

48 Nevern Square  
London SW5  
17 July 1976

Mr. Howard P. Willens  
Wilmer, Cutler and Pickering  
1666 K Street NW  
Washington, D.C.

Dear Howard,

How good it was to get all that stuff from you a week ago. But it did come at a bad time, given our involvement in the move to London. However, I have put in a good deal of time albeit some on trains between Cambridge and here.

I have read all the material, at least twice, and have rough comments for you. In the interest of having something on your desk as soon as possible I have polished up only my reactions to your criticisms of my draft, to get in the mail tonight. The other material will follow shortly, perhaps over the weekend.

Let me say that I am writing this for your eyes. Indeed I consider my responsibility directly to you. You can use the material any way you see fit, though. You may think my statements a bit too strong to be circulated among the younger participants in this process but I leave that up to you. If you would like me to recast my remarks for general consumption I will be happy to do so.

Assuming you will get this note about Tuesday, I will plan to be in my study both Wednesday and Thursday from about 3:30 until 5:00 or so your time should you want to call me about anything. Tel (01) 270-1010 or if not answer for some reason try (01) 373-3452.

Anything on the summer schedule yet? Cheers.

Sincerely,

John P. Wheeler

17 July 1976

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From: Jake Wheeler

To: Howard Willens

Subj: Reactions to Your Comments on My First Draft, dated 7 July 1976

First a couple of caveats. My draft was intentionally overwritten. It is easier to take out--usually--than to add. I also did not know (and do not know now) just what other materials will be given to the delegates. With these matters in mind let me take up your points in the order you raise them.

(1) Oddly this was hard for me to write, since it consisted mainly of trying to say something I have said often before--but in a different way. I do think that most of the matters should be dealt with. The delegates need some discussion of the convention, but if they will have the Manual or some other such device, then discussion need not be repeated in our stuff although an updating may be called for. The specific reference to consultants and any other inappropriate reference may simply be edited out. That is the kind of judgment you must make and since my name is not to appear on any of this I have no pride of authorship to defend. While I agree that much has been written on this and that an oral presentation to the committee is wise, I still believe that the delegates need something on the role, purpose and organization of a convention. Will they have the manual or something like it?

(2) Again I leave this to your judgment. I included the material on the bill of rights, etc., simply as illustrative of what the covenant had done and what the convention can still deal with. Actually the covenant does precious little and the convention has most of the pie. As you well understood I did draft this with the criticism of the project which you had shared with me in mind. The latter part of the paragraph is the position which I have hoped is the case. However, I felt unsure that this could be sustained. I am glad that it is legally sound and can be dealt with in a redraft, ~~though I had~~ subject to your close scrutiny and suggestions.

(3) No problem. Can do.

(4) Here I return to critical remarks that I make more fully in other sections of my overall response--which unfortunately you will only get later. Why not include here the kind of introductory statement to the papers which you suggest? Then proceed to present in an average of 10-15 pages each the broad issues, both practical and philosophical, which will come up in each problem area. I refer again to the models of the PAS Alaska studies and of Salient Issues. Whether that average is sufficient or not, we should strive to restrain the number. (As I indicate elsewhere I am overwhelmed by the plan to submit to the delegates a publication of 700-1000 pages).

~~(5)~~ Now for style. (1) My early experience in journalism still shows through, for the better I hope. However, I may get too jazzy at times and indeed violate the New York Times tenet about not allowing editorial matter to creep on page one. But I think there is general consensus among students of state constitutions (and not just academic ones) that there are precious few good state constitutions.

Some obviously are better than others. None, including the Model, should be presented as a guide to be slavishly followed. I do feel strongly that the Alaskan and Hawaii constitutions may be among the ~~the~~ most appropriate which might be emphasized. I doubt that one can cite authority for a proposition that a particular constitution is poor or good. All one can do is explain the guidelines for a good one and judge particular constitutions against them.

(2) Again no problem. This is the kind of thing you need to tell me.

On this point though is it correct to assume that the people of the Marianas will not be put off by things "American"? That is, may I assume that they are interested in American institutions and, in general, think them good? Or at least acceptable. How closely do the values they seek to preserve and further accord with American ones? Where are the conflicts?

(3) Here I am in a quandary. Unless the citation really is necessary or conveys information in itself, I am inclined to leave it out. These are not papers designed for academics passing judgment on one's research qualities. Nor as I understand it are they the kind of thing presented to the more practical law journals. They are being written for the delegates--garden variety citizens who are interested in help on the job which lies ahead of them. I can certainly put in whatever documentation you think necessary to preserve a standard format, but I do hope we can avoid the infras, the supras, and the op. cit. Let me know the guidelines.

(4) Perhaps somewhere between the style of my draft and that of the papers lies the happy optimum. But perhaps understandably I think it a bit closer to mine! It is the teacher in me as well as the reformer to want them not only to read the material but to understand it and even enjoy it. While my style may be too breezy I feel the briefing papers--if the judiciary is typical--is too structured, too formal, almost mechanical. I do not criticize the quality of the legal research done--except as I have done elsewhere in regard to "how many states do it this way"--but I find it hard to separate what is truly important from what is not, what is constitutional from what is otherwise. There is too much an effort to be "objective," to avoid taking sides, and the end result may be to take sides inadvertently by suggesting not that point "A" is preferable to Point "B" but that something on that subject should be in the constitution in the first place.

Frankly, I am not quite certain how to interpret your remarks on this aspect of style. Can you be a bit more specific about how you want me to cast my stuff?

Your outline is certainly as good as mine and I can accommodate my writing to it. Do you want me now to proceed to rewrite with that outline and your criticisms in mind? To save time, I shall do so unless I hear from you to the contrary via telephone, telex or mail.