

DELEGATE DAVIS: Mr. President [Chairman], would Mr. Dahood yield to a question?

CHAIRMAN GRAYBILL: Mr. Dahood?

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE DAVIS: Mr. Dahood, for the benefit of the journal and the record here, is it your intention on this to repeal the existing statutes on open hearings, or do you feel that they would still remain in full force and effect?

DELEGATE DAHOOD: I feel they would still remain in full force and effect, Delegate Davis.

DELEGATE DAVIS: Thank you, Delegate-(Laughter)

CHAIRMAN GRAYBILL: Is there other discussion? Very well, members of the committee you have before you for your consideration, upon the recommendation of Mrs. Eck that when this committee does arise and report, after having had under consideration Section 9 of the Bill of Rights Article, that it recommend the same be adopted.

Mr. Heliker, for what purpose do you arise?

DELEGATE HELIKER: I would like to ask Mr. Dahood a question.

CHAIRMAN GRAYBILL: Okay. (Laughter) Mr. Dahood.

DELEGATE DAHOOD: I yield, Mr. Chairman.

DELEGATE HELIKER: Mr. Dahood, being an ignorant nonlawyer, what is an individual?

DELEGATE DAHOOD: What is an individual?

DELEGATE HELIKER: Is it by any chance also a corporation?

DELEGATE DAHOOD: A person can, of course, Dr. Heliker, as you well know, be defined to include a corporation under the law.

DELEGATE HELIKER: I know a person can, but can an individual?

DELEGATE DAHOOD: An individual, in my judgment, would not be a corporation, no.

DELEGATE HELIKER: Thank you.

CHAIRMAN GRAYBILL: Well, the Chair doubts that it needs to restate that lingo. All those in favor of this motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: So ordered. Section 9 is adopted. Will the clerk please read Section 10.

CLERK SMITH: "Section 10, Right of privacy. The right of privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Section 10, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10 of Proposal Number 8, it recommend that the same be adopted.

CHAIRMAN GRAYBILL: Mr. Campbell.

DELEGATE CAMPBELL: Mr. Chairman, fellow delegates, the right of privacy is a right which is not expressly stated in either the United States or the Montana Constitution. It is our feeling, on the Bill of Rights Committee, that the times have changed sufficiently that this important right should now be recognized. If I may, Mr. Chairman, I would like to add an amendment which the committee has made, and I would like it voted on before I continue. This would be to the-add to Section 10 the right of individual privacy.

CHAIRMAN GRAYBILL: Is that on line 5 of page 6?

DELEGATE CAMPBELL: Yes, Mr. Chairman, and the committee has unanimously approved this amendment and would request a vote on it if necessary.

CHAIRMAN GRAYBILL: So many as shall be in favor of adding the word "individual" so that it reads: "the right of individual privacy", as the committee wishes to have this matter considered, please say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed?
(No response)

CHAIRMAN GRAYBILL: So ordered.

DELEGATE CAMPBELL: This would exclude any question about a government or a corporation. In our early history, of course, there was no need to expressly state that an individual should have a right of privacy. Certainly, back in 1776, 1789, when they developed our Bill of Rights, the search and seizure provisions were enough, when a man's home was his castle and the state could not intrude upon this home without the procuring of a search warrant with probable cause being stated before a magistrate and a search warrant being issued. No other protection was necessary; and this certainly was the greatest amount of protection that any free society had given its individuals. In that type of a society, of course, the neighbor was maybe 3 to 4 miles away. There was no real infringement upon the individual and his right of privacy. However, today we have observed an increasingly complex society and we know that our area of privacy has decreased, decreased, and decreased. The United States Supreme Court, in *Griswold versus Connecticut*, had to construe the right of privacy as an implied right and, in that case, held that the right of privacy extended into the marital privacy, that the state did not have a compelling state interest in going into the bedroom of a married couple to prevent contraception. And they ruled the Connecticut anticontraception law invalid as invading the right of privacy. Now, we don't know how the interpretations will go from there, what the Supreme Court will do. We feel, in the Montana Supreme Court, it has recognized the right of privacy, although it has not been expressly stated in the Montana Constitution. What this would do-by requiring that this area of privacy be protected unless there is a showing of a compelling state interest, it produces what I call a semipermeable wall of separation between individual and state; just as the wall of separation between church and state is absolute, the wall of separation we are proposing with this section would be semipermeable. That is, as a participating member of society, we all recognize that the state must come into our private lives at some point; but what it says is, don't come into our private lives unless you have a good reason for being there. We feel that this, as a mandate to our government, would cause a complete reexamina-

tion and guarantee our individual citizens of Montana this very important right-the right to be let alone; and this has been called the most important right of them all. You've all had placed on your desk the *Montana Standard's* editorial of February 3, 1972. I think it states it very well. "Times change. That, in a nutshell, is why the Constitutional Convention delegates in Helena are working on a new and more modern governmental charter for Montana. Today, with wiretaps, electronic and bugging devices, photo surveillance equipment and computerized data banks, a person's privacy can be invaded without his knowledge and the information so gained can be misused in the most insidious ways. It isn't only a careless government that has this power to pry; political organizations, private information gathering firms, and even an individual can now snoop more easily and more effectively than ever before. We certainly hope that such snooping is not as widespread as some persons would have us believe, but with technology easily available and becoming more refined all the time, prudent safeguards against the misuse of such technology are needed. Some may urge and argue that this is a legislative, not a constitutional issue. We think the right of privacy is like a number of other inalienable rights; a carefully worded constitutional article reaffirming this right is desirable. Wade Dahood of Anaconda, Chairman of the Bill of Rights Committee, hit the nail on the head when he said: 'As government functions and controls expand, it is necessary to expand the rights of the individual.' The right to privacy deserves specific protection." Mr. Chairman, I would recommend the adoption of this section.

CHAIRMAN GRAYBILL: Very well, is there discussion?
Mrs. Babcock.

DELEGATE BABCOCK: May I ask a question, please? Would this preclude a corporation made up of family members?

DELEGATE CAMPBELL: It's not-it is intended to protect the individual as we have described it. We do not feel that a corporation is an individual. It can be considered a person, but not an individual. We don't think that this would apply in that area.

CHAIRMAN GRAYBILL: Mr. Harper.

DELEGATE HARPER: Mr. Chairman. I'd like to move an amendment that, on line 7, after