomic Plant being done by Duke right now.

MR. SINKLER: The court has held that you can't have special zoning laws.

MISS LEVERETTE: Huger, what's the objection to . . .

MR. SINKLER: The model language?

MISS LEVERETTE: Yes.

MR. SINKLER: No objection to it at all cause the model language is the same thing but I'll tell you you've got to go farther than the model language. I think if you use the model language -- either that or go back to the court. The court is going to hold that a law amending or changing a school district or something like that is something that can be handled by general legislation -- going to knock it out. I think they're going to knock out this game provision too which I think is very desirable.

My idea is to either use the model language -- I don't think the model language is a dambit better than this thing here in IX -- in all cases -- going to take other cases -- or just

start out "Wherever a general law can be made applicable, no special law shall be enacted, except under the following circumstances" and whatever exceptions you want. I think you need some exceptions.

MR. McLENDON: Do we agree that the preamble or the opening sentence of such a section of the Constitution should read as you have stated -- where a general law can be made applicable, no special law shall be enacted.

Are we in agreement -- does this need to be the opening?

MR. RILEY: That is kinda' the opposite of what the model says.

MISS LEVERETTE: Why don't you say "The Legislature shall pass no special or local acts?"

MR. RILEY: If this is covered by the general law, then you can't have special laws. If it is not covered by the general, that opens up anything.

MR. STOUDEMIRE: The model comes pretty close to doing what we have been doing in South Carolina all these many years.

MR. McLENDON: Read it.

MR. STOUDEMIRE: "The Legislature shall pass no special or local act when a general act is or can be made applicable, and whether a general act is or can be made applicable shall be a matter for judicial determination."

MR. WALSH: That's exactly what's been happening.

MR. SINKLER: I don't care whether you use the model or whether you use the other, I simply say that you ought to specifically declare that the following areas can be subject to special legislation.

MR. McLENDON: Can we agree on the model language and then decide. . .

MR. SINKLER: I like the other one better personally.

MISS LEVERETTE: You know one of the comments that they make on this model is the fact that even though the question as to what is a special law may not be capable of a categorical answer, it is not the major question under common constitutional provision that no special law be passed when the general can be made applicable. The problem has been when is a general law applicable and

who is to determine it?

MR. SINKLER: Some states say that that is a question for the legislature, but our court has ruled specifically that it is a judicial question. You do find cases around the country where the courts have held that it is a matter for the General Assembly to decide. That's the reason they put that additional language in the model provision. That doesn't hurt anything. I don't mind that. I have no objection to that. It validates what our present practice is, which I think is the correct practice.

It seems to me that what you -- whether you say it positively or negatively -- it doesn't really make any difference. The whole thing I'm trying to get at is that I think there are certain areas in which you are probably going to have some legislation. . .

MR. WORKMAN: I think the thing that concerns us a little bit is that you're more or less inviting the legislature to do what it wants, saying that we are not putting any qualifications on it -- saying that the courts are going to determine whether what you did is right. I would prefer some standards by which the legislature could proceed.

MR. SINKLER: I don't think you can very well do that. If you give the legislature -- I think the idea of the judicial resolution is probably the correct way. I would not like to change our language. If we change the language in any fashion, then I want to put in it that it is a question of judicial determination, lest our court would misinterpret what we're trying to do.

MR. WALSH: In view of that, I move that we adopt the model language. Just exactly that.

MR. HARVEY: How about with the proviso about the game zones?

MR. SINKLER: I wouldn't put that in.

MR. HARVEY: You wouldn't put the game zones in?

MR. SINKLER: I certainly wouldn't.

MR. STOUDEMIRE: Why do you take game out?

MR. WORKMAN: The habitat varies from one part of the state to the next -- the nature of the game . . .

MR. STOUDEMIRE: Therefore, you've got the very justification you need to get a special law through.

MR. SINKLER: The courts have still held otherwise on that.

MR. WORKMAN: That's the way they arrive at the compromise of saying that the Legislature can determine zones and, which presumably, sufficiently uniformity of the habitat of wildlife. The same law can apply to these. The theory that Huger has, and I share it, is to get down to a county by county basis or even within less than a county you get special dispensation for a landowner or a political subdivision to erect barriers or open up barriers.

MR. SINKLER: Night hunting and all those sort of things.

MR. SMOAK: Well, you have a line between two counties and the special law in this county affects the landowner across the way.

MR. SINKLER: I think it is very necessary that we leave it like it is.

MR. McLENDON: Do you mean that we adopt the Model Constitution language as set forth on the bottom of page 27 (working paper # 9)? Then you would list under that the exceptions or the provisos?

MR. SINKLER: Except that the General Assembly may enact special laws to incorporate school districts and to divide the state into as many zones as may be practicable. I would put both of those in there.

MR. RILEY: How about the Forestry?

MR. SINKLER: I think that might be desirable too.

MR. McLENDON: Aren't we getting right back to the language we have now? What have we accomplished?

MR. SINKLER: No. We eliminated some of these things. I think the general language takes care of probably one, two, three, five -- certainly have the general law to apply there.

MR. STOUDEMIRE: One thing I was thinking -- one idea might be to just stick to the Model, if you are going to have a public hearing -- and hope to see what areas come up at a public hearing for additional treatment.

MR. HARVEY: I second Emmet's motion that to start with we adopt -- at least to start with -- the Model Constitution Section 4.11.

MR. WORKMAN: Shall we say whether we are going to add exceptions?

MR. McLENDON: Let's vote on this provision first and then we can move from there.

Do I understand your motion is the language set forth at the bottom of page 27: "The Legislature shall pass no local or special act when a general act is or can be made applicable, and when a general act is or can be made applicable shall be a matter for judicial determination."

Is that your motion?

MR. WALSH: Yes, that's my motion.

MR. HARVEY: I second it.

MR. McLENDON: All right, any further consideration?

All those in favor -- do I understand that that is to be in lieu of this Section 34?

MR. HARVEY: That "and when" is a typographical error. It should be "and whether" -- just to keep the record straight.

MR. McLENDON: All right, all those in favor of that motion. . .

MR. SINKLER: No, it's not. It's not a typographical error, Brantley. It is a direct quote back of the language that is used before.

MR. HARVEY: Well "whether" is what they use in the Model Constitution.

MR. SINKLER: They do?

MR. HARVEY: Yes.

MR. SINKLER: Well, "whether" is correct.

MR. McLENDON: All right, all who are in favor of that motion, hold up your hands.

It seems that we are all in favor of it.

Now, we are open to provisos.

MR. SINKLER: I move we have a proviso on incorporating school districts.

MR. McLENDON: Which would read how, Huger?

MR. SINKLER: I would let the draftsman take care of that.

MR. STOUDEMIRE: The draftsman is not quite sure that he understands what you want taken care of.

MR. SINKLER: I'm just asking for . . . .

MR. STOUDEMIRE: I know you're talking about schools and I know you were talking about game but . . .

MR. SINKLER: No. No. I'm just talking about schools right now. I figured we'd take them up one by one.

MR. STOUDEMIRE: I don't quite get the idea here how you would pin schools to this that was just adopted.

MR. SINKLER: Well, I'll give you some ideas.

MR. STOUDEMIRE: Provided, that . . .

MR. SINKLER: No, just except that the General Assembly may enact specially in the following areas: one, two three -- that's all you'd have to say.

MR. STOUDEMIRE: All right, special laws, however, may be enacted: school districts, game zones.

MR. SINKLER: No. I don't think they have agreed on any of these yet.

MR. STOUDEMIRE: O.K. _ I've got you.

MR. McLENDON: All right, we will deal with them one at a time. The school district situation will be an exception for special legislation. Then we'll take any others that arise. Brantley, is something worrying you about it?

MR. HARVEY: Yes.

MR. McLENDON: All right, speak up.

MR. HARVEY: I'm not following this as to why -- what do we anticipate the Legislature doing with school districts?

MR. SMOAK: Well Huger gave a beautiful example a little bit ago.

MR. WALSH: I believe the example he cites is an example of special legislation which would be permissible. . .

MR. SINKLER: The court held that it wasn't.

MR. STOUDEMIRE: The Elliott vs. Sligh case . . . firecrackers . . you showed that there was special noise conditions in Charleston and Richland and if you could show that other things were true, then you could go ahead and enact this special firecracker thing. The way I see it, if you would show that it is necessary to have a special law, so that you can make your school districts overlap three counties or two-county lines and so on, then I think that is all the justification that would be needed to get the special law.

MR. McLENDON: If I understand your argument, Bob, you feel like the language in the Model Code is sufficient to accomplish the purpose which we all apparently seem to agree to allow special legislation for school districts?

MISS LEVERETTE: Let me ask you a question on that. Do you think that the body of the decision is the result of the interpretation of what we have in here?

MR. SINKLER: You've got to go back and reincarnate this section . . . out of the constitution and you'll see the problems. I think you can very easily adopt a general law to provide how you can incorporate school districts -- how you order their boundaries, but I think every type of legislation that you're going to have, you're going to have petitions and elections to do that. I think cases come up where the legislature can do a better job, probably, than the people involved. Lord knows, if you do the wrong job in a school district, they're going to be voted out of office.

I am all in favor of having a general law with respect to the handling of fiscal affairs in schools but that's here in the area of local government. But I think . . . over this -- I think you're better off being allowed to handle it but if you all don't agree with me I'm certainly not going to fight about it. I simply tell you though that in 1940-odd there was an amendment to 6-11, which did say the General Assembly can incorporate school districts by special acts.

MR. HARVEY: This section of the Constitution is not applicable?

MR. SINKLER: It is applicable but it was made inapplicable in the 40s by an amendment to a different section. It was a section relating to mandatory public schools. When the General Assembly knocked out public schools, they knocked out this proviso too. That had the effect of reinstating force.

MR. HARVEY: The whole rationale of the thing is that you set up general laws, Huger, and then it is wrong -- just like for legitimization and adoption, for instance, you set up procedures by which every citizen in the State has to go through if he wishes to adopt a child. It is wrong, then, for me just to go to the legislature and say "this child is yours -- adopted by a legislative act." It is not fair.

And isn't that the same thing on schools -- you set out laws to protect the people theoretically, I guess, and give them a voice in what school district they will be in and so forth. You provide methods that they can change. I'm not sure what these are, and then it is wrong just to come with one swoop of legislative . . . . and change that.

MR. WORKMAN: The general law can be made applicable by the wording of the law. You can say that under the existing -- wherever by referendum, the school patrons of the districts in adjoining counties decide to merge their school districts, it can be accomplished.

MR. SINKLER: You've got general laws like that.You've had those from time immemorial but I just tell you that you're opening up -- there's going to be a lot of litigation.

Mr. McLENDON: Is our problem different from what Huger is saying? If it is surplusage, then it wouldn't hurt, would it? That's what I want to find out.

MR. WALSH: I believe it is surplusage.

MR. STOUDEMIRE: Right now, you cannot have special acts on school districts, right? That is according to the Constitution.

MR. SINKLER: To corporate, consolidate, change boundaries under the general law -- very awkward cumbersome procedure.

MR. McLENDON: Is this one of the areas we might well pass over?

MR. SINKLER: I think I'm in the minority here, so I don't see why you don't go ahead and vote me down.

Mr. McLENDON: We may be wrong.

MR. SINKLER: But that has been the history of it. If you want to disregard the history -- O.K. Of course the original provision of Section 6 of Article XI was right tough, because it had a size limitation on the size of school districts, which we haven't got, so maybe you don't need it as much as I think you do.

MR. STOUDEMIRE: You have twenty-four units now. Richland is just about to be twenty-five. Now that your racial questions are rapidly fleeting, I think you are going to have more and more county units -- like Orangeburg and Marion.

MR. WALSH: I think for the time being short of any other commanding thing -- you ought to leave it like you've got it.

MR. HARVEY: How about game zones? I think, of course, the people have said that they . . .

MR. SINKLER: Said what?

MR. HARVEY: That they wish to treat the different -- allow the legislature to divide the State into game zones and treat them differently.

MR. SINKLER: I think that is absolutely necessary.

MR. WALSH: You are arguing the wrong thing. This Section 34 says now that you cannot provide with special game zones.

MR. SINKLER: Yes, we are talking about the proviso.

MR. HARVEY: When you divide the State into zones and treat every zone -- treat everything within the zone -- that's different from just one particular situation.

MR. STOUDEMIRE: If you pass a general law pertaining to game in South Carolina and say that there shall be fifteen game zones, then you have done it by general law.

MR. SINKLER: I don't think the court decisions would back you up.

MR. McLENDON: If you are going to take the game zones and make them an exception, if a dozen people sat in here, and if we thought long enough, we could find a dozenthings that would fall in the same category.

MR. WALSH: They have thought up ways to get around this without any trouble.

MR. SINKLER: They certainly . . . That was back in the forties and that was a very contested situation. You see, you don't want to have it covered by special act, Emmet, because you don't want to place -- what's that big club down in Jasper County? You don't want that club getting a special act, saying that it is a five hundred fine to shoot a bird on that place and a fifty dollars fine across the way. You don't want that sort of thing to happen.

Then you don't want Berkeley County allowing night hunting and other counties not, so the only way you can handle it is by zones.

MR. WORKMAN: A reasonable classification is the test here and the only way you can get at it is by some sport of special . . .

MR. RILEY: You couldn't have had much of a court test on whether or not the court would say that setting up uniform zones would be special or general because if explicitly prohibited and quite obviously you had to have this proviso added to have that done.

MR. STOUDEMIRE: That's right.

MR. SINKLER: You probably may be right, but I think you're going to find a lot of moreover language in some of these decisions, which say that "moreover" -- it is bad under both six and nine. I think you are going to find a lot of decisions relying on more than one particular aspect of the thing. You're going to find court decisions holding that -- I'll try to dig up this brief that I wrote ten or so years ago. . .

MR. WALSH: Why don't we study this a little more?

MR. WORKMAN: Let me make a motion that we accept as we already have Section 4.11 out of the Model Constitution, and then add to that: "Provided, however, the General Assembly is empowered to divide the State into as many game zones as may appear practical." In other words -- the first proviso.

MR. McLENDON: Well, how is that going to cure the school situation?

MR. SINKLER: This is going to be a matter of a lot of votes down in the low country.

MR. WORKMAN: I think for the purposes of inclusion that we ought to make it read: "That the General Assembly is empowered to divide the State into as many game and/or forestry districts as it may determine necessary"and to enact special legislation consistent with the special divisions.

MR. STOUDEMIRE: All right.

MR. WORKMAN: You take those two categories in the different parts of the State. They obviously require differential treatment in hunting and in protection -- forestry protection.

MR. McLENDON: All right. What is the reaction to this motion?

MR. HARVEY: I'd say that it's expedient to put that exception in it.

MR. McLENDON: Let's don't use the and/or.

MR. SMOAK: . . . extending the rabbit season for two weeks in such and such a county and the "coon" season ten days and all that. How is that?

MISS LEVERETTE: You'd save a lot of money on printing costs if you didn't do it.

MR. McLENDON: All right, we have Bill's motion then for the two provisos. Is there any adverse observation?

MR. SINKLER: You'd be surprised if you leave this thing out of here how many votes you'll lose. Everybody in the upstate is going to say "early dove season" and that sort of business.

MR. WORKMAN: You've got next to the people.

MR. SINKLER: You surely have.

MISS LEVERETTE: I'm just curious. What is the reason for constantly year in and year out varying these times and areas?

MR. McLENDON: The difference in the weather and seasons. The weather may be dry -- it may be wet -- the river may be up or down. If it is too dry they don't want the dogs running the rabbits. They want to wait until it gets a little wet.

MISS LEVERETTE: I'm glad to know that.

MR. SMOAK: People come in and say "You know I haven't had any time to do any rabbit shooting at all. We need two more weeks."

MISS LEVERETTE: I'm glad to know that since I don't hunt.

MR. WALSH: In North Carolina you hunt rabbits with sticks.

MR. RILEY: Let me call your attention to a clause here that I was just noticing on page 28. It's just as you get into Section 5(b):

"In any event, a bill must be on the desks of the members in final form before a final vote."

That's the kind of language that we got into in another section this morning. It sounds like pretty good language to me if we can incorporate that idea as a safeguard.

MR. WALSH: That will enable you to see just what you have before you pass it.

MR. RILEY: It could tie up a day or so on something that could be very controversial.

MR. STOUDEMIRE: Go back to that special proviso: "That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only" and then "Provided, that in any event, a bill must be on the desks of the members in final form before a final vote."

That could be added without -- and the language could be a little bit better than that I have just read. It could be added without any great evil.

MR. RILEY: It would certainly give us a good point of debate.

MR. SINKLER: Now, let me tell you what's going to happen. All right, you are going to amend it by changing the dotting of an "i" and the crossing of a "t" -- not in final form, then you're going to have . . .

MR. McLENDON: You're cluttering it up.

MR. WALSH: I think once you get that procedure operating, you just may be one day late on things. It will take its normal place.

MR. McLENDON: Well, that's one problem we have with the newspapers now -- we're taking too many days to do the legislative work. It's just another delaying of tactics.

My feeling is that the Legislature, when it gets down to that point, the people who are there know what they're voting on.

MR. RILEY: When I go out to get a coca cola or get a telephone call from Greenville and come back in and -- "dadgum" -- a bill has gone across and come back and been concurred with and changed completely and you've been working on it for two or three months.

MR. WALSH: And you ask somebody what's in it and they say "I don't know -- so and so said it was pretty good."

MISS LEVERETTE: That's exactly the wording that Dr. Larson recommended from the Model to be added to Section 18.

MR. RILEY: I suggest that we put that in brackets and when we go into the final determination, we can either vote it in or not.

MR. WORKMAN: I second that motion.

MR. McLENDON: All right, Bob, make that notation.

MR. STOUDEMIRE: I have it.

MR. SINKLER: That is something I would like to publicize tremendously to see what reaction there is generally.

MR. McLENDON: Let's go now to Section 35.

MR. STOUDEMIRE: All right, as you know, this is the subject of the special session in New York -- and the Bowater Bill -- and this is really needed in the Constitution.

MR. WORKMAN: I would like to have John West's view on this because it is my feeling that South Carolina is not only more tolerant, but is more eager in its seeking out foreign corporations as well as domestic corporations to locate in South Carolina.

MR. WALSH: I don't care how good they are, I don't know whether you want them to be able to buy up all the land in your State.

MR. RILEY: Well, couldn't the General Assembly provide for a provision like that?

MR. SINKLER: I understand that you can start in Florida and you can walk practically to New York without getting off land belonging to the paper companies.

MR. SMOAK: It's getting more and more that way every day.

MR. STOUDEMIRE: Did you notice what Mr. Evans said?

(John Gary Evans) -- "It is appalling to witness the rapidity with which the lands of the State are passing into the hands of aliens and foreign corporations."

MR. WALSH: Paper companies might be good. They buy up all this land and let it grow up and what are you going to do?

MR. SINKLER: Don't worry. The economics have got them. The Georgia-Pacific in Charleston, which is probably the biggest landowner in Charleston, with 15,000 acres around the airport -- 4,000 acres belonging to Gulf Oil -- and they have just announced this stinking scheme of developing 15,000 acres around that airport. They have just announced that it was too valuable to grow trees on. West Virginia Pulp and Paper Company is very conscious of the same thing. Paper companies are going to become land companies before too much longer.

MR. RILEY: Well, the Oil Companies have become intersection companies. They own every key intersection in the country.

MR. McLENDON: Let's get back to aliens.

MR. HARVEY: I think that that is a section for the Legislature, if anything, not constitutional.

MR. WALSH: Should we take it out?

MR. McLENDON: Yes, let's take it out. Do you agree to this?

(There was no opposition)

All right, that concludes the Legislative Department, unless you have further thoughts.

Now, where does that put us?

MR. STOUDEMIRE: It takes us down to courts.

MR. McLENDON: And that is Working Paper what?

MR. STOUDEMIRE: Working Paper No. 8.

MR. WORKMAN: I might, for the sake of the reocrds, indicate that in the opening address to the Constitutional Convention of 1895, Governor John Gary Evans said inferior courts of South Carolina were a disgrace and he recommended the formation of county courts.

He also recommended some stringent provisions in the magisterial system -- the duties of the magistrates. Bob, check me on this -- to recommend to the next court and it was a substantial change to what we have now.

MR. SINKLER: Ministerial magistrates rather than judicial magistrates.

MR. WORKMAN: That's right. That was the essence of his recommendation.

MR. McLENDON: We passed some ministerial acts in the General Assembly last year -- ministerial recorders and things of that sort.

MR. STOUDEMIRE: Mac, I hardly know how to get started on courts.

MR. McLendon: Well, let Professor Abernathy start for you. We are on Working Paper No. 8, page 2.

(Mr. Stoudemire, at this point, introduced Professor Abernathy)

MR. STOUDEMIRE: Professor Abernathy and I did go over this and considered -- we didn't rewrite it -- considered some of the rough thoughts thrown out here last time when we spent fifteen or twenty minutes when I questioned you about what you thought and did not think. I think that between us we can get the language

as we go along. We have made some notations. Of course you have a certain basic question -- you have a unified system by the constitution -- chief justice and an administrative agent. The overriding issue in the whole thing is how do you get your judges?

At the last meeting, about this business of courts below the major trial courts, I believe it was generally agreed that . . . might be all right if done by general law. Let the Legislature create what inferior courts it wanted to but only by general law as opposed to local law.

I have my notes that there was no great concern as to whether probates or clerks of court and solicitors and things of this nature -- there was no great excitement over whether these were constitutional issues or not as opposed to dropping these things back to statutory. I suppose, Mac, that we will start where we always start, Section 1.

MR. McLENDON: Working Paper No. 8, Section 1.

MISS LEVERETTE: It starts with Article V, Section 1.

MR. STOUDEMIRE: We could start back with Article VI on Jurisprudence.

MISS LEVERETTE: What page is that?

MR. McLENDON: Judicial Department -- all right.

MR. WALSH: The American Bar Association says there are three things you ought to have if you're going to have a good court system. One is that administration is built into the system -- not a part of the selection of competent judges -- not political. . . how you achieve that, I don't know.

MR. STOUDEMIRE: We start off with old Consitution. Judicial power in the State shall be vested -- now the question I think should come up first from the very beginning -- shall it be vested in a unified court system, which means, as you know, under the boss of the Chief Justice or administrative agent responsible to him, is that right?

MR. SINKLER: I think you want to say under the supervision of the Chief Justice.

MR. STOUDEMIRE: All right. And the question -- a part of this unified is -- or do you unify all the way down or do you unify down to the municipal level and that's where we ran into trouble, wasn't it, that it may be harder to bring in your recorder courts under a unified system.

MR. SINKLER: Well, you have things like this. Charleston County has tried to go to a unified traffic court, countywide.

MISS LEVERETTE: There was some comment, Bob, at the last session it seems to me -- a suggestion as to how far down it should go. It did not go down to the municipal.

MR. STOUDEMIRE: No. I have here to unify chief justice, constitutional courts, and I assume that everybody would agree to Supreme Court and your major trial courts would be constitutional, and then apparently such other courts as the General Assembly would put under it by law.

MR. WORKMAN: The feeling of uniformity -- if I recall was that the courts be uniform down to the municipal level and there the municipalities would be relatively free to constitute courts within those municipalities.

Otherwise, if you move into county court areas, there would be general laws which would apply if a county determined to move into that system -- not requiring it to do so, but once they did move in at that level, then it would follow certain procedure.

MR. SINKLER: The language has got to be when you get down to county courts: "including county courts from such counties as may be provided therewith by the General Assembly."

MR. WORKMAN: That's the approach, but here's the fabric: "When a county, on its own motion or its delegation's" moves into this . . .

MR. RILEY: Permissive.

MR. WORKMAN: Yes.

MR. SINKLER: Then you want to -- I think you've gotta' do it on jurisdiction. I think you have got to say that the courts established by the municipalities or by special legislation shall be inferior to the courts -- these courts -- and shall have jurisdiction only to the extent of -- something like that.

MR. STOUDEMIRE: Well, now we can start off with: "The judicial power of the State of South Carolina shall be vested in a Unified Judicial System, which shall include the Supreme Court, or a Supreme Court, circuit court and such inferior courts" -- carrying out your language of last time -- I mean your reasoning also -- "and such inferior courts as the General Assembly may create by law"and also include. . . .

MR. HARVEY: Limited jurisdiction. Don't leave that out. The circuit is the only one with general jurisdiction.

MR. STOUDEMIRE: All right. Create such inferior courts with limited jurisdiction -- that's what you're talking about? As I see it, you could have a thing of this nature or let the General Assembly create lesser courts or inferior courts by general law.

MR. WALSH: Can't we say that all these other courts have to come under this system or administration?

MR. STOUDEMIRE: It may be easier to say it that way and if you want to exclude municipal. You know sometimes the easiest way to do something is just say it -- that this does not apply to municipal courts -- if it should be determined that municipal courts should be excluded.

MR. RILEY: Why do we desire to exclude them?

MR. STOUDEMIRE: What was our difficulty? Do you remember, Glenn? Or did we run into a snag?

MR. ABERNATHY: Was that with municipal?

MR. STOUDEMIRE: Yes. Seems like we ran into a snag somewhere on that.

MR. ABERNATHY: Basically the problem was determining what comes under the State Court System and what does not.

If you run everything down into a general State Court System, then your general provisions with regard to administrative supervision by the Chief Justice with regard to prohibitions on the practice of law -- particularly there -- and limitation on the political . . . These, then, can be applied to a State Court System. They do not apply to your municipal court system where it would be unusually burdensome and perhaps undesirable otherwise.

MR. RILEY: Explain those two again -- they were what -- running for office?

MR. ABERNATHY: Your general prohibitions on running for office -- running for political office -- which I have suggested here would come from the ABA proposal and others and the practice of law. If you want to make your mayor your municipal recorder, you'd be barred initially from . . .

MISS LEVERETTE: In other words, your municipal court as opposed to your state court, it's a different situation, and if you run it all the way down, you run into these problems.

MR. HARVEY: You'd have a tremendous problem of administration if you made the Chief Justice responsible for everything.

MR. RILEY: You might set up general guidelines for them to go by. You end up doing that anyway. You have the general section of the code pertaining to cities and towns and the population of such and such. I agree with you, but there is a certain amount of desirability of having some uniformity in these courts.

MR. SMOAK: There is some disadvantage too in trying to tie these things together. They are not the same. They are administered separately and differently.

MR. SINKLER: I think you could make your division not a matter of population or geography, but make your division on the quantum of jurisdiction. In other words, it seems to me that what you would do would be to make it very clear that your Supreme Court, your circuit court and your county court were under the Chief Justice and they could be given such jurisdiction as the General Assembly prescribed.

You couldn't have a county court in Darlington with jurisdiction of two hundred fifty thousand dollars and one over in Charleston with ten thousand. You'd want to have it all the same all the way down the line -- be uniform.

Then when it gets down to other courts, I think you more or less are going to have to let nature take its course, but I think you can handle that by restricting jurisdiction to the point where it can't be too burdensome. I think you should provide an appeal for these inferior courts to the county court or court of common pleas and from there to the Supreme Court, in case the county court or court of common pleas . . . to the Supreme Court. You wouldn't want to have that jump in there. I think you do it on limited jurisdiction, don't you?

MR. HARVEY: Well, Huger, shouldn't the constitution just confine itself to the broad statement of such inferior courts of limited jurisdiction as may from time to time be established?

MR.SMOAK: By general law.

MR. HARVEY: And leave it to the legislature.

MR. WALSH: That sounds good to me.

MR. WORKMAN: Yes. I'm in agreement with that, but I raise the point that we may come to later. It is required under here now the establishment of county courts -- countywide jurisdiction requires referendum by the people.

MR. SINKLER: They got around that by leaving out McClellanville in Charleston.

MR. WORKMAN: That's right. In Darlington County they tried to establish a county court and let Little Swamp Township. . . If that thing goes on, I was wondering if we would want to put that referendum picture in here.

MR. SINKLER: No. I don't believe you want that. What I think you want to do is once you establish those courts then put a very definite jurisdictional limit on the inferior courts. Put that in the constitution.

In other words, I was going to let them have special legislation for these inferior courts throughout the State. Once you let them have special legislation -- inferior courts -- you have no control on them at all, unless you limit the jurisdiction. You have gotta' do it by limitation of jurisdiction.

MR. WORKMAN: Can you limit it on something besides the dollar mark? That's what I'm getting at.

MR. SINKLER: No. That's the only way you can do.

MR. WORKMAN: We have had to fight through the years, you know, to change the magisterial jurisdiction -- to try to upgrade that and make it more realistic.

MR. SINKLER: Well, I'm not going to fuss too much about that. My idea was to make these courts so really unattractive that the only use they'd have for them would be police courts.

MR. McLENDON: Aren't we really talking about the language under Section 1 in Section A, which is recommended?

MR. STOUDEMIRE: Could we say something like this, gentlemen?

"The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, circuit court, and such inferior courts as may be established by general law."

And we may have to go on and say that the general law can determine how far down the line you go with unification.

MR. SINKLER: No. I don't see that at all. Let's do it right. Let's put in right here -- I don't think you want to make them have a county court.

MR. STOUDEMIRE: No.

MR. SINKLER: I think you'll follow through -- start on the county courts, and at the end of that I'd say "whose jurisdiction shall be established by general law." Then all your county courts would be exactly the same if you happen to have one. . .

Then I'd say "The General Assembly may also provide for such inferior courts as may frim time to time be necessary, but the jurisdiction of such inferior courts shall be limited."

In other words, what you've done really is to preserve your system now -- except that you -- all you're dealing with is your county courts -- getting them unified, which they ought to be. There is no excuse for them not to be. I think you need them here in Richland County -- probably in Charleston.

MR. HARVEY: I don't think the inferior courts come out from under the jurisdiction of the Supreme Court.

MR. SINKLER: I wasn't going to take them out from under the jurisdiction of the Supreme Court. I was going to limit the jurisdiction.

MR. HARVEY: I thought Bill said that nothing below the county court would be under this unified judicial system. But I don't agree with that. I'm thinking of Juvenile Domestic Relations Courts. Now, those are of limited jurisdiction and should definitely be under the overall judicial system.

MR. STOUDEMIRE: I think whatever might be established for magistrates court -- this is where justice is done or not done -- to the great masses of people.

MR. RILEY: You're going to have some trouble.

MISS LEVERETTE: Doesn't the term of limited jurisdiction -- isn't this a term of law. Doesn't it have a connotation in itself -- limited jurisdiction -- doesn't that describe a type of court?

MR. SINKLER: It would be limited to everything but -- and it is still limited. I guess you're right about domestic relations courts.

MR. RILEY: Probate courts too.

MR. SINKLER: My basic idea isn't bad, but I think my language is very inept. I think the domestic relations . . . I think that this business -- your language about your county shall apply to domestic relations -- juvenile courts. In other words, if a county has one, it's got to be the same in Charleston as it is in Greenville County.

MR. RILEY: I think that ought to be in the Constitution.

MR. SINKLER: I do too, definitely.

MR. RILEY: That would put the monkey on the Legislature's back to do it.

MR. HARVEY: Isn't that covered by this:

"That such inferior courts of limited jurisdiction as may from time to time be established by general law." Doesn't that cover it?

MISS LEVERETTE: That's just what I was thinking.

MR. WORKMAN: That does everything, except put in -- Huger wants limited jurisdiction.

MR. SINKLER: No. No. I don't think you can have that. I don't think you can have general laws to cover a situation like the traffic court in Charleston County and a few things like that. I don't think you ought to try to do it. I want to incorporate Bill's idea -- in other words, if you have a county court -- all county courts have got to be the same. If you have a domestic relations court, all domestic relations courts have got to be the same. If you have a juvenile court, it has to be the same all over South Carolina. And probate courts might be the same all through South Carolina.

MR. HARVEY: Well, that's covered by statute by general law.

MR. SINKLER: Yes. That's all right, but below that -- I want to go below that. I want to give them the right to do something by special act.

MR. WALSH: I think the simplest thing is to say that your municipal or recorder courts are not included within.

MR. ABERNATHY: . . . include everything that might be devised but two things -- include everything at the inferior level that might be devised by the legislature, juvenile or probate and everything else in the unified system. Secondly, require that such . . . be uniform from county to county as they are developed, but third, exclude municipal courts from this.

MR. SINKLER: The Charleston County traffic court is not a municipal court, it is a county court. What they're trying to do is to get rid of the magistrates down there. . .

MR. HARVEY: It would come under your county court then?

MR. SINKLER: No. I think it would not come there. I think that type of court ought to have a very limited jurisdiction. The General Assembly ought not to be allowed to let the traffic court in Charleston put up a thousand dollars fine when it may be included elsewhere, but nevertheless up to a very limited amount.

The General Assembly ought to be given discretion. I think you do that by having your unified system go down beyond where I started with domestic courts -- juvenile and domestic, are they two separate courts?

MR. WORKMAN: Juvenile and Domestic Relations is frequently one court.

MISS LEVERETTE: You get all kinds.

MR. SINKLER: I know -- you've got all sorts now.

MISS LEVERETTE: Let me ask a question? Can we establish a point at which we leave the state court system and go into these other things? If we could do that, I think then we could apply what we are talking about to the state system.

MR. SINKLER: All right -- two hundred dollars jurisdiction on fines and sixty days personal -- civil one thousand dollars -- trying to make it very small, so they won't have those courts.

MR. RILEY: Everything else would be under the state system?

MR. SINKLER: That's right.

MISS LEVERETTE: I'm just afraid they might start amending that.

MR. HARVEY: I come back to not making any distinction on the amount involved in that I agree that your municipal courts and even your countywide traffic courts maybe should be under your unified system. But I believe if we are going to retain our magistrates that you should go all the way down to the magistrates. That's a part of the statewide system, as I see it.

MR. STOUDEMIRE: Let me insert one thing here. The chances are that your inferior courts of limited jurisdiction as may from time to time be established by general law now leaves the door wide open to get rid of your magistrates, which I think you want to do -- not necessarily wipe them off by specific constitutional statement but you have left the General Assembly the right to do this when it exists.

MR. SINKLER: You don't want Charleston to establish a court of civil jurisdiction -- trial of cases, civil cases, which would be given a large jurisdiction -- you don't want that. I really think you need a jurisdiction -- some type of ceiling on these courts.

MR. WALSH: Wouldn't the answer to that, Huger, be just imply to say that -- unified system -- but in the case of courts which handle violations of municipal ordinances -- they can be excepted.

MR. SINKLER: All right, just criminal exception -- that's all right.

MR. WALSH: Well, that's what really exists now.

MR. ABERNATHY: Then could you insert -- accomplish that by inserting after "courts of limited jurisdiction" the phrase "except for municipal courts and traffic courts."

MR. STOUDEMIRE: It might be better to stick with his terminology, Glenn -- "local ordnances". After all you may come up with a new county government that Charleston County can enact ordnances.

MR. ABERNATHY: Municipal ordinances?

MR. STOUDEMIRE: Well, county ordinances. We may end up with a local government system -- somehow or other -- we haven't done the local government yet. There may be another agency enacting ordnances other than a municipality.

MR. HARVEY: If you have a county government, you enact ordinances.

MR. ABERNATHY: Would that accomplish it by inserting that phrase?

MR. SINKLER: I don't want to say "by general law". I want to make it crystal clear that if you establish a county court, that one county has the same jurisdiction everywhere. I don't think this language is strong enough to do it.

MR. HARVEY: How about using the word "uniform" --"such uniform inferior courts".

MR. SINKLER: "Such inferior courts of uniform limited jurisdiction" -- by general law.

MR. STOUDEMIRE: You want county courts established -- all counties to have . . .

MR. SINKLER: You argue that the Greenville Court really could have more jurisdiction than the Allendale County Court -- that is, if one is established.

MR. SMOAK: I don't think so. It seems to me that if Allendale needs one -- that the needs would be the same.

MR. HARVEY: The caliber of judge that you can employ -- if the county is going to pay him and so forth differs from a large city than it does from a small town and I'm not so sure that it's not political -- having smaller jurisdiction in the county court for Marion, Beaufort, and Allendale than in Charleston and Greenville.

MR. SMOAK: This is one of your limiting factors too. If you require that judge -- if he has to reach a certain standard -- this has something to do with how soon they really need him, when they will attempt to qualify -- put it that way. All of this tends to be uniform, which I think is good.

MR. ABERNATHY: I agree wholehartedly with Mr. Sinkler's position that what you want to be sure of that inferior courts are not established in a hodgepodge manner as they have been in the past.

Do you think this language would be construed to bar other such inferior courts that are non-uniform and are established by other law or do you think -- just leave the phrase as it is and add a separate flat statement?

MR. SINKLER: All county courts -- all inferior courts, except courts whose jurisdiction is less than so and so shall have uniform jurisdiction.

MR. ABERNATHY: What we are getting at -- could this be considered to mean merely that uniform courts of inferior jurisdiction established by general law are part of the unified system but others don't fit that and might be created . . .

MR. SINKLER: That point is certainly going to be picked up and argued unless you put a limitation on the jurisdiction of courts not under your unified system. The court is going to say you did not intend to exclude these courts that you merely intended to provide for a unified system leaving the General Assembly free to go its own merry way and establish all these hodgepodge courts. I think you have to be very categoric in the language.

In other words, I don't think that we want to make it mandatory for a county to have a county court.

MR. RILEY: Let me ask one thing now? The old language where we have the common pleas and general sessions set out, is that not necessary?

MR. ABERNATHY: It didn't appear to me that it was. It does present this potential problem. Under the standard unified system, one of the arguments in favor is that you get a great deal of flexibility about handling your case load; and the judge is the judge of a court. He's the judge of a circuit court. He is not sitting from December 8th to December 15 as a judge of commom pleas and from December 16th to December 25th as a judge of general sessions. . .

MR. RILEY: I like that. What I am interested in also is under this. Could not the Chief Justice in the Supreme Court set up in a county like Greenville, which requires two domestic relations courts, could not they set up a circuit judge in Columbia, Charleston and Greenville and empower him to handle domestic relations and juvenile problems?

MR. ABERNATHY: This is one of the big advantages of the unified system.

MR. SINKLER: I think that is very desirable. You say you've got two judges in Greenville?

MR. RILEY: Two juvenile.

MR. SINKLER: We certainly want to provide for -- we want to give flexibility there. It seems to me that we ought to say that the circuit court shall be a circuit court for each county. I think that is desirable.

MR. RILEY: Here's what I like. I'm looking at the language the way it was. After you say "The judicial power shall be vested in a unified system, which shall include a Supreme Court, a circuit court" -- then, I wonder about the language here -- say also that the General Assembly may establish -- getting into these other things -- a unified county court system or a unified system of such other courts.

MR. SINKLER: No. I don't think you want to do it quite that way, because I think you give them a mandate to establish a unified county court.

I think what we want to say -- we want to let them establish county courts but all those county courts in the counties where those courts would be established shall have the same jurisdiction. When you say circuit court, professor, I think you are going to have to say "with civil and criminal jurisdiction." I think you are going to have to pick up the words civil jurisdiction and criminal jurisdiction in the first sentence in Section 1.

MISS LEVERETTE: Well now, Huger, the theory you're going on, on these county courts is -- you're talking about a court in Allendale as opposed to one in a larger county. The thinking I would propose is that when a county reaches the point at which it needs a county court, then it would be a court that would fit into this uniform jurisdiction.

MR. McLENDON: Is there any way for us to get it congealed? Can you congeal it Bob? Let's listen to Bob try to congeal it for us.

MR. STOUDEMIRE: As I see a common thread here, it should include a Supreme Court, a circuit court properly defined, and strike "county" here and"such inferior courts as might be established." That would get us out of the mandatory provision of county courts. Now follow through then that all of these would be under the unified system, except those courts handling ordnances. I think that's what we agreed to, is that right?

MR. SINKLER: But traffic violations . . .

MR. STOUDEMIRE: To make sure that I understand and that we understand that we all agree -- we're saying here that this would involve juvenile and domestic relations, also include probate.

MR. RILEY: And equity.

MR. SINKLER: County courts can have equity.

MR. STOUDEMIRE: You do intend probate to be included?

MR. SINKLER: Yes.

MR. STOUDEMIRE: I just want to make sure.

MR. McLENDON: Is that language down in writing where you could read it back to us again or not? I think we understand it though.

MR. RILEY: I move -- just as he read it.

MR. WALSH: I second it.

MR. McLENDON: All right. All those in favor of this language or the draftsman to chew on, will indicate by saying "aye".

It seems to be unanimous.

MR. WORKMAN: I move that we break for five minutes.

MR. RILEY: I am sorry but I am going to have to leave.

(Mid-afternoon break)

Lieutenant Governor John C. West returned at this time.

MR. McLENDON: Mr. Chairman, I'll give it back to you and we'll try to bring you up to date.

MR. STOUDEMIRE: We have agreed to -- on this Working Paper #8 -- we agreed roughly to a unified court, including a Supreme, a circuit, and such inferior courts of limited jurisdiction and so on that might be established by law but making it so that courts dealing in ordnances could be excluded by law from the unified.

MR. SINKLER: Yes. All county courts have got to be uniform.

MR. STOUDEMIRE: Now, we're down to Section 1A on Marlboro County and I assume that this would be eliminated under a schedule clause which would give existing courts . . . . am I correct in that?

MR. WEST: Right.

MR. HARVEY: Other things in this section are not going to require a referendum?

MR. STOUDEMIRE: No.

Now, this takes us over to page 5, to the proposition of the Supreme Court itself. I believe that Professor Abernathy, in his study, has made very little change in -- well he says:

"The Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum for the transaction of business. The Chief Justice shall preside, and in his absence the senior Associate Justice. In all cases decided by the Supreme Court, the concurrence of three of the Justices shall be necessary for a reversal of the judgment below."

I believe that is very close to the terminology of what we now have, isn't it?

MR. ABERNATHY: You combined it in one.

MR. STOUDEMIRE: Did I? We took out election here -- elections come up a little bit later.

MR. SINKLER: Don't we want to provide in this section now that the Chief Justice shall be head of the Unified Judicial System.

MR. STOUDEMIRE: That comes later, doesn't it Professor Abernathy?

MR. ABERNATHY: Yes.

MR. STOUDEMIRE: The next thing to come up for consideration is the number of justices, right?

MR. WORKMAN: We're right there now, aren't we?

MR. STOUDEMIRE: I think the question would be, do we want to keep a five-man court? And then, we're satisfied that the Chief Justice shall preside and in his absence the senior man presides.

MR. ABERNATHY: What I did, Bob, was to take the first two sentences out of Section 2, verbatim, stop there, and then go to Section 12, and add the first sentence.

MR. STOUDEMIRE: Section 12, 1st sentence:

"In all cases decided by the Supreme Court the concurrence of three of the Justices shall be necessary for a reversal of the judgment below, subject to the provisions hereinafter prescribed."

Is that good terminology?

MR. ABERNATHY: I think so.

MR. STOUDEMIRE: O. K. fine. Now we have got to get to Section 12 a little bit more, haven't we, Glenn?

Do you want the en banc court? All this long Section 12 is to the best of my knowledge -- the en banc court has only been used on the road bond issue, is that right?

MR. SINKLER: Oh, no. It was used with great frequency in the twenties.

MR. WEST: It hasn't been used, in my experience, since I have been practicing. I don't believe it has been used in the last twenty years.

MR. SINKLER: I believe that would be correct -- I believe twenty years is correct.

MR. STOUDEMIRE: Is it a useful device to keep in the Constitution?

MR. WORKMAN: It got the highway bond issue approved -- never would have it if it hadn't been used.

MR. WALSH: Do other states have an en banc?

MR. STOUDEMIRE: I think we are almost unique in this respect. I don't know where it came from.

MR. SINKLER: It came from the time when you only had three judges in the Supreme Court. As a matter of fact, it goes back farther than that. It goes back -- if you will look at the old decisions of the equity court, you'll see that the court consisted of the guys who had been around on circuits trying cases -- en banc is really very ancient.

MR. WEST: Frankly, I'd be inclined to say that we should eliminate it. . .

MR. STOUDEMIRE: I would hate to have to clear up all that language. That's hodgepodge language.

MR. WEST: All right, let's just eliminate it.

MR. SINKLER: That wasn't in the Constitution of 1868?

MISS LEVERETTE: Yes. Article IV, Section 12 refers to 1868.

MR. STOUDEMIRE: Yes. I was looking in the 1790.

MR. SINKLER: I think we could take it out.

MR. STOUDEMIRE: Section 12, Sarah?

MISS LEVERETTE: I think so. It refers to 1868.

MR. STOUDEMIRE: Article IV, Section 12.

MR. SINKLER: The reason I asked you that was that the footnote . . . amendment proposed in 1910 and ratified in 1911.

MR. STOUDEMIRE: That's right. I'm pretty sure that is right. No. Wait a minute. That amendment did something here with this language about . . . permission to two to three -- you see when you're reading, you can't tell . . .

MR. SINKLER: No. That became necessary when the court was a three-man court and they made it a five-man court.

MR. STOUDEMIRE: That 1910-11 amendment has something to do with who can call this thing.

MR. WORKMAN: Well, if we're going to omit it, I don't think it makes much difference when it was put in.

MR. STOUDEMIRE: Right. Now, Section 3 takes care of the old court and since we are making no changes, it looks like Section 3 is no longer of any value.

Now, Section 4: "Jurisdiction of Supreme Court." Professor Abernathy keeps it like it is, except in the last sentence, following the phrase "for the correction of errors at law," insert the phrase "in a manner provided by rules of the Supreme Court" -- say that Glenn like you want it?

MR. ABERNATHY: Actually the question here is to take a middle ground between what we have now, which makes it totally regulated by the General Assembly, and what is proposed in several of the constitutions, to allow the courts to make its own rules even including rules of ethics.

MR. STOUDEMIRE: You'll really be opening up a Pandora's box there.

MR. ABERNATHY: Right. I wasn't about to propose that. I am merely suggesting an intermediate position to allow the courts to make rules in the manner provided by rules of the Supreme Court and under such regulations as the General Assembly may, by law, prescribe; to allow the courts to participate through the necessary rule-making power within the authority given to it by the Legislature.

MR. SINKLER: Well, now let's think that out. This thing just didn't get in here -- this business of "under such regulations as the General Assembly may, by law, prescribe." It is the result of what we used to call the damage suit and the railroad lawyers. The victory of the damage suit lawyers over the railroad lawyers -- the railroad lawyers wanted the court to have all the power and the damage suit didn't want them to have any. This sort of thing is something you would get people like Mr. _____ and all those"old timers" to keep talking forever on it.

The court has adopted pretty well its own rules. As time has gone on their rules have a lot more teeth in them and for instance the rule that you've got to specify the error -- that's their rule -- there's nothing in the law about that. They haven't had any trouble operating under this. If you start tinkering with this language, I think you can promote a real Donnybrook.

MR. WALSH: Well, what do you propose?

MR. SINKLER: I wouldn't change it at all. I really wouldn't.

MR. WORKMAN: There is, if I might anticipate by one distinction here, when you get to the administrative duties that devolve upon the Chief Justice:

"The Supreme Court shall make rules governing the administration of all courts of the State and, subject to the law, the practice and procedure in all such courts."

MR. WEST: That would cover it, wouldn't it? I'm inclined to agree with Huger. Let's leave the present section as it is.

Shall we agree to leave that Section 4 as it is and then come to Section D on page 8?

MR. STOUDEMIRE: Professor Abernathy, I believe Section D on page 8, becomes necessary if we are going to have a unified system. Is that right?

MR. ABERNATHY: Right.

MR. SINKLER: Why do you need the word "temporarily"?

MR. STOUDEMIRE: "The Chief Justice shall have the power to assign any Judge to sit temporarily in any court."

MR. SINKLER: I don't like that word "temporarily".

MR. ABERNATHY: The idea was that he might be sort of a resident judge in one place. The justice would have the power to move him . . . docket in another area.

MR. SINKLER: I wan't thinking about that. I was thinking that -- I think probably if we ever get this unified system, there will possibly be some rotation of judges, probably to a lesser degree than there is now, but I think the word "temporarily" being an adjective -- never use an adjective if you can avoid it -- if you're going to have the system, let the judges assign anybody to sit where he wants to.

MR. HARVEY: Well, now that means that he can sign a probate judge slip in the circuit court?

MR. SINKLER: No. I think that ought to be limited to judges of the circuit court.

MR. WALSH: You are talking about superior jurisdiction.

What about a good county judge. If you need somebody to try some cases -- you take in New York, when they run short of superior judges when they're trying something like these electric cases which they have a lot up there -- they just pick out a good county trial judge and send him over.

MR. WEST: Of course we still use the system of special circuit judges.

MR. WALSH: I was interested in talking with a county judge in New York. He had been sitting as a year and a half as -- I believe they call him superior court judge -- he said there was one case they had spent six months on.

MR. WEST: Shall we agree that we eliminate "temporarily" and approve the section?

MR. SINKLER: Strike out the word "temporarily"?

MR. WEST: Yes. Strike that out.

MR. STOUDEMIRE: Professor Abernathy and I agree that we might make two sentences out of this which would be clearer "and, subject to the law" and so on. Put a period after the second sentence ending in "in all the courts of the State." Then start off "subject to the law, the Supreme Court shall make" and pick up again.

I was a little bit worried about the reference "subject to law". We can make it into two sentences.

MR. SINKLER: Well, we don't use the phrase in South Carolina "subject to the law". What we're talking about there, I assume is statute law. So you want to say "subject to such law as the General Assembly shall enact."

MR. STOUDEMIRE: Bring in the General Assembly.

Now, this section on the bottom of the page, I believe, takes some major revision according to some of the thinking that took place last time.

"The Chief Justice of the Supreme Court" instead of "may" -- "shall designate a Chief Judge for each division" is the way I have it now.

I think maybe we need to stop right here for a moment. Last time I believe you said, the idea of allowing an appellate jurisdiction between the circuit and the Supreme Court would probably not be a good idea. Now, I don't know whether you want to reconsider this because whether or not you have an appellate division affects a good bit of the language coming up.

MR. WEST: I don't really see the need of it, do you Mac?

MR. STOUDEMIRE: What I want to ask you/this -- How about twenty years from now?

MR. WALSH: Let me ask/this thought. That would depend on whether or not a lot of our present inferior courts can still appeal to a circuit judge. You take in Spartanburg County, the juvenile court. . . and many times that gives you that additional appellate relief.

MR. WEST: I think you open up a whole lot of complications. If you're going to put in the immediate appellate court, then you're going to have, say the Supreme Court should have the right -- the appeals to the Supreme Court is not a matter of right -- they should be able to select. I would much rather see us go ahead with the existing system and then leave it to twenty years from now -- what North Carolina has done -- put in the appellate division.

MR. SINKLER: The appellate division is really not too useful.

MR. WALSH: Well, Huger, the advantage is -- I believe I'm correct on this -- your appellate division usually is just one lawyer who would hear it -- hear it on the basis of the record. . . In other words, you don't print the record like you do the Supreme Court.

MR. SINKLER: I think the Supreme Court is the most terrible . . . I think that is a matter that they should be asked to correct by rule rather than by putting it in the Constitution.

MR. WALSH: I don't think this printing is what's causing the trouble.

MR. STOUDEMIRE: May I ask a layman's question? Assuming that you are violating -- if that's the correct word -- and appeal right now to the Supreme Court, would it be heard this year?

MR. SINKLER: Oh yes.

MR. McLENDON: It wouldn't be heard between now and January first, I don't think.

MR. WEST: We filed a case in October and it will be heard in the December term of court.

MR. STOUDEMIRE: I think you have killed the appellate.

Now, this Section E brings up the idea -- it will have to be reworded if you buy the idea.

MR. WALSH: Mr. Chairman, I just want to . . . the appellate idea will be treated with the understanding that we will still vest in our court a certain degree of appellate jurisdiction over the lesser courts.

MR. SINKLER: Now we ought to go back to that. That is something we ought to get back into that section. I think there should not be an appeal from a county court to the circuit court. I think there ought to be a direct appeal from the county court -- talking about this county court, the concept which we agreed upon today -- which was that it would be a court of unified jurisdiction throughout the State. You don't have to have one in your county if you don't want it. If you have one in Charleston, it's got to have the same jurisdiction as the one in Greenville County. I think that probably -- of course the General Assembly was elected to do it, but if you want to preserve your appeal, I think the appeal that you have is really limited to those inferior courts below the county courts. You still want to be able to appeal domestic relations courts to the common pleas.

MR. WORKMAN: Would this be within the administrative purview?

MR. SINKLER: Probably statutory.

MR. HARVEY: Down under that Section 4: "and shall constitute a Court for the correction of errors at law under such regulations as the General Assembly may prescribe."

MR. SINKLER: That takes care of it.

MR. STOUDEMIRE: Now what's being proposed here in Section E -- what we have here will have to be reworded to conform with your recent decision. The idea was that it was proposed in that there shall be a chief judge of each division of what we call the State Court System picked out by the Chief Justice. What is behind that Professor Abernathy, can you tell us?

MR. ABERNATHY: Simple administrative control -- some one person responsible at each level through whom the Chief Justice can issue his orders and carry them out -- find out what is going on primarily at the circuit court level, for example, where the docket is behind -- whether they are caught up; can issue an order to the chief judge and tell him to pick out some one to shuffle around.

MR. SINKLER: No. I think the Chief Justice ought to do that. If you start having a chief among the circuit courts, you are going to set forth a pretty bad feeling, a lot of jealousy. Then you are diffusing the thing you're trying to do.

The Chief Justice is going to say, "well, I got technically the power, but this guy has also got power -- it's his billing, let him run it. You are not going to get results unless you put it on one man. You may have to come along and give the Chief Justice administrative assistants -- that's all right, but don't let's diffuse the authority.

MR. WALSH: You are probably right.

MISS LEVERETTE: I think it is important that in order to make it an administrative proposition, especially, you are going to have to give him something because if he is going to sit up there and try to administer without an administrative arm, there'll have to be a chief judge.

MR. STOUDEMIRE: If you take away the Chief Justice, we may have to go back and say that the Chief Justice is the boss and word it some way that it is clear that he can employ an assistant.

MR. SMOAK: Give him an administrative head.

MR. STOUDEMIRE: We'll have a sentence that he may appoint administrative personnel.

MR. SINKLER: If you need to do that.

MR. STOUDEMIRE: Now if that is dead, we go to Section F.

I believe what is before us here is that the judges now pick out a clerk for the respective courts whatever they may be.

Professor Abernathy, on this question here "F" -- as we go through this section by section, we come back later specifically to the clerk of the Supreme Court, do we not?

MR. ABERNATHY; Yes.

MR. STOUDEMIRE: Then we come specifically to the clerk of the circuit court. My idea right now is just to delay this until we get in our old Constitution to the section of the Supreme Court Clerk. They want to treat that differently from the county.

Actually, you can take Section 7 -- put it in Section 7: "be appointed by the Chief Justice" -- administrative personnel or whatever you want to do.

MR. HARVEY: You want to take it up later, but I don't see any use of getting into a barrel of worms. . .

MR. STOUDEMIRE: When we get down to about Section 25 of Article V, "There shall be a clerk of court elected in each county" -- we are going to have to say that we are for this or we are against it. I just want to keep you from doing it twice.

Do I understand that you would like to incorporate it into this provision on chief justice, administrative duties of assistants, a specific sentence about appointing an administrator.

MR. SINKLER: That might be a good idea. Your section 7 is "Reporter -- clerk" and there is no reason why you shouldn't put that in there.

MR. HARVEY: Just put it right in there.

MR. SINKLER: I move it go in, Mr. Chairman.

MR. WEST: All right.

MR. STOUDEMIRE: Add a section on administrative assistants?

MR. HARVEY: No, put it in with Clerk and Reporter. You have a section on Clerk and Reporter.

MR. STOUDEMIRE: All right, but we have got to add a provision somewhere on administrative assistants.

MR. SINKLER: I think it would be better added not there because the Reporter and the Clerk are elected. We want the administrative guy appointed by the Chief Justice. He has the responsibility and is entitled to appoint him.

MR. STOUDEMIRE: All right add administrative assistants.

Now, gentlemen, you are down to the question of how you select your major judges. We're at the top of page 11, Working Paper #8.

You know how they are selected now?

MR. WORKMAN: How is that?

MR. McLENDON: I'm like Judge Greneker now -- explain that to me, Bob?

MR. STOUDEMIRE: You know your alternatives -- by the Legislature, by the Governor, with Legislative confirmation and then by some type of a screening board who recommend to somebody who finally activates. I think those are your normal ways -- and popular election.

MR. SINKLER: Nothing is perfect. We have a pretty good system, and I move that we stick with it.

MR. McLENDON: Of all the alternatives I have seen -- there may be a better system, but I don't believe the alternatives that I have seen surpass it.

MR. HARVEY: There ought to be some method by which the Bar could make recommendations to the General Assembly.

MR. McLENDON: There'd be a hue and cry with the public about the lawyers controlling the courts if we had any voice in making the recommendations.

MISS LEVERETTE: If you put into this commission or whatever you want to call it -- if you have it properly representative -- there is a provision in the American Bar Association here. Where is that, Bob?

MR. SINKLER: You mean organized labor and everybody participating in it?

MISS LEVERETTE: No. It's on page 11. They call it a judicial nominating committee. I don't know any of the particulars of this but "one of whom shall be chief justice" -- like the chairman, the members of the bar, the state divided into geographic areas shall elect three of their members of the commission -- the Governor shall appoint three citizens. . . This does not put it in the hands of the lawyers or the Governor's hands or doesn't throw it all into one side.

MR. McLENDON: Do we want to change this simply for the purpose of change or should we wait for some reason for changing. I don't see the reason for the change now.

I can see that there's opposition to the method of selecting them and there is public opposition sometimes to the legislative people. But the end product of that system seems to be what the public needs. Who are we getting and what are we getting and what kind of job they do -- the end product seems to be excellent.

MR. STOUDEMIRE: I believe I brought this up last time. If you are going to retain the legislative method of selection -- what about the judge's coming from anywhere in the state as opposed to the current condition of mandatory residence?

MR. SINKLER: Is it in the Constitution that he has to be a resident of the circuit?

MR. STOUDEMIRE: Yes. (reading) "and at the time of his election he shall be an elector of a county of, and during his continuance in office he shall reside in, the Circuit of which he is judge."

MR. WEST: I rather like the idea -- and it almost passed the General Assembly one time to have some roving circuit judges assigned by the Chief Justice.

Frankly, I think if you put two circuit judges in Columbia, Greenville and Charleston, you could probably use them -- but at the same time they might catch up. I think it would be far more efficient to have -- start off with one or two roving circuit judges and increase them as needed.

MR. SINKLER: Haven't we negated this residence clause in this first thing that we adopted a little while ago. I don't know if our presiding officer was present at that time when we -- "The Chief Justice shall have the power to assign any justice to sit in any court."

MR. WEST: Yes. I think that is the first step. The second step is to eliminate possibly the residency requirement.

MR. STOUDEMIRE: It is my feeling that by and large a judge -- you know you have got to know the vacancy of a judge -- one who calls Rock Hill or York County home -- that you are probably going to stick to that area but this might take out the residency. It could allow a man from Greenville to get into this thing and he might be elected sometime.

MR. McLENDON: You are going to have a hue and cry from small counties who say that down in Allendale and Marion and Jasper that you fellows up in the upper part of the State constitute forty-five per cent of the General Assembly -- you are going to elect Joe Blow to be my circuit judge over my dead body, they would say.

MR. SMOAK: Of course it is true that if you happen to end up in a corner of the State without a judge, you are in bad shape.

MR. McLENDON: I think the purpose in the original setup was so that every litigant would have access to a judge or some sort of proximity to it.

MR. WALSH: If you have good administration in a court, that wouldn't occur.

MR. McLENDON: In Dillon County, they don't have civil court but about two weeks a year. Of course, if the judge didn't come to Dillon except for those two weeks and he is sitting in Greenville or Pickens or Charleston -- they have to have all kinds of equity matters attended to.

MR. STOUDEMIRE: I was assuming that under a statewide election that judges would be still assigned to a certin area.

MR. WORKMAN: But he wouldn't physically be there, normally he's going to be home.

MR. SINKLER: I think we had better approach that on John's theory. I don't think we ought to get this thing -- seems like I'm running from everything -- but after all just trying to get some through -- I don't think you are going to -- overnight -- pass this thing through without some type of resident judge.

I think that John's idea is that we set up, probably, a number of judges and provide that -- have an overlap for roving judges.

MR. WEST: And provide for one resident judge for each judicial circuit.

MR. SINKLER: And then so many at large.

MR. WEST: And give the General Assembly the power to determine the number.

MR. SINKLER: I believe that's the best way -- John's idea.

MR. SMOAK: I just have one other thought to throw out on the election of these judges. I know this is not the place to think about -- but how about some method of terminating the elections that we have over in the General Assembly that go on forever?

MR. WORKMAN: The proposal was made last year. I forget by whom -- that would have sawed that thing off -- after so many votes, you knock off the bottom man -- after so many more votes, you knock off the next man and so on which would solve itself over a logical period of time.

MR. STOUDEMIRE: You could do that by law, couldn't you?

MR. WORKMAN: Yes. That's what I mean.

MR. HARVEY: I think, then, we are agreed as to principal. Let's get the language to accomplish that.

I move that we do have the circuits with the one resident judge who shall be a resident there when elected and shall reside in the circuit.

MR. WEST: And the General Assembly may provide for additional roving circuit judges.

MR. WALSH: I subscribe to that but shouldn't we also say that the State shall be divided into. . .

MR. SINKLER: Let's limit the number of circuits.

MR. WEST: I'd say, let's limit the number of circuits, say, to the existing number and provide for the roving judges.

MR. SINKLER: Let's do that. Let's use the number and let's just pull out a number and let them amend the Constitution five years from now on this thing, if necessary. What have we got now?

MR. WEST: Sixteen.

MR. SINKLER: The way we have it now -- limiting the number of circuits -- and let's have five or seven rovers.

MR. WORKMAN: Let me suggest something? The sixteen circuits that we now have are not sixteen intelligently divided circuits. We don't want to freeze the present boundaries.

MR. SINKLER: We don't want to freeze the boundaries, we want to say "there shall not be more than sixteen circuits."

MR. WALSH: That's a point I made -- that's what I think -- that is that you ought to add in that they should be reasonably contiguous and reasonably populated.

MR. WORKMAN: Litigation -- put that in -- population and litigation don't always go together.

MR. McLENDON: You can't do that because down in the lower part of the State it takes six counties and two districts to equal Greenville.

MR. SINKLER: No, you couldn't do that.

MR. WORKMAN: The combination of community and commercial affairs would enter given areas.

MR. HARVEY: I have to go fifty miles to get to a circuit judge.

MR. STOUDEMIRE: I'm wondering if you are going to fix the number in the Constitution so that you can take in population, space, and all the other things that you should perhaps say there should not be more than twenty fixed circuits.

MR. SINKLER: No. Let's don't go over sixteen circuits.

MR. WEST: I like the idea of sixteen circuits and let the judges rove because, frankly, in the electing process some consideration, probably some weight, could be given to an area which did not have a resident circuit judge -- like Aiken -- it would be real logical to say that we will elect a roving man from Aiken.

MR. WALSH: Wouldn't that defeat just what you're trying to do?

MR. SINKLER: No. He's roving. We don't care where he lives, he's got to rove.

MR. WEST: I'm saying that it would give the people in Aiken a judge.

MR. STOUDEMIRE: All right then, the idea of sixteen circuits -- and the language be such that these circuits would not necessarily be frozen to their existing boundaries -- then add to that the idea of roving judges created under authority of the General Assembly, elected from the State at large -- live in the State at large.

MR. SINKLER: Let's put a limit on the number. We don't want to end up with thirty-two judges, which you might get in a situation like this.

MR. SMOAK: I don't think the General Assembly is going to go overboard.

MR. SINKLER: Let's limit it -- I move -- five or seven rovers.

MR. SMOAK: We might need more than that.

MR. SINKLER: All right, let them amend the Constitution then.

MR. WALSH: If you have sixteen circuits and have one roving judge in every four judges, you've got all you need.

MR. SINKLER: That's what I say. If you put five in, I think that is enough -- but not more than seven.

MR. McLENDON: Everybody's going to be running for one of those seven places. If you say seven, then you are going to have the legislation to establish seven.

MR. SINKLER: We need about five. Let's put not more than five.

MR. WALSH: What do you need five for?

MR. SINKLER: I think you could use five pretty good.

MR. WEST: Let me read you this. I meant do to this anyhow. This is a report to the Judicial Council from the Committee on Improvement of the State's Judicial System.

"We make only one specific recommendation that judicial circuit with a case load of litigations too heavy to be handled efficiently by a single circuit judge, that the General Assembly be authorized to elect a second circuit judge. The data supplied us by the Clerk of the Supreme Court as to the number of pending cases in the various circuits, both in common pleas and general sessions,would indicate that in at least four or five of the circuits there is an immediate need for a second resident judge.

If these additional judges are added to the circuit bench, they would not only aid in the elimination of judges in the home circuits but also would be available for assignment by the Chief Justice for other things."

MR. WALSH: John, here is the one fallacy in that very thing. They talk about -- the trial cases -- that's not where the backlog is in Spartanburg. We can get a case tried, but I have been trying to get an appeal from the administrative board for four months and I can't get it.

MR. SMOAK: We can't get a trial in my county in under a year.

MR. WALSH: It takes about a year in our county. I can't wait a year for a jury trial, but on a lot of these administrative things you can't set around and wait for four to six months.

MR. WORKMAN: Are you speaking for the attorney or are you speaking for the client?

MR. WALSH: I'm speaking for the client. Some of these matters are real urgent in which they have an appeal from an administrative hearing to circuit court and you can't get it heard.

MR. WEST: Of course now, the first question, and I'm not arguing -- do we need four or five. This committee has evidently determined that four or five are needed. Does that answer your question?

MR. WALSH: I could probably go along with you. I haven't seen the facts but I think that the committee is dealing basicly with jury trails, whereas in my experience there is a greater backlong in other areas.

MR. SINKLER: That's up to the Chief Justice to fix the rules, you could get relief there.

MR. WORKMAN: I would move that the circuit court be limited to a resident judge and each would not exceed sixteen circuits with a total of circuit judges not to exceed twenty.

MR. SINKLER: Twenty-one, let's make it.

MR. WEST: And five roving judges.

MR. STOUDEMIRE: Gentlemen, within the last six or seven years in the wisdom of the General Assembly, you have increased your circuits from fourteen to sixteen based on the need. By putting a fixed limit, you are going to amend the Constitution to have nineteen circuits to twenty-five. My feeling is that you have the General Assembly and also the veto of the Governor to govern the . . .

MR. WEST: I'm talking sorta' like a traitor, but very frankly, if there had not been a constitutional limitation to five Supreme Court judges, we would have had seven when Judge _____ and Judge _____were running and I don't think that would have been good.

MR. STOUDEMIRE: Your system of selection was wrong.

MR. WEST: The fact is though under the existing constitution, when the circuits are not fixed, we have not gone helter-skelter in creating circuits.

MR. SINKLER: I think that has been the tradition in South Carolina, certainly on the Supreme Court, and when the load got too good for three, it got to four. When it got too good for four, they went to five.

MR. WEST: The safety valve is what has saved our system -- county court system -- you see you can always increase the jurisdiction of your county courts as long as it's uniform and keep the circuit court as really a superior court in the sense of trying only the really important cases and that probably is the best thing.

(At this point Mr. Smoak had to leave)

MR. McLENDON: I'll second Bill Workman's motion which I believe is to the effect that we limit it to sixteen circuits with not more than five roving judges -- five additional. Shall we designate the judges -- call them roving judges?

MR. WALSH: I'd just say additional judges.

MR. SINKLER: Just say additional because if you say roving you might negate the thought of that first sentence.

MR. WORKMAN: You might say five additional judges irrespective of residence.

MR. WEST: That's good. Is there any objection to that?

It is unanimously approved.

MISS LEVERETTE: I think I will take exception to the method of selection -- just for the record.

MR. STOUDEMIRE: We haven't decided that yet.

MR. WEST: We haven't decided -- this is on the number.

MISS LEVERETTE: I thought you were probably going on and leave that.

MR. WEST: I'm not going to . . .

MISS LEVERETTE: Well, I think my objection will remain anyway.

MR. STOUDEMIRE: Another easy question here is the term of judges for the Supreme Court.

MR. WEST: Where are you, Bob?

MR. STOUDEMIRE: At the top of page 11, Section 2. I believe this comes up now with what was left of Section 2 awhile ago, isn't that right and Section 13 on the subject. The existing term, as you know of Supreme Court Judges, is ten years.

MR. WEST: The Supreme Court Judges -- ten years -- is there any objection to that?

No objection and it is approved.

MR. STOUDEMIRE: Let's see what will be next.

MR. WORKMAN: I suggest as we proceed that we eliminate viva voce here until we have taken care of all elections -- elected by a joint vote of the General Assembly.

MR. STOUDEMIRE: And you want "shall continue in office until their successors shall be elected and qualified" -- that's sound, I think.

Now, the term of office of circuit judges.

MR. WEST: Let me read you a letter from Mr. D W Robinson, dated November 17, a member of the South Carolina Judicial Council's Committee on Improvement of the State's Judicial System:

Honorable John C. West
Camden
South Carolina

Dear John:

At a meeting of the South Carolina Judicial Council's Committee on Improvement of the State's Judicial System held yesterday I was asked to advise you as Chairman of the Committee drafting proposed changes in the South Carolina Constitution that our committee favored a constitutional change making the terms of Circuit Judges ten years rather than four.

Your attention is also called to the action of the Judicial Council at its meeting in April 1967 recommending a change in the Constitution permitting the election of additional circuit judges. A copy of the Committee report on which this

action was based is enclosed for your information. I am advised that General Merritt drafted a resolution to effect this constitutional change and handed it to the two judiciary committees in May 1967.

Sincerely,

D. W. Robinson

I also have a letter from John Grimball, Judge of the Fifth Judicial Circuit, saying that he approves this recommendation.

MR. STOUDEMIRE: Professor Abernathy -- for whatever it might be worth, says six years.

MR. SINKLER: I'll say six.

MR. STOUDEMIRE: Let me ask you gentlemen this? This is predicated on what -- on how you're going to get them. One of my chief objections to legislative selection is the two-party system and it might throw judges into the helter-skelter of a hearty fight.

Now, would the term, though, have some bearing on this. What I mean is if he is elected for . . . then you'd have less fights -- if you're going to have fights.

MR. WEST: I think the point is that ten years or for that matter six years, a circuit judge ought to be able to convince fair-minded people of both parties that he is either fit or not fit.

I can see a hot fight between Democrats and Republicans -- if the Democrats elected a circuit judge for two years by about five or six votes, the next year the Republicans got in and the judge hadn't had a chance to get his feet on the ground, maybe made a couple of bad decisions, the other crowd would come in and turn him out -- maybe that wouldn't be fair.

I think we ought to push it beyond the four years, whether it is six, or eight, or ten.

MR. SINKLER: I feel very much like you do. I don't think it ought to go to ten because I think the Supreme Court ought to get ten.

I don't believe a party system is going to change this in our lifetime or even in the lifetime of the youngest man present, because I think actually the individual South Carolinian is going to be pretty much the same whether he calls himself a Republican or a Democrat. That's the way I feel about it. I think it's going to be a difference without a distinction when it comes to matters like judges.

MR. STOUDEMIRE: Is eight years a good term?

MR. HARVEY: No. I think that's a little too long.

MR. WALSH: I think six is very good.

MR. WEST: Is there any objection? There seems to be no objection -- six years.

MR. STOUDEMIRE: Six years, O.K. Now, John, I think we are down to the selection.

MISS LEVERETTE: I want to ask Glenn one question. Is there any merit in having a commission of some type to make the nominations to the General Assembly? Most of the nominations are made to the Governor -- Governor's appointment. You would have that step in between there where you would not necessarily have nominees from the General Assembly if you used this -- you could or you could not.

MR. ABERNATHY: That is a proposal that frankly had not occurred to me at all. It is not used to my knowledge in the states that do have legislative . . . because they nominate and elect their own.

MISS LEVERETTE: They're Governor's appointees, aren't they?

MR. ABERNATHY; I am intrigued by it. It would only operate effectively to this extent -- where you say they would have the power to nominate three, four, five or whatever you want to provide.

MR. WORKMAN: What would be -- and I think I'm o.k. here -- I don't know how you feel on this, but in following the national pattern, if the South Carolina Bar Association were, through a committee, to pass as to the potential of the judges who are being considered. Doesn't ABA have a screening committee now on the fitness of judges?

MR. WEST: They have a fitness report. It is not conclusive or binding.

MR. STOUDEMIRE: But that's not put on by the Constitution.

MR. WEST: Don't we want to take a vote. All in favor of maintaining the present system, raise your hands.

One, two, three, four. (for it)

All oppose - It is four to two.

Our Secretary, Bill Workman, is going to have to leave and I told him that we decided that we are not going to meet tomorrow, so maybe we ought to talk about another meeting time.

MR. WORKMAN: Bob has suggested the possibility of another meeting between now and the 29th of December.

MR. STOUDEMIRE: Or between now and the 12th of January.

MR. SINKLER: Does anybody object to a full Saturday meeting?

MR. WALSH: A Saturday meeting instead of a Friday?

MR. HARVEY: The week before or the week after Christmas would be difficult.

MR. WORKMAN: Well during this interim, let me read to you from Sol's letter.

"Frank Thornton and some of the other constitutional officers are concerned about the proposal of our committee to eliminate statewide races for these offices. I understand that our group has tentatively agreed to consider whether these officers should be appointed by the Governor or elected by the General Assembly and do away with statewide races for them.

It is my understanding that all of us deserve all rights to be either for or against any proposition when . . . comes on the proposed constitution.

I think it only fair to Mr. Thornton and the other constitutional officers to give them an opportunity to be heard. I suggest

that we have Governor West have the Secretary to write these people to appear before us at our next meeting. I don't think this would alter what we have agreed upon that we would hold where we are with reconsideration in mind if it appears necessary, and accord these gentlemen with whatever opportunity we can if they desire to come and talk with us."

MR. WEST: If I understand it correctly, we agreed that we'd make a note and before we took a vote on a tentative final draft, we would again consider this question of public elections.

(After much discussion, it was decided that the next meeting would be held on the 29th of December).

MR. ABERNATHY: Bob, will you ask what the next thing of importance is. I think for the most part, from what you have told me, it is the general agreement on a major point -- this matter of removal.

MR. STOUDEMIRE: Well, what's up before us is to complete the Judicial System and then the Local Government thing is ready. I hope we can get everybody here for the next meeting.

MR. WEST: Jack Lindsay called me last night and said he was trying a case and would get here as soon as the case was over, or he would get here tomorrow, so we must call him tonight that we won't meet tomorrow.

MR. STOUDEMIRE: All right, we go to page 19.

MR. HARVEY: Excuse me, before we go on, since the 30th is a holiday and New Year's Day week-end, can we decide if we are going to try to work Saturday of that week too.

MR. WEST: I don't believe so.

MR. WALSH: I think we ought to decide that too.

MR. SINKLER: We'll just meet one day, Friday, that's all.

MISS LEVERETTE: And that will just be on local government?

MR. STOUDEMIRE: It will be on where we pick up on the Judicial System.

MR. WALSH: Now we have the 19th and 20th down for January.

MR. WEST: You see the General Assembly meets on the 9th of January.

MR. McLENDON: What about Friday the 6th of January?

MR. WALSH: That's the very next week after the 29th of December.

MR. STOUDEMIRE: What I'm concerned about is staying ahead of you. There should have been another person here all along with me, so that between us -- I could tell him o.k., start redoing the election article according to what we decided. We could have stayed completely abreast.

MR. WEST: Let's take a reading and see who can be here on the 29th, and then let's press on as we have about another twenty minutes or so now. I believe we can clear out a good bit of this in that time.

MR. STOUDEMIRE: We are on page 19.

MR. WEST: Everybody agrees that we ought not to tell the Supreme Court how often to meet. Let's eliminate that section.

MR. STOUDEMIRE: That's Section 5 on page 19.

I think everything in this, Glenn you doublecheck me to be sure that I'm right -- pages 12, 13 and so on all pertain to nominations.

MR. ABERNATHY: Yes.

MR. HARVEY: That means you are going to omit Section 5?

MR. WALSH: Yes, let's omit it. Everybody agrees to that.

MR. STOUDEMIRE: Now, Section 6:

"Disqualification of judges in certain cases -- how vacancies filled -- holding circuit courts."

MR. WEST: This is providing that judges can be disqualified and special judges can be appointed.

MR. STOUDEMIRE: (reading) "It is, however, squarely provided in the canons of judicial ethics, is unnecessary in a Constitution, and is only enforceable within the judicial system itself, which would guarantee the principle without the necessity for incorporating it in the Constitution."

You take the position of cleaning it out, Glenn?

MR. ABERNATHY: I simply take the position that they already do it. This is not provided in any other constitution that I checked, and that there is no way of enforcing it except through the judicial branch itself and there is no need for it.

MR. WEST: I don't see any need to have it in the Constitution. Let's omit it. Does anybody object?

There are no objections and we'll omit it.

MR. STOUDEMIRE: Now, we're back to where we were awhile ago: "Sections 7, 27, the election of clerks."

MR. SINKLER: Leave this in because we have covered the administrative thing under the Chief Justice. Let the Chief Justice do his own appointing.

MR. WALSH: I think we ought to provide for an administrative head of the system, but beyond that I don't believe we ought to name anybody else.

MR. SINKLER: Wait a minute now, wait a minute -- you might get a situation there where the reporter there not so much relates to the office but it -- of course you cover that in your written decisions, don't you?

MR. HARVEY: One thing you're doing here, you didn't mention, of course you could get into the situation where the Legislature said it should appoint a reporter or clerk.

MR. SINKLER: Well, it's just three lines, it won't hurt to print it.

MR. WEST: Do you move that we keep it in?

MR. SINKLER: It's just wont hurt anything.

MR. WALSH: And it won't take much ink.

MR. WEST: All right.

MR. STOUDEMIRE: Now, gentlemen, we are down to the county thing: Section 27.

"There shall be elected in each county, by the electors thereof, one clerk" and so on.

The question I raise -- I don't know we get it across to the people that you still could have something elected even though the Constitution doesn't prescribe it.

MR. SINKLER: I agree. I think "there shall be a clerk of the court of common pleas" -- I think your language is good -- "chosen in such manner as the General Assembly shall prescribe."

MR. WEST: Why do you need a constitutional provision for a clerk of court?

MR. SINKLER: Well, I think you do want a court of record -- all types of records. Without a clerk you couldn't have a court of record.

MR. STOUDEMIRE: One thing that Professor Abernathy and I got into a discussion about was how important is the nontechnical aspects of that office -- the aspects of the office not relating to the trial of cases.

MR. WEST: It is the most important phase.

MR. STOUDEMIRE: The method -- this was very critical to us -- is the judge's portion of the clerk most important or is his keeping up with all these other records and so on most important -- what does that have to do with the method of selection?

MR. McLENDON: Well, some clerks never go to the courthouse. We had one for years that just sent his administrative assistant. They do that in Florence -- a great many times the clerk never attends to the duties upstairs.

MR. STOUDEMIRE: Is not a well qualified clerk of court -- I'm thinking only now about trials and legal processes and not the registrar aspect -- is not a well qualified clerk of court essential to a good judicial system?

MR. WALSH: A good person to keep records is highly essential.

MR. STOUDEMIRE: Well, who does that?

MISS LEVERETTE: The court stenographer really does that.

MR. STOUDEMIRE: No. We're talking about the records.

MISS LEVERETTE: Oh, I see.

MR. SINKLER: Talking about the records and who sentences and so on.

MR. McLENDON: It means drawing the jury and that sort of thing.

MR. STOUDEMIRE: Mr. Chairman, it seems to me that if you are going to leave the clerk of court in the Constitution -- frankly, I don't see any reason for it but I'm not a voting member. If you are going to leave it in, then it seems to me that you simply need a statement saying that there shall be one.

MR. WEST: That's right. I agree with that.

MR. STOUDEMIRE: The General Assembly could prescribe all types of qualifications necessary -- how a person gets the job so that one can be assured that you do have a qualified person -- it leaves the way open.

MR. WEST: Shall we then rewrite that section to say that there shall be one clerk for the court of common pleas?

MR. STOUDEMIRE: For the circuit court.

MR. WEST: For the circuit court for each county.

MR. SINKLER: I think that's what we should do and let the General Assembly decide.

MR. HARVEY: Are you going to do the same thing with sheriffs?

MR. STOUDEMIRE: We haven't gotten there yet.

MR. HARVEY: I'm inclined to leave him elected by the Constitution.

MR. ABERNATHY: One of my primary reasons for suggesting that this be taken out was in line with the unified court system and Chief Justice administrative control -- was a problem to make any appropriate recommendations in adoption of rules and regulations -- to find out what goes on in any court.

I assume, perhaps erroneously, that the basic source of information for what goes on in all of the circuit courts would be the clerk, and when the Chief Justice orders the circuit judge to furnish him with certain information and he turns around and tells the clerk to furnish him with that information by Friday of next week -- the clerk says: "I'm elected by the people and my term runs four years the same as your term, and I'll turn it in when I get good and ready."

The the judge says. . .

MR. WEST: You're in contempt of court and I can put you in jail.

MR. ABERNATHY: Does the judge have adequate control over the records?

MR. WEST: Yes, he does.

MR. ABERNATHY: Under this kind of a system to furnish this?

MR. McLENDON: He is an official of the court.

MR. WALSH: Of course, this again ties in with your county government.

MR. WEST: Gentlemen, frankly I think we are all a little bit weary and I believe unless there's something pushing that we might as well adjourn.

The meeting was adjourned at 6:10 p. m.