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**MY GLORY DAYS:
HOW I CAME TO BE IN THE RIGHT PLACE
AT THE RIGHT TIME**

Mae Nan Ellingson

During a recent interview with National Public Radio's Supreme Court correspondent Nina Totenburg, regarding a brief filed by Montana Constitutional Convention delegates in the Supreme Court case of *Espinoza v. Montana Department*, she asked, "How in the world did you, at the age of the 24, come to be the youngest delegate to the 1972 Montana Constitutional Convention?" I was tempted to reply tongue in cheek, quoting the Len Manuel Miranda's Alexander Hamilton: "By Working a Lot Harder, by Being a Lot Smarter."

There is some truth to the first part of that quote. But only a small part. The fact is, I was in the right place at the right time. And how I arrived there is a matter of circumstance, fate, and a very fortuitous decision. This is the story of possibility in time and place. It is the story of my relationship with Montana: how I got here, came of age here with a detour along the way, and how its Glory Days would not only be mine, but last me a lifetime.

The first time I saw Montana was through the windows of a 1962 red Plymouth Valiant, early in April of 1966. It was also my first time camping. I was on a car-camping honeymoon to Montana, the home of my new husband, Barry Robinson, a native of Big Fork. After a tour of duty as a helicopter pilot in Vietnam, Barry was stationed at Fort Wolters in my hometown of Mineral Wells, Texas, instructing the next batch of newly commissioned Chief Warrant Officers how to fly UH-1 Hueys. Ninety-five percent of all the helicopter pilots who flew in Vietnam passed through the Primary Helicopter Center at Fort Wolters. The whirl of helicopter rotor blades was the omnipresent sound in my town from 1956 until 1973.

"Jimmie's" was my family's drive inn restaurant and where I and most of my eight siblings worked during our childhood. As the second eldest, I started carhopping at seven and continued until I left home. I have no idea of how many trays I set on the window ledge of the cool cars of many so-called "fly boys." Over 41,000 pilots were trained at Fort Wolters over 17 years in operation. At the peak, it was sending 575 pilots

per month to Fort Rucker for advanced training before heading to Vietnam.¹

In between taking and delivering orders, I studied at the end of the inside counter with its 17 stools. I would start work as soon as I got home from school, work until 2:00 a.m., get up, and walk to school. Junior high and high school were a three-mile jaunt. I was a good student, involved in student government, and had some wonderful teacher-mentors who encouraged me. In a small town like ours, it was well known that the Windham kids had a pretty hard life, as did their mother, and encouragement and support from outside was important to me. I had dreams—pipe dreams, really—about going to a prestigious eastern college like Vassar, which I learned about in reading Mary McCarthy's *The Group*. That sounded like a very exciting place. But upon graduating from high school in 1965, armed with a \$1000 Miss Future Teacher of America scholarship, a more achievable goal was the University of Texas. But even that was out of reach. We did not have the money, and I was needed at the drive inn. Fortunately, Texas had very good junior colleges, and Weatherford Junior College was only 17 miles away, which enabled me to commute daily and work at the drive inn.

During the 1965 Christmas season I took a second job at the local Ben Franklin. One afternoon a good-looking blue-eyed army officer in his dress uniform came in and bought some wooden suit hangers. As I checked him out, we exchanged smiles, and I noted the name on the check he had written, CWO Barry W. Robinson. Two days later he returned for more hangers, this time with a fellow officer who managed to extract my name as well as my usual presence at the drive inn.

Both started frequenting Jimmie's. License plates and the make of cars were the keys to my remembering where to deliver orders. Barry's red Plymouth Valiant was the only car that I ever served having a black "Treasure State" license plate. Indeed, he was the only Montanan I had ever met. A courtship ensued, mostly through a car window while delivering hamburgers to other customers but with occasional dates to Fort Worth, 47 miles away, or the Officers' Club at the base. Four months later, in true "Officer and Gentlemen" style, we were married.

When we headed to Montana on our honeymoon in April of 1966, I had only a vague notion of what to expect. Most of what I had read about Montana was from a much earlier time, informed largely from Barry's collection of Montana history books—*Trails Plowed Under, Before Barbed Wire, The Big Sky, High Wide and Handsome*, and lots of books

1. James R. Chiles, *Where Huey Pilots Trained and Heroes were Made*, AIR & SPACE MAGAZINE, Sep. 2015, <https://www.airspacemag.com/history-of-flight/heroes-fort-wolters-180956245/>.

about Charlie Russell and his art. One early date was to the Amon Carter Museum in Fort Worth which still houses a world-class collection of the work of Charles M. Russell and Frederick Remington. Never having seen an oil painting or sculpture in person, I was awed. And that awe, both for the art and its landscapes, was something I shared with Barry and has grown to a passion over the years.

Driving to Montana from Texas is a good way to see the Rocky Mountain west for the first time. Camping in Rocky Mountain National Park, a first for me, exposed me to beauty I had never experienced—the gurgling of clear mountain springs and creeks, the smell of pine and spruce trees, the songs of new kinds of birds, the morning smell of coffee and bacon being cooked over a camp fire. It was good. As we made our way north along the Rockies, a majesty and beauty rolled out before me. I also started to see remains of old placer and sluice gold and silver mines in Colorado, which precipitated some discussions with Barry about the meaning of that Treasure State license plate and the State's motto: Oro Y Plata.

Then we reached Wyoming, camping in the stunningly beautiful Tetons. The next day we hit the Montana border at nightfall. Seeing only an occasional light in the distance and very few cars for miles and miles, I wondered if Montana was really out in the middle of nowhere. I was relieved when the lights of Missoula appeared. The next morning, as we walked around the University of Montana (“UM”) campus, I was surprised to see people in shorts and out sunbathing in 45-degree weather. Then we headed toward Big Fork where Barry's parents lived. On first seeing the Mission Mountains and Flathead Lake, I knew there could not be anything more beautiful. But I was mistaken. The next day we went to Lake McDonald in Glacier Park where Barry's father worked as a caretaker for some of the private holdings around the Lake. Tramping around Lake McDonald on snowshoes on a bright, clear, but chilly day and seeing the mountain peaks in the distance is a memory that I have carried for 54 years.

When Barry was discharged from the Army in 1967, I was willing and eager to move with him to Missoula for his smoke jumper job with the U.S. Forest Service. I felt some guilt about leaving my mother and younger siblings to run the drive inn. But my mother encouraged me to go, particularly if Barry made good on his promise that I would get a college education. After we married, I received my Associate Degree at Weatherford College, so when we got to Missoula, I enrolled for my junior year at UM, and we settled into married student housing at the base of Mount Sentinel.

I soon realized that all of that blue sky and clean air that I had seen in the Missions did not exist most days in Missoula. The air had a rotten

egg smell and there were days when it was not possible to look out the window and see Mount Sentinel, a mere 1000 yards away. In short order I learned the culprits: the Horner Waldorf pulp mill, the numerous teepee burners throughout the city and county, fireplaces, and the fact that Missoula was tucked in a valley that captured all the pollution.

I remember a local morning call-in show on KYLT radio with a Russ Limbaugh-type provocateur named Ric Webb. One morning when the air was particularly vile, with the outrage and naïveté characteristic of a know-it-all newcomer, I called in to voice my heartfelt concerns about the air pollution. I had quite an accent which Mr. Webb immediately picked up, and he asked where I was from and how long I had been in Missoula. My three months did not impress him. The ensuing caller said: “Ric, you know that little gal who just claimed to be a Texan? Well she’s as phony as a \$3 bill. I have been to Texas and they don’t speak like that.” My first Montana lesson—it is the messenger, not the message. But that did not deter me, and I continued to call in.

The Ric Webb show was a good public forum, and the only forum for airing the issues of the day. And increasingly, environmental issues were getting more airtime. I started attending meetings of GASP—Gals Against Smog and Pollution—an organization whose purpose was to enforce the implementation of Montana’s 1967 Clean Air Act. GASP’s efforts included study groups, petitions and rallies to pressure elected officials to take action. But the main target was Hoerner Waldorf. My first act of environmental activism was joining GASP members in a march on Hoerner Waldorf on Leap Day, 1968.

But Barry’s desire to fly helicopters was a stronger pull than Montana and smoke jumping, and in the late spring of 1968, he left for Anchorage, Alaska. I planned to follow when the University let out for the summer, but two immense things happened. It is hard to describe the impact of Martin Luther King’s assassination in April, followed by the assassination of Robert F. Kennedy in June. A fellow political science student and friend called to tell me about RFK’s assassination. We sat in her apartment in married student housing in grief and disbelief, sobbing uncontrollably. This country seemed so full of hatred, division and fear.

And nowhere was this more evident than at the Democratic National Convention held in Chicago that summer, which I watched from Alaska. Bill Daley, Chicago Mayor Richard Daley’s son said, “1968 was one of the most dramatic and traumatic years in the nation’s history.” Walter Cronkite noted on August 25 CBS news, “The Democratic Convention is about to begin in a police state. There just doesn’t seem to be any other way to say it.”

The move to Alaska provided a break for me, a new perspective. I was no longer on a campus and was working as a teller in a branch of the First National Bank of Alaska.

Alaska was challenging, exciting, and remote. The days became very long as the winter equinox approached. Barry worked ten days on and ten days off and I was frequently alone. Mail took four to six weeks to arrive from anywhere, and the high cost of telephone service made it difficult to keep up with family and friends. Those pre-internet days, along with the time zone difference, made Alaska seem like a different country. My bank was located next to a bar and near some car lots, multi-family housing projects, and pawn shops. I learned about flooring, financing cars, and the struggle of dealers to make a living. I saw the impact of alcohol on Alaska Natives as they came into the bank, totally inebriated, to cash their monthly allotment checks. I felt a maternal, yet patronizing instinct, encouraging them to open a checking account instead of taking the cash. The majority of my workmates were women whose husbands were stationed at the military bases, all eager to build new friendships.

Much of my Alaska life centered around Barry's work and the natural wonders of this extraordinary state. I was quickly exposed to the issues associated with the development of its natural resources and need for protections. In the early '60s, oil had been discovered in the Cook Inlet south of Anchorage, and drilling platforms were popping up everywhere. Barry had taken a job flying workers and supplies to these platforms, working for a company owned by Carl Brady, a close friend of then Governor Wally Hickel.

As in Montana, the discovery of gold in Alaska led to some early migration. There were other similarities: vast landscapes with abundant natural resources, indigenous people, and a sparse population. Much of its land was accessible only by plane. For many years the call of the wild had been enticing all sorts of gold seekers and adventurers to the "Last Frontier." The valleys between the mountain peaks and sparkling rivers were littered with abandoned cars, oil barrels and the detritus of seemingly itinerant settlers just picking up and moving on. The general attitude was use it, abuse it, and move on. It was startling to see so much large-scale litter—perhaps something only newcomers notice, and reminiscent of the eyesores I noticed near Glacier Park in 1966.

Alaska's pre-statehood Constitution, approved in 1956 and effective on statehood in 1959, established a public trust for its natural resources. In March of 1968, the State had plenty to be excited about. Oil was discovered in Prudhoe Bay, a 100-million-acre chunk of land that the first governor had fortuitously selected to receive from the federal government under the Statehood Act. That and subsequent discoveries raised all

the questions of how these resources can be developed while protecting the environment and honoring the rights of the indigenous people. Wally Hickel was the second Governor, and he embraced the notion embedded in the constitution that the environment was a sacred trust to be protected for the people of the state. Trying to find the right balance, he oversaw the early development of the Prudhoe Bay oil fields. There followed years of debate about the impacts of pipelines to get the oil to market. After OPEC-caused oil shortages, the federal government passed the Trans Alaska Pipeline Authorization Act in 1973. It was not until 1977 that oil started flowing. But the discovery of oil on Prudhoe Bay, the largest oil field in North America, was and still is an economic boon for Alaska and its people. Although its production is dwindling, it has paid for most of Alaska's government services for over 40 years. Similar to Montana's Coal Severance Tax Fund, a portion of the state's oil revenues was set aside for future generations as part of the Alaska Permanent Fund.

After Nixon's election in November of 1968, he sought to appoint Hickel as Secretary of Interior. Hickel eventually accepted, only to be dismayed that his appointment was opposed on the grounds that he was anti-environment. His nomination was approved and his reputation as a strong conservationist has, for the most part, been maintained. But his mettle was seriously tested with the massive oil spill off the coast of Santa Barbara, the third largest spill after the Deepwater Horizon and Exxon Valdez spills. The public was outraged about the damage to marine life. Secretary Hickel initially faltered in his handling of the disaster. He called for a moratorium on all off-shore drilling pending a complete reassessment of the situation. But he allowed drilling to resume after a closed-door meeting between oil and government officials of his office. Hickel strongly advocated for legislation to place the liabilities for these types of spills on the oil companies, demanding all appropriate environmental safeguards for this growing industry. Public reaction to the Santa Barbara oil spill is credited with the passage of the National Environmental Protection Act of 1970 ("NEPA") and establishing the first Earth Day. Hickel encouraged President Nixon to make Earth Day a national holiday.

The importance of NEPA to the environmental community, the country and Montana cannot be overstated. It preceded the enactment of Montana's Environmental Protection Act by a year. "In the several years after the spill, more environmental legislation was passed than in any other similar time in history."² In light of the current attempted rollback of many environmental provisions, it is notable that NEPA received solid bipartisan

2. Corwin Miles, *The Oil Spill Heard 'Round the Country*, LA TIMES, Jan. 28, 1989.

support. It was introduced in the Senate by Scoop Jackson of Washington in 1969, only a month after the spill. It passed the Senate unanimously in July, passed the House of Representatives (372-15) in September, and was signed into law by President Nixon on January 1, 1970.

The day after the Santa Barbara spill, my husband's helicopter crashed in the Cook Inlet while flying a passenger and supplies to an off-shore drilling platform. The body of the passenger was recovered, but Barry's was not. Medical experts surmised that his heart had stopped beating within 10 seconds of plummeting into the icy waters when the windows shattered around his cockpit. Wally Hickel called to express condolences.

Now a widow at 21, far removed from my Texas family, and with fragments of a life in Montana, decisions had to be made. Alaska was beautiful and remote, but I was alone. The significance of my decision to return to Missoula astounds me to this day. By chance it put me in the right place at the right time to be involved with something important. And being in the right place at the right time demands a resilient mental state.

UM and I had metamorphosed since I left for Alaska in 1968. I was the 21-year-old widow of a conservative Vietnam veteran. The anti-Vietnam war sentiment was starting to erupt. Notwithstanding the tumultuous events of the previous nine months, my horizons were pretty limited. My persuasive high school American History teacher, Mrs. Winnie Fiedler, had left me determined to follow her footsteps. So, I continued pursuing history and political science with an eye toward teaching American Government. The faculty in the history and political science departments was stellar and I was ready to study and learn, and also to question—a new skill for me. I was fertile ground for charismatic professor, K. Ross Toole, along with my fellow students. He had deep roots in Montana and great insights into its history. He developed the quarterly, *Montana: The Magazine of Western History*, and wrote *Montana: An Uncommon Land*. In 1965, he accepted the Andrew B. Hammond Professor of Western History at UM which he held until he died in 1981. In his standing-room-only class, *Montana and the West*, I learned about Montana's chronology, and the economic and political forces that shaped, and continue to shape, its history and politics.

After completing my student teaching and a BA in history, I began graduate work in political science with a teaching assistantship under Dr. Ellis Waldron, whose expertise included government and elections. And I revised the Handbook for Local Government Officials, a publication of the Bureau of Local Government at UM. Coincidentally, the Handbook

had originally been written by another student of Dr. Waldron's, Dale Harris, who later became the Executive Director of the Montana Constitutional Convention.

My work with Dr. Toole and Dr. Waldron focused on Montana history and government, but national issues were also crystalizing. Before attending UM, I had little exposure to intellectual and liberal thought. I wondered if my reactions to the assassinations of MLK and RFK would be different if I was still working at Jimmie's. Growing up in a town that trained Vietnam pilots, and having a spouse who suffered terrible PTSD, I had not questioned the war. In high school I saw the sons of the upper class beat the draft with deferments or the National Guard, while my working-class friends served and died. Even at 17, I resisted the role of class and privilege in our country. But I did not question the war itself. After the Democratic Convention, the tide turned. It was no longer just "hippies" who questioned the war. I had my own misgivings.

The Kent State shooting in 1970 was my turning point. On the oval at the UM, I joined a protest against its treatment of college dissidents—my second act of protest. For me, it was not so much a protest against the war, but the right to protest. I shared this with Wally Hickel. Ironically, it was his criticism of Nixon's practice of demeaning protestors during Kent State that got him fired as Secretary of Interior. He wrote: "Regardless of how I or any American, might feel individually, we have an obligation as leaders to communicate with our youth and listen to their ideas and problems." This letter was leaked to the press, and Nixon sacked him. Afterwards, he said: "I'm going with an arrow in my heart and not a bullet in my back."

While protesting did not come naturally to me, compassion did. It was an essential part of my identity. That is why Dr. King's assassination so profoundly affected me. How could one could grow up in a segregated south and not feel guilty about "white only" signs at swimming pools, and separate entrances at almost every establishment?

I was part of that system. At Jimmie's, I could wait on black people, but I could not place a tray on their car door. I delivered their food in a paper bag and told them they had to leave. I knew it was wrong. But it was the custom. One particular memory of a cold winter night in 1962 sticks with me. It was a 9:30 p.m. weeknight, and business was slow. My mother and I, and a few kids were the only ones at the drive-in when a black man came to the door and asked if he could come in. He was on foot and needed food and warmth. I left him at the door to ask my mother if he could stay. She said no. I protested: it won't hurt anything! It was clear to me that she agreed, but she feared word would get out and hurt the business. Amazingly, she agreed let him stay and cooked a meal for him.

He ate, thanked us profusely, and went out in the cold night. It was not lost on me that economic fear can prevent people from doing the right thing. I remember the year because it was right before school desegregation.

On returning to campus in 1969, music became ever more important to me. I remember loving Patsy Cline on our juke box at Jimmie's. Music has always been a comfort, but it became much more in the late 60s. Peter, Paul and Mary, Woody Guthrie, and Bob Dylan, all ushered in a decade of music conveying urgency and provocation. As did Woodstock—400,000 young people gathering at Max Yagur's farm in Bethel, New York, to envision peace and listen to the most iconic music of the era.

I never considered going to Woodstock, but it came to define our generation and for me, to foster an idealism and sense of greater possibilities for action. Songs addressed all the issues of the day—the war, the environment, civil rights, women's rights. And it did not stop with Woodstock. As the war raged on the songs became more focused and compelling. Barry McQuire, Dion, Crosby, Stills, Nash and Young, Marvin Gaye. Then Joni Mitchell's wake-up call, "You don't know what you've got 'til it's gone." The music was a riveting call to action on environmental degradation and social justice.

We were also experiencing a nationwide movement for better and more open state government, which fostered interest in updating state constitutions. This was partly in response to U.S. Supreme Court reapportionment decisions such as *Baker v. Carr* and *Reynolds v. Simms*. The Court held that reapportionment was subject to judicial review, and additionally, that the Equal Protection Clause of the 14th Amendment required state legislatures to represent people—not cows, trees or geographical boundaries. This "one man, one vote" requirement was at odds with many state constitutions. In 1970, John Gardner, former cabinet member under President Lyndon Johnson, founded Common Cause, a citizens' lobby. Among other things, it focused on campaign finance reform and open government or "sunshine laws." The League of Women Voters became actively involved in the cause of structural change that would result in better state and local government. A consensus was growing that rewriting or amending state constitutions was overdue. The Montana League took a leadership role promoting a rewrite of Montana's Constitution.

As a result of their efforts and the legislature's bipartisan support, Montanans voted in favor of calling a Constitutional Convention to rewrite the State's 1889 Constitution. 100 delegates from counties, based on population, would be elected across the state. Missoula County was entitled to 8 delegates who must be at least 24 years of age. The convention would convene in Helena in 1972, after primary and general elections in 1971.

During this period, I continued my work in the Political Science Department and began researching the role of political parties in the 1971 Legislative Session for my thesis. My course work and the Local Government Handbook gave me solid background about many aspects of Montana government and the shortcomings of the Constitution. Dr. Waldron must have recognized this, and my enthusiasm, when he suggested that I file to be a delegate to the Convention.

Having turned 24 in June, I was just barely eligible to run, but it did not seem likely to me that a graduate student who had lived in Montana only four years could be elected to such an important position. Nevertheless, I was in the right place at the right time. My academic experience and eagerness to try to make a difference outweighed my doubts. I had nothing to lose but the election.

Candidates for delegates could run as Democrats, Republicans, or Independents, and I had to declare my affiliation. A few years earlier, that would have been a snap decision. On our junior high basketball trips, while my teammates were sitting in the back of the bus singing 99 bottles of beer on the wall, I was sitting right behind Mr. Crosier—teacher, coach, and conservative farmer-politician. My dad was a staunch Republican prone to tirades about the damn AFL-CIO, Walter Reuther, the Teamsters, and Democrats who wanted something for nothing. Some of that must have rubbed off on me. I was also influenced by Ayn Rand's writings and thought laissez-faire capitalism made sense. In addition to carhopping, I worked in a grocery store, had a Christmas tree stand at Christmas and a firework stand for the 4th of July, sold snow cones at the rodeo, and worms for fishing. I was the "pull yourself up by your bootstraps" mindset, and a Goldwater supporter.

By age 24, I was no longer certain that America gave everyone an equal shot at success. But the doubts began earlier. You can't live in the segregated south and believe that everyone has an equal chance. Even though my family was referred to as poor white trash, I knew we had a better shot than the black families in Mineral Wells. In our segregated school system, the "colored schools" had the oldest facilities, most outdated textbooks, and the worst equipment. In high school, and after the election of John F. Kennedy, I believed that the Civil Rights Act of 1963 was critical to making equal opportunity real. But even though I became a big fan of JFK, I did not see myself as a Democrat.

When the Civil Rights legislation passed, Republicans supported the legislation by greater percentages than Democrats. That was the case for all of the four bills from 1957–68, known as the Civil Rights Act.

Southern states were largely Democratic, where there was minimal support. And, my past association with Republican Hickel also kept me in tune with Republicans.

In Montana, my graduate work indicated that Republicans tended to be more rural and business oriented, and Democrats tended to be more urban and labor oriented.

Neither party had taken a position on launching a convention, and I was not aware of any partisan divide on constitutional issues. Neither did it appear, at least to me, that one party favored the environment more than the other. As I learned from Dr. Toole, the Anaconda Copper Company had controlled members of both parties as well as the courts. I became aware of the work of George Darrow and Harrison Fagg, distinguished republican legislators and environmental leaders from Billings, who made me think that the Republican Party would be a good fit for me. I also visited with three Missoula Republican legislators, Bud Ainsworth, Tom Haines, and Bill Worden, all of whom encouraged me to run. I think they were eager for some youth in the party.

But I was also becoming more aware of the good work of our U.S. Democratic Senators, Mike Mansfield and Lee Metcalf, and their leadership, particularly Senator Metcalf, on environmental matters. I knew that President Johnson could not have advanced the Civil Rights bill without the help of Senator Mansfield. But I was not sure how that played out within the State.

In any case, Dr. Waldron was very clear that he thought I should run as a Republican. At the time, I was reasonably comfortable with that decision.

While neither party took a substantive position on a convention, a number of Republican candidates opposed any major constitutional changes and were concerned about negative impacts on business, particularly Hoerner Waldorf. (Interestingly, those candidates were not elected in Missoula.)

Sixty-four people filed for Missoula County's eight seats. The 1971 primary election narrowed the field to 24: eight Republicans, eight Democrats, and eight Independents. In the November general election, four Democrats and four Republicans were elected. I was shocked and gratified that I had received the second highest number of votes after John H. Toole. To this day, I find that vote remarkable. Maybe my hard work and my newfound understanding of constitutions were key. But I went door-to-door in every district in the County and spoke at every event I could wrangle. There were a number of community forums at which all of candidates were invited to speak. I did not miss one. The League of

Women Voters and the Missoulian played a big role in educating the populace about the convention and the Constitution, resulting in a lot of free advertisement. This was beneficial to me as I had a pretty paltry campaign chest. The endorsement of the Missoulian and other organizations also helped prove me to be a *bona fide* candidate.

I do not recall how much money I raised. I did not know many people, but everyone I met, including Barry's smokejumping buddies, helped with fundraising. It was most definitely a campaign of small donations. Earlier, when I was getting established, I had developed a friendship with a local banker. He was a Republican, knew a lot of people, and was willing to raise money for me. It was not until we filed a campaign report that I realized many of his donations had come from bar owners. At the time, Montana's Constitution prohibited gambling, and as interpreted by Attorney General Robert Woodall, this prohibition included bingo and lotteries. A new constitution or a constitutional amendment was the only game in town, and the tavern owners were hoping to have an ear at the convention. (As to that issue, I think the Constitution would probably not have been approved if the legalization of gambling had not been placed on the ballot as a side issue. In order for gambling to be legal, voters had to vote in favor of the new Constitution.)

Missoula County sent a strong and balanced delegation to the Convention. The eight delegates included four women: two Republicans, and two Democrats. The four men were evenly divided between the parties. We had two lawyers; an economics professor; a documents librarian at the University; an architect and wife of a University professor; a nurse who had served on the Missoula City Council who was also the wife of Professor Payne and the top vote getter; and an insurance professional, John Toole, who was the grandson of John R. Toole who had served in the territorial legislature and was a delegate to the 1889 Constitutional Convention. I was one of 19 women elected to rewrite Montana's Constitution. In previous legislative sessions, only one or two women ever served simultaneously.

Shortly after being elected, my "real" political education began when I received a call from a gentleman that I had met at one of the forums in October. He re-introduced himself, congratulated me, and offered to help find housing in Helena. I was still basking in the miracle of the election and was touched by his thoughtfulness. When I mentioned his name to Dr. Waldron, he became unhinged. He said, "Mae Nan, that man is a lobbyist for the Anaconda Copper Company! You cannot, you must not allow yourself to become ingratiated to a lobbyist, most especially a lobbyist for the Anaconda Copper Company or Montana Power Company. It will taint you and your work!" I was dumbfounded, but even more, I was

fearful that I had let Dr. Waldron down. Was I already tainted? I immediately called Mr. Crippen and told him that I appreciated the offer of assistance but would find housing on my own. It never occurred to me that there was any motive other than kindness. But maybe, possibly, Dr. Waldron was just being overly protective.

I learned quickly that being nice and being helpful are the key ingredients in successful lobbying. But I had now learned caution, and I stayed far away from paid lobbyists during the Convention. I was not alone in that regard, and it is interesting that many lobbyists commented that the delegates to the Constitutional Convention were by and large a very unapproachable bunch.

Much has been written about the 1972 Constitutional Convention and the extraordinary document it produced. My goal is not to echo those accounts, but rather, to share a part of the proceedings that challenged and inspired me; to relate my experiences in being a part of this history; and to acknowledge the relationships, friends, and opportunities that came my way as a result.

The elected delegates convened in Helena on November 27, 1971, for a special dinner and preliminary organizational meetings regarding leadership and procedural matters. During the day, the assembled delegates heard from 13 members who expressed an interest in serving as President. Afterwards, a Democratic Party caucus was held to determine their nominee. Comments in the transcript indicate that the Republicans did not have a caucus. In any case, I was not invited and did not attend any caucuses.

On the morning of November 29, all 100 delegates assembled in the chambers of the House of Representatives, which was called Constitutional Hall during our proceedings, for a very formal and regal opening session that befitted the gravity of what we were about to undertake. Alexander Blewett of Great Falls, chair of the Constitutional Revision Commission, presided. After Governor Forrest Anderson was escorted to the podium, Mr. Blewett presented him with the pen and gavel used by William Andrews Clark in presiding at the 1889 Constitutional Convention. After the introduction of all elected State officials, Supreme Court Justices, Legislative Leadership, and Mr. Samuel Witwere, President of the 1969-1970 Constitutional Convention of Illinois, Governor Anderson addressed the delegates and gave us our charge. Governor Anderson was in his second term as Governor and had been the foremost leader in reorganizing the executive branch.

He began with a scholarly summary of what a state constitution should be, but it was his other remarks that had a more lasting effect on me. He noted that the 1889 Constitution reflected a distrust in government

that was prevalent when it was written, and he urged a very different path. In his words, we had “an opportunity to initiate a new history—a history of dynamic and responsive state government.” Further: “Those who came before us changed a wilderness into a state. We have fought to lift this state up from its colonial status in the national economy. We are working to preserve our unequalled environment. We have undertaken many programs to improve our state and local governments. And we are now beginning the task of revising our State Constitution. And by these acts—and others—Montanans are saying that they will not forfeit their right to determine the necessary policies for the right to govern.”

While he intoned us to acknowledge the “timeless wisdom of the National Constitution,” he encouraged us to “not be afraid to include new and progressive ideas into the Constitution” citing the recent executive reorganization and granting 19-year-olds the right to vote. That guidance as well as his exhortation, “to make the Constitution be a statement of our faith and the belief that good and decent men and women will govern this state in the coming years” was well-taken by the delegates and was subsequently reflected most notably in our Legislative Article.

After Governor Anderson’s speech, the Delegates who were seated in alphabetical order, were sworn in by Chief Justice James Harrison. The first order of business was to elect the leadership of the Convention and to attend to other matters for the conduct of our proceedings. The election process revealed significant insights about those elected, the mindset of delegates who had previously been legislators, and how we would ultimately work together as a unit. I thought we got off to a shaky start.

Delegate George Harper, an independent and Methodist minister from Helena, made a motion reflecting what he thought was a consensus from the previous day, calling for the election of Convention officers to be conducted by secret ballot. Delegate Miles Romney from Hamilton, a newspaper man and progressive Democrat, expressed surprise at Delegate Harper’s motion and immediately offered a substitute motion to the contrary—that all votes taken for the election of officers be by roll call. The vote on that motion was by voice vote, the outcome of which Governor Anderson could not determine. On the subsequent roll call vote there were 50 yeas and 49 nays. After the vote was announced, a Delegate characterized the vote as regrettable, noting that the secret ballot had been “almost unanimously” agreed to the previous day.³ That meeting must have been a caucus of some sort, as there is no formal record of it, and judging from

3. MONTANA CONSTITUTIONAL CONVENTION VERBATIM TRANSCRIPT, Vol. III, 22 (1972) [hereinafter MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT].

Delegate Romney's comment, he did not attend any of the meetings. The actual vote recorded by the delegates was not reported in the Proceedings, and I have long wondered who voted for the secret ballot and whether I did. I understand the appeal of a secret ballot when it comes to voting for people, which is distinct from voting on issues.

Cedar Aronow, a distinguished lawyer and former legislator from Shelby, was elected as temporary President by a roll call vote of 98 Yeas, one Nay, and one Absent. This early decision for roll call votes not only affected the conduct of the Convention itself but was carried into the Legislative Article.

Then came a decision that had a momentous impact on the Convention. The names of Leo Graybill Jr., a Democrat from Great Falls, and Independent Bruce Brown of Miles City, were put in nomination for President of the Convention. It was generally thought that these two lawyers would be the only two nominees. But Otto Habedank, a highly respected Republican lawyer from Sidney, rose to state that he had come to the Convention dedicated to bipartisanship. He bemoaned a proceeding held the previous day to which he was not invited, which presumably was a caucus at which Democrats had determined to support Mr. Graybill.

Delegate Habedank stated that he expected to hear from all 13 of the delegates (all men) who had expressed their interest to serve as President. He then offered up the names of the other 11 members who then, one by one, declined. The atmosphere in Convention Hall grew tense. But once completed, the roll call vote for the President proceeded through the alphabet with each Democrat voting Graybill, and each Republican voting Brown, until Democrat Jerome Cate's name was called. He rose to address the body. After touting his extensive background as a Democrat, he cast a vote for Bruce Brown stating, "This is a Constitutional Convention where each and every candidate [sic] should exercise his own judgement on each and every issue and not be dictated to by the party machine."⁴ Dissatisfaction with the Democratic Party caucus had now been expressed by a member of each party. The vote then resumed with every Democrat continuing to vote for Graybill and every Republican voting for Brown until Delegate Robinson uttered "Graybill" to an audible murmur in the chamber and in the gallery. I was the first Republican to vote for Graybill. The partisan pattern continued until Lynn Sparks, a Republican delegate from Butte, also voted for Graybill. I did not feel compelled to indicate why I voted for Mr. Graybill, but when asked, I answered that I thought he had the best skills to run the Convention. The final vote was 60 for

4. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. II, 15 (1972).

Graybill and 38 for Brown, after which Delegate Brown moved to cast a unanimous vote for Graybill.

The issue of political parties came up again in the appointment of committees and committee chairs. Independent Delegate George Harper reflected some of the frustration by saying, "If this partisan approach for committees keeps up, the six Independents may as well go home or register as visitors in this kind of delegation."⁵ President Graybill, in discussion of these procedural matters of committee assignments and chairs, made references to the "other side" which was duly noted. It was becoming increasingly clear that the delegates did not want party affiliation to be a consideration for anything. Delegate Harper again noted: "The sooner we get through with the business of mentioning parties, the sooner we get through this idea of caucusing, and going 'we and they', the sooner we can settle down and get the job done, the much more attractive the outcome will be for the people of this state."⁶

After the rules established that we would have a first Vice President, I nominated fellow Missoulian and Republican John Toole for Vice President. In a somewhat strange motion, given what had just been said about nonpartisanship, Dave Drum of Billings proposed that with the consent of the Democrats, only Republicans and Independents be allowed to vote on the Vice-Presidential candidate. Before any Democrat could object, numerous Republicans and Independent Delegate Charlie Mahoney strongly objected, and stated that all delegates should be able to cast a vote for the Vice President. In the process, Delegate Karl Davis said—to applause—"Let's give some serious consideration to not having any more caucuses throughout this entire Convention." John Toole was elected unanimously. The delegates went on to elect Bruce Brown as Eastern District Vice President, Dorothy Eck of Bozeman as Western District Vice President, Jean Bowman, a 32-year-old Republican from Billings as Secretary, and voted 99-1 to retain alphabetical seating throughout the remainder of the Convention.

It seemed that political party affiliations had finally been put to rest, but the issue of who would appoint the Committee chairs was unresolved. The Rules Committee recommended that the President and Vice President make these appointments. But several delegates, including me, felt that while the President should make a temporary appointment, the Committee members should choose their own Chairs and Vice Chairs. After Delegates Campbell, Vermillion, Robinson, Foster and Skaari spoke in favor of that proposition, Delegate Schiltz responded: "I am struck by the

5. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. III, 22 (1972).

6. *Id.*

fact that all proponents of the substitute motion are very young. At the ripe age of 52, I shall never have another and better chance to join, and I support their motion as a progressive idea that needs to be heard, and it needs to have attention paid to it.”⁷ I think this was the first time that the relative youth of some of the delegates was mentioned, and in the context of advocating for a particular course of action. That discussion was not orchestrated, but it did become clear as the Convention progressed that there were a number of issues about which the younger delegates were unified. At some point, the younger delegates instituted meetings to discuss and strategize. We became known as the Young Turks, but we did not discriminate as to age, and the meetings were attended more often than not by older delegates who shared the same sentiments.

November 30 and December 1 were occupied with budget matters, committee assignments, Convention personal and procedural matters. On each of the evenings following adjournment, social gatherings drew the delegates to the turn-of-the-century mansion of former Governor Tim Babcock and Delegate Betty Babcock. By the end of four days, there was a sense of comradeship, friendship, respect, and good will among all 100 delegates, not to mention enthusiasm and humility for the work ahead.

I was embracing all the warmth, but I also left Helena with sadness, fear, and uncertainty as to whether I would be able to return. Late in the afternoon of November 30, I received a call that my mother in Texas had taken a turn for the worse with her cancer. She had been taken to intensive care, and I should come home.

The Missoula smog was so bad that planes were neither coming nor going. A friend drove me to Spokane to catch a flight to Dallas-Fort Worth.

When I got home, my mother was in and out of consciousness, and it was clear she was terminal. She was only 52, but she had not seen a doctor since my youngest brother was born seven years earlier. The cancer was too far advanced for meaningful treatment. She had survived relatively comfortably for about 18 months. But as she lay dying, it fell to me, the eldest, to sort things out. She died within two weeks of my arrival, on a day that was exactly a month before the Convention was to reconvene on January 17.

It was evident that I was the only person able and willing to take on the responsibility for my youngest brother and sister, ages nine and 13. But it seemed nearly impossible for me to take care of my mother's affairs, help my grieving siblings, and figure out what we were going to do—all

7. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. III, 79 (1972).

within a month. My first inclination was to relinquish my place at the Convention. But Dr. Waldron and my strongest supporters, Randy Skelton, Ted and Patsy Lympus, Rodger Clingman, and Linda Ramsay, opposed that option ardently, promising help on the Montana front if I could settle things in Texas. Somehow we managed to do that, and my brother Mike, sister Judy, and I all arrived in time to spend Christmas with Linda Ramsay's family in Kalispell. After the holiday, we settled into my 10 by 40 foot mobile home on South Fourth West in Missoula and began working on whether, if, and how I could do right by my brother and sister, but also fulfill the oath of office I had taken three weeks prior. I wanted to do it all.

The budget for the Constitutional Convention anticipated a 66-day session in Helena with weekends off, at least in the early phases. Given that schedule, it seemed best for Mike and Judy to stay with Ted and Patsy Lympus and get enrolled in school. I would be coming home every weekend. Ted and Patsy were loving people, and her brother Randy Skelton, a close friend and my campaign treasurer, was also willing to provide support. I never doubted that my siblings would be well cared for. I knew it was not an easy transition for them, but I was certain, then as now, that bringing my brother and sister to Montana was the best decision. I could have given up my seat. But I did not and proceeded to make my Helena arrangements for the Convention.

Having declined the help of the Anaconda lobbyist, I needed a Helena residence. One of Ted's law school friends was Jim Moore (the same Jim Moore who wrote the Alice Creek article in this publication). Jim had grown up in Helena, and he arranged for me to rent an apartment in his parents' home. On January 16th I moved in, and on January 17th, I arrived early at Convention Hall for the opening gavel of this once-in-a-lifetime experience.

After an invocation and roll call, President Graybill shared his thoughts about our immense undertaking. Looking back at his remarks 48 years later, I am still convinced we elected a leader who would not only preside fairly but inspire us to our best ideals and conduct. His vision for the Convention was a moving challenge:

How can we get this job done? I would simply seek to remind you that we must be open—open to ideas, open to opinions and to debate. We must also be open to our own consciences and to our inner selves. We must seek guidance and good fellowship right here in this room. We must be responsive to each other. If we can make government work here in this room, then perhaps we can make

Montana or help Montana move into the future with confidence and vision. Montana—our Montana—is a great, vast state. It has been badly robbed and left little of the financial gain it has produced in the past. And lately, for lack opportunity she has been left without her greatest resource—young people. But these young Montanans want to return to their great state because Montana embodies for them the things they find worthwhile—the open space, the mountains, the clear streams. In other words, the good life. If only for that reason, Montana must move into the future with confidence and vision through a document that will be written to respond sensitively to her needs. My good wishes go with you. May God bless you and keep all of us during this Convention. Thank you.⁸

His speech was met by thunderous applause and great emotion. On rereading his challenge, I am struck by how many of his words and images found their way into the Preamble that was adopted only toward the end of the Convention on March 7, 1972.⁹

Even though adopted late in the Convention, the Preamble was certainly not an afterthought. On January 28, Bob Campbell and I, after working late into the prior evening, submitted our draft Preamble as Delegate Proposal 59. Three additional delegate proposals for the Preamble were subsequently introduced, and all were referred to the Bill of Rights Committee. The Committee skillfully blended them to formulate its final proposal to the Convention floor.

One Committee change warrants discussion. The 1889 Preamble began, “We, the people of Montana, grateful to Almighty God” Throughout the Convention debates, and as reflected in the Constitution itself, a conscientious effort was made to recognize the importance of Montana’s Native American people and cultures. In keeping with that sentiment, our proposed Preamble invoked the “Spirit of our Creator,” rather than God. Donald Foster’s proposal expressed “gratitude for the Spirit of Creation,” Jack Ward’s expressed gratitude for “Divine Guidance,” George Rollins made no reference at all to God or a Creator. It is interesting to note, in light of the recent allegations of an anti-religious bias in our Constitution, contained in the pleadings and briefs filed in *Es-*

8. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. III, 111 (1972).

9. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. V, 1635 (1972).

pinoza v. Montana Department of Revenue, that God is invoked in the preamble. Some committee delegates expressed concern that the Constitution might be defeated at the polls if there was no reference to God in the preamble. It is also interesting that Delegate Rollins, a devout Mormon, chose to make no reference to a higher power at all. The adopted Preamble reads:

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

I am proud of this Preamble and my part in it but wonder if we may not have been better off leaving out God. After all, there is no reference to God in the federal constitution's preamble. But perhaps the most striking difference between our Preamble and any other, is the reverence and appreciation the natural beauty of Montana. I regret that some reference to the State's Native Americans did not receive any acknowledgement. We were not alone in that omission. In writing about Alaska's Constitution, Gordon Harrison noted, "This preamble does not acknowledge the presence of the Alaska Natives—Indian, Aleuts and Eskimos—prior to those who "pioneered" the land."¹⁰ However, in Article X, Section 1, Montana's Constitution does recognize the "distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity."¹¹

What the Constitution should say and do, to protect the quiet beauty of our State, became one of the most contentious issues of the Convention. I had some very strong opinions about that, as I was certain that concern about the environment mattered as much to voters in Missoula as any of the substantive issues, and it figured heavily in my campaign. I intended to deliver on it. My campaign brochure shows a photo of me riding my bike against a backdrop of a massive clear-cut. Clear-cuts and air pollution were not the only environmental issues of the day. And Montana was not alone in wanting to attend to these issues. In the early '70s, over two-thirds of the lakes, rivers, streams and coastal waters of this country were unsafe for fishing and swimming. Congress had been trying

10. GORDON HARRISON, ALASKA'S CONSTITUTION, A CITIZENS GUIDE, 7 (2018).

11. MONT. CONST., art. X, § 1

to address this deterioration with amendments to the Federal Water Pollution Control Act of 1948, culminating in the Clean Water Act of 1972. Significant progress had been made on some fronts by the Montana legislature in 1969, and the adoption of MEPA in 1971, but there was growing distrust that the Legislature was actually willing to protect Montana against environmental degradation on the land, in the water, and in the air. Many believed that a minimum, constitutional duty to protect the environment should be imposed on the Legislature. The environmental costs of mining Montana's abundant coal resources was becoming widely known. John Prine's song, *Paradise*, made more famous by John Denver, was on all the air waves:

And daddy won't you take me back to Mulenberg
County
Down by the Green River where Paradise lay?
Well, I am sorry my son, you're too late in asking
Mr. Peabody's coal train has hauled it away.

One of the most vexing environmental issues concerned who had standing to sue on behalf of the environment, and whether injury to aesthetic and environmental interests was as recognizable as economic interests or injury.

More has been written about Montana's environmental constitutional provisions than any other provision. A totally new and separate article, Article IX, Environment and Natural Resources, was created, and the Right to a Clean and Healthful Environment found its way into Article II, Section 3 of the Bill of Rights after Article IX was finally approved. While the Constitution is lauded for having perhaps the strongest environmental protection provisions of any state constitution, no one should believe we were anywhere near unanimity on anything, other than saying there would be an environment! The environmental protections were hard fought and often demoralizing. I can think of no other issue before the Convention where the lawyers played a more pivotal role on both sides of the debate. It was during the debates that I realized the power of being a lawyer.

As Delegate Harper pointed out, we needed the lawyers. We were, after all, crafting a legal document with legal terms and concepts that would be ultimately subject to interpretation by lawyers and courts. This was particularly true as we plowed new constitutional ground. Indeed, the very essence of the environmental debates were legal—the Public Trust Doctrine and standing.

A review of the transcript of proceedings of March 1 and 2, Vol. III bears out the depth of the contention and the sway of the lawyers. Aside

from the notion of the environment as a “public trust,” which was heatedly debated and defeated in an early vote, there were three issues that warranted most of the debate. One dealt with which adjectives, if any, should be used to describe the environment; e.g., “clean and healthful,” whether to “maintain” or “improve and enhance” the environment, and whether to grant Montana citizens the right to sue to protect the environment without having to show monetary damages or direct harm to themselves.

Economics had always taken precedence in the extraction and refining of Montana’s natural resources, and the accompanying degradation of the environment was a way of life. A number of the lawyer delegates were accomplished trial lawyers who seemed to fear the Convention would go too far with its concern for the environment at the expense of the development of Montana’s natural resources. Several of the lawyers acknowledged their clients and their involvement in litigation on all sides of environmental disputes. They were eloquent, effective advocates who contributed meaningful perspective to the issues. But several were at times heavy-handed, patronizing (at least to me), and intentionally created fear and uncertainty. They obfuscated and hyperbolized that the environmental protections we were seeking would result in infringing property rights, close industries, lose jobs, and generate hundreds of pointless lawsuits. Paul Harlow, one of the more senior Delegates and former legislator from Sanders County, frustrated by this line of debate, declared, “The various lawyers and other individuals—I’ll include a lot of you—have been waving a red herring around here all day, and you have been waiving it so long it is starting to smell bad When you sue the company that is polluting—the suits against the Anaconda Company at Columbia Falls, the suits against Hoerner Waldorf in Missoula, or the suits against the company in Garrison—this doesn’t in any way bring [sic] allow the people to take over the property So why are you are continually waving this red herring that this will allow people to take over other people’s private property. It does not.”¹²

It is important to remember that the Chair of the Committee, Louise Cross, did not agree with the Committee Report for the Environment and Natural Resources article, specifically that it was the strongest constitutional environmental section of any existing state constitution. She had been outvoted 7-2 on what she considered the most important provisions of the proposed article. But on the Convention floor, March 1, she said that was not important. What is important “is that we on the Convention floor face up to responsibility and adopt language that will do the

12. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. V, 1266 (1972).

job . . . If we put our minds to it, we can really do something great for the good for those generations for whom we do lip service . . . Rarely do we do anything until we are forced to do so. Coal lies under the eastern third of this state. Do we have to wait until we have the equivalent of 20 great walls of China marching north and south from border to border, and just as useless, before we realize that we've destroyed the precious resources of our productive land? Many of our natural resources are nonrenewable and when they are gone, the treasure of the Treasure State will be gone. How we ultimately deal with this issue will be the measure of our sincerity."¹³

It was clear that Louise Cross, and not the Majority Report advocated by Vice Chairman, CB McNeil, had the loyalty and support of the environmentalists in the Convention. So rather than debate the language that the State will maintain "an environment," Delegate James proposed to add "a clean and healthful" in front of "environment," and add, "for the protection and enjoyment of present and future generations." There was strong opposition from the Committee members, but both Delegate Campbell and I spoke in favor of the amendment. When I was recognized, I stated that I would probably be up many times that day, because the Environmental Article was probably the most important provision we would consider in this entire Convention. Shortly after I spoke, Delegate Burkhardt rose, also in support of the Delegate James amendment, and referenced the recent appearance of Charles A. Lindberg, who strongly encouraged the delegates to protect the environment for future generations. Delegate Heliker rose in support of the amendment, and offered the opinion of Montana law professor John McCrory, that, "Contrary to the view of the committee majority, I believe that the descriptive adjectives are necessary for guidance in interpreting the Constitution so that the present problems are not perpetuated. The words "clean and healthful" have common usage and meaning which would furnish such guidance."¹⁴ In spite of these persuasive arguments, Delegate James' motion to add "clean and healthful" was defeated, 40-44.

The next effort to strengthen the environmental article was Delegate Cate's motion to provide that Montana shall maintain and enhance a clean and healthful environment as a "public trust." The public trust, along with the citizen's right to protect the environment by legal means was contained in Delegate Proposal 162, signed by Louise Cross, Jean Bowman, Mark Etchart, Daphne Bugbee, Jerry Cate, George Harper, and me, but it

13. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. IV, 1199 (1972).

14. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. IV, 1206 (1972).

had been rejected by the majority of the Committee. But Cate's motion allowed the full Convention to consider it.

The public trust doctrine had its origins in Roman civil law, but at the time of the Convention it was attracting new attention due to Oregon Professor Joseph Sax's writings. Simply put, the doctrine recognizes that certain natural resources are held by the government in a special or trust status for current and future generations and that the state has a fiduciary obligation to protect those resources for future generations. Alaska's Natural Resources Article embodied the public trust notion, and most environmental advocates felt that enshrining the public trust doctrine in the Montana Constitution would be the ultimate victory, and highest protection for the environment. Delegate Cate's public trust amendment was defeated 58 to 34. During this debate, Delegate Fred Martin, a wise historian, made a prescient remark in connection with the 100-year anniversary of the establishment of Yellowstone National Park. He noted, "The establishment of Yellowstone Park, in my opinion, has paid far greater dividends than did the founding or the discovery of gold in Last Chance Gulch or in Bannack or in Alder Gulch, or anything else, because it's preserved [as] a continuing resource"¹⁵

Immediately after the defeat of Delegate Cate's public trust proposal, I offered another amendment which provided that, "It is the public policy of the state to achieve and maintain a high quality environment which is clean, healthful and pleasant for the protection and enjoyment of its people and the protection of its natural beauty and natural resources, including wildlife and vegetation. Each person shall have a duty to act in accordance with this public policy and, each person may enforce such right against any party, government or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as may be provided by law."¹⁶ This language achieved the three things most of the environment advocates wanted but offered a more moderate approach with respect to lawsuits by allowing the legislature to establish some standards or thresholds for standing to sue.

My proposal was strongly supported on the floor by eight fellow delegates as a reasonable, well-crafted compromise. It seemed to be gaining traction. But soon I found myself being questioned—more like cross-examined—by one of the most accomplished trial lawyer Delegates, Marshall Murray. But I did not cower. I had done my homework, and I was prepared and could answer every question posed. I was not able to define

15. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. V, 1220 (1972).

16. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. V, 1229 (1972).

exactly and in the abstract what “clean and healthful” meant. But it did not matter, since this language was used in other environmental provisions. Nor could anyone define with precision what “liberty” meant, or the words “adequate” and “reasonable” used in the majority’s proposal. Delegate Garlington, another distinguished lawyer, added a word of caution against my proposal, in his measured and eloquent way. “I want to point out to you that this is the most sweeping kind of statement that would be drafted, and it is pregnant with all kinds of possibilities for the future of Montana that are not found in any precedent. Of course, there is no precedent for this because the other constitutions do not go this far, and I feel that, as a responsible body, we should deliberate here on the extent to which we wish to enlarge the periphery of the environmental protection, because you can see here that we are creating rights by one citizen against another, crisscrossing all through the whole panorama of human activity. And I think we should be very careful before we get carried away with enthusiasm . . . and over-do it.”¹⁷

Delegate Schlitz, in his response to Mr. Garlington, echoed Governor Anderson’s charge and a feeling shared by many of us, when he said, “If I understand—the burden of his song is that this is untested and untried—there’s no precedent for it. As you all know, Montana, was the first state ever to have a war conducted underground in Butte. We were the first state to ever have a senator who was not seated in the United States Senate. Just once before I die, I would like to see Montana be the first state that did something good.”

Delegate Romney also spoke of fear: “Somebody is trying to muddy the water and frighten all the little people in Montana, of whom there are many more than there are large corporations, with the consequence that the delegates will be chased back into their holes and refuse to vote.” Nevertheless, fear prevailed. My motion lost 51 to 43. But we were moving in the right direction as we picked up nine votes over the previous amendment.

While the transcript of proceedings does not reflect it, those of us working on the environmental article had a plan—we would keep coming back with proposals in some form or other that would enshrine a clean and healthful environment and grant the right to sue to protect that environment.

After the defeat of my proposal, Delegate Arlyne Reichert of Great Falls proposed what was essentially the environmental provision of the newly adopted Illinois Constitution. It stated that it was “public policy of the state and the duty of each person to provide and maintain a healthful

17. *Id.* at 1237.

environment for the benefit of this and future generations.” It couldn’t be argued that no other state had tried this provision. Delegate CB McNeil reminded everyone that the Committee had taken the word “healthful” from the Committee report to make the article stronger, arguing that we should not allow the environment to be degraded to a healthful level. Delegate Don Foster pointed out that a number of people in Montana did not even then have a healthful environment. But the McNeil faction won again. This proposal went down 47-43. We did not gain any additional support. There were just more absences among delegates previously voting Nay.

Next up was a proposal by fellow Missoula delegate Bob Campbell. He proposed that the article read: “The State of Montana and each person must maintain and enhance a clean and healthful environment in the state for the enjoyment and protection of present and future generations.” Delegate McNeil immediately offered an amendment to change “enhance” to “improve” and delete clean and healthful. The new wording would be: “The State of Montana and each person must maintain and improve the Montana environment for present and future generations.”

What followed was some of more hilarious rhetoric of the Convention along with some inexplicable votes. With McNeil’s motion, we were essentially back to the majority report, along with the assertion that it was the strongest statement on the environment they could come up with. Delegate Campbell had a field day noting that if the delegates supported the majority report they were going to have to tell their constituents that yes, we went to Helena and determined that we would have an environment, but we were unwilling to state the type of environment we wanted to have. Delegate Eck from Bozeman noted that she had been talking to environmental groups around the State and not one found this to be a satisfactory provision. She said, “In fact, they’ve ridiculed it, and I think they will ridicule us if we go home with it.” Doggedly, McNeil continued to argue that the intent of leaving out the modifiers was to not allow the Legislature or the courts to permit our present environment to be degraded to what they might interpret a “clean and healthful” environment. I don’t know if the delegates were persuaded by that reasoning, or if they were growing weary. But shocking to me, McNeil’s motion passed, 68-19. We had lost a lot of ground on that particular vote. But we were not to be deterred. Bob Campbell was immediately on his feet again with a motion to put the words “clean and healthful” back in. This time, with no debate, the section reading “The State of Montana and each person must maintain and improve a clean and healthful environment for the present and future generations” passed 49-38. Finally, and surprisingly, a victory.

But not totally. In the process of these amendments, the issue of the right to sue had been dropped from subsection 1 of Section I and was now to be addressed in a separate subsection. Chairman Graybill recognized Louise Cross from Glendive, the persistent and indefatigable Chair of the Environment and Natural Resources Committee. Her motion would allow a resident to take appropriate legal action against any person, governmental or private, on behalf of the environment, subject to reasonable limitation and regulation by the Legislature. We were back with the essence of the second part of my amendment from earlier in the day. Her motion went down, 46-44.

Next, the opponents to the right to sue offered an amendment that would limit that right to state agencies, and place responsibility for implementing and enforcing the policy solely in the hands of state agencies. This argument would get no traction with the environmentalists, primarily because state agencies had already failed in their duties. But the debate was set for more obfuscation, fear, and red herrings. This time Delegate Dahood, perhaps the most eloquent of the attorneys, held forth and again tried to equate the right to sue with taking property rights. While he said he wanted the environment protected, he wanted it protected by public servants in whom we have placed our public trust. Doing so, in his opinion, would protect private property rights. In response I pointed out that citizens could already bring actions against state agencies.

No one really could match Mr. Dahood's eloquence, to wit; "If we want to take the private property rights that have been so cherished in this country and place them at a different level than they occupy now, then you will pass this type of proposal that we are objecting to and which will not solve the problem that can best be solved by the amendments that are before this body now." After which, he said "I'd like to ask, at this time, if Delegate Robinson will yield to a question." Notwithstanding that I sensed I might be taken to the woodshed, I had to say, "I will." He then asked "Delegate Robinson, may I ask you how as a private citizen, in the event you wanted to file a lawsuit for the protection of the environment, would you proceed to file that lawsuit, hire a lawyer, secure the necessary expert testimony and the scientific data that's required to be successful?" Without a moment's hesitation, I let fly a pretty churlish, "Well, Mr. Dahood, I certainly would not come to you."

Even though it evoked applause and laughter, I knew it was not a particularly dignified response. But it was clever and gave me time to collect my thoughts. Fortunately, President Graybill asked if there was more to my answer. I answered in the way that anyone would. I would see a lawyer, assess whether I had a case, and estimate the cost to prosecute. Mr. Dahood's motion failed, and we were back once again on the

issue: shall we give citizens the right to sue on behalf of the environment. There was a motion to adjourn for the day and resume debate in the morning, but that motion failed 47-45. There was a strong desire to get this issue resolved before the end of the day.

President Graybill asked Delegate Etchart to take the chair so that he might speak on the question. He was eloquent, persuasive and exquisitely deferential to his fellow lawyer Dahood. He framed the question of one as enlarging human rights with respect to protecting the environment. He did take issue with Mr. Dahood's parade of horrors if we enlarge the rights of people to sue. "There are plenty of ways to avoid this parade of 'horrors,' all in the hands of the legislature, all in the hands of the people. The problem is not the parade of horrors. The problem is whether you want to, here in Montana, because of our environment, grant a right to plaintiffs that is greater than what we have granted before? And when you vote on it, whether it is today, or tomorrow, that's what you are going to decide on."

Delegate's Cross motion failed 54-44, and on that sorry note, we adjourned to have dinner at the Babcock residence. We were not successful in getting an explicit Constitutional right to sue in Article IX. It was a disappointment that was hard to swallow.

The next day, however, Delegate Cross rose to fight her other battle, a Constitutional provision that would require the reclamation of all lands disturbed by the taking of natural resources. This debate was almost as long and acrimonious as the debate on Section 1 of Article IX.¹⁸ She was ultimately successful in getting a fairly strong reclamation provision, garnering some support from the eastern farming and ranching Delegates.¹⁹ Her persistence paid off. And I would be remiss in discussing Article IX, if I did not mention Section 3 and its far-reaching impact. Elison and Snyder noted in *The Montana State Constitution* that Montana did not take strict control of its water rights until the people ratified the Constitution.²⁰ The Environmental and Natural Resources Article was not all I had hoped for, but it clearly was an important part of what was accomplished. The fact that the right to a Clean and Healthful Environment was added to the Declaration of Rights bolsters the protections, and the Montana Supreme Court, thus far, has given full effect to the notion that these provisions are self-executing, are not window dressing, and are tools for protection of Montana's environment.

18. *Id.* at 1251-54.

19. MONTANA CONSTITUTIONAL CONVENTION TRANSCRIPT, Vol. IV, 1199 (1972).

20. LARRY M. ELISON & FRITZ SNYDER, *THE MONTANA STATE CONSTITUTION* 185 (2011).

The Convention succeeded on many fronts other than the environment, and to describe them is beyond the scope of my task. But I want to mention another provision that was very important to me—the recognition that women are equal. It is a timely topic. The first version of the Equal Rights Amendment to the Federal Constitution was written by Alice Paul and introduced to Congress in 1923 but died an ignominious death. Representative Martha Griffith of Michigan introduced another Equal Rights Amendment in 1971, and by the time of our delegate election in November of 1971, it had been approved by the House of Representatives and referred to the U.S. Senate for approval. Not willing to rely on the federal process for ratification, I campaigned for a strong equal rights provision in Montana's constitution. Once elected, I and other delegates submitted delegate proposals for such a provision, which overwhelmingly became part of our Constitution. The U.S. Senate did not approve the ERA and refer it to the States for ratification until March 22, 1972, the day the Montana Constitutional Convention adjourned. The Montana Legislature approved ratification of the federal ERA in 1974, and defeated attempts in the three subsequent legislative sessions to rescind its ratification. It was during the ERA debates and particularly the rescission efforts that I realized that the Montana Republican Party was not a good fit for me. To date, the ERA to the U.S. Constitution has not been approved and the deadline has passed. A recent post-deadline ratification by Virginia, and a proposed extension of the deadline, has awakened new interest. Given the period of time and the number of states that rescinded, I agree with Justice Ruth Bader Ginsburg that the effort should start anew.

Having served on the Legislative Committee, advocating and implementing provisions that would fully make the Legislature a strong and equal third branch of government, I have been disappointed to see the emasculation of the Legislative Branch through referenda for constitutional amendments that have brought about term limits and biennial sessions. The sad part is that these changes were brought about by legislators who willingly weakened the peoples' branch of government. I hope they can get the horse back in the barn.

I measure my opportunity as a delegate to the Constitutional Convention from two perspectives. What did I accomplish for the State of Montana, and what was the impact of that service on me? The answer to the first, is that I believe my fellow delegates and I gave Montanans a Constitution that is far superior to the 1889 Constitution and is indeed a Constitution that will well serve current and future generations.

On the second point, I am certain I received way more than I contributed. Ironically enough, it may have been my dueling with the lawyers that set in motion a life-changing event for me. Shortly before the end of

the proceedings, Delegate Murray (yes, the Marshall Murray with whom I frequently sparred) came to my desk to tell me that “some of us have been talking and we think you should go to law school.” That was quite a compliment coming from him. I thanked him but did not know how else to react. We agreed to talk later. I was interested in this possibility but couldn’t visualize how I could do it, considering my finances and the need to support my brother and sister. He said, “Oh, we realize the obstacles, but one of the delegates is willing to help you out financially.” To protect both me and my potential benefactor, he did not want to reveal who it was. I was very humbled by the thought that someone had such confidence in me. After the Convention adjourned, my first priority was to try to create some sense of normalcy for my brother and sister in Missoula, and I knew I would be busy until June 6 advocating for the passage of the Constitution. I had also secured a job in autumn, teaching government at Hellgate High School, so I felt secure knowing I would have a job and be able to support my family.

Until the Constitutional Convention, I never considered a career other than teaching school. In Texas, teaching and nursing were the professions open to women. I never knew any women lawyers in Texas, but I met several at the Convention. I learned that legal training was valuable and having a JD behind one’s name was a source of power and respect. After being named one of the 10 Most Influential Delegates by the journalists covering the convention, I had no doubt that I could be a lawyer and a good one.

I had not forgotten the suggestion. Mid-way through my year of teaching, I called Marshall and asked if he thought the offer for help was still good. He couldn’t imagine why it would not be, but he would inquire. On learning that it was, I took the LSAT and was admitted to law school in the fall of 1973. By then I knew that Delegate Dave Drum of Billings was my benefactor. Dave Drum was one of those larger-than-life men who appeared on the cover of Life magazine after founding KOA, which had apparently been quite lucrative. But he and I never exchanged money or even talked about the mechanics. I later learned he had helped with the education of other similarly situated people. He and I became friends after I graduated from law school. And I was able to pay him back. He continued to amaze and inspire me with his ideas, eclecticism, and an entrepreneurial spirit that included developing a feed lot, cultivating drip irrigation apple orchards on Flathead Lake, and running for the U.S. Senate.

Thanks to him, I graduated with honors from the UM Law School in 1976, the year my sister graduated from high school. By then I had married and the whole family took a much-needed Bicentennial Road Trip across the United States.

One other thing happened at the Convention that, while not life-changing, was something that made me realize I had indeed surpassed any expectations I ever had for myself. The day of signing the Constitution was a big day. Each delegate would be called by name, rise from his or her desk, walk to a desk in front of Convention Hall, and manually sign the Constitution before Secretary of the Convention, Jean Bowman—and then get photographed. There was some suspense in the Hall that day as it was not certain that every delegate would sign the document. Still, everyone was dressed for the occasion, television cameras were running, and other than when the names were called out, it was dead quiet. My name was the 78th name to be called, and as I rose, the somber silence gave way to loud, raucous cheers and prolonged applause. I was shocked at the uproar and stunned by what could only be interpreted as approval of me and recognition of a job well done. I was immeasurably proud. The only other person who received applause was Lucile Speer, my fellow Missoula delegate and best Convention friend. We were separated by 50 years but nothing else. She was the only delegate born in the previous century, 1899. Every delegate signed the Constitution—even the one who openly opposed its ratification. Subsequently, not all delegates worked equally hard to secure its approval. But on June 6, 1972, the Constitution was approved by the narrowest of margins.

After the Convention, the Delegates created a Constitutional Convention Society for the sole purpose of getting together each year to renew our friendships, celebrate what we had achieved, and revel in the quiet beauty of our state and our legacy. One of the first and perhaps best of those gatherings was on Torrey B Johnson's Powder River Ranch. Actually, it was not a quiet gathering at all, it was a real Powder River Boys gathering with branding and castration. Torrey played his guitar, singing and yodeling around a campfire, with food, drink, laughter and good will. I have no idea how often Torrey and his Powder River buddies—Dick Nutting and John Leuthold—and I, voted together, and we diverged often on issues of importance to each us. But it didn't matter. I adored these men. Our decision to seat ourselves alphabetically and eschew partisan politics made all the difference in our deliberations and relationships. It is true, as noted at the beginning, there really were not party positions on the various issues facing the delegates. But there were political differences based on party that became discernible over time. Democrats tended to favor change more frequently than Republicans; Republicans were more rural and conservative; Democrats were more urban and liberal. But we didn't let any labels of differences define or limit us, for which I am grateful.

The Montana Constitutional Society is losing members. We are now only 13 and we no longer meet regularly. Soon we will all be gone, but I hope to be around for the 50th anniversary on June 6, 2022. I have been in touch with all but one delegate who is very debilitated. Almost all of us were recently involved in the filing of an Amicus brief in the U.S. Supreme Court case of *Espinoza v. Montana Department of Revenue* which challenges Section 6 of Article X of the Constitution as being violative of the free exercise of religion clause of the Federal Constitution.

So how did I come to be the youngest delegate at the Montana Constitutional Convention? By fate and propitious decisions, I was in the right place at the right time. I fell in love with Montana. I followed my own early interest in government. I was encouraged and supported by motivating teachers and mentors. I was inspired by the music and idealism of the time. I had generous help from friends, and the perseverance of my brother and sister. And honestly, I think I really did work a lot harder.

There is no doubt that those were my Glory Days and they have continued to bring glory, abundance, and fulfillment to my life.