

Wade Dahood and Nick Ehli, 2022 January 3

Nick Ehli [00:00:00] This is Nick Ehli, and I'm here with Wade Dahood, who was a delegate at the 1972 Montana Constitutional Convention from Anaconda. We're speaking on January 3rd, 2022 in Anaconda, Montana. Mr. Dahood, you were appointed to the Constitutional Revision Commission, established in 1969. They recommended that the Legislature should call a convention to write a new Constitution. What, in your view, is the most obvious shortcoming of the prior 1889 state constitution?

Wade Dahood [00:00:35] Well, I think it had provisions here in there that favored the big corporations. And I think Evan Barrett, who's a great educator here in Montana and also a great politician, has pointed that out very well. And I provided you with a disc in which I think he makes his comments as to what some of the weaknesses were that were in that Constitution and starting in the early 60s, the League of Montana Voters, which was very prominent and I think influential at that time, was urging the Legislature to appoint a Constitutional Commission with the view in mind to eventually have a Constitutional Convention. And so the constit-, the Legislature decided, I think, in 1967 to appoint a Constitutional Revision Commission with 16 members to determine whether or not, in their opinion, there should be a Constitutional Convention, and they decided there were shortcomings, that the people were not being fully represented. Taxation was not in balance like it should be. And there were certain restrictions in that Constitution that diminished the right of the individual. And so consequently, the Commission decided there should be a Constitutional Convention and recommended to the Legislature that there be a Constitution[al Convention] so that he appointed a second Constitutional Revision Commission. I was on the first one, there were four members appointed by the Supreme Court of Montana from the bar, and I was one of the four lawyers appointed. And that's how it all started. But it was all started years before by the League of Women Voters.

Nick Ehli [00:02:41] OK. The majority of delegates at the convention were Democrats. You were...

Wade Dahood [00:02:47] Yes.

Nick Ehli [00:02:47] You were a Republican.

Wade Dahood [00:02:49] I think if I remember correctly, there were 56 Democrats or 58 Democrats, 36 Republicans, 6 Independents.

Nick Ehli [00:03:01] OK. Did that party affiliation matter once you all got to Helena? And how important was that alphabetical seating chart?

Wade Dahood [00:03:08] I think hypothetically, in the beginning, it was important. It seemed to be important. And I've said this before, and I keep saying it. I think after we were there about 10 days, there were no Republicans and no Democrats and no Independents. There was 100 Montanans absolutely dedicated to putting together, if they could, a new Consti-, a new Constitution that would be beneficial to all the people and be a great Constitution for the state. And I can say this. Leo Graybill, I think, was primarily responsible for putting aside political affiliation and work as Montanans, and I wish the Legislature of Montana could work like that. I wish the Congress in Washington could work like that. We'd have a successful government.

Nick Ehli [00:04:07] So how important did you think it was to have a seating chart that you are all in alphabetical order as opposed to...?

Wade Dahood [00:04:15] I think it was very important. You know, everybody became very friendly. I thought in a very short period of time, everybody just got to know everybody and liked everybody, and there is no division of thinking as set up geographically by aisle on this aisle as opposed to that aisle. We were just all there. We all had the same capacity. Constitutional Convention delegates and we all worked with ideas from that standpoint.

Nick Ehli [00:05:00] You were the chair of the Convention's Bill of Rights Committee.

Wade Dahood [00:05:03] Yes, I was the chairman.

Nick Ehli [00:05:04] Having practiced law since the Korean War...

Wade Dahood [00:05:08] Since the Korean War I practiced law with J.B.C. Knight and eventually built this office 40 some years ago, and I was very active and I had an agenda myself and I helped form the Montana Trial Lawyers Association in the early '60s, which today is probably the most influential and powerful bar association in the state. And I was a trial lawyer. J.B.C. Knight was one of Montana's most successful trial lawyers. And naturally, I joined him after I left the Korean obligation. And I served in the Pentagon and the Defense Appellate Division. I was discharged in September of 1953, as a captain in the Judge Advocate General's Corps and I spent the last 15 months in the Pentagon and the Defense Appellate Division doing that kind of work before the boards of review and the United States Court of Military Appeals that had just come into existence. And so when I went to the Constitutional Convention, I had almost 20 years of extremely active trial lawyer experience, and I had received a defeat from the Montana Supreme Court that resulted in my dissatisfaction and in some anger in which they repealed what's called a third party law suit after 80 years of existence in Montana. And we tried to get the Senate to correct that, and they wouldn't do it. So I was very active in conducting seminars for the Trial Lawyers Association. I was also very active on the Executive Committee, the Montana Bar Association, and brought about the requirement that judges wear robes in court, which they didn't at the time and also provided for continuing legal education because I I thought the better educated a lawyer is, the more experience you have, the better it is for all the lawyers to practice law and practice successfully. So I had an agenda and I frankly told the Trial Lawyers Association I was still very involved on the board of directors. I served as past president and I prepared seminars and conducted seminars, and I told them after that loss in the Ashcraft case where a guy who was not employed by Montana Power received the protection of their workers' compensation law, which meant you couldn't sue him. He was up on a large pole, 30 feet in the air, fell and spent 90 days in the hospital, and the Montana Supreme Court said as long as the Montana Power had workers' comp, even though he wasn't their employee, he was protected. That had never been ruled before in that fashion. Mm-Hmm. But I told the people that were close to me, I said, I think I'll run for the Constitutional Convention, if that's the only way we can get it resolved. There are other things that should be accomplished with a new Constitution. That was my

motivation. And that's why I ran for office. I was very active in Anaconda, and even though at that time it was all Democrat, I still got the second highest vote. So I think I had a pretty good idea of how to approach these particular problems. And so in my capacity as chairman of the Bill of Rights Committee, first of all, I wanted a new Constitution. Second, I wanted Article Two, which was the declaration of rights to make sure everybody was protected like they should be. And I had some strong ideas about things. For example, I thought everybody the age of 18 should have full legal rights. I told my committee, there were 10 on the committee and I, as chairman, made 11. I told them, I said, If you're old enough to die for your country at the age of 18, you're old enough to vote. But we also held the door open with respect to certain privileges based on majority such as no drinking until you're 21. But we did, we worked on the Bill of Rights very diligently, and we just didn't waste any time in working on every provision. And I think the disc that I've given you and by the way, when you're done with that, will you send it back or make a copy? Thank you. So and then I got involved in all the other issues that were involved. And I tell you what we were by Legislature granted 60 days in which to be in Convention, and then we were compelled to resign. So Leo Graybill was so efficient, we finished in 56 days thinking we would use the four days of expenses left to do what we could to promote the Constitution. And those that opposed filed a lawsuit and had that stopped. We had opposition from the very start.

Nick Ehli [00:11:34] So you worked with a researcher, Rick Applegate.

Wade Dahood [00:11:38] Yeah. Rich Applegate was probably as fine a researcher as you could ever find. Very bright individual. And he worked for members of Congress, but he was our legal analyst. And I took Rick aside and I told him what I had in mind, why I had those particular ideas in mind. And Rick paid attention. Rick worked for two years before we arrived in Helena, and that's what people should remember. This Constitution was not framed in 56 days. They had a research staff and there was an individual who was in charge of all of the research analysts, and they were assigned to various committees that were set up for the Convention. And when we arrived after our election in November of '71, we had booklets and pamphlets and papers that researched and analyzed all the issues you would expect in a Constitution. So there were years of

study along with the League of Women Voters and all of these research analysts. So when we arrived, we had a great amount of paperwork that was available to us so we could see what is required in the various articles that we were assigned to work on the Bill of Rights Committee papers stacked probably 10 inches high and the research was all done. So we got a lot of time to work on it. And when we started our debate, each committee had a booklet like the one I've given you. And like I say, we were well-prepared for the verbal combat that took place.

Nick Ehli [00:13:41] So how did you arrive at what the what the Bill of Rights should be?

Wade Dahood [00:13:49] What was that question?

Nick Ehli [00:13:50] How did you arrive at? How did you decide what, what should be...?

Wade Dahood [00:13:54] Well, I read everything and of course, I had ideas of shortcomings in my practice of law and of course, taken away what's called a third party lawsuit was a grave injustice to the average work person. That was ridiculous. In other words, if somebody came to work for me driving a truck delivery products and they were injured, for example, how how can they be protected by my workers' compensation coverage? They're not an employee. They're not under my control. And that was never brought up, but in this one case that I had, Ashcraft, where the damages were going to be tremendous there was a reason they have that protection, but it made no sense. The Montana Power never paid for that protection and like I argued, if they don't have any liability, why should they care what condition the premises are in when they bring in a third party to work on a subcontract? So it was quite an issue as far as I was concerned, but I was concerned about everything else, and I was also very concerned about the fact that I could never get a single judge in the years that I practiced law, almost 20, to consider removing sovereign immunity from our law, which meant that a political subdivision could not be sued for negligence and that was based on sovereign immunity from England. It carried over. It was a judge made rule that judges wouldn't change it. Congress wouldn't change it. So I changed it in, uh, Section 18 of Article Two that sovereign immunity is abolished in Montana, although later they partially restored it by providing

the Legislature by a two thirds vote. Could it have sovereign immunity in a particular situation, and everybody was asleep at the switch from that one to the people during that particular election. I think it was 1974 and they put that provision back in. But the basic concept of sovereign immunity was revoked. So I was very strong about kind of condemnation. I tried in the '60s. Until I went to the Constitutional Convention, I probably tried 20 condemnation cases where the state was taken down to build the new highway, and I don't know that you could say this and then the other other big field. But I never lost the case. But we had to hire our own agricultural economist. We had to hire our own surveyors who would have to hire our own assessors. In other words, we had to pay all the expenses that are necessary to try that type of case on behalf of the landowner. And you could have expenses up to ten thousand dollars that even though they won the case, they had to pay the ten thousand. I really felt that was wrong because the state in their condemnation process could spend all the money they wanted. Nobody could question it or nobody would question it. And so I convinced my committee that that was wrong, that if the landowner contested the amount that they were offering for the land and he prevailed, even the dollar more than what the state offered, they had to pay all of it expense. I got that down and I, you know, and I also provided that when an individual serves his sentence, and I was very involved in criminal law, and he's finished with state supervision that he should have all of his rights restored. He shouldn't have to spend a lot of money to hire someone to approach the governor and secure a pardon. We got that. We got a lot of things done. But, you know, once I got involved, I went all the way and I worked with all the other delegates whenever I had the opportunity. Had judicial terms expanded, trying to reduce the effect of politics from judicial decision making. And so we couldn't get longer terms, but we got some increase in terms. The Supreme Court from six years to eight years, the district courts from four years to six years. I guess a lot of that could probably sit here for two hours and tell you about all the things that we worked on. We were there for 56 days. I can tell you this, we worked day and night and we did on Saturday, Sunday. Nothing, just another day.

Nick Ehli [00:19:41] I'd like to talk a little bit about the right to know clause in the Bill of Rights.

Wade Dahood [00:19:46] Yeah, well, there were three sections that were new to the Constitution. The right to know, the right to participate, and the right of privacy. All right?

Nick Ehli [00:19:59] Yeah.

Wade Dahood [00:20:00] The right of privacy was misunderstood by the Fourth Estate, the press. In fact, in Billings, the headlines in yellow "Right of privacy, the right to conceal" that was the headline. That was dead wrong, and all the newspapers took that up. And so we had public meetings with respect to various proposals of the right of privacy was held at the governor's conference room lasted about three hours. The press was there in full force and they were very belligerent and at times some of the comments was rather heated. But eventually we convinced them that the right of privacy had exactly that. We're talking about individual rights that nobody else has any interest in, no real reason to know anything about it. You know, I'm sick and having problems, there's some personal situation that comes up. You know, the right of privacy was determined by the United States Supreme Court some years earlier to exist in the United States Constitution. It was inherent, even though it wasn't stated. Bob Campbell, who was extremely active delegate on our committee. And Bob was a very intelligent individual. He was a graduate pharmacist as well as a lawyer, went to law school after he graduated from pharmacy and very active. And that was the proposal that he really, truly championed. And he was dead right. Finally, after three hours of heated debate, I think we convinced the press that we weren't talking about concealing anything, that this was an individual right that everybody had at what we call the doctrine of the right of privacy. And so that was separate and apart from the right to know and the right to participate, the right to know and the right to participate, Sections Eight and Nine referred to the actions of the political subdivision or the state itself that when they're concentrating on putting together some particular type of mandate, some type of rule or regulation, and it had to be open to the public. They should be told what it is and they should have the right to ask questions and to participate. That was new to the Constitution. So Sections seven, no Sections Seven, or Eight and Nine right to know, right to participate and the right of privacy. The three of them together were new to the Bill of Rights. So I told my committee and I had done a lot of work on it, spent a lot of

time. I said, we're going to fully debate and fully discuss each and every proposal that comes before us and that we talk about. And I said, there's one rule that I'm going to insist upon, and that is things that we do not eliminate a single right of the people from the 1889 [1889] Constitution. Everything that we add has to be something more, something that restores rights, something that expands the right of the individual as a free citizen of this state. And that was our philosophy and I think we carried it out as well as can be done. And I think and scholars have said it, that we've got probably the best Bill of Rights of any state constitutions.

Nick Ehli [00:24:15] So on the right to know clause, can you talk about how your fellow committee member Dorothy Eck and her fellow members of the League of Women Voters pushed for that reform?

Wade Dahood [00:24:26] You know, I can't recall accurately everything about the Constitution, but I think with the Bill of Rights when all was said and done, I think it was pretty close to unanimous, the booklet that I gave you at the end shows how everybody voted. And I think it was almost close to unanimous, let's put it that way. Yeah, but it was all well thought out and that booklet will show you that.

Nick Ehli [00:25:03] So you represented Anaconda, a major industrial stronghold and state at the time.

Wade Dahood [00:25:09] I'll tell you what I was there. I was elected from Anaconda, but in my judgment, I represented the state, the people.

Nick Ehli [00:25:20] So, coming from Anaconda, your dad being a smelterman here, how did that affect your viewpoint on the rights guarantee of a clean and healthful-...

Wade Dahood [00:25:34] You know, I can tell you this. I grew up on the north side of Anaconda, and I hate to repeat this because everybody's got a story like this. We were very poor. We didn't have anything. I still don't know how I could afford to go to law school, but I did. I sure couldn't do it today with the tuition they charge. But I went there and my attitude was a statewide attitude. I wanted what was best for Montana, not just Anaconda or Butte or

some particular section. I wanted a Constitution that fully supported the rights of everybody from state line to state line. And so my thinking was cosmopolitan in that respect.

Nick Ehli [00:26:30] OK, so how did that, did your background, did it affect at all how you were looking at the guarantee of a clean and healthful environment?

Wade Dahood [00:26:42] Well, I thought that's something everybody should want. That was no difficulty for me. I thought we should have a clean and healthy environment, but we shouldn't go crazy over it either and have restrictions that made it difficult for Montana to continue to promote its mining industry and to promote whatever industry it had that required some degree of pollution. It's very difficult to be a manufacturing society without some pollution. And this idea that some people had that we should have a pure environment was ridiculous.

Nick Ehli [00:27:28] So in hindsight, do you think that the clean and healthful environment inclusion has benefited the state?

Wade Dahood [00:27:34] Yeah, I do. I think if we modify where we had to, there were some extreme attitudes that I think we rejected in the Constitutional Convention. And I think the way we finally came to agreement was an attitude that was good for everybody.

Nick Ehli [00:28:04] Ok. So Section Eight in the Declaration of Rights, the right to participation is a Montana original. Can you describe what that means in practice and why it was important to you?

Wade Dahood [00:28:15] It was a Montana original, wasn't it?

Nick Ehli [00:28:18] It was.

Wade Dahood [00:28:24] So what, I really had no trouble with it myself, and I thought it made sense.

Nick Ehli [00:28:30] Why do you think...

Wade Dahood [00:28:31] We should all want that. Yeah.

Nick Ehli [00:28:33] So you thought it was important to include?

Wade Dahood [00:28:35] Yes, I did think so. I wanted to make sure personally and I wanted all the members of my committee to feel the same way that when we finished with the Declaration of Rights, all the rights of the individual were protected.

Nick Ehli [00:28:56] Are there any of those rights that you think are would be? [sic] Which one do you think would be the most indispensable that you established?

Wade Dahood [00:29:12] Well, I think, first of all, you've got to look at those rights to protect an individual from a criminal complaint or from a grand jury indictment. You know, your own individual rights are so important the prohibition against compelling you to indict yourself or incriminate yourself. I think the right to a jury trial is important, and that's in the Declaration of Rights. And the other provisions are all important, but protecting the individual citizen from wrongful complaints in the criminal field was important, making sure that he's not compelled to testify against himself, making sure that he has a jury trial. I think all those things were inherent in the original United States Constitution and are certainly important for Montana.

Nick Ehli [00:30:31] Which one of those Bill of Rights did you view as the most controversial?

Wade Dahood [00:30:35] Most controversial? I think a lot depends on what your individual interests are. By removing the decl-, the sovereign immunity provision, protecting government and political subdivisions from a lawsuit is important to a lot of people because they're very short sighted. They don't really understand what they're standing for. I think restoring a third party lawsuit was very important. I think it made a heck of a difference to provide if you want to take somebody's land to build more highways you've got to compensate them fairly.

Nick Ehli [00:31:25] OK, so the, the right to privacy has been used...

Wade Dahood [00:31:31] And the right of privacy is important. I think we always have it. You know, I would tell Bob Campbell, "Listen, Bob, I said as a lawyer, you know that we have the right of privacy. It's inherent in the United States Constitution. But I agree with you, we should have it spelled out in the Montana Constitution."

Nick Ehli [00:31:51] So it's been used somewhat to strike down anti-abortion, anti-gay rights bills. What's your take on that?

Wade Dahood [00:32:01] And I'll be very candid about it. I wasn't that concerned about the abortion issue. I thought it was being legislated nationally. I thought the Legislature had the right. I guess until Roe versus Wade was 1973 to restrict abortion, I think in many respects it's more of a religious problem than a political problem. But I guess there comes a time when the politicians have to step in and the judges then make sure it's not carried to an extreme. I think eventually we're going to see a Roe versus Wade somewhat modified. I think it's probably going to hold up. It's probably going to end up where the states will make the decision as to what restrictions they want on abortion. Do I personally believe in abortion? I probably don't, and I'm not so sure that... I've ever taken a position on it. I think certainly there is, from a medical standpoint, a point where there shouldn't be an abortion. I just haven't made an issue of it.

Nick Ehli [00:33:40] So I wanted to talk a little bit about this, a Montana legislator recently condemned the 1972 Constitution. He called it a socialist rag.

Wade Dahood [00:33:55] Yeah, that to me, is probably the most ridiculous political statement I have ever heard. A socialist rag, because you protect the rights of every individual? Where have you seen anything happen under the new Constitution that you would call a socialist rag? I challenge anyone to point out a single provision that's been used as a socialist rag. You know, there are some people that just can't accept the fact they never prevailed. And a lot of people that didn't prevail want to attack the Constitution and at any public debate they can't succeed because there's no way to attack it. It's all up to the people. It's all up to the Legislature. It's making sure that the rights of the individual are protected. That is anything but a socialist rag. If anything, it's

probably the epitome, the top political achievement that you could have to protect the rights of the people. I defy anyone to read the Declaration of Rights and point out a single provision of the 35 sections that is not in favor of the people.

Nick Ehli [00:35:19] Every 20 years the people of Montana vote on whether to rewrite the state constitution.

Wade Dahood [00:35:24] That's right. And they've never done that.

Nick Ehli [00:35:25] If that were to happen in 2030, when it comes up next, what part of the 1972 Constitution would you encourage them to keep, change or add?

Wade Dahood [00:35:38] To rewrite?

Nick Ehli [00:35:39] If they were going to rewrite it? What should they...

Wade Dahood [00:35:41] In my judgment, none.

Nick Ehli [00:35:43] And would there be...

Wade Dahood [00:35:44] The work was done that well and it was done with, if you want to assign political affiliation, it was done with Democrats and Republicans and Independents.

Nick Ehli [00:35:57] Would there be anything that you'd add to that constitution?

Wade Dahood [00:36:01] For me right now, I would add nothing. And you know, the judges have had no trouble with our Constitution. The Legislature's really had no trouble with our Constitution. And I don't know that there's anybody around that can say, you know, there's one, right I want as an individual that's not in that Constitution. All the rights that anybody wants to have a successful career as a Montana citizen are in that Constitution.

Nick Ehli [00:36:36] If a new...

Wade Dahood [00:36:37] It was truly drafted for the ages.

Nick Ehli [00:36:42] If a new Constitutional Convention is called, what advice would you give those future delegates?

Wade Dahood [00:36:50] Well, I would tell them they should approach it as we did, as Montanans, put aside all the political strife that's out there in our community and dedicate yourselves to putting together the type of Constitution that people will approach with respect and will understand that it's there for the purpose of making sure that the rights of the individual are enhanced and that all the rights that anybody could reasonably want are provided in the Constitution.

Nick Ehli [00:37:31] So given...

Wade Dahood [00:37:33] And of course, they should also have a provision that taxation be fair and that the school districts be properly protected. You just have to go through it all, and I don't know why anybody would want to bother doing that.

Nick Ehli [00:37:47] So...

Wade Dahood [00:37:48] It's done.

Nick Ehli [00:37:49] Given today's entrenched political divisions, how do you think a Constitutional Convention would be different today if we had one?

Wade Dahood [00:38:00] You know, I don't know if it would be that much different. I know there are provisions in there that we have now that are absolutely necessary for protecting individual rights, that, in all probability, might not pass today. People just aren't paying enough attention to government like they should. I'm not so sure the third party lawsuit would be that important today. I'm not so sure with the influence of insurance companies, sovereign immunity would be that important today. I don't know how important... Eight, Nine and Ten would be to people because it's all in the abstract and when county commissioners meet, the Legislature meets, there's just not that much attention being paid by the citizens, so I don't know that it would be that important today as it was then.

Nick Ehli [00:39:17] So do you think that it would be possible with the political divisions that exist? I mean it seems like you were all able to set that aside.

Wade Dahood [00:39:26] Yeah, we were able to do that. Could they do that again?

Nick Ehli [00:39:29] Yes.

Wade Dahood [00:39:29] They should be able to. Will they do it again? I don't know that.

Nick Ehli [00:39:37] Um. What is your most lasting personal memory from the Convention?

Wade Dahood [00:39:43] Pardon?

Nick Ehli [00:39:44] What's your most lasting personal memory from the Constitution?

Wade Dahood [00:39:52] I think my most lasting member of memory of the Convention was probably on the 56th day, it was time now to sign the Constitution. And there were some older delegates from eastern Montana that I know were not going to campaign for the Constitution and yet all 100 locked up, solidly signed the document. I must admit, when the last one signed, I had tears in my eyes. I thought that was a magnificent gesture that, that established the success of our Constitution and the Constitution itself in my judgment, and I got involved a lot of litigation... In fact, six, seven years ago, I finally settled a class action suit involving Montana Power for 115 million, and I've had a number of million dollar settlements. I put them all aside. To me, my most important achievement as a lawyer is serving as a Constitutional Convention delegate. I think in the 20th century, the Montana Constitution, which was the only one passed during that century, 1972, was the outstanding achievement of my career. And as a lawyer, I think I take more pride personally in the Constitution of Montana 1972 than any other achievement as a lawyer.

Nick Ehli [00:41:52] One last question for you. Your parents emigrated from Lebanon.

Wade Dahood [00:41:57] That's correct.

Nick Ehli [00:41:58] What did it mean to you as a son of immigrants to have the opportunity to help write the constitution of an American state?

Wade Dahood [00:42:08] That's a great question, and I never considered it. I'm going to consider it now. I think it's... An honor that should be remembered and cherished and respected. I achieve success as a lawyer, as a son of immigrants, and I don't know how they could afford to send me to school, but somehow I made it and I worked very hard. I've achieved a great deal. Well, I built this building 40 years ago, paid for it without any debt. So but I worked hard and I put no restriction on my time. And so I consider that a great honor that I've been able to graduate from law school, join a successful lawyer in Anaconda and become a successful lawyer myself and meet individuals like Emmett Barrett.

Nick Ehli [00:43:23] OK, well, thank you so much for your time today, Mr. Dahood.

Wade Dahood [00:43:26] That's it.

Nick Ehli [00:43:26] We certainly appreciate it.