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**FOREWORD TO THE LAWYER-DELEGATES OF THE 1972
MONTANA CONSTITUTIONAL CONVENTION: THEIR
INFLUENCE AND IMPORTANCE**

Mae Nan Ellingson

Last fall as the State of Montana approached a referendum on whether to call another Constitutional Convention, I was reflecting on not only the provisions of the 1972 Constitution but the people and the process that resulted in that document. In particular, I had been thinking about the significant contributions made to that effort by Montana lawyers and the Montana Law School, and I thought it past time to recognize those contributing. To that end, I suggested that Professor Fritz Snyder and I write an article about the role of lawyers at the Convention for the *Montana Law Review*. There were 24 lawyers who served in the Constitutional Convention. At time of writing, eight lawyer-delegates remained. There were also lawyers who were not delegates who made significant contributions to the Constitutional Convention, and many of those have likewise passed. Most notable among them are Alexander Blewett of Great Falls, who chaired the Montana Constitutional Convention Commission, and Margery Hunter Brown.

My regret is that their importance has not been previously acknowledged and I feel some responsibility for that oversight in that I had the great fortune of being a delegate to the 1972 Convention and observing their contributions first-hand.

At the time of my election to the Constitutional Convention, I was a political science graduate student whose aspiration since high school had been to teach government and American history. Since my major area of focus in graduate school was state and local government and I took great advantage of the preparatory materials prepared by the Commission and Margery Brown, I felt pretty well-informed and prepared on most all of the issues facing the Convention at the time. As a result, I often found myself tangling with the lawyers in floor debates of those issues. I was often disgruntled by the power and influence that I perceived the lawyers to have.

It seemed to me that their words carried more weight than those of other delegates simply because they were the words of lawyers. That seemed true even if all they were expressing was their opinions. Needless to say this was frustrating, particularly when their opinions were different from mine! And it was especially frustrating when I could back up my opinion with facts, but their law degrees still seemed to make them more authoritative.

The truth is that as a result of their experience, legal education, and the skills and knowledge they had honed in their respective practices, the lawyers were more knowledgeable and better equipped for the task of writing a Constitution than many of us non-lawyer delegates. And the decisions made by the Convention as a whole were better and more informed as a result of the lawyers' scrutiny of certain proposed provisions and the vigorous discussion and debate they encouraged.

I am glad that 24 of the 100 delegates were lawyers. They were needed, as more of them are needed in the Legislature. I learned a lot from and was inspired by these men. (Yes, Virginia, they were all men.) I learned that a legal education is a very, very valuable tool. I also learned that the power and influence of a lawyer can be attributable to a number of factors. Several of the lawyer delegates—Wade Dahood, Marshall Murray, James Garlington in particular—were skilled and polished trial lawyers whose eloquence dazzled and inspired the delegates and spectators alike. It was expertise in subject matter that made some lawyers so influential: Carl Davis on water law and school trust lands; Russell McDonough and James Felt on taxation; Dave Holland, Bruce Brown and Geoffrey Brazier on matters of criminal law. Some—Thomas Ask, Ben Berg, Otto Habedank, Thomas Joyce—truly excelled in the art of lawyering: they were thoughtful, precise, and analytical. Mr. McDonough was diplomatic, skillful in mediation and forging compromises that allowed progress to be made on divisive issues. The great wisdom that Cedar Aronow and Jack Schiltz brought to the Convention was invaluable. The younger lawyers such as Bob Campbell, Jerry Cate, Jerome Loendorf and Michael McKeon brought with them a sense of idealism that often united them in opposition to their more senior “brethren,” as they would say. Most of the lawyers, notably Robert Kelleher, had a sense of humor and could laugh at themselves. And all of them understood that the provisions we wrote would be interpreted by courts over the generations and that the exact words and the intention behind them were important.

Leo Graybill, as President of the Convention, had to possess in ample measure all of these attributes, plus leadership and a good deal of patience, to successfully pull off the formidable task of drafting, debating, and approving a constitution in 56 days. It is doubtful that any delegate other than Leo Graybill could have successfully presided over the Convention.

In the following pages, you will read some of these lawyers' words, gain some insight into their personalities and political dispositions, raise your eyebrows a bit and realize that the outcome was made better by their participation. But the article itself will not tell the full story of the lawyers' importance, as some lawyers (such as Russell McDonough) did not speak a

lot in the floor debate, except on the Revenue and Taxation article and this article focuses primarily on only three of the 14 articles of the Constitution.

On a more personal note, near the end of the Convention one of the lawyer delegates dropped by my desk in the House Chambers where we met and said, “Several of us delegates have been thinking you should go to law school.” To be honest, as a result of my frustration in the floor debates, I had been thinking the same thing! But I did not see that as a realistic possibility, given family commitments. Aware of my situation, the message-bearer indicated that one of my fellow delegates (not a lawyer) was willing to provide financial help to enable me to attend law school. The fall immediately after the Convention, I taught American Government at Hellgate High School and soon realized that I must become a lawyer. With help from that fellow Constitutional Convention delegate, I began law school at the University of Montana the following fall, graduating in 1976.

Without a doubt, serving in the Constitutional Convention has been the most defining event of my life. It was then and there that I was inspired to become a lawyer and received the help and encouragement to do so. I am proud to be a graduate of the University of Montana School of Law, proud to be a lawyer, and grateful for the wonderful career and opportunities that have come my way as a result. Thank you, fellow delegates.

