PUBLIC HEARING ON

PROPOSED REVISED CONSTITUTION (1944) PENDING BEFORE JOINT LEGISLATIVE COMMITTEE TO FORMULATE A DRAFT OF A PROPOSED REVISED CONSTITUTION FOR THE STATE OF NEW JERSEY CONSTITUTED UNDER SENATE CONCURRENT RESOLUTION NO. 1, ADOPTED JANUARY 11, 1944

HELD BEFORE SUBCOMMITTEES ON

Tuesday, February 1, 1944

(Judicial)

J.

SPEAKERS - MORNING SESSION

February 1, 1944

Mrs. Maxwell Barus)
Mrs. Fred Metzger)
Miss Marion E. C. Walls)
Mrs. Frederick Jeutter)
Mrs. E. W. Anderson)
Mrs. R. M. Hunter)
Mrs. J. H. Constantine)
Miss Marion E. C. Wells - Speaker, N. J. League of Women Voters
Re Modification

Mrs. Charles R. Howell, Pennington Women's Club, member of the New Jersey Federation of Women's Clubs Re- Modification

Mrs. Thomas L. Parsonnet, New Jersey State Conference, National Counsel of Jewish Women, re Modification

Evelyn Seufert, New Jersey Committee on Constitutional Revisions, re Modifications and Proponent

Mrs. F. W. Hopkins, Consumers' League of New Jersey, re Modification for Article 6, Proponent for Article 5

Mr. Walter J. Bilder, Associated with but not representing the New Jersey Committee on Constitutional Revisions - Proponent

Edward W. Wiss, Monmouth County Bar Association, re Abolition of Court of Chancery (Afternoon session)

Dr. R. L. Gittings)
Dr. Warren Fowler) New Jersey State Chiropractors Society- Proposed
Mr. F. W. Poppy) amendment to the constitution involving right of the individual to make selection of their own doctor.

Morris Isserman, Esq., N. J. State C. I. O., Re Modification

SENATOR EASTWOOD: May I again state that anybody desiring to speak this morning or present any written memorandum, give their name and address to the stenographer now and the name of the organization you represent, if you have not already done so.

May I say that the Committee has adopted certain rules for the conducting of these hearings. Of course, they are not to be too strictly enforced. We will appreciate, however, the cooperation of those presenting views in carrying out the purport of these rules.

Our hearings will commence each day at 10:30. We will try to start promptly at 10:30 and continue until 1:00 and adjourn for lunch for one hour and then hearings will be resumed at 2:00 o'clock and continue until 4 O'clock.

The order of speaking, as far as practicable, shall be first the opponents; secondly, those for modification or addition; and third, the proponents. And, as I announced a few minutes ago, at the beginning of each session we will desire that those who plan to speak or present any written memorandum register with the stenographer so that we will have your name and address, as well as the organization you may represent.

At the beginning of each day of hearings a spokesman for the Committee will give a brief summary of the particular Article under consideration and will then inform the audience when other Articles will be considered.

We would like very much, if you have written memorandum, that you give it to the Sergeant-at-Arms or hand it to the stenographer prior to presentation of any oral statement, and of course, if you desire to file a written statement, memorandum or brief, afterward, you may do so and address it, if you will please, to me, Howard Eastwood, Chairman of the whole committee It may be addressed either to the State House here or to Burlington, New Jersey

Each speaker is limited to 15 minutes on each Article. If an organization is represented by more than one spokesman, it is suggested that the subject matter be divided among such spokesmen. In other words, if

an organization is presenting views and you have more than one particular phase of the subject you desire to present, we would appreciate it very much if you would divide that subject matter between your representatives so that, of course, that will give you the opportunity of having more time on all of the subjects or divisions of the subject matter that you are presenting.

Of course, it is not our intention to stifle anyone in the presentation of views. The Committee feels it is possible to present your views in fifteen minutes, if you will stick to the subject and avoid as far as possible dealing in generalities, in that way I think it is likely that you may be able to present your views within fifteen minutes. If it is found impossible to do so, it is not intended to be a hard and fast rule that would prevent anyone from getting a complete opportunity to present their views fully.

I would like to stress this rule that the Committee has adopted that all suggestions and modifications and additions to the Constitution shall be submitted in writing, and shall contain specific language to accomplish the suggested results. I believe the experience of the Committee before Henderson's Committee, where suggestions were made, did not extend to submission of written suggestions containing specific language, and, so that the Committee may have the thought that you may desire to present, it will be very helpful indeed if you will present any suggestions, changes or additions in the specific language in which you think it should be phrased.

Any person attending the hearing who does not desire to present his views orally, may record his position by filing a written statement with the Chairman.

May I ask of those who will speak this morning that if you will as far as possible speak loudly enough, distinctly enough and slowly enough so that the stenographers may be able to get your entire statement, it will be very helpful if you follow this suggestion.

I may also add relative to the statement made yesterday that there is no intention on the part of the Committee to hurry these hearings through to a completion without giving everyone, individuals and organizations, a full opportunity to be heard. I have received several requests already from

organizations indicating that they are not prepared today or this week to present their views and they wish to be heard. Those requests will be taken up by the Committee and we will endeavor to cooperate with these organizations by fixing a time when the organizations may have an opportunity to present their views fully.

We do feel, of course, that this matter of the Revised Constitution is of primary importance in this Legislative Session. We want to complete the hearings as expeditiously as possiblebut at the same time we have every intention of giving everyone a full opportunity to be heard.

I am going to ask the Counsel for the Judicial Committee, Russell Watson, Esquire, if he will at this time give you a summary of the Article dealing with the Judicial Section of the Constitution. Mr. Watson:

Mr. Watson: Senator Eastwood, under the draft of the Revised Constitution transmitted by Governor Edge to the Legislature, Article V, which is now before this Committee, would be reconsidered.

A Supreme Court is set up to succeed to the Jurisdiction of the Court of Errors and Appeals and a Superior Court to succeed to the jurisdiction of the present Supreme Court, the Court of Chancery, the Prerogative Court, the Circuit Courts, and the Courts of Common Pleas, Oyer and Terminer, Quarter Sessions and Special Sessions and the Orphans' Courts.

The Superior Court will sit in two trial sections, a law section and an equity and probate section. Matrimonial causes will be heard by the law section.

Two or more appellate divisions of the Superior Court will sit to hear appeals from the law and the equity and probate sections. Appeals from the inferior courts such as the Recorder's Court, District Court, etc., will be heard either in one of the sections or in an appellate division of the Superior Court.

Appeals to the Supreme Court from any Court will be limited to cases involving capital punishment or Constitutional questions or in which there is a dissenting opinion in an appellate division of the Superior Court or in which such an appeal is allowed by an appellate division or by the

Supreme Court.

No Justice of the Supreme or Superior Court may practice law or engage in gainful occupation or continue in office after the he reaches the age of seventy years but he may be assigned to temporary duty by the Chief Justice after reaching that age.

Each Justice of the Supreme and Superior Courts must be an attorney at law of at least ten years' standing.

The Supreme Court and the appellate divisions of the Superior Court will sit in Trenton and the sections of the Superior Court will sit in the various counties.

Justices of the Superior Court will be assigned to counties, sections, etc., by the Chief Justice annually but there will always be one Justice appointed from each county who will reside in and sit in the law section of the Superior Court in that county. When his services are not needed there, he may be assigned to sit elsewhere.

Assignments to appellate divisions will be made by the Chief Justice each three years.

Rules as to practice, pleading and evidence will be made by the Supreme Court subject to law.

The Supreme Court will consist of a Chief Justice and six associate Justices to be appointed by the Governor with the advice and consent of the Senate and to serve during good behavior.

The Superior Court will consist of such number of Justice as may be authorized by law, not less than twenty-five, similarly appointed, who shall serve for seven years when first appointed and, if reappointed, during good behavior.

The first Chief Justice and Associate Justices of the Supreme Court will be appointed by the Governor with the advice and consent of the Senate on or before July 1, 1945 from among the Chancellor, Chief Justice, Supreme Court Justices, Vice-Chancellors, Circuit Court Judges, and such judges of the Court of Errors and Appeals as are attorneys at law of ten years' standing, then in office. The remainder of these judicial officers and all of the Common Pleas Judges then in office will automatically become the Justices of the Superior Court.

The Chief Justice and Associate Justices of the Supreme Court so appointed will serve during good behavior subject to the seventy year

age limitation.

The Justices of the Superior Court so created will serve out the terms to which they were appointed under the present Constitution. They may be reappointed for good behavior with an age limitation of seventy-five years, if, at the expiration of their terms, they are attorneys at law of ten years' standing and have not reached that age.

The Legislature may create inferior courts of limited jurisdiction but all judicial officers of the State except those elected in or appointed by the governing body of any county or municipality must be appointed by the Governor with the advice and consent of the Senate.

Administration of all of the Courts of the State will be supervised by the Chief Justice under rules made by the Supreme Court. Provision is made for the appointment of an administrative director to assist in the administration of the Courts and to collect and publish statistics as to the administration of their business and the cost thereof.

There will be one Clerk of the Supreme Court. The Clerk of the present Supreme Court and his office force will be transferred to this office.

There will be a State Clerk of the Superior Court and in the counties the county clerks and surrogates will act as clerks of the Superior Court according to the subject matter of the controversy which will be determine by rule of the Supreme Court. The Clerk in Chancery and his office force will be transferred to the office of State Clerk of the Superior Court.

After the expiration of the terms of the Clerk of the present Supreme Court and the Clerk of the Court of Chancery, the Clerk of the Supreme Court and the State Clerk of the Superior Court will be appointed by the Supreme Court with the approval of the Governor.

Appropriate provisions are made for the transfer of causes pending in the Courts which are abolished to the Courts succeeding them in jurisdiction.

Stripped of details, this proposed Article V embraces three fundamental principles, unified court, independent judiciary, and a court of administration under a responsible chief justice.

SENATOR EASTWOOD: May I inquire whether there are any opponents of the Judicial Article who desire to present their views this morning? Among the names listed so far all of those who have registered are proponents or for modification or changes. There are no opponents registered.

Then we will proceed to hear those who have registered as representing themselves or organizations for modification or additions to the Constitution. I believe there are several ladies present - Mrs. Maxwell Barus, Mrs. Fred Metzger, Miss Marion E.C. Walls, Mrs. Frederick Jeutter, Mrs. E.W. Anderson, Mrs. R.H. Hunter and Mrs. J.H. Constantine representing the New Jersey League of Women Voters. I assume this organization is here this morning to speak with respect to modification of the Judicial Article.

MISS WALLS: I am speaking for them.

SENATOR EASTWOOD: As far as the Judicial Article is concerned?

MISS WALLS: Yes.

SENATOR EASTWOOD: Your name is?

MISS WALLS: Marion E.C. Walls.

To the Chairman and members of the Legislative Committee on Revision of the State Constitution:

The League of Women Voters approaches the consideration of Article V of the proposed revision of the Constitution from the viewpoint of the citizen. In a representative democracy the power of the government is in the hands of the people. It is therefore important that the framework of the three branches of government through which this power functions should be simple, so that it can be easily understood by the average citizen.

We therefore wish to congratulate the Committee for the simplified revision they propose for the judicial branch of the government. As our organization deals with the study of government and citizen participation in it, we know that the present Court system is so complicated and unwieldy that the ordinary layman cannot understand it. Nor can it, in our opinion, function speedily and directly enough to provide equality of justice for all citizens.

The principal modification to Article V which we wish to propose is in the interest of securing greater equality of justice for all citizens alike. Since the League is organized in local communities, and for the past twenty years we have studied the various types of local government at close range, we feel better qualified to make suggestions regarding the lower courts than on any other part of the court system. The great volume of legal actions is in the lower courts; it is to them that the man of low income has to take his case; it is to these courts that the first offender goes when he comes in conflict with the law, as well as the so-called minor offenders. All of these cases need the most careful and efficient consideration, in order that both the citizen's and society's rights may be preserved. For years we have studied the functioning of the various types of local courts, and there is such variance in court procedure and in the justice administered as to create unfairness in the protection received by citizens in differen t communities.

The League believes that the interests of all of the people of our State can best be served by abolishing the recorder, police and justice of the peace courts, and by transferring all of their functions to a state controlled court. Such a court should be set up on district rather than on county lines, with divisions having civil, criminal, juvenile and domestic relations jurisdiction not assigned exclusively to the upper courts, with appeal to the proper appellate division of the Superior Court.

The District Court should consist of a Chief Judge who shall have administrative authority over the divisions in the several districts throughout the State, and such numbers of judges as are needed to carry on the work of the divisions in the several districts.

The appointment and qualification of the District Court Judges should be the same as those for judges of the higher Courts, and their salaries should be established by law.

We therefore recommend that a District Court having civil, criminal, juvenile and domestic relations divisions be included in the system of constitutional courts and that Section I of Article V be amended to include such a District Court, that Section V of Article V designate the set-up and duties of such a Court, and the qualifications of judges for such a Court; that the present Section V should become Section VI and that the present Section VI should become VII.

The League believes the District Court branch to be the most important of the Court system, because it is closest to the lives of the greatest number of our citizens. It is all important that there should be a unification in the procedure and administration in the lower or inferior courts, and this can be accomplished only by State-wide control.

The League will submit a carefully worked out addition to Article V.

Respectfully submitted,

SENATOR ELSTWOOD: As I understand it, Miss Walls, you will submit later in specific language the proposal that you offer in your remarks:

MISS WALLS: That is right.

SENATOR ELSTWOOD: May I ask if any Members of the Committee desire to interrogate Miss Walls?

Mr. Cavicchia would like to ask a question.

ASSEMBLYMAN CAVICCHIA: Do you mean you would have all the courts constitutional courts?

MISS WALLS: I would say that was the implication.

ASSEMBLYMAN CAVICCHIA: In the meantime you would not permit the leeway of establishing courts by legislation?

MISS WALLS: I see your point. No, I would say these should be in the Constitution but future courts might be added to supplement them by statute. Does that answer your question?

ASSEMBLYMAN CAVICCHIA: In other words, all the courtsthat we know we now have in this State, take in the Constitution?

MISS WALLS: That is right.

SENATOR EASTWOOD: May I inquire whether your statement as I understood it, incorporating in the Constitution all the present inferior courts, would include Justices of the Peace?

MISS WALLS: No, we believe Justices of the Peace should be abolished and I believe they are, are they not?

SENATOR EASTWOOD: Yes, but your proposal as I understood it was that all the present inferior courts be continued as constitutional courts in the Constitution.

MISS WALLS: We are specifically not saying there should be lower courts but in time form district courts having civil and criminal jurisdiction.

SENATOR EASTWOOD: I want to clear up one point in my own mind. May I inquire further, is your organization than opposed to the continuation of Justices of the Peace?

MISS WALLS: Yes.

SENATOR EASTWOOD: And their jurisdiction?

MISS WALLS: That is right.

SENATOR EASTWOOD: Are there any other Members of the Committee desiring to ask Miss Walls any questions?

Does Miss Evelyn Seufert care to speak now as one desirous of presenting views on modification?

MISS SEUFERT: Mr. Chairman, Members of the Committee and Ladies and Gentlemen: The New Jersey Committee on Constitutional Revision is deeply gratified by Article V as proposed by the Committee. We feel that it goes a long way in establishing the principles of a court system that we so badly need in this State. Those principles which should be considered when we are reorganizing the courts are first, unification; second, flexibility; third, the conservation of judicial power; and fourth, responsibility.

In looking over Article V as it is proposed now we find those principles have been well considered and are the basis of Article V. However, we feel that Article V should be more inconclusive. As far as it goes it bodes well but in referring to Section I of Article V, paragraph I, we feel that there should be a change in the manner of an inclusion.

Reading paragraph I of Section I; "The judicial power shall be vested in a Supreme Court and in a Superior Court and in inferior courts of original limited jurisdiction, which inferior courts may from time to time be established, altered and abolished by law. Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution, as may be provided by law."

We submit this question - Why not now? If the provision is here that the inferior courts may be integrated with the superior court by legislation at a later date, why postpone it, why not do it now by the Constitution? We are making this one great break in our court system, let's go the whole way and do a thorough job. We have accomplished these four principles in our upper courts but not in our lower courts. The inferior courts are more in need of unification that the higher courts are. I submit they have been the forgotten man in our court system.

Now let's look for a moment at our inferior courts, what are they, and perhaps we can get some picture of the hodge podge of these local courts.

Speaking first of the highest inferior courts which would be the district courts: We have two district courts in each city of over 135,000 in population and we have one district court in cities of less than 135,000 population but with more than 17,000 population. And we have one district court outside of the city district court in each judicial district which are specified by the Legislature. We have a district court judge appointed by the Governor and confirmed by the Senate for a five year term. The jurisdiction of our district courts, as we know, is limited to an amount of $500 in civil cases and in landlord and tenant cases. Then we have divisions of our district court called small claims divisions where jurisdiction is $50, and persons having claims under $50.00 may come in that division without the necessity of having a lawyer represent them.

Now, our district courts alone have more people coming to them than all of the other courts in the State and yet they are part of our inferior courts. The judges of our district courts, outside of very few in large municipalities, are not full time judges, they are part-time; they are paid low salaries, of course because they are on a part-time basis; they are primarily occupied with their own profession rather than sitting as judges in the district courts, and many of you have had experience of course in the crowded calendars of the district courts. We do not get the same kind of justice meted out in every district court. That is, of course, because there is no administrative head of the district court. There is no judge in our higher court system who has the power to tell the district court judges what to do, when to sit, and how to keep their calendars. Up to date there is no check-up on the operation of our district courts. These district court calendars become terribly crowded, cases lag way behind and we must always keep in mind that more of the people in this State meet our court system, come into contact with it, through the district courts rather than through the higher courst and their knowledge of the judiciary and

judicial system of New Jersey is limited to district courts.

Sometimes it takes more than a year to get a decision in a district court, for example as we know, of course, we are guaranteed rights of trial by jury but if parties wish to waive july trials they may and so it has become the custom in many district courts. I mean parties do in the majority of cases waive jury trials for the sake of speeding up, but everyone has the right to demand a jury trial and it has come to the point where guaranteed protection of rights and liberty by a jury trial is used as an instrument of deliberate delay because the party will ask for a jury trial for the purpose of delay and in many courtsthis means a hold-up of a determination for at least a year.

There are many things in district courts that need to be brought to the attention of someone and if the district courts were brought within the constitutional court system and become a part of the unification of the courts a good many unsatisfactory conditions now existing will automatically be wiped out.

Then we have the Small Cause Courts. Of course, now under the New Constitution the abolishing of the Justice of the Peace may do away with Small Cause Courts, although we may find that some other person will be sitting in Small Cause Courts. The Justice of the Peace held Small Cause Court within his own County and they had civil jurisdiction of $200 and also had jurisdiction over landlord and tenant cases but could not handle a question of title to land.

We have another court, inferior court, which some of us don't even know exists and that is the Recorder's Court for the trial of small causes. That is established by the Governing Body of just boroughs or townships. Only boroughs or townships have these courts which try small causes and they must be boroughs or townships of more than 3,000 population in counties other than first class, where they have one or more district courts. In the United States we have lots of Recorders Courts. Now, recorders in courts

trying small causes are appointed by the governor and Legislature for three year periods and have civil jurisdiction like justices of the peace and the same criminal jurisdiction of the justice of the peace in a Justice of the Peace Court.

Then we have Criminal Judicial District Courts which have been set up in some of our counties. Originally the judges were appointed by the Governor and confirmed by the Senate, then the Legislature passed a law appointing judges in joint session of the Legislature.

The Criminal Judicial District Courts deal with minor criminal offenses. There are four of these courts in Hudson County, two in Passaic, and two in Bergen County.

Then we have Police Courts, Recorders Courts, Magistrate Courts, Municipal Courts, City Courts, City Criminal Courts, Family Courts, County Traffic Courts, etc. All of those together make these inferior courts. They are not included in our court system and, unfortunately, as I said, these have been the forgotten courts and the judges are the highly forgotten men in our court system.

The fact that the cases are small and the amount involved never exceeds more than $500 doesn't necessarily mean that it is the difficulty of the case or the amount of skill in learning which should be applied to that, it is limited to the upper courts. We get just as difficult and as important cases in the lower courts and even these small cause courts call for high type judges. Each and every case has to be decided with justice and expeditiously but, unfortunately, here in the State of New Jersey the significant Judge has not been the trial judge who dispenses justice immediately upon trial, but they are justices of the appellate courts who make out of the controversies brought to the court as a means of developing the law, and I submit it is the trial judges in the lower courts that have the tough jobs, immediate decisions to make. The upper courts are just interested in controversies, not

how they affect A and B but in controversies as they are able to use them to develop the law.

The application of the law in these lower courts as distinguished from the ascertainment of the law has received too little attention in the court system in New Jersey and as a result of that the results of the concrete cases in our courts have seen less regard than the reasons for reaching these cases and reaching decisions, rather the results, and after all it is the results that we should be primarily concerned with and not the courts as a means of developing law and I don't think we need go into any further explanation of how unsatisfactory the results have been in our lower courts because there is no control over the police courts, the municipal courts, the family courts, the justice of the peace courts, small cause courts, district courts, etc. Each judge runs his court as he sees fit. In some courts there is one measure of justice meted out and in another court another measure so that when we look into inferior cours we realize these great principles of reorganization of the court system on which we are basing reorganization of courts in New Jersey have never been applied to inferior courts.

The Revision Committee here suggests that at so me time we might have an integration of these inferior courts with superior courts- why not do it now when it will be much easier to do it. We all know that since there are so many of these courts and since they are local courts the pressure that will be brought to bear on our Legislature from local groups, when the time comes that the Legislature does want to integrate the courts into superior courts, will be so great that probably the Legislature will not be able to overlook that pressure.

I submit right now that it would be much easier for the Legislature when it is doing a thorough job to resist pressure now than at a later date when the higher courts will not be under consideration.

There is another point that the Revision Committee is interested in establishing this morning, that is in connection with Section V of Article V dealing with the terms of the justices. Section V, Paragraph 3 on page 15 -"The Justices of the Supreme Court shall be appointed to hold office during good behavior without limited terms except as to age as provided in this Constitution. The Justices of the Superior Court shall hold office during good behavior for terms of seven years and if reappointed shall thereafter hold office during good behavior without limited terms except as to age as provided in this Constitution."

The New Jersey Committee on Constitutional Revision believes that for the better administration of justice we should have definite terms for our justices of the Supreme and Superior Courts, long terms to be sure to guarantee independence and security to the judiciary, but you will note that our justices are to serve under this provision for good behavior, and what is good behavior? That, of course, is something that is very difficult to determine. We can, of course, remove a judge for malfeasance or misfeasance in office - can you remove a judge for nonfeasance in office? We doubt it very much. In other words we might Conceivably have a judge on the bench who is there after having served his apprenticeship for life on good behavior who, although he does nothing wrong, still he does nothing right to the effect that he makes no contribution. You might say he just sits down on the job, not an active judge, he doesn't keep his calendar up to date, perhaps as he should, he is not particularly interested and makes no contribution to the judicial system. Under the Constitution as it is now, there is no way of getting rid of a judge who makes no contribution to our court system. We feel that a period of perhaps 12 years or a 15 year term is a safeguard to the public. There is no question that if a man has a 15 year term and during that long period is a desirable man for office he will be reappointed, but if he turns out to be not as good a judge as we can get in that job, the people will

have an opportunity of removing him and putting somebody else in, but so long as there are no grounds for removal for nonfeasance we are stuck with that kind of a judge in our courts.

For that reason the New Jersey Committee would like to see a limited term for our judiciary term, long enough to give, just as I said, security and independence and an opportunity to prove ability. And the Committee will, as requested, later submit in writing its definite recommendations, Mr. Chairman.

CHAIRMAN: Mrs. Seifert, you will submit to question of Mr. Cavicchia

MRS. SEIFERT: Yes, sir.

MR. CAVICCHIA: Do you mean all courts should be constitutional courts?

A Yes, I do; that all the courts shall be made a part of the general State court. For example, you can have a Supreme Court, Superior Court, and County Court and within your county court have as many divisions on as l> local a nature as may be necessary.

Q Wouldn't you allow for flexible superior court systems to meet the needs of changing conditions.

A Yes, sir, I will provide, as you provide here, that the legislature may, from time to time, increase the inferior courts or give the supreme court the right to make rules to increase or decrease inferior courts.

Q Suppose the condition is such that it would be deemed expedient to constitute an entirely different classification than would be taken in the constitution if it were done so, according to your recommendation, wouldn' we be in a sense following the justice of the State?

A I don't believe so, Mr. Cavicchia, If you give the chief justice of the Supreme Court the power to increase or decrease the jurisdiction of these inferior courts there you will get the necessary flexibility.

Q Don't you think this takes care of any objection that you raised in the Section VI wherein the chief justice of the supreme court of the administration head of all the courts of the state?

A It is to the extent that he will have personal supervision over the judges of the inferior courts but that does not effect the number of the courts themselves or the quality of the courts or the differences of the courts in each municipality and in each county. We don't have a uniformity there and merely supervision of the chief justice does not bring uniformity of the courts.

Q Doesn't it provide for the report to the legislature as to the activity of the courts and therefore the legislature will have at its disposal merely what is being done at the courts and accordingly can legislate the existence or prevent the abolition of the inferior courts in that extent?

Q Isn't that a great improvement and doesn't it go a long way in what you say?

A Yes, it does and do we believe that the legislature would act upon those courts?

Q Is there any reason to believe otherwise.

A Yes, I think there would be traffic.

CHAIRMAN: Miss Seifert, may I inquire that you made a statement with the appellate courts are interested primarily in developing the law that may apply to the particular things under consideration. Did you have in mind the provision of the proposed constitution which would give the appellate court the right to determine the facts as well as the law.

A No, sir, I did not. I had in mind one of the reasons for the present unsatisfactory conditions of our lower courts, the fact that our appellat courts were not concerned with what goes on in the lower courts.

Q Do you not feel that the proposed constitution would remedy that defect?

A Yes, I do think so.

Q Then may I inquire of you with reference to your statement that there is some question in your mind as to whether the judges may eventually get what may be construed to be a life tenure and be held accountable for non-feasance. Have you given consideration to paragraph 4 of section 5 which gives the Senate right to prefer charges and determine the question of good behavior. Do you not feel that that would include acts of mal-feasance, mis-feasance or any acts of a judge which would come to the question of good or bad behavior?

A No, Senator, I do not. We carefully considered the statement that the legislature would bring the charges but it is a question of what basis th charges are preferred on. I don't think we have yet had a charge of non-feasance. The term "good behavior" is so difficult and it is not qualified that non-feasance would not be considered a ground for the preferring of charges by the legislature. If it is, that is all right. But it seems to me so far in the history of the state and country ..

it has not been possible to remove adjudge for non-feasance.

Q Is it not true that under our present system a judge can only be brought to trial through impeachment proceedings or House of Assembly and then tried by the Senate?

A Yes.

Q And it is a much more complex proceeding.

A Just that a Senate can prefer the charges. It is much simpler than having to go to a trial of the Assembly and Senate. This simplification is a much decided improvement but I still question whether any group has preferred charges for non-feasance.

CHAIRMAN: Under the present practice the House of Assembly would have to consider that it was a charge of non-feasance with sixty members.

Q And you feel this section of paragraph 4 does not imply with the suggestio you have in mind; for bringing up a judge for non-feasance?

A If I could be convinced that it would be for non-feasance. What is the basis for preferring charges?

CHAIRMAN: If we had not made these sections clear and people may have different views that is the purpose of this hearing and we are glad to have your organization submit in writing some specific suggestion with respect to the particular phase.

MISS SEIFERT: Yes, sir.

CHAIRMAN: May I make one further inquiry, Miss Seifert. Do you hold the view that by giving to these judges what may be equivalent to life tenure may create a stronger independent judiciary?

A I think a longer term and security. The knowledge that re-appointment is possible for good behavior is sufficient to grant independence to the judiciary after two 15-year terms to amount to life tenure in the higher courts, I presume.

Q What do you think would happen as they approached the end of their term as to the effect it may have upon the decisions where, for instance, legislators may be councilmen in the cases?

A I think as they approach the end of their term if they have a 15 year term, if you consider approaching the end of the term the end of 13 or 14 years, they will have such a record behind them and will have been able to build up such a satisfactory record for their work, they wouldn't have to worry about re-election by the legislature because they have enough behind them by that time.

MR. LEWIS: Do you propose that all of our inferior courts as we know them today be replaced by a district court which is to be a constitutional court?

A No. I said the committee would submit a definite plan. We have not had an opportunity to work out a definite plan but in general if you had the lowest section of the court system, county courts, then give the chief justice the right to make rules on that county court, or divisions, for instance district divisions, municipal, domestic, juvenile, etc., have them spread about the various parts of the county, as many as necessary, depending upon the population and case of the communities.

Q Is it your thought then that the constitution outline specifically all the inferior courts which are to be constitutional courts and determine their jurisdiction in the constitution?

A No, sir, I do not think you should specifically outline. I would set up the county court and give the chief justice the power to make within that county court as many/necessary divisions as municipal courts, domestic and juvenile courts or municipal courts, as necessary, but not to outline those courts in the constitution.

Q In other words, you prefer to give that power to the supreme court instead of the legislature?

A Yes, that is the point.

MR. VAN OLSTEIN: Do I understand that you think, therefore, anybody fulfilling a judiciary capacity in the state shall be a full time judge and not engage in any other occupation?

A Yes, sir, I certainly do. We need full time judges in our little municipal courts as we do in the supreme court and under the flexible system we ha

now with the chief administrator being able to assign we set up our inferior courts on a county bases; let the chief justice have the power to assign someone to go in and hold court if necessary but he would be on the same equity as any judge in the system.

Q Then the full time judge at the same time would take care of all the magistrate cases, etc.?

A Yes, part of the time in a domestic court, within the county, being allocated to the place where he is needed at the time. Just as in an English system you will see Lord Chief Justice going down to a smaller court to hear a murder case. What goes on in a smaller court is just as important as in our higher courts and perhaps even more important to some people.

MR. LASHER: Mrs. Seifert, assuming this good behavior does not take in non-feasance, would your plan contemplate removing the judge after the completion of 12 or 15 year term?

A It wouldn't matter, if he were in his second term he would be removable. We also might add a provision in here for removal by non-feasance, because if the judge had been re-appointed to another 15-year term, by his seventh year he gets careless about his work and we should have the power to remove him.

MR. LEWIS: Is it your thought, then that the district court judge or the inferior court judge would then travel around the county, for instance in a rural county; he would not sit in a particular county or boro?

A Yes, sir, he would be assigned wherever he was needed at that particular time.

MR. HAND: Have you considered that these well-paid full time judges would be devoting their time to the minor cases, such as drunkenness, minor traffic violations; do you think that would be entirely justified?

A I think the police court cases would be handled by police courts.

MR. CAVICCHIA: You are aware of the fact that it provides for the very thing you recommended?

general with the new constitution as presented but since we have to wait for an executive board meeting to approve the stand we are taking, I would like to a sk from you to be able to present a statement at some future date?

CHAIRMAN: We will be glad to receive it Mrs. Parsonnet.

CHAIRMAN: We will now hear from Morris Isserman, Esq., from the New Jersey CIO. (Mr. Isserman not present in room at this time).

May I ask if there are any others here who desire to present view for modifications.other than those whom I have called upon?

MRS. HOPKINS: I am from the Women's League of New Jersey. We are in favor of the judiciary article.

CHAIRMAN: Are you speaking as a proponent?

MRS. HOPKINS: Yes, sir.

CHAIRMAN: We will be very glad to hear you later.

CHAIRMAN: I might state that while we are waiting for Mr. Isserman, that present this morning is Edward M. Wise, Esq., Warren County Bar Associatio as one who desires to speak on the question of abolution in the court of jurisdiction. Mr. Wise has asked to be given an opportunity later to present his views on memorandum.

MR. WISE: Yes, sir.

CHAIRMAN: I would also state that George W. McCarter is present and also wishes to make a statement. We will be glad to have you make a statement, Mr. McCarter.

MR. MCCARTER: We have a memorandum in preparation which I might say is one in modification, accepting in general, the proposed plan, and suggested changes we think would be an improvement. That is at the printer's now and we respectfully move that we be granted an opportunity later in the course of your other hearings to present it?

CHAIRMAN: The committee will be glad, I am sure, to fix a time that will give your committee that opportunity.

MR. MCCARTER: Very well, sir.

CHAIRMAN: As I understood in discussing the matter this morning, Mr. McCarter you think you will be able to present your views some time next week?

MR. MCCARTER: Yes, sir, positively.

CHAIRMAN: I believe Morris Isserman is here now.

MR. ISSERMAN: Mr. Chairman and members of the committee, I would like to make an application at this time to present a brief at a later date and prevent my oral argument at this time. I can give you some of our views but I would like to have an opportunity to speak later on.

CHAIRMAN: I will be very glad at this time, Mr. Isserman, if you will outline and give some of your views and then an opportunity will be given you by the committee so that you may present a brief and speech.

MR. ISSERMAN: We have, Mr. Chairman, members of the committee, some 2 or 3 basic objections to the suggested article 5 on the judiciary. The first one applies to section 3 which provides, I should say, sections 2 and 3, which provide for the appointment of judges. We believe, in the first instance, that judges should be elected by the people in the same manner and the same fashion as the other members of the legislative and executiv branches of the government. We have been unable to find a single reason why New Jersey should comtinue the method of the appointment of judges. We believe that in the election of judges we will get good men who will be responsible to the people; who have to account to the people for their actions, and experience has shown that men who know that they must accou periodically for their actions are apt to do a better job generally than those judges who are appointed by the political powers in office at the time the vacancy occurs or those judges who obtain tenure of office. I would like to, as I said before, go on perhaps a little more at length on this subject, and I would like to reserve my time on that. Our secon point which we make, and which is important, is our objection to the provision in this constitution which would provide that judges of the supreme court are appointed for life or during good behavior, which is t amount to life, and judges of the superior court, after a seven year term, and they receive re-appointment and are appointed for life. The first thing I can't understand is why there is a distinction made between the justic

of the supreme court and those of the superior courts. I think it is possible that the governor under the system which you propose, may make a mistake in the appointment of a supreme court in determining his abiliti judicial temperment and his understanding of the law, and under this section as you have written it today, once a mistake that man stays on the bench. I presume you must have given it some consideration that from reading of the document there seems to be no good reason why there should be a distinction between the appointment of the justices of the supreme court and the justices of the superior court. Secondly, we don't believe it makes good judiciary attitude to permit a judge to obtain life tenure. In most of the states in this union judges must be re-appointed or re-elected, as the case may be, and we believe this should be continue here. I will concede that occasionally, and I say only occasionally, a good judge in this state was not re-appointed. I believe that occasional perhaps a judge may have had to at the end of the term mold, let us say, his decisions and I put it advisable because I know of no particular instance, to specify the then appointing power governor who is in office. But weighing that against the rather important proposition that judges, knowing that they are going to be faced with either re-appointment or re-election, knowing that they are responsible to someone for their actio I believe you must come to the conclusion that the appointment or the election of a judge should be for a stated specific term. The third basi objection that we have is the failure to provide in this constitution a provision which will unify the court system of this state. I heard Mrs. Seifert a few moments ago testify on that point. We are fully in accord with the position she has taken. We believe that no judge should be permitted to practice law and that includes the police court judges. We believe that no judge should be a part and parcel of an executive branch of the government. At the present time, the lower courts, the police courts, act, in most instances, as branches of the executive, rather than as independent judiciary. We feel that with a proper provision in this constitution, not necessarily setting up the number of courts or the type

of courts, a provision that all judges be appointed by the governor, that all courts be created by the legislature -- all inferior courts -- and by the elimination of the clause which says,"Every court of inferior jurisdiction,.....", all except "judge of criminal jurisdication elected in or appointed by the governing body of any county or municipality pursuant to the state or law." We believe that to be out. If we are going to have the independent judiciary that should start from the bottom up. You men know that there are more cases in our State in the civil court than in the court of appeals. For that reason we urge that some provision be made in the constitution whereby complete control of all the courts of the state be given to the legislature and the appointing power of all the judges of the state be vested in the governor of the state instead of the local municipalities. This will eliminate the present existing evil wherein the police court judges take orders from the chief of police. For public safety we favor the independent judiciary. We believe the police court judges should not be permitted to hear cases. They should get adequate salary but not come under the jurisdiction of the [illegible] municipalities. Those, in the main, are our objections. We have some minor ones, for instance, I don't believe that the constitution ought to provide that the appellate divisions shall sit at the seat of the State Government. There may come a time when the legislature in its wisdom may determine there may be an appellate decision in North Jersey. At the present time it is satisfactory. Five years from now it may not be. I don't believe that the appellate decision ought to be fixed in the constitution. I am talking now perhaps as a lawyer but I have a case coming up and I feel I ought to go into Essex County Court House with it, or Union or Hudson County. Why we should have to come down to argue matters in Trenton when they can be argued in Essex County. I can't believe it is necessary. One more point under section 4, sub-division 3,article 3; that is, "Appeals to the Supreme Court from any court may be taken only (3) On certification by an appellate division". I think there ought to be another instance where the cases may be brought to the

supreme court and that is where the appelate division reverses the lower court because then what you have is one out of four superior court judges deciding the case in your favor and I think under those circumstances an appeal should be as a matter to right. One other objection that is important and that is the supervision which sets up your appellate provision and appoints these judges for three years. We are in favor of an appelate provision where the judges are permanently fixed. We feel in the present court system the totating of judges was given in a particular case; the judge who sits in the appelate division today who may sit at another time in a lower tribunal may not issue the same decision as when he sits as an appelate judge.

MR. CAVICCHIA: Mr. Isserman, in discussing terms for judges you made much o the point of judiciary temporal understanding of the law?

A That is part of it.

Q That is a great point that you make in your argument?

A It is one of the points but not an important one.

Q Doesn't that answer the argument about electing judges?

A No, the judge who is elected and who does not do the job well undoubtedly faces the election and may not be re-elected.

Q How about the first instance?

A We have no complaint in the first instance; you take the gamble where you are elected or appointed.

Q Do you gamble justice for a period of years?

A You have no choice, Mr. Speaker. If the people appoint a man and then find they made a mistake you can't rectify it unless by impeachment.

Q We don't provide for impeachment under this proposal.

A You provide for a new method of impeachment, the Senate sits as the trial body, in effect, as a removal, from office. You call it an impeachment or this new system you have in mind. It is the same thing.

MR. CAVICCHIA: It is a simpler system.

MR. ISSERMAN: Yes, a man who is brought up on that sort of a charge. The point I make is that a man who may be able to throw a bluff as a lawyer

and get the appointment and then he gets on the bench and isn't fit. What check have you provided for judges of the supreme court here. The answer is "none", You do provide a check when you are worried about a judge of the superior court. I would like to know why the difference. There must have been some reason when this Department decided it. It does not appear on the face of the instrument and we have not the minutes of the proceedings but to me it is just as important to have at least a check of a judge of the supreme court as a judge of the superior court.

CHAIRMAN: Do you, Mr. Isserman, advocate that the judges of the higher courts be elected and the judges of the lower courts be appointed?

A No, sir; all be elected.

Q You indicated that all the judges of the inferior courts be elected?

A No. In the first instance, we believe that all judges should be elected; the police court judges and district court judges and going away from that point, that in any event the entire court system should be integrate and the police courts and district courts, the governor makes appointment should be included in the court system. I believe the governor does a better job in this State than the local municipalities.

Q In other words, if the judges from the inferior courts are elected at the present time, most of those judges are appointed by the governing bodies?

A That is correct.

Q Then the same people would elect the judges; the governing body may be appointed.

A The difference is this, and I have had a lot of experience along these lines --

Q You mean personal experience?

A I mean in court practice. The difference is this, Mr. President; That if a man is elected by the people he is independent, at least independent from the police department. You can go into many towns in this state, an if you want records, I can produce them, where the judge would have to do what the police chief wants him to do. We have an instance in Newark

where one of the judges refused to follow directions; he was independent and sure enough he was brought up on trial for failure to obey the departmental rules. If we are talking about independent judiciary, what right has a department got to try a judge?

CHAIRMAN: If the judges were from the lower courts it would be free of political influence?

A More free than they are today but not subject to the orders of one man who happens to be in the executive branch of the government.

Q May I inquire further, Mr. Isserman, with respect to your argument against the so-called life tenure of the judges, isn't experience in those matters a factor which requires great consideration.

A Certainly.

Q And isn't it true that the judges of the district courts have life tenure

A They have.

Q Isn't it a fact that as far as New Jersey is concerned those judges are really manifest of their fine support as judges in so far as ability and consideration is concerned?

A I will give you an example. There is a judge in the Third Circuit Court of Appeals in which New Jersey is included who was removed from our force against whom impeachmentproceedings were almost brought and certain judge whose judgment and decisions have been questioned. There was a judge in the Third Supreme Court of Appeals -- high grade tribunals -- who was impeached and I think that one of the causes for that was because the ju Felt that he was secure in his job and somewhat or other in the course of years would expect that that conduct would be thrown out but if he knew that at the end of seven years the slightest deviation would be subject to question by a real bar association who would have the courage to get and say things, then I don't think he would act that way.

Q Is that just one judge you are speaking of?

A Two judges.

Q Two out of; how many in the United States?

A Far be it from me, Mr. Chairman, to figure out how many were taken out of office; three in Pennsylvania.

Q I would like to know, for the fact that you show life tenure is not satisfactory. I would like to know to whom you are referring.

A Three in Pennsylvania, I think, against whom charges are being brought or about to be brought; either two or three.

Q Against how many to whom no charges have been brought?

A The great number of them have been brought. The great majority who are judiciary are honest, capable and doing their jobs well. We ought to hav a check. One other point I would like to make. It is more difficult for a president of the United States and the Senate of the United States to do a careful job selecting a judge, much more difficult for them to continue being faced with that problem as in the State of New Jersey, New Jersey is the smaller part of the United States. This is one of the jobs that can done effectively. The Senate can be reached and I don't mean by loitering in the Senate Chambers.

MR. LEWIS: Mr. Isserman, you indicated the advisibility of making it possible for the appellate division of the appellate court to sit in Newa or some place in North Jersey?

A Yes

Q Would it be fair or equitable to require attorneys in Cape May, New Jerse to travel to North Jersey in reference to the seat of the capitol?

A No. First thing, you will have at least two appellate divisions; secondl there is no reason why the appellate division, if it wants to move, can't go to North Jersey, and can't sit in South Jersey, if necessary. I want to do this thing; I don't say it is necessary; leave that provision elastic; as the time comes, if there is a necessity for it permit the appellate division to be settled elsewhere than in the State capitol. It may be advisable. After all, the purposes of re-organization to the judiciary method is to make for a streamlined method of handling appeals. If you permit it to be elastic the legislature can, from time to time, determine / whether the courts should comply.

Q Do you feel at the present time it is the thing that an appellate division to sit in North Jersey.

A If an appellate division were set up now in North Jersey and one here it would divide the State in half pretty nearly. It would make it easier for the people in Passaic and Bergen to go to argue their cases. I think it is just about an equal division. People in Essex County could have their cases heard in Bergen County, or if you want to set it up in Union County it is all right, too.

Q Would you maintain, Mr. Isserman, that the Federal life term system be changed?

A No, I didn't maintain that. I said the circumstances covering an appointment of Federal judges is somewhat different from the circumstances and conditions of State Government, especially for the size of the Government.

MR. HAND: When you spoke before about a certain,..., did you refer to the Arillio case and the conclusion that that system be changed?

MR. ISSERMAN: That's right; the Arrillio case is not a bad case, in point; there is a lot of smoke and fire in that case and I am not condoning Mr. Arrillio. He went before the public with the public knowing all the facts If the people want to elect John Jones for a judiciary of this State, even though Jones may have a record of burglary or theft, it is the right of the people to have John Jones. If the people wanted to elect Arrillio, and there is an article in the newspaper that says Arillio will do the job good because he is on the spot, that is still their right, unless you want to do away with the elective system. The Governor's job, the Senator's job is just as important as the Judge's job. If we trust the people to Governor, we must trust them to elect the
elect the/judiciary. There is not distinction you can make between a judge and an assembly and governor which should be elected by the people.

CHAIRMAN: I understand, Mr. Isserman, that you are arguing then that the system prevailing in New Jersey for appointments of the Governor have not worked out satisfactorily?

A Mr. Chairman, I can quote the Newark Evening News --

Q I am not asking you to quote, I am asking your opinion.

A In my opinion, I don't believe that the system of appointment has been as good or as efficient orhas produced the best kind of results. I believe the election of judges would have produced just as good if not better judges who would interpret the law as it should have been [illegible] interpreted in the past.

Q In what respect has the system of appointment of judges failed?

A Apparently, the committee in discussing this article realized that the system has failed because even you in appointing, say, will appoint them right so that the judge will not be sugject to political need.

Q You are deviating as to whether they should be appointed or elected?

A No, sir, I am not.

Q In what respect has the system failed?

A In respect that the judges here appointed were compelled to look to the Governor, if you want to call it, or the political persons in power, for re-appointment and that on occasions decisions were molded on the basis of what the government in power wanted and on the basis if you don't do so perhaps, and that is pure hearsay, you may not get the appointment. That is pure hearsay but it is inference drawn in any argument made in the present method.

MR. CAVACCHIA: If that is true, how would electing judges who would have been elected in the main by the strength of political purpose, cure what you have just said?

MR. ISSERMAN: A judge who did not do a good job, whose actions were such tha he did not merit re-appointment, would not perhaps meet with the approval of the people but at least one thing we can't quarrel with if the people elect this man this is their choice and if they want to keep in office inefficient, dishonest officials there is nothing this legislature can do to protect them against themselves. We must trust in the sense of the electorate to elect the proper kind of judges.

Q The mandate referring to the legislature was in effect for the draft of a constitution which would give the people of this State a better and more responsible government. Don't you understand that to be the intent of the constitution?

A With certain limitations.

Q Isn't it the duty of this legislature to produce for the people a draft of that form of government in all its parts which is more apt to give the people of this State a better government including the better administration of justice?

A Certainly.

ADJOURNED

MR. ISSERMAN:

If the people of the State of New Jersey want to elect a crook to office, and by an overwhelming majority pick the crook, I am afraid they have the right to do that. If a man is elected as a judge and is a crook, the people have the right of impeachment if the man is a crook, and he can be prevented, under the constitution, from ever holding office again. How can we possibly quarrel with the right of the people to elect their officers. You are now challenging, sir, the judgment of the people who elected you.

MR. EASTWOOD:

I am referring to the statement you made, that even though a man may be a burglar, crook, housebreaker, etc. you think the people ought to have the right to choose that man for a judicial position. With all due respect to the senators, it is my contention that the selection of those who will preside over courts dealing with property rights, and even with the disposition of lives are much more serious and important than the activities of senators. It seems to me there would be less liklihood of having a man who might be apt to transgress if appointed by the Governor than a man elected by the voters.

MR. ISSERMAN:

I think you trust the judgment of the people in your county.

SENATOR EASTWOOD:

I certainly do.

MR. ISSERMAN:

You don't believe, honestly, that a man who was a burglar or crook could be elected senator. I don't think a burglar or crook will be elected as a judge. You can impeach him, and through the benefit of the constitution prevent him from acting ever again as an official.

SENATOR EASTWOOD:

I actually respect the determination and decision of the voters. We do get, indirectly at least, an expression of the voters; while we have an appointment made by the Governor, elected by the voters and confirmed by the senators, also chosen by the voters, who are their representatives.

MR. ISSERMAN:

It is an expression, but I think the best form of expression is direct.

ASSEMBLYMAN LASSER:

When judges are elected, do you advocate the fourteen year term?

MR. ISSERMAN:

Yes, I would advocate a fourteen year or ten year term. I don't think the judge who is elected ought to be called upon to meet the electorate too often. I do think there should be periodic times when he must come and face his people.

ASSEMBLYMAN LASSER: You think, every fourteen years would be adequate to accomplish your purpose?

MR. ISSERMAN: Yes.

ASSEMBLYMAN VOGEL: Do you desire the integration of all courts? I mean, you must be aware of the fact that we have laymen acting as recorders.

MR. ISSERMAN:

I think the laymen in the Court of Errors and Appeals should be eliminated, and laymen in the police court should be eliminated. It should be carried on by lawyers and men who are there for life. In certain communities you may not need more than one man. In Ocean and Cape May Counties, the Superior Court Judge may be able to do that job. In the larger counties, you may have to bring in a judge from

the Criminal District Court, which will embrace more than one county. There is no harm in that. It is a matter of practical application to the principle, which is that all judges should refrain from practicing law and appointed by the Governor of the State.

ASSEMBLYMAN LEWIS:

Do you maintain that judges should be elected by the people?

MR. ISSERMAN:

Yes sir.

ASSEMBLYMAN LEWIS:

According to your arguments the federal system should be changed?

MR. ISSERMAN:

This is because the size of the country makes it difficult to provide for the election of judges. It might not be in all cases, but the possibility would be if in the election of a judge in the Circuit Court of Appelates, he sits in Delaware, Maryland and New Jersey, it might be a rather difficult task, an almost impossible task.

SENATOR EASTWOOD:

What is your position on eradication of justices of the peace?

MR. ISSERMAN:

There is no reason, in the United States to continue justices of the peace. That was all right one hundred years ago. We should have lawyers who know the law. A person brought in on any charge is entitled to have his case determined by a lawyer, in the same manner as a person charged with a petty offense.

ASSEMBLYMAN VOGEL:

Do you think that some of the jurisdiction exercised by the police judges should be assumed by the police department?

MR. ISSERMAN:

If it means setting up of fines for parking tickets, certainly. There is no reason why there should be any doubt in the jurisdiction of the police department handling such things as parking tickets, but if it is a question of taking away rights to drive a car and depriving a man of his method of earning his livlihood, that man is entitled to a proper trial before a lawyer and judge.

ASSEMBLYMAN VOGEL:

What about retaining cases like drunkenness and disorderly conduct?

MR. ISSERMAN:

I think they should be tried. In the larger counties such as Essex and Bergen, those cases are tried.

SENATOR EASTWOOD: This Committee will consider at its hearing tomorrow morning, starting at 10:30, Article I, Bill of Rights. The Legislative Committee is asking me to announce that that Committee will consider Article VII, Elections, tomorrow morning. The same Committee, the Legislative Committee, will give a public hearing of Article VII, which is known as the Defense Article on Thursday morning at 10:30. This Committee will make announcements later as to the time that may be allotted for other articles under consideration by this Committee, as well as special time requested by the New Jersey Bar Association and the Executive Committee charged with the consideration of the Executive Articles will undoubtedly make an announcement of the schedule of hearings later in the day.

I now call upon Mrs. F. W. Hopkins, who will speak as representing the Consumers' League of New Jersey.

MRS. HOPKINS: The Consumers' League, as a member of the New Jersey Committee of Constitutional Revision, for which Mrs. Seffert spoke this morning, have entirely endorsed the proposal of the New Jersey Committee. However, we want to make a statement of our own. We are in favor of the document as a whole, and are very much pleased with this one specific article. We have no changes to suggest. On behalf of the Consumers' League we are not making any particular point. We think the provisions for allowing equity to prevail are very satisfactory. We approve of the small Supreme Court and the provision of an administrative head of the entire court system and, in a word, we approve of the great simplification of the court system, and we want to be registered as favoring Article V as it stands.

Meeting adjourned at 3:30 P.M.

PUBLIC HEARING ON

PROPOSED REVISED CONSTITUTION (1944) PENDING BEFORE JOINT LEGISLATIVE COMMITTEE TO FORMULATE A DRAFT OF A PROPOSED REVISED CONSTITUTION FOR THE STATE OF NEW JERSEY CONSTITUTED UNDER SENATE CONCURRENT RESOLUTION NO. 1, ADOPTED JANUARY 11, 1944

HELD BEFORE SUBCOMMITTEES ON

Wednesday, February 2, 1944

(Judicial)

J

SPEAKERS - MORNING SESSION

Wednesday, February 2, 1944

REV. ELIAS S. HARDGE	State Branch of the National Association for Advancement of Colored People of the State of New Jersey. (modification)
MR. FRED MARTIN	New Jersey Herald News of Newark, New Jersey
MR. ROGER TUCKER	Negro Affairs, Inc.
DR. JAMES CLAIR TAYLOR	Methodist Churches of the A. M. E. Zion
DR. DILLARD BROWN	Ministerial Alliance
MISS EMMA E. DILLON	Business and Professional Women's Club; New Jersey Good Will Commission; Women's Consultive Committee on Constitutional Revisions; and the Committee to Eliminate Discrimination against Women.
MR. F. S. KELLOGG	Manufacturers Association of New Jersey (Proponent)
MISS MARION E. C. WALLS	New Jersey League of Women Voters (Proponent)
MRS. F. W. Hopkins	Consumers' League of New Jersey (Proponent)
MISS ELIZABETH MADDOCK	President of the New Jersey State Federation of Women's Clubs (Proponent)
MR. DAVID H. AGANS	New Jersey State Grange (Proponent)

SENATOR EASTWOOD: Are all those who are here this morning registered with the stenographer, names, addresses, and organizations you represent? If you have failed to do so, do so promptly. Also state in registering whether you are appearing as opponent, modification for changes, or as a proponent.

We will follow the rules that were adopted by the Committee yesterday, that the opponents will be heard first. Those that may urge modification or changes will be heard second and those who are proponents will be heard last. We allot fifteen minutes time to each speaker. We suggest that if you are representing an organization and there is more than one speaker for the organization that you divide the subject matter between your speakers so that in that way you will give your organization more time to present your views.

This morning has been alloted to consideration of Article I, Rights and Privileges, the Bill of Rights. I will ask our counsel, Mr. Russell Watson, to outline the article under consideration.

MR. RUSSELL WATSON: Mr. President, Mr. Speaker, Members of the Committee. Article I, commonly known as the Bill of Rights, Rights and Privileges is precisely the form and content of the present Bill of Rights in the present constitution. Therefore, I take it that there is no need of going through the Article paragraph by paragraph and stating the provisions.

Chapter 217 of the Laws of 1943, under which the Referendum was held, provides the public question, "Shall the one hundred sixty-eighth Legislature be authorized to agree, by a majority of the members elected to each of the two houses, upon a revised Constitution for the State, which Revised Constitution shall include the provisions of Article I of the present Constitution, commonly known as the 'Bill of Rights'. The word 'include' was used by the legislators in the draft for adoption of this statute as both inclusive and restrictive and it was the legislative intent

that the present Bill of Rights should be incorporated in the proposed revision if the referendum was adopted. It is precisely in its present form and substance. Also, there is another consideration in mind; if any alteration were made in the Bill of Rights, certainly by way of exception and probably by way of addition, the door would be open to litigation which might jeopardize the legal effect of the revisions, if it is passed by the Legislature in this form and adopted at the referendum. So, therefore, there are reasons based upon legislative intent, reasons based upon legislative, judicial restriction for adhering to the Bill of Rights as it presently appears in the constitution.

SENATOR EASTWOOD: Apparently from the notice that I have from those who have registered this morning, there are no opponents appearing desiring to be heard in opposition to the Bill of Rights, Article I.

There are several who appear urging modification and those appearing as proponents.

I will ask Miss Emma E. Dillon, who appears on behalf of the Business and Professional Women's Club, New Jersey Good Will Commission, Women's Consultative Committee on Constitutional Revision and the Committee to Eliminate Discrimination Against Women. Miss Dillon is appearing for Modification. She is also a Member of the Bar of the State of New Jersey. If you will now present your views, Miss Dillon.

MISS EMMA DILLON: Mr. Chairman, I shall speak first for all of the groups except the Good Will Commission. The reason I have been asked to speak for all these people is we are all trying to accomplish the same thing, the exception being the Good Will Commission which cannot, or does not at least, at this present time consider the question of discrimination against women. However, the other three groups have been working a long time for elimination of any distinction between men and women and their rights, and I stress the word 'rights' for the simple reason in responsibility and duties,

we are equal to all other citizens.

I am not going to repeat the great amount of material which was given to the Commission prior to its study of the Constitution, but will refer you to the previous testimony taken on Constitutional Revision, which begins on page 45 and thereafter, which discussesthe legal side.

I want to discuss some of the things that have been brought out of late. There is a saying that "Out of all evil, some good must come." War has always been a crucible out of which people have derived rights and privileges that were denied them before, whether or not the war may be between groups fighting for those rights or merely coming to them as a result of somebody else's battle. Prior to the war there were a lot of absurdities. It was rather an amusing thing, yet a very shocking one, after the Congress of the United States had passed laws helping to win this war, the word 'people' was used in the hearings before the Congressional Committee which pertained to the permission of women physicians to enter the Armed Forces to do their work in helping save some of the boys. A high ranking officer of the Navy said that he did not believe in that particular Act, that the word 'person' referred to women. That is pretty silly. If I say people or persons, we naturally include women and men.

I also wish to refer to you the idea of the Fourth Generation when there were practically no women working at all outside their own homes.

Three generations ago some of the women found themselves in the position of having to depend on the bounty of their men, folks being unwanted people in the household of those men, you began to find women who would sew to earn their own living, who went out nursing, became mid-wives, various things for the purpose of earning their living. Two generations ago we began to find women going into offices. I refer you, if you want some amusing reading in the light of our present day affairs, I refer you to

the magazines and newspapers of that day. No nice girl would ever work in an office with men.

A generation ago we began to emerge into a consciousness which was a benefit to men as well as to women, for we had then become conscious that there was no line between the ability of men and women. There is no difference between people because of race, creed, color or religion. That men and women, people of all kinds are endowed with the same mental attributes. Physically, we may be different, biologically we may be different, but, nevertheless, the ability to earn economic freedom, which is one of the fundamental freedoms, is important. That a man could cook a good steak does not mean he is disgraced. Men could design clothes for women, but not be considered a sissy. Artists - men and women have their place. We discovered much to our consternation that all women are not good housekeepers - many of them can't be good housekeepers - but they are wizzes at doing something else in business. In the last generation there has been a great acceleration of women workers brought on by the last war.

No, I have some statistics which will probably be amazing to some of you. They have been compiled from very definite sources and are used by the U.S. Government itself in the various departments.

The Business and Professional Women's Federation of the United States had a survey made and this is not a guess-work survey, it is a definite survey based on actual figures and we discovered that practically all of the women who work for a living, practically all of them have, of course, themselves to support, but in most every instance someone else. We find that one in every six is entirely responsible for her household and that the number of dependents of the household rather consists of from two to eight individuals. We found that as women assumed greater economic ability they tend to assume more and more responsibility for dependents. We find that unmarried women in almost every instance,

support one or both parents. That is particularly true where there are brothers and sisters - all the rest of whom have married and the support of the parents and the home devolves almost entirely on the unmarried woman.

We find that in addition to this these women not only support themselves, but many times not only their own households, but frequently contribute to the support and education of nieces and nephews, especially so where women do not have other dependents.

Now the old tradition that women work only to get pin money has been shown to be perhaps the greatest fallacy of the day. The number of women who work for pin money, the part in this survey is so small it is less than 1% of those who work. That is rather an important thing.

All we ask is an equal chance to perform those duties, to be paid the money in the same amount paid to other workers - in other words, there is no difference in any job.

Now these figures are interesting. The War Manpower Commission in May 1940, said there were approximately 11,000,000 women working outside their homes to support themselves or others, as I have given you the figures. This amount has grown to

September 1942 to 14,000,000 women, divided as 7,000,000 in business and professions and 7,000,000 in factories.

Now, it is our contention that there isn't any difference between the person who works in a profession and the person who works in a factory, because the purpose is the same - economic independence.

We would, therefore, ask that the Bill of Rights have added to it - and surely if nothing is deleted - the law is covered - but we ask there be added to the Bill of Rights that there should be no distinction under the law between the rights of men and women to vote, to hold public office, or to enjoy equally all civic, political and economic rights and privileges.

Gentlemen and ladies, we have come to the place now in New Jersey where we have an opportunity to say to the world that we do believe in the things about which we talk. Now we are talking about freeing the Indians in India. We talk about releasing this and that group for freedom, giving them liberty, then we have half of our population that doesn't yet have political freedom.

Now, I will add to the remarks the request of the Good Will Commission --

That there be included in the Bill of Rights a provision that there shall be no distinction because of race, color, creed or religion. Those words we could say - race or religion, but in order that we may be sure all people are incorporated as we want them to be we think the word "sex" should be included. We should show to the world that we here in New Jersey believe people should be free; that they ought to live their own lives.

The war has been certainly the means through which a lot of things have been revealed. There has been a story that if women are economically free, something is going to happen to the birth rate. But you have only to look at this year's statistics and know that children will be born. There isn't going to be anything happen to homes because women go out to work. There is going to be

something happen to society if the great amount of leisure time which women - are going to have - if you won't let them work - if this isn't going to be left open to them. Remember in the old days, four generations ago that men had to have five wives during their lives because the drudgery of his household killed off his wives.

But, nevertheless, we have come to the place now where all you do is press a button and you have light; you turn a little thermostat and you have done away with all the problems that had to do with keeping the house warm. So that we have now to take cognizance of the fact that this gap which is caused by the lack of work in the home must be taken care of and women want to give their time to outside work.

I shouldn't speak personally in a meeting of this kind, but out of the experience and observation I have had, I think it would be fair to tell you that the household of women, where I know anything about them, where women work, are very happy indeed. There isn't any of this business that we speak of - what is going to happen to homes at all.

One other thing has been demonstrated--women going out to work does not make them neglectful of their children. We had a meeting the other day of the Defense Committee and Dr. Potter presented an interesting figure. We have tried to establish in the State of New Jersey a number of Child Care Centers for the children of women who have to go to industry. We have found that the women are not using those centers nearly so much as we thought they would, because they prefer to get someone in the home to look after them, or to have them taken care of by a sister, aunt or grandmother or someone of that kind. Remember also that it has been demonstrated that women are not willing to herd their children into institutions.

New Jersey, on this question, is farther ahead than practically any other State in the Union. We ask now that New Jersey be the State of the 48 to show to the world, and therefore, practically the only point place in the world today, that we do believe

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that all people of this State should be considered on an equal basis. We should not make any distinction because of sex, color, religion or race. We should give everyone the same chance and unless we do that and until we do it we do not believe in the things for which these boys are in there dying for.

So, therefore, in order to make it all inclusive, we might do so by two additions to this Bill of Rights.

In the first paragraph it says "all men". Now in grammar, you will pardon me please, when we say "men" it includes women and so since we have so contrued this construction prior to this time we would suggest you add the words "and women" so that it will read "all men and women are by nature free". That is a simple addition which states what we mean definitely. Then we would add, as it would include all of the things which I am asking, instead of merely saying "there shall be no distinction because of sex", we could change that clause to read, "sex, color, creed or religion". Then we would be truly conscious of the progress which has been made.

SENATOR EASTWOOD: May I make an announcement. Any of those who have written a memorandum will you give it to the stenographer today. If you have not prepared it for today, will you then send it to the Chairman, myself, as soon as you may be able to get it ready. If there are nay specific proposals advocated, we urge those that present them to submit them in the form in which you desire to have it considered, the exact language, you may want to have the Committee take under consideration. Are there any questions any member of the Committee desiresto ask Miss Dillon?

(no response).

SENATOR EASTWOOD: If not, I will call upon Reverend Elias S. Hardge, who will speak for the New Jersey Branch for Advancement of Colored People of the State of New Jersey.

DR. ELLIS S. HARDGE: Mr. Chairman, I am here today representing the National Association for the Advancement of Colored People, representing branches and practically all of the Cities of the State and representing about 200,000 negroes. As you know we are the victims of segregation and discrimination and sometimes we feel that we suffer from this point of view more than any other minority group in the State. At the same time there are hundreds and thousands of our boys who are fighting and dying all over the battle fronts of the world, making the supreme sacrifice, putting their lives upon the altar; fighting for freedom and democracy for others while we are denied it here at home. Even right here in the State of New Jersey there are places and circumstances under which we are denied our civil rights and we are here today asking that some addition shall be made in the Civil Rights Bill here to Rights and Privileges, Article I.

May I read:

(Rev. Hardge reads as follows:)

"It is recommended that the following sections be inserted in the Constitution:

1. As Paragraph 22 of Article I, or as Paragraph 3 of Article 2, which deals with the powers of government, and the proposed section should read as follows:

1. "No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state. The legislature shall provide penalties for violations of this section. These penalties shall be recovered and paid to the individual or organization aggrieved, and action to recover the same shall be brought in the name of the State of New Jersey for the benefit of the aggrieved person.

2. "All citizens of this state, regardless of race, color, or creed, are hereby declared free to enjoy the full right to matters affecting public health, housing and educational facilities, public utility facilities, businesses affected with a public interest, without segregation or discrimination, either of the state or political subdivisions thereof.

3. "Any insurance company, either foreign or domestic, doing business within the state, shall not refuse or limit insurance of any kind to persons otherwise eligible, by reason of their race, color or creed, nor provide special or additional rates by reason thereof. The legislature shall promptly enact legislation for the enforcement of this provision and shall include in such legislation a penalty restraining such insurance companies from doing business within this State during the period of the violation of this section.

4. "In addition to the penalties hereinprovided for violation of civil rights, any public officer of this State or any political subdivision thereof who shall violate the provisions of this section or shall knowingly permit such violation shall be subject to removal from public office or employment and guilty of a crime to be designated by the legislature. The legislature shall promptly enact legislation for the enforcement of this provision, describing the nature and type of crime and the penalty to be provided therefor".

We are asking this because we feel and know that we are not asking too much. We are only asking that we be treated as men and women. We do not come asking for any special favors for negroes, but we come asking and insisting upon negroes being given their civil rights in the State of New Jersey, as well as in the United States.

We have a great deal to say about Hitlerism and Fascism. We want to keep it from our shores, but I am sure you realize that Hitlerism was practically in this country long

before Hitler was born and in many of the sections of the Country it is still being practiced now. Right in our own State of New Jersey, probably the Southern part of our State, to some extent, if you will pardon me, it is being practiced. I need not tell you what we have suffered with reference to this dual system in the State. You know, as well as I do. A decision was handed down the other day with reference to two negro children here in Trenton. I am sure we are not asking too much, it is our purpose as the National Association for Advancement of Colored People of the State of New Jersey, to bring these things to your attention so that these things may be corrected to which purpose we will give our last ounce of energy and blood, if necessary, that these rights be obtained not only for our group, but for all minority groups.

It is foolish for the boys of our race to go and fight on every battle front of the world where there is no segregation in the fox holes - there is no segregation when it comes to dying on the battle-front. Why should these boys fight and die on the battle front and then be segregated at home.

I will give an illustration. I was talking to a soldier who had been discharged. He fought in Guadacanal. He stated that when they returned to this country there were 600 of them that went down to Texas where they attempted to go into the mess hall to have their dinner and they were told -" White people here and colored people over there". As it should have been, those white boys with whom they had been fighting in Guadacanal, took their part and stood up for them, for their rights. They said, "We have been fighting all over together, we have been dying together, why can't we eat together?" They refused to eat unless these colored boys were allowed to sit down and eat with them.

Gentlemen, I certainly trust that this will be given your consideration. I trust that these things we are asking will be taken care of. We certainly want to be as progressive in New Jersey as people are in other States. I trust you will give

these requests your special consideration; that they will become a part of this revised constitution.

SENATOR EASTWOOD: Doctor, will you hand to the stenographer a copy of the suggested proposal you read to us a while ago?

(Dr. Hardge handed in copy of proposal).

Next we will hear from Mr. Fred Martin, for modification, who represents the New Jersey Herald News of N.J.

MR. FRED MARTIN: Senator Eastwood, Members of the Committee, Friends.

I am primarily down here interested in the work of NACP with Reverend Hardge. In a general outline I think he has covered the entire field of civil rights and human dignities. However, in a group like this when we are writing the very basic law of our State, and being a member of the negro race, only one who is treated less than a man, is insulted daily, can come to you men and ask you to put into the constitution this basic law that is going to give us relief from what we have suffered here in the State of New Jersey.

A man told me the other day, "Fred, how long did it take you to prepare that speech?" I said, "I didn't prepare any speech." If I were to paint one of you gentleman's face black and take you outside this State House, let you be well educated, well financed, well dressed, gentlemen you wouldn't imagine it the way you are treated in the State of New Jersey. I was born in the South, but have lived in Jersey 23 years. I started working in a rubber factory, then went to war in the first war and came back and settled here. I thank God we still can migrate in this country, just as well as 20% of foreign population can come here and settle in New Jersey. But, gentlemen, we only have to cross the

river in New York and see the difference of two States, one giving us, some of the things we are asking for as citizens, the other not. We know that in this world you are going to always have the underdog. Churchill informed us a few months ago he wasn't going to be the first Prime Minister to liquidate the British Empire. Neither do we come here asking you to write into the basic law of this constitution that will make us Senators, Governors, but we do ask you as citizens of this State, as we have given in every battle front our boys, that you please consider the trials and tribulations of a race, a minority group which is 5% of the population of New Jersey, who is now deprived of the very thing we are fighting for. You needn't worry about the colored man going down to the hotel to buy a lobster dinner. You needn't worry about the immigrant from Europe; he has no money; he doesn't know a lobster newburgh from a pork chop. Consequently these things will take care of themselves.

A few months ago we went to Colgate. We told them: For 136 years you have discriminated against us, but you have built up in our group a large consumer interest. Well, we have a law now that says that if you have a government contract, we expect for you not to discriminate in your employment. Those are the things we are asking here. We are asking you to give us, write into this new constitution, that may never be rewritten for the next 1,000 years to come, provided you have a shrewd politican to manipulate it. We are asking you to allow us in the State of New Jersey, open doors to education, therein lies the very basic thing for a democracy. When you segregate and discriminate you create ill-will and animosity. We become bitter. You know us--we know not you because we are separated and kept apart.

Now in the State of New Jersey we have a dual situation. This is what I told Doctor Hardge. I would like to say a few words on that situation. Children do not know a difference. You have heard of the Springfield Plan. I was born in the South. I went to school in the South. I was taught in the South by colored and white teachers. A college was founded by the American Missionary Association. In the dormitories and in the class rooms we sat at tables; in the recreational room we all sat

together playing and working together with colored and white teachers. It is more of a problem here in the State of New Jersey than it is in a College in the South. These women and men who have gone to Yale, Harvard, Smith, Wellesly, go down into the South, live there and work with you and sit on the Board of Trustees. We come to New Jersey and settle here--we knock on the doors of Education here and they say, "No.".

In South Jersey you have a great fine school; back in the meadows you have a two-room school. In some places in South Jersey they have one or two rooms of colored children which grades range from the 1st grade to Junior High, being taught exclusively by a colored teacher, who is ill-equipped, ill-trained. Such goings on in a civilized state. We cannot help, gentlemen, if colored members of New Jersey bow our heads in shame when we meet our friends from New York, Illinois and other progressive states.

We, in New Jersey, are in the live stage of educational advancement. Notwithstanding, Commissioner of Education, Dr. Elliott, gave us a deaf ear here for the last ten years. We don't intend to cause any trouble, but gentlemen and ladies, we cannot accept that since we are citizens; we are dying on the battle-fronts. We cannot accept that treatment from Dr. Bosshart.

We are asking you to please give us some relief. You can give us some relief in the re-writing of a constitution that will be democratic in its very fundamentals. We don't want platitudes, we have that. We don't want promises, we have had these. There is a member of our race in the legislature, coming from Essex County. We are proud of him. Why can't we have some member of our group in the Senate. Why can't we have a governor. I don't believe that we as a group let those in authority understand some of the problems affecting us. Do you know, in this State, I had a white man, high up in official capacity of the State, tell me, "Do you know, Fred, we have given you all Bordentown". I am not here to libel or slander the great school that has been built there. It has been serving a wonderful purpose, gentlemen, but we should be ashamed to have in the State of New Jersey, a Negro

School, supported with taxpayers money, ill-equipped, yes. If you don't believe it, I will put up some money to investigate it. It cannot have equipment, why? It is a Negro school. Open its doors to white members, put in white faculty with colored faculty members, get the very best we have and Bordentown will turn exactly into a Hampton or Tuskeegee of the South. Gentlemen, we are not proud of Bordentown, not proud of any segregation. We too would like to go to Rutgers, the New Jersey College for Women and even Princeton. Some day I am hoping Princeton will admit us. Princeton is no greater than Harvard, Yale, Columbia or Northwestern.

In closing, I want to say please consider us too as members of this body. We are human beings--stick us with a pin we feel it. Mr. Chairman we get angry when we would like to stop and eat and we have to pick out certain places, we can't stop everywhere in New Jersey; there are places in New Jersey I would like to stop to eat without having either myself, wife or son insulted. When the war is over, Germans, Italians will come in to New Jersey and will tell the Negro members of New Jersey, "Stand back, you helped to fight us in Europe."

Gentlemen, please let this court order from Justice Porter be the beginning of decent living. For God's sake, for God's sake, please treat us as human beings.

SENATOR EASTWOOD:

At this time, we will hear from Mr. Roger Tucker, on Modification, representing Negro Affairs, Inc.

MR. ROGER TUCKER:

Mr. Chairman, Members of the Committee on Revision of the Constitution of New Jersey. I am representing the Negro Affairs, Inc., a welfare social and service organization of the State of New Jersey. I am a negro citizen. I have seen New Jersey grow. I remember the time when a negro or any minority group did not know what segregation or discrimination was. Today, it is just the opposite. As we have met here today to streamline the constitution, in the words of Governor Edge, streamline the constitution so that when the boys come home from the war that they will not

meet the same obstacles for which they have been fighting against. We, of the Negro Affairs, have been fighting in the State of New Jersey for the last 12 years for the same purpose as the State's soldiers and of the country have been fighting for on the battlefronts of Europe. The negro is a peace abiding and lovable citizen. He bothers no one unless he is aroused and if he is aroused he is a terrible person to deal with. He fights not with the sword. The majority of them are God loving people; they believe in the Bible, not in an eye for an eye, a tooth for a tooth. They believe in the legal methodand for years the negro has had to spend what little finances he was able to obtain and give it to the lawyers and added an additional burden because the State of New Jersey in order to secure the civil rights which are supposed to be extended to each and every citizen under the Constitution of the United States. The majority of negroes has a deeper purpose in view. We not only are looking to today, we are interested in post war conditions. We know the feeling all of the minorities have, the jews, the negroes and the yankees. In other words, we want to take Hitlerism out of the State of New Jersey and keep him out of the State of New Jersey. We do not wish the boys to come back from the battle front and to still find Hitler in the State of New Jersey. Friends, we have many friends amongst the non-colored people. We don't call all white people bad. We have a host and host of good white people and they have fought and fought side by side with us and have gone all the way down the line, but today they are under the impression that this is the day in which their hopes can be realized by having this Constitutional Revision Committee, by one stroke of the pen, to eradicate by inserting by addition or modification or whatever may be necessary to eliminate those conditions.

Number one, I wish to bring to your attention the discriminatory practice of the Insurance Companies in the State of New Jersey. Very few qualified negroes can receive insurance on their automobiles in the State of New Jersey. I know because I have tried to get them in. I am sure there are only a few negroes in insurance companies and they are the ones who are accepted. They either must be a doctor, lawyer, or a business man or some negro who has been sent by some white person endorsed by some white

person. Gentlemen, that should not be.

I would like to call your attention to the discriminatory practice of the Pennsylvania Railroad going through our State of New Jersey up until last Sunday. My investigation reveals that the Pennsylvania Railroad from its Newark office sold a ticket to a colored girl on the Champion, the train going from New York to Virginia, the ticket called for Section "C" in the Parlor Car. That Parlor Car consisted of negroes only, running through our State of New Jersey. Now why do these discriminatory practices exist? They exist because the Utility Board, your Educational Board, Insurance Heads, have closed a deaf ear to everything.

It has been the policy of the Heads of the State of New Jersey to discriminate and segregate in the State of New Jersey. Therefore, as Paragraph 22 of Article 1 and as Paragraph 3 of Article 2, which deals with the powers of government, we should like to offer a proposed section to read as follows:

"All citizens of this state, regardless of race, color or creed, are hereby declared free to enjoy the full right to matters affecting public health, housing and educational facilities, public utility facilities, businesses affected with a public interest, without segregation or discrimination, either of the state or political subdivisions thereof.

"Any insurance company, either foreign or domestic, doing business within the State, shall not refuse or limit insurance of any kind to persons otherwise eligible, by reason of their race, color or creed, nor provide special or additional rates by reason thereof. The legislature shall promptly enact legislation for the enforcement of this provision and shall include in such legislation a penalty restraining such insurance companies from doing business within this state during the period of the violation of this section."

"In addition to the penalties herein provided for violation of civil rights, any public officer of this state or any political subdivision thereof who shall violate the provisions of this section or shall knowingly permit such violation shall be subject to removal from public office or employment and guilty of a crime to be designated by

the legislature. The legislature shall promptly enact legislation for the enforcement of this provision, describing the nature and type of crime and the penalty to be provided therefor."

MISS EMMA E. DILLON, Legislative Chairman of the N. J. Federation of Business and Professional Women's Clubs, submitted the following statement:

"There shall be no distinction under the law between the rights of men and women to vote, to hold public office, or to enjoy equally all civil, political, economic rights and privileges."

The following organizations have requested more time to be heard:

Negro Affairs, Inc.

National Association for Advancement of Colored People of the State of New Jersey

Union Baptists of Essex County

New Jersey Herald News of Newark

Ministerial Alliance

Methodist Churches of A M E Zion

We are primarily interested in discrimination, segregation and insurance in cooperation with the National Association for Advancement of the Colored People of the State of New Jersey which Reverend Hardge represents, so I am asking your earnest consideration in these additions. Thank you.

SENATOR EASTWOOD:

Mr. Tucker, was the proposal you read about insurance the one also quoted by Reverend Hardge?

MR. TUCKER:

The same thing.

SENATOR EASTWOOD:

It struck me as the same thing. I just wanted to make certain. If you have any written memorandum you wish to file in addition to your remarks, we will be glad to have you do it today or send it to me later.

At this time I will call upon Dr. James Clair Taylor, speaking for the Methodist Churches of the A.M.E. Zion.

DR. TAYLOR:

Mr. Chairman and members of the Joint Legislative Committee formulated to draft the proposed Revised Constitution for the State of New Jersey: I want to speak primarily on the matter of discrimination in employment.

As a representative of the church, you would quite naturally expect that I should be tremendously interested at this time when we are revising our constitution that we shall find some way to, as nearly as possible, reorganize life in our State so that it will approximate the Kingdom of God. We want, of course, to keep the pressure of the Christian ideal and of the Democratic ideal on the conscience of this group.

We have a constituency in this State of just a little more than 11,000 and yet what I have to say, I am sure, would express very largely the feeling of the religious leadership of our people in this State. We have opportunities to see something of the frustration or series of frustrations our people live under. We see the mark of those frustrations on their personalities, and strive though we may to rehabilitate them, to make them effective men and women, citizens of the State of New Jersey, the task is almost hopeless unless our people have not only the right to live but the right to work, and the right to work on those occupational levels for which they are equipped.

You know, I am sure, that there has been over a long period discrimination in employment of our people. We are disturbed because even now, under the pressure of this war emergency, with the need for manpower, there is still discrimination in employment and even in those instances where negroes are given what we call token employment in industry, the matter of upgrading is a very serious problem and so there is a waste of resources and of abilities needed now for the prosecution of this war because of this very fact of discrimination in employment.

Now, if we have discrimination in employment now, under the drive of this war emergency, that argues ill./ We know that the war should end sometime. We know that there will be a reversion to peacetime activities and we can anticipate that negroes will be the chief sufferers in the period of readjustment.

I am sure most of you are familiar with these figures as of 1939 in our State of New Jersey. Negroes constituted, although they are only 5% of the total population of the State, 12% of the total unemployed. A report on State Emergency Relief Administration indicates, though negroes compose 5% of the State's family population, they composed 26% of the families on relief at that time. The Federal Works Program Administration reported in 1937 that

negroes up to 20% of New Jersey's total employable workers were then on relief. Let's take on city, for instance, in Elizabeth where negroes compose 4.2% of the total, they constituted 28.5% of the families on relief in 1938.

Now, with conditions like that just prior to the war and with discrimination still extant in spite of the need for manpower for the prosecution of this war, you can understand how we would be apprehensive. Now, the thing that troubles us is that not only do negroes suffer because of this discrimination in employment, but the State itself suffers. The discriminator suffers with the discriminated. In a good many of our cities where young people do have the courage to equip themselves for specialized types of occupation - and I want you to realize, as you probably do already, that in a great many cities of our State we have difficulty getting our young people to equip themselves because of the relation between opportunity and incentive - if there is no opportunity, why equip ourselves - but when they do have the courage and the initiative to equip themselves for the types of work for which they have aptitude and ability and opportunities do not come in the State of New Jersey, they go to other states where they do have opportunities. That means a skimming off, shall I say, of the cream of the crop of our race in this State, which leaves not only the race impoverished for leadership in our several communities, but our State itself impoverished to the extent of the resources represented by these young people having to go out of the State of New Jersey for occupational opportunity.

We, therefore, wish to urge that this Article I include a Section which shallmake it a misdemeanor, punishable by whatever means the Legislature may determine upon, to discriminate against a citizen of the State of New Jersey in employment in any industry or business because of race, creed or color.

SENATOR EASTWOOD:

Dr. Dillard Brown representing the Ministerial Alliance. We will be glad to hear from Dr. Brown at this time.

DR. BROWN:

Ladies and Gentlemen: I am representing some nine denominations which are perhaps in touch with the people of this State more closely and intimately than any other particular organization or group of organizations in this State.

The Church's purpose is to encourage and to nourish the souls of men and yet it has been constantly called upon to defend and to meet with the civil neglects of our government. And so we have concurred today to express our opinion that there should certainly be adopted for our Constitution amendments which have been suggested by the Reverend Dr. Hardge. We feel that in doing so we can come to the seat of the evil with which we contend. We do not believe it is our job primarily to continue to act as defenders when there should be a safeguard in our Government which would eliminate all such happenings.

There are a number of instances wherein we are called to speak for a group of people, to represent them, to explain why there are certain discrepancies in our health bill, in our housing conditions, in our juvenile problems, and so on, and I think all that comes back here in the basic legislation of our State, that there should be a right for opportunity of housing which is of a standard productive of good and sound health and, secondly, I believe that here we should protect the rights of those people whom we try to rear as good citizens and whose background is ethically sound.

There are many times in which we are brought into the courts of this State to speak about or for certain individuals under our care. The State has provided in a limited way for the effects and has done nothing for the causes.

In our communities we have found there are inadequate utilities for people to use. There are utilities there which are limited to race, creed and color, and we do not feel that these things are provided for the nuture and the growth of our young people as they should be.

Our housing problem is perhaps one of the most acute that we have seen in a number of years. Oft-times I have been asked, "Why is it that so many of your people are susceptible to tuberculosis?" and so on. It is not a racial thing. We give the lie to anyone who says so, but it is rather a matter of contact, a matter of conditions under which we are forced to live in our several communities, a matter which crosses and contradicts the rights of all peoples within this country. We believe there should be a certain and definite statement concerning our housing; there should be a definite and certain statement concerning utilities for the community; and certainly there should be economic opportunity for all of our young who come.

The statement in Holy Scripture, "We have created all men of one blood" is predicated on the understanding that there can be no peace, and no lasting peace until the rights and dignity of all men are concerned. The Commandment which says, "Thou shalt do no murder" was not speaking of the body as much as it was of the soul. When our young people are told they cannot make this trip because they are of a different race, with their athletic teams, men do not realize they are trying to murder the souls and ambitions of those who are growing, trying to believe in a Democracy which on one hand gives them a right and takes it away on the other.

We are proposing, therefore, the several denominations which I represent, that we concur in the proposals which have been made that we might have a right to opportunity and equality of opportunity, that our health conditions may be improved, that our housing may be adequate, and that there be no discrimination in our educational system or in any other public opportunity whatsoever. It is our feeling that if we are to continue to build men and women who

are citizens not only of this State but representatives of the Government in which we believe that these things must be so, and so we concur with the proposals which have been submitted to you and we most urgently ask you to consider them because in them is the strength of our State.

SENATOR EASTWOOD:

May I inquire, Dr. Browm, I think that completes all of those of your group desiring to present their points of view here this morning?

DR. BROWN:

Right.

SENATOR EASTWOOD:

I think I can speak on behalf of the Committee and say that we are indebted to you for the clarity and effectiveness with which you have spoken and for your cooperation in the matter of time and we appreciate this cooperation very much here this morning.

Is Mr. L. H. Jamouneau present? He gave his name during the morning as one wanting to speak on modification; also Mr. Saul A. Wittes - is he here? If not, I will ask Mr. F. S. Kellogg, who appears as a proponent, to speak at this time, representing the Manufacturers' Association of New Jersey.

MR. KELLOGG:

Mr. Chairman and members of the Committee: I appear on behalf of the Manufacturers' Association of New Jersey as a proponent to speak as to Article I of the Proposal.

Speaking as a proponent, I naturally do not oppose any provision which is contained in the Proposed Article I, nor do I speak in favor of, but rather against any additions, subtractions or alterations in the Proposal.

The eighteenth Section of the Proposal gives to the people (not some of the people or a class of the people, but to all of the people) the right freely to assemble together and to consult for the common good to make known their opinions to their representatives and to petition for address of grievances.

You of the Committee are, in fact, the representatives of the people to whom any of the people may petition for a redress of what they consider a grievance. So in what I have to say, I do not wish to be taken as questioning at all the right of any person to say differently to you.

At this time and place allquestions of whether from a technical, legal point of view you have been legally authorized to represent the people are laid to one side. This is neither the time nor the place to raise such questions.

Coming now to the provisions of Article I, I would direct your attention to the fact that there is not a single provision which does not apply to every man, woman and child in the State of New Jersey. The Proposal contains no provision limited to any class of the people of this State. The provisions are all inclusive and universally applicable.

So, I urge upon this Committee that no addition be made to Article I which is not universal in its application.

There is another aspect of this matter concerning which I wish to speak. It is the question of the authority, in fact, of this Committee in respect to Article I.

The law under which the Referendum was held last November mentions Article I of the present Constitution and says that the Proposal for a Revised Constitution "shall include the provisions of Article I of the present Constitution commonly known as 'The Bill of Rights'". There is a technical, legal argument which could be made concerning these words. It is the argument which is recognized in the courts in the legal maxim which may be stated in

English as follows:- To include one thing is to exclude other things. Therefore from the technical, legal point of view the law under which the Referendum was held and under which you are, in fact, acting may well be interpreted as preventing any change whether by subtraction or addition to the Bill of Rights contained in Article I in the present Constitution.

I do not, however, rely upon technical, legal interpretation. I appeal to your knowledge of what the people thought they were voting for in respect to Article I when they voted on the Referendum. I feel confident in making this appeal because I heard before and after the last election many people say substantially this, "Yes, I voted for the Referendum. The men who are in the Government know more about changing the Government and how to make it work better than I do, and they can't hurt me because they are not going to 'monkey' with the Bill of Rights." So I rely, in suggesting that there should be no addition or subtraction from the Bill of Rights, not on the technical rule of legal construction, but on what I believe to be and on what I believe you know to be the practical construction placed upon that clause by those who voted in respect of the Proposal.

The Committee of which you Committmen are a part has done an outstanding piece of work in preparing a Proposed Revision. There are many things in your Proposals in respect to which I and those whom I represent are in hearty accord. The purpose is that your Proposal, when finally drafted, shall go to the people next November. I would urge upon you that nothing be done which will raise any questions in the minds of the people as to the full and fair performance by your Committee and the Legislature of what the people understood to be authorized at the last Referendum. If confidence be not maintained it might result that all of the good work done by this Committee and by the Legislature would come to naught at the polls.

And so, because provisions in respect to special classes should not in any event be included in Article I, and because the authority purported to be given at the last election was not an authority to add to or subtract from the Bill of Rights in the present Constitution, and because any changes in the present Bill of Rights might destroy the confidence of the people in the procedure adopted and so possibly lead to the defeat of the Proposal as a whole - for these reasons I urge that this Committee and the full Committee and the Legislature carry into their final draft of Proposal, the Bill of Rights as contained in Article I of the present Constitution without addition to or subtraction therefrom.

SENATOR EASTWOOD:

Thank you, Mr. Kellogg. At this time I will call on Miss Marion Walls speaking as a proponent for the New Jersey League of Women Voters. Miss Walls:

MISS WALLS:

Members of the Committee and Mr. Chairman: We have said that it is a question of "equal rights or human rights", implying that equal opportunities do not always result in equality, and citing the well-known fable of the fox and the stork as an example.

We have maintained that women are equal to men, but that in certain situations they are at a disadvantage unless there is protective legislation to remove the disadvantage and give them a real equality.

More specifically, marriage laws, such as the one concerning the support of wife and children by the husband, and divorce laws, such as the one concerning alimony, were designed to overcome a disadvantage in the position of married women. Minimum wage laws for women, such as we have in New Jersey, were designed to overcome an unequal position caused by the lack of labor organization among women and hence a weaker bargaining power. All such laws could be immediately upset upon inclusion of such an amendment in the Constitution.

Some disadvantages experienced by women are a matter of prejudice rather than of law and can only yield to time.

The League realizes that in many States women suffer hardship because of their position under State laws which do not permit them to have legal custody of their children in case of separation of the parents, or do not permit them to make wills or affect their rights to hold property, etc. But we feel that State laws designed to deal with the specific inequality in point, will accomplish all and more than "blanket legislation" can accomplish.

By "blanket legislation" we mean non-specific legislation which will, because of it's vagueness, need to be interpreted again and again in the courts. Many eminent jurists and lawyers have said that it will take from 25 to 50 years to decide all the litigation which willarise as a result of inclusion of such an amendment.

An "equal rights amendment" to the Federal Constitution has been introduced at various times in the past and has always "died" in committee. Such powerful national organizations as the American Association of University Women, the Girls' Friendly Society of the United States of America, the NationalBoard of the Y.W.C.A., the National Consumers' League, the National Council of Catholic Women, the National Council of Jewish Women, the National Women's Trade Union League, the National Service Star Legion, Inc., the Women's National Homeopathic Medical Fraternity, the International Ladies' Garment Workers' Union, and the National League of Women Voters, as well as Carrie Chapman Catt, Anna Lord Strauss, eminent New York attorney, and Judge Dorothy Kenyon, have opposed it in the past.

We would like to file an additional brief later, if we may.

There is only one point I would like to make, that is in the case of specific legislation interpretation is very difficult - there is a statute, I think, under Title 10, Civil Rights, passed approximately in 1941 - it calls for no discrimination in public office or public employment on the grounds of sex or marital status, yet the women teachers of secondary schools in Elizabeth are not receiving salaries equal to men for equal work.

The Counsel of the Board of Education, I am informed - and Mr. Lanning I would rather not be quoted, please - I am informed has maintained it is impossible to determine what is the meaning of equal work. Thank you.

SENATOR EASTWOOD:

We will be very glad to have you submit a brief in addition to your remarks today - Dominic Cavicchia says as soon as possible.

MISS WALLS:

Yes, all right.

SENATOR EASTWOOD:

We will be very glad to hear at this time Mrs. F. W. Hopkins, who speaks on behalf of the Consumers' League of New Jersey.

MRS. F. W. HOPKINS:

Mr. Chairman and Members of the Committee: Our understanding of the terms of the referendum of last fall was that there would be no change, and by that we understood no addition to the Bill of Rights, to Article I of the Constitution, in this present Revision. However, if the committee is considering any changes, we are very much concerned by the proposal that was made this morning by Miss Emma Dillon, on behalf of the Business and Professional Women's Club and other groups, urging the inclusion, as I understood her remarks, in the Bill of Rights of a statement that there shall be no discrimination in economic matters between men and women.

The Consumers' League, like the League of Women Voters, and like the other national organizations, a list of which Miss Walls has just read to you, is one of those women's organizations that has opposed consistently equal rights amendments in either the New Jersey Constitution or in the National Constitution. We are an organization that is largely composed of women and, of course, we feel very strongly that there should not be discrimination against women. We feel, however, that just for that reason we need to have certain protective legislation for women who are working because of two factors: In the first place, women are biologically different, as Miss Dillon remarked this morning. I think a quotation might be in order from a decision of the United States Supreme Court in upholding the constitutionality of the law limiting the hours of work in Oregon for women: "As healthy mothers are essential to vigorous offspring, the physical well-being of women becomes the object of public interest and care, in order to preserve the strength and vigor of the race."

There are therefore biological differences between men and women which makes certain legislative protection necessary for women, as

distinct from men. That seems to us essential in our laws. Then, there is the other difference between men and women, which is an economic one, due to the fact that women have not gone into trade unions, have not organized in trade unions, to the extent men have, and are not in a position to bargain collectively to the extent that men are. For that reason, there is some justification for laws to regulate the hours of work for women and there is some economic justification, as well as biological, for that kind of laws, and also laws to regulate wages. In New Jersey we have a minimum wage law for women. The Consumers' League would like to see a minimum wage law applying to men and women, but in the absence of that, we believe we should not throw out our present law, which is operating in several industries in this State to insure a living wage to women, which otherwise they could not have in all sections of the industries. So we feel that there should be no such amendment to the Constitution of New Jersey. We feel that the way to approach any discriminations which exist, even if perhaps people feel that these laws protecting women in industry are undesirable, is to approach them through attacks on those specific laws rather than through a blanket measure of this kind which does not attack the laws on the basis of their merit but on the basis of some high-sounding term, and everyone expects there should be no actual discrimination between men and women.

I have here a clipping. -- I don't know whether you care to take the time to listen to it, -- which appeared in the New York Times last week, by Marian Anderson, who is Director of the Women's Bureau of the New York Department of Labor. As you know, there is a proposal to amend the Constitution of the United States as to equal rights for women, and she is throwing the weight of her opinion against that kind of amendment, and is also against such amendment of the State Constitution.

This is a very hasty presentation of our point of view. The Consumers' League would like to submit a brief also, in opposition to Miss Dillon's proposal.

SENATOR EASTWOOD:

We would be glad to have you submit a brief

as soon as you can and if you care to include the letter or editorial referred to in the New York Times, we would be very glad to have you incorporate that in the brief.

MRS. HOPKINS:

Thank you.

SENATOR EASTWOOD:

Has Mr. L. H. Jamouneau returned to the Senate Chamber, or Mr. Saul A. Wittes?

This seems to have exhausted those who have registered as desiring to speak this morning. May I inquire if there is anyone else, who has not registered, who desires to present a point of view this morning?

MRS. MADDOCK:

May an individual speak?

SENATOR EASTWOOD:

Yes, indeed.

We have endeavored from time to time to publicize the fact that all desiring to be heard will be given an opportunity to speak either from an individual point of view or as representatives of organizations.

MRS. MADDOCK:

Well, I happen to be the President of a large organization and the only thing is they haven't asked me to speak so that although - I am Elizabeth Maddock, President of the New Jersey State Federation of Women's Clubs - I would like to say that our Board of Trustees went on record as opposed to the equal rights amendment as presented for the Federal Constitution. I know our Board, because it took that action toward the Federal amendment, would feel exactly the same about having it incorporated in our State Revision.

I would like to state as a Member of what has long been a minority group, not in numbers but in position - women you know haven't even been considered human beings so very many years - I would like to say that, instead of classifying and defining what "all"

means, it seems that if we leave this "all men" and "all persons" it will be inconclusive and will not call attention to our difference of race in our constitution. Certainly everyone who qualifies as a citizen of this State should be included in "all men" and "all persons" and for that reason it seems to me that it is not the wording of the Bill of Rights that is wrong but it is decidedly the application of those rights.

Thank you.

SENATOR EASTWOOD:

Thank you, Mrs. Maddock. And, incidentally, I feel that I should again state that we will be very happy to hear from all who may desire to present a point of view, and may I say to the newspapers so that it might be publicized that any one not able to get here may file with the Committee a written statement of any points of view they may desire to advocate and we will be very glad to receive all written statements, or you may just register your appearance here with the stenographer so that it will be noted in the record.

MR. AGANS:

Mr. Chairman, my name is David Agans. I am not listed as a speaker this morning because of the fact that our organization, the Grange of the State, had no idea anyone would attack the Bill of Rights. We supposed that was a foregone conclusion on which we could rely and, of course, I came here this morning without a brief, but, listening to what already has been said, there have been suggestions that the Bill of Rights be amended in certain respects and my organization - and we cover the State pretty well - figured at the time the referendum was presented at the Election that we were in favor of the Bill of Rights as is and I concur with what the Manufacturers Association said in regard to its position upon the Bill of Rights.

I don't care to take any more time but that is our position. I haven't been directly authorized to say so but I could not sit here and let it go by the board without expressing my opinion, representing the organization as I do.

Thank you.

SENATOR EASTWOOD:

When you refer to your organization you refer to the New Jersey Grange, do you not, Mr. Agans?

MR. AGANS:

Yes, the New Jersey State Grange.

SENATOR EASTWOOD:

We will be glad to have you supplement that later on, if you care to, with a written statement.

MR. AGANS:

All right, thank you.

SENATOR EASTWOOD:

Is there anyone else desiring to be heard on Article I?

I might state for the benefit of those present who may be interested that the Legislative Committee will hold a hearing tomorrow on Article VII, the Article known as the finance article. This Committee, the Judicial Committee, will devote the hearing tomorrow morning to Article VI, public officers. The Judicial Committee will sit next Wednesday, February 9th, for further consideration of Article V, the judicial article.

We had indicated, the Judicial Committee indicated that it would take up and consider today Article X which I believe is the Article dealing with general provisions. I don't know whether anyone present wants to be heard on Article X.

If there is nothing further now, the Committee will adjourn and reconvene at two o'clock this afternoon.

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SPEAKERS - AFTERNOON SESSION

Wednesday, February 2, 1944

MR. L. H. JAMOUNEAN	Newark, New Jersey
MR. SAUL A. WITTES	Elizabeth, New Jersey
MR. BRAVELL M. NESBITT	Elizabeth branch of the National Association for the Advancement of Colored People in the State of New Jersey. (registered only) (modification)
MR. J. E. JONES	Elizabeth branch of the National Association for the Advancement of Colored People in the State of New Jersey (registered only) (modification)
MR. MORTIMER EISNER	Attorney from Newark. (Proponent)
MRS. HERMAN A. AFFEL	President of the Ridgewood League of Women Voters. (registered only) (proponent)

SENATOR EASTWOOD:

We will now hear from Mr. Witts and Mr. Jamouneau who were registered to speak this morning but could not be located. Which of you gentlemen wishes to speak first?

MR. SOL A. WITTES:

Mr. Chairman, I shall be very brief. Our proposal is for a provision in the constitution. We suggest that it be placed in Article VI for taxpayers' suits in our courts as a matter of right, and we suggest that it be proposed in this form.

SENATOR EASTWOOD:

May I interrupt a moment. This day has been devoted to the Bill of Rights, but we will be glad to hear what you have to say.

MR. WITTES:

It could be set up in either one. We were debating whether it would not be wise to place it in the Bill of Rights.

Acts of public officials, governing bodies and administrative agencies shall be reviewable on application by any stated citizen and taxpayer to a superior court which shall determine such orders according to the rules of the supreme court. As generally constituted, our constitution makes no provision for the tazpayers' suit, and redress of corpus by taxpayers has always been taken advantage of by means of prerogative writs. As we know allowance of prerogative writs is a matter of discussion by the Supreme Court. No assurance is given to the taxpayer of being permitted to have his action on the merits of what ordinarily should come to the Supreme Court. Justices for r prerogative writ. The court may just refuse without giving any grounds or good reason, and there is no appeal. This places the citizen and taxpayer at the mercy of the court.

I had this experience some years ago. I applied to the court for a writ of certiorari to review a contract made

by the City of Newark on an expenditure of ten million dollars. This city had made no appropriation for its share of the contract, and the contract was void. I requested a writ of certiorari and was sent to the Supreme Court Justice who allowed me to show cause. He asked me to return a week or so later. When I did return, he said: "This matter is so important I don't deem it advisable to assume the responsibility of issuing the writ and should go before the Supreme Court in Trenton." I came down here and made my arguments. Again the court was not able to give me a decision and asked me to return. I came back two days later and they told me what I - this is the decision I had: "We don't deem it expedient to allow this writ at this time." That was the decision. I was through. I had no right of appeal - I was absolutely powerless.

Having that in mind, I thought that a constitutional provision giving to taxpayers an unequivocal right to bring action to test contracts of municipal officials in the disbursements of moneys in the courts as a matter of right. These are the difficulties encountered in the Supreme Court and in other courts of the State. In an action such as this in New York State, we could have the right to appeal. As it was in the other case, we were out in the cold.

Your answer might be this: Why isn't it possible for the Legislature to enact such a law without incorporating it in the constitution. That would ordinarily be allright except for this one difficulty. I am afraid that it might encourage the powers of the Supreme Court in the matter of the issuance of Prerogative Writ. Such a law might be held unconstitutional. That is why we urge that it be placed in the constitution as a matter of right. You may say: If such a provision were incorporated in the constitution it would encourage a multiplicity of suits. That could be prevented by requiring a taxpayer, prior to the time of bringing action, to post a bond for the cost of such an action. The experience in New York State has been very satisfactory.

Thank you very much for giving me the time.

ASSEMBLYMAN HAND:

Is there such a provision in the New York Constitution?

MR. WITTES:

There is not so far as I have been able to discover. I am not sure that a constitutional question would ever arise in New York because of this matter of prerogative writ they have always been able to give relief to the citizens.

ASSEMBLYMAN HAND:

That is governed by statute in New York?

MR. WITTES:

So far as I have been able to discover.

SENATOR EASTWOOD:

We have asked others who have specific proposals to incorporate into the constitution to set them up, so that the Committee might get definitely the idea to be presented to the Committee and to prepare and submit the specific form of the proposal, and I would like to say to you as to the others, as far as it is possible to do so, the written memorandum of the proposals should be filed with the Committee not later than Friday of next week, which will be February 11th.

We will now hear from Mr. L. H. Jamouneau.

MR. JAMOUNEAU:

I would like to add that I have had other cases of a similar sort. I would like to call your attention to the matter involving the Newark City budget, I think it was 1937 or 1938. The case was recorded, and you can refer to the court files for the facts. In that situation I was trying to have the budget reviewed because of the fact that the city had included a million dollars for which there did not seem to be any necessity at all - a sort of pork barrel they were building up - contrary to the budget law.

We applied to the Supreme Court with exactly the same result. They refused the writ without any reason. It seemd very undemocratic and wrong to me. I am not a lawyer and cannot argue the legal side of it, but it seems very wrong that any citizen cannot go in a court as a matter of right and demand that those things be reviewed. I am quite concerned about this. I think it is mighty important. I will prepare a memorandum, in which I willgive the fuller details referred to.

I think you are aware of the deterioration of municipal government in the last few years, especially in the larger cities. This is largely due to the fact that the citizen doesn't take the necessary action to stop these violations of law and other misdeeds of governing officials. It is quite essential to put something in the constitution not only to encourage that supervision by the citizen, but also to give them some assurance they are not wasting their time when they attack a wrong and that they won't be turned down by the Supreme Court.

In this memorandum we will give details of these cases we have in mind.

SENATOR EASTWOOD:

I have been given the name of Mr. Mortimer Eisner who wished to speak as a proponent of Article I of the Constitution. Is he here? I believe Mrs. Affel wishes to be recorded as one who favors Article I of the Constitution. I understand she doesn't desire to speak. Is Mrs. Affel here? Does she desire to speak? Are there any others here who were not here this morning who may desire to speak on Article I, known as the Bill of Rights? If not, I believe scheduled for today is Article X. Is there anyone who wants to speak on Article X? This, I think, is really non-controversial.

I will announce again the Legislative Committee will sit tomorrow morning and consider Article VII and its

findings. This Committee will sit tomorrow and consider Article VI. This Committee will also sit next Wednesday, February 9th, for a further consideration of Article V, the Judicial Article. Are there any other announcements?

The Committee will then adjourn until tomorrow morning at 10:30.

PUBLIC HEARING ON

PROPOSED REVISED CONSTITUTION(1944) PENDING BEFORE JOINT LEGISLATIVE COMMITTEE TO FORMULATE A DRAFT OF A PROPOSED REVISED CONSTITUTION FOR THE STATE OF NEW JERSEY CONSTITUTED UNDER SENATE CONCURRENT RESOLUTION NO. 1, ADOPTED JANUARY 11, 1944

HELD BEFORE SUBCOMMITTEES ON

Thursday, February 3, 1944

(Judicial)

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SPEAKERS - MORNING SESSION

Thursday, February 3, 1944

Mr. Michael Breitkopf	New Jersey Veterans Protective League (Opponent)
Mr. James K. Kneeland	Secretary, Sheriff's Association of New Jersey (Modification)
Mr. Alex Campbell	Vice-President of the Sheriff's Association, Sheriff of Union County. (Modification)
Mr. John W. Bill	Chairman, N.J. Veteran's League Committee comprising the following organizations: United Spanish War Veterans, Department of New Jersey; Disabled American Veterans; Veterans of Foreign Wars; Army and Navy Union; and, Marine Corps League. (Modification)
Mr. George H. Warwick, Sr.	Vice Department Commander, U.S. Spanish War Veterans (Modification)
Mr. M.Metz Cohn	Department Judge Advocate, Veterans of Foreign Wars (Modification)
Mr. Max Singer	Department Judge Advocate, Disabled American Veterans (Modification)
Mr. Alex M. Ormsby	Marine Corps League (Modification)
Mr. Chris L. Edell	Department Commander, Veterans of Foreign Wars. (Modification)
Mr. Warren Shaw	Department Commander, Disabled American Veterans
Professor John E.Bebout	New Jersey Committee for Constitutional Revisions (Modification)
Dr. Leon S. Milmed	Newark, New Jersey (Modification)
Mrs. Edwin Bebout	New Jersey League of Women Voters (Modification)
Captain Gill Rob Wilson	Combined Pension Funds (Modification)
Mr. John A. Wood, 3rd	Combined Pension Funds (Modification)
Mr. Charles J. Strahan	Combined Pension Funds (Modification)
Mr. Fred W. Cook	Combined Pension Funds (Modification)
Major William Nicol	State Police, Combined Pension Funds (Modification)
Senator Gilbert Borton	Combined Pension Funds (Modification)
Mr. John A. Wood, 2nd	Combined Pension Funds (Modification)
Mr. Charles A. Philhower	Combined Pension Funds (Modification)
Mr. Carl Holderman	New Jersey C.I.O. (Modification)
Mr. John J. Goff	Essex Council #1, N.J. Civil Service Association
Mrs. A.L. Van Voorhies	League of Women Voters (Modification) does not desire to speak)
Mr. Manuel Cantor	Communist Party of N.J. (Modification
Mrs. F.W. Hopkins	Consumers League of N.J. (Modification)
Mrs. Julius E. Flink	State Conference of the National Council of Jewish Women

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SPEAKERS - MORNING SESSION

Thursday, February 3, 1944

MR. MORRIS ISSERMAN - New Jersey C. I. O. (modification)

MR. PHILIP PRINCE - State Council Municipal Workers - N.J. C. I. O.
(modification)

SENATOR EASTWOOD: If there are those who desire to speak on Article VI, Public Officers, if you have not registered with the stenographer, please do so, giving her your name and address and the organization you represent. Will you please do this immediately. Also indicate, if you will, whether you present your views as an opponent, as one advocating modification or change, or as a proponent. We will hear from you in the following order: first, those who oppose; second, those advocating modification, and third, those who are proponents.

The Committee has, among other rules, determined that each speaker should limit himself to fifteen minutes. If there are more members than one from an organization who desire to speak, so that there will be full opportunity to present your views, we will ask that you divide your subject matter among your representatives so that you will not be restrained in the full expression of your point of view. I also ask that if you have prepared and brought with you a written memorandum, will you give it to the stenographer. If you have not come prepared and you desire to submit one later, I will ask that you do so as promptly as possible, not later than Friday of next week, February 11.

As I indicated a moment ago, the hearing this morning will relate to Article VI - Public Officers.

Is Mr. Russell Watson in the room? We will have our counsel, Mr. Watson, give you a summary of Article VI so that all present will know just what the article represents as far as the discussion here this morning is concerned.

MR. WATSON: Mr. President, Mr. Speaker and members of the Committee. Section I is a civil service provision which is intended to create and improve the civil service system. Paragraph 3 provides that strikes by public employees are against public policy. It is complementary to Article III, Section 4, Paragraph 2. Paragraph 4 provides that no person holding an appointive

office or position under the government of the state -- that phraseology includes county and municipalities -- shall receive compensation in addition to his annual salary unless it is allowed or appropriated by the Legislature.

Paragraph 6 provides for the commencement of terms of elective or appointive officials.

Section II provides that the State Comptroller, the State Treasurer and the State Auditor shall be appointed by the Senate and General Assembly in joint meeting for terms of four years, which constitutes these officials agents of the Legislature. The Governor may, however, require from them written statements under oath when it is required in public interest.

Paragraph 2 provides that the Prosecutor of the Pleas shall be nominated by the Governor and appointed by him with the advice and consent of the Senate for terms of 5 years. That is in the present provision.

Paragraph 3 makes the same provision respecting county clerks, sheriffs, surrogates, and coroners to be elected at general elections; the county clerks and surrogates to hold office for 5 years, and sheriffs and coroners for terms of 3 years. It provides for vacancies. The effect of this section is to permit sheriffs to succeed themselves.

Section III, paragraph 1 invests the Legislature with broad investigatory powers, protects any person from self-incrimination, or rather accords any such persons constitutional rights, but provides any person who avails himself of those rights shall not hold any public office.

Section IV, paragraph 1 is the impeachment provision respecting the Governor and all civil officers of State government except judicial officers.

Paragraph 2 and paragraph 3 supplement the impeachment procedure concerning which I think there is no substantial change from the present provisions.

SENATOR EASTWOOD: From the list of names furnished to me by the stenographer it would appear that there is only one person appearing as an opponent of Article VI who desires to speak this morning: Mr. Michael Breitkopf of the New Jersey Veterans' Protective League. Mr. Breitkopf:

MR. BREITKOPF: The New Jersey Veterans' Protective League against Constitutional Revision has requested me, as its president, to appear before you to enter its protests on its own behalf and also on behalf of the thousands of veterans and their families around this state to this entire program of constitutional revision.

When the question of revising our Constitution was advanced last year, we opposed such a step upon the ground that it was unfair to the 500,000 men and women of New Jersey presently in the military service to consider this subject in their absence; and upon the further ground that with the entire attention of the country devoted to the winning of the war, and with all of our citizens giving the utmost of their time and attention to that end, and with many of them grief stricken, they could not possibly give the proper time and attention to an important subject like constitutional revision. We, therefore, urged that this whole question be deferred as we felt very strongly that this was no time to change the basic law of our state under which our people would have to live for probably many generations. Time and the election of 1943 have proved that we were right.

We stated at the time that the people were not interested and that you could not get them interested because their thoughts were with their boys overseas, and their energy was devoted to problems involving the national defense. The referendum election of 1943 proved that our contention was right and that our arguments were sound. Out of a state with 2,134,143 registered voters, only a little over 600,000 voted on this referendum, although there were a total number

of 1,173,588 who voted at the same election for the gubernatorial candidates. There were, therefore, 1,497,215 citizens who failed to either attend the polls or vote on constitutional revision, and out of the 1,173,588 who actually voted at the general election, only 639,928 voted on the Constitution. The people, therefore, were not interested in constitutional revision at this time during the war and did not understand it. 1,497,215 of our citizens failed to become interested or take part. To a total of 600,000 men and women in the military service, 76,410 ballots were mailed and only 10,419 valid ballots were returned, and of this number only 6,757 persons in the military service voted on the constitutional revision. What a sad reflection on popular government!

This is our reason, fortified by the results of the last election, for asking that this question of constitutional revision be deferred until the war is over and until our fighting men and women return and are afforded an opportunity to take part in our government, and why we further ask that this question be deferred until the minds even of those who are home are freed from the cares, worries, and responsibilities of this war and they can devote their entire attention to a consideration of the problems involved in revising the State Constitution.

We further urge that if, despite our protests, you insist on proceeding with your program of constitutional revision, that you at least give serious consideration to a constructive program protecting the rights and privileges of veterans of the present war and of all wars in which this country has been engaged, and that our Constitution contain forthright declarations with respect to absolute preference to veterans in appointment, promotion and tenure of public office, whether of the state or any political sub-division thereof, and also with respect to post-war care and rehabilitation of the veterans of this war. Your proposed Constitution fails to provide for any veterans preference and, in fact, takes away preference rights which have already accrued to the veterans of this state. When you provide for competitive

examinations and appointments and promotions therefrom, you put the veterans in the same position as all the other people of this state.

Our League has prepared a provision for this Constitution which we submit to you herewith, together with other proposed sections affecting the rights of returning veterans and the protection of them and their families after this war. We have not included all of the provisions which we believe are required and should be passed, as we believe some of these measures should be the subject of legislation. We have, however, prepared and submit to you herewith certain proposed constitutional provisions referring to the protection of honorably discharged veterans in their employment, education, hospitalization, vocational training, and financial relief. These provisions are extremely important to the veterans and, in fact, to all of the people of this state. We urge upon you their serious and deliberate consideration. We trust that in passing upon this important question you give serious thought to the problems of these men and women presently in the service who are not in a position to speak for themselves, or to protect themselves or their future, at this time. The glorious deeds of the fighting men of America need no praise from my lips, but let us all remember that whether they languish and starve and suffer humiliation in Japanese prison camps, or lie wounded on a battlefield in Italy, or in the South Pacific, their rights at home must be preserved by others. Let us not make this vitally important subject a political football. Let us not follow in the selfish footsteps of many of our legislators at Trenton, yes, and even at Washington, who, through their dilatory tactics, are attempting to throw every obstruction in the path of these service men and women to vote at the next election. I tell you, that it is a responsibility of the legislature, of which your committee is a part, to first pass a real military voting procedure before you even consider this subject of constitutional amendment. We hope that the Congress of the United States will pass such acts, but in the meantime it is your duty to make provision for military voting before this constitutional subject is

even considered, and further, it is the plain duty of the legislature to defer this entire question until the war is won.

MR. BREITKOPF: I would like to submit a proposed amendment which I have here; a proposed amendment to the New Jersey Constitution.

Article VII, "Finance," - add Section 6.

(a) The restriction in this Constitution with respect to the incurring of public debt in excess of $100,000., shall not apply to the incurring of public debt for the purpose of raising moneys for the payment of compensation to honorably discharged veterans of any war of the United States, or to their education, rehabilitation, hospitalization, vocational training, financial relief, either to said honorably discharged veterans or to their dependents.

(b) In any war in which the United States is presently engaged, or may hereafter engage, the legislature shall make provision for the appropriation or raising of public funds and pay upon honorable discharge of every soldier, sailor or marine serving during said time of war, and resident in this state at the time of entry in the military service, a sum equivalent to $50. for each month of service, and the legislature shall further provide for the education, vocational training, hospitalization or rehabilitation of honorably discharged veterans, and for the care of their widows and orphans.

MR. BREITKOPF: I also have here Article VII which has to do with Finance. I suppose I have to take that up with another committee.

SENATOR EASTWOOD: Yes, the Legislative Committee. I might say, Mr. Breitkopf, that there already has been a bill introduced in this State to do everything humanly possible to see that those in the service be given the opportunity to vote.

MR. BREITKOPF: I hope it is passed.

SENATOR EASTWOOD:

I believe such legislation will be passed, in addition to which you know we have the Veterans' Commission under the able leadership of Senator Littell that worked all last year and they are continuing this year, trying to promote the welfare of the veterans, as well as the Post War Economic Welfare Commission.

MR. BREITKOPF: I might mention in passing that my committee would like the names of its membership on the record:

President - Michael Breitkopf,
Past National Commander,
29th Division Association.

V. President - Walter Lambert, Bergen County,
Junior Vice President,
American Legion.

V. President - Joseph P. Fennell, West Orange, N. J.
Past State Commander, D.A.V.,
Past State Commander, Catholic War Veterans

V. President - Frank T. Callaghan, Swedesboro, Gloucester County, New Jersey,
Past Commander,
American Legion.

V. President - Charles Erophy, Hudson County,
National Commander,
Catholic War Veterans of the United States.

V. President - Harry Huneke, Morris County,
American Legion.

V. President - James McGee, Union County,
Commander, D.A.V.,
Rahway, N. J.

Chairman of Board of Trustees - William Shaw, Passaic County,
State Commander, D.A.V.

SENATOR EASTWOOD: Just give it to the stenographer.

MR. BREITKOPF: Thank you.

SENATOR EASTWOOD: We have two men here representing the Sheriffs' Association, Mr. Alex Campbell representing the Sheriffs' Association of Union County. Mr. Campbell.

MR. CAMPBELL: Mr. President, Mr. Speaker, Ladies and Gentlemen: First of all, I would like to pay a compliment to this committee for the constructive job and the conscientious way that they

are taking their efforts to bring about a revised constitution, and on behalf of the Sheriffs' Association of the State of New Jersey, we feel greatly indebted to you, Ladies and Gentlemen, for your efforts. Therefore, the only request we have at this time regarding a change, in the opinion of many of our sheriffs and citizens of the State, is in Section II, Article 3, the statement which reads: "County clerks and surrogates shall hold office for a term of 5 years; sheriffs and coroners for 3 years", be changed to read: "County clerks, surrogates, sheriffs and coroners shall be elected by the people of their respective counties at general elections. County clerks, surrogates, sheriffs and coroners shall hold office for the terms of five years". We feel as though the surrogates and county clerks seem to be generally recognized by their constituents of their counties as worthy of a five year term and we would greatly appreciate this honorable body reconsidering the term of sheriff to be one of the same term as those offices of 5 year terms. Therefore, we will leave it to your honorable body's discrimination whether or not we should be put on that same basis and we greatly appreciate what has been done in the past and leave same with you for your consideration. Thank you for this opportunity and privilege of coming before this body in behalf of the sheriffs of the State of New Jersey.

SENATOR EASTWOOD: I present at this time Mr. James K. Kneeland, Secretary of the Sheriffs' Association of New Jersey. Mr. Kneeland.

MR. KNEELAND: I think Mr. Campbell has taken care of the points for me.

SENATOR EASTWOOD: All right. I might note for the record at this time that Mrs. Julius E. Flink representing the State Conference of the National Council of Jewish Women is present as an observer.

At this time I will call upon Mr. John W. Bill who appears as one advocating modification of Article VI. Mr. Bill is Chairman of the N. J. Veterans' League Committee comprising the following organizations:

United Spanish War Veterans, Department of New Jersey; Disabled American Veterans; Veterans of Foreign Wars; Army and Navy Union; and the Marine Corps League. Mr. Bill.

MR. BILL: Mr. Chairman and members of the Committee. We urge upon you today to modify Article VI, paragraph 2 and insert therein a provision giving civil service preference in the appointment and promotion to veterans of all classes. We have able counsel here who will go into the legal technicalities of this question and I am sure they will enlighten you on the facts as they may be, but as Chairman I want to bring out the reason that we are for the modification of this article in this constitution. Over a period of twenty-five years since the last World War we have had many sad instances everytime a veteran would pass an examination for a position or employment. There was the time that he would have to go to court and prove that he had business capacity and that he was able. After all, he did go into an open competitive examination. He competed with all individuals there. He wasn't given any easier questions than those sitting in with him. And after he passed the examination and came out on the list, what was the result? The little politician in the county or in the municipality or some state department, what did they do? They called him in, looked at him, probably didn't like the way he had shaved that morning, and said: "You don't have the business capacity". He doesn't get the job. So off into the courts he goes and the courts rule that the act did not apply in this or that case, based on a mere comma or a purely technical question. And the result was that the veteran did not get the job. It happens continually. We have Veterans' disability preference; that is a laughing stock because the veteran never gets that right. We may say he does but he doesn't. We are concerned about this. We are at war. You have heard the Chairman read the organizations which we represent. Many of these men are back here today. What are we doing for them? Do we think of them? We say we do. The Chairman has a splendid program on post-war planning, but you know, Landies and Gentlemen, that when this war ends

unless we get some protection in this Constitution the Legislature in the future can modify or amend anything they want to. We had many boys, you know, too young or too old the last time and we have the same thing now. You know it's never a private war. Anybody can get in it. But they don't and when the show is over they say: "Why should a veteran get this or that?" We are duty bound. We are bound to the men whom we have been reading about who are being treated so brutally by the Japs. We are bound by the same reason. We have fought for our country at one time or another, which binds us to see that our rights are protected; that our rights are inserted in this constitution, so no cheap politician can come along and take those rights away. We know what the penalties of war are. We have suffered them. I wish many of you on this committee would go the veterans' hospitals today and I am sure that no one would quarrel with us about having provision in this constitution. Some say it is a class. Let it be a special class. I think they are. Any man willing to lay down his life for his country certainly should be given consideration for any position, office or employment he may seek. You may remember one case which the Newark Evening News played up considerably, a case in Essex County, the Chamber Case vs. the Board of Education. They said he did not have the business capacity. He passed the examination and got somewhere in the 90's. A newspaper in Essex County, The Newark Evening News, when it realized it was so outrageous, editorially came out and said there was something wrong in Denmark.

Another case was a man, a disabled veteran in Nutley. He took the examination for the job as personal tax collector. He passed, and what do you think the Commissioner of Finance said? "Why you didn't graduate from high school". Do you think the Heinies would ask that fellow if he had a high school diploma? Do you think the Japs would ask for a high school diploma? They most certainly would not care whether he had one or not. And that is the question we must solve and that is the question we ask you to protect for these men who are fighting overseas. We have the proposal here of the State of New York.

In 1938 when we were at peace, the State of New York adopted a proposal in their constitution giving veterans' right both in appointment and promotion. The Women Voters League of the State of New York went to the United States Supreme Court and they told them to go back into the home in the kitchens. They said it has been so from the ages, from the time of the revolution the great American people of the United States always recognize their defenders. They had the audacity to go in but the Supreme Court slammed the door on them. So that the New York State proposal is a portion of our proposal of the State of New Jersey. We feel that if you would take the time to write the boys in Guadalcanal, the boys at Bataan, or wherever they may be, that if you asked them if they believe they should have preference when they come back there would be no doubt about it. So we earnestly ask you today to consider modification of paragraph 2 and insert in there the veterans' proposal. That isn't asking too much. We say there are close to 500,000 or better in service from the State and I think they are entitled to some protection and they should have it. When a man takes an open competitive examination and he qualifies there can be no doubt that he possesses the business capacity. Why should any official check on him as to whether he likes him or not because the job is made for someone else? The time has come when we will not tolerate that. We feel once they take an examination and pass they have the business capacity because if they didn't they couldn't pass the examination. Once they pass that examination they certainly should be given some credit for the wounds they bear on their bodies. Who can deny that? Let him stand up and say: "I don't believe in that." How about the fellow that cracks up? This is a very serious and important question. Let us be mindful of this. I know that I want to be able, God willing, when this war is over and the boys come back, I want to be able to say that I tried to do something for them, because I had a dream 25 years ago when I saw, in these legislative halls, in discussions on veterans' preference, there wasn't a Monday in the early twenties when we met in the evening when there wasn't a $5.00 or $10.00 passed out to go to the courts to protect these men's rights.

Regarding discrimination, we had the case of a bright colored fellow in Jersey City who passed the test for the Motor Vehicle Department and should have had the position. Do you think he got it? He was a disabled veteran too. Would the Huns ask his color. Would they say: "We won't shoot you; you are colored?" No, they took a shot at him and hit him right. We have cases of men who went to court and spent thousands of dollars to try to win their point. We do not want to be selfish. We want to be reasonable about this.

We should have enough copies of this proposal for the record and I will now give way to the next speakers, the Department Judge Advocate and Department Judge Commander, and they will enlighten you further.

Thank you.

MR. EASTWOOD: The next speaker is Mr. George H. Warwick, Sr., Vice Department Commander of the United Spanish War Veterans. Mr. Warwick.

MR. WARWICK: Mr. Chairman, Mr. Speaker, Ladies and Gentlemen: I am taking the place of our Department Commander and our Judge Advocate. I am Senior Department Commander at the present time. I am the oldest soldier of this morning's gathering. I date back to 1898 with Puerto Rican service and 14 months' overseas service in the World War with five months on the western front. I know what it is all about. In my early days in the country it was a time when it was as if the American eagle of the United States had wings pressed to its side. On the one side was the Atlantic Ocean and on the other the Pacific. With the outbreak of war with Spain the wings of the eagle spread so that the tip of one wing cast a shadow on Puerto Rico and before it was over the other tip was well past the Philippine Islands, and our men served in all branches of service under extreme conditions and particularly under conditions which resulted in ill health, fever and disability. I was in it in the period when the American soldier received the munificent sum of $15.60 a month with no bonus, no special hospital care. Nothing was given us in the way of hospitalization until something around 1922, and I am representing these men because they served, and

they served under conditions that were the extreme. They say that old soldiers never die. They never die; they just fade away. And our United States Spanish War veterans are fading away at the rate of from 500 to 750. We go well past the 6 or 7 thousand mark every year, so you readily see, as a senior organization, that our veterans are passing on. What does that have to do with this session this morning? Well, it seems that it is more important to us than perhaps the later veterans, or equally important. For today we are interested in this question because it concerns our sons and our grandsons. It might interest you to know that in the World War we had over 80,000 that served. In this global war we have many thousand who were in the service during the last war, and men who were in the Navy and unable to get back are now in the maritime service, and they have sons and grandsons and it is important that we, as senior veterans' organization, lend our effort, our time, and our interest to see that these sons and grandsons shall receive every consideration in the time that will follow this particular war -- not necessarily at the close of this war because already these boys and girls are coming back at this time in large numbers and we have them on our hands.

It has been my privilege, and I count it as a privilege, to be in many of the hospitals overseas and in this country and I have been in some of the others at Hampton Roads where the men who had cracked up in the World War were locked-in patients because of their mental condition and where there were actual suicide cases, and at many of the places where these mental cases are taken care of. They illustrate what the war entails in the loss of health and mind to the young citizenry of our country. And so I wish, in the name of the United Spanish War Veterans, to heartily endorse the proposals and the aims of our New Jersey State Legislative Committee as brought out by our Chairman, Mr. John W. Bill. I thank you.

SENATOR EASTWOOD: At this time I will call upon M. Metz Cohn, Esquire, Department Judge Advocate of the Veterans of Foreign Wars.

MR. COHN: Mr. President and Members of the Committee: I am a lawyer of the State of New Jersey and have been for the past 25 years. It has also been my good fortune to serve as Department Commander of the Veterans of Foreign Wars from 1933 to 1934. I am now Department Judge Advocate of that fine organization and when we received a copy of the proposed revision I may say that we were amazed to think that there was no provision in the Constitution for Veterans and disabled veterans, and naturally we asked the question why. And I am here as a representative of the Veterans of Foreign Wars to ask the members, or Mr. Watson who assisted in the preparation of this particular provision why there was no provision in the Constitution for veterans and veterans' preference.

I did not have time, Mr. President. to secure the number of states in these United States that have seen fit to incorporate in their state constitutions a provision for veterans and disabled veterans. I know New York State has. As a matter of fact I have a copy of the New York State Constitution which includes a provision for veterans and disabled veterans.

Now, the argument may be by learned counsel that this is class legislation. The United States Supreme Court, the highest court in this land, has passed upon that question and has ruled that question out. Now, another argument may be that there was no provision in the constitution as adopted in 1844, therefore the members thought there should not be any provisions in 1944. They may have said there are ample statutes on our statute-books giving veterans and disabled veterans protection of their rights. It sounds nice but it is not true because time and time again it has been my good fortune, or misfortune, whichever way you look at it, to go into court for the purpose of ascertaining just what rights these veterans have under our statutes.

I know one case where a man came out first in a civil service examination, had a college background, took the civil service competitive examination and the Supreme Court said that - after the appointing authority stated, without giving the man a chance under a probationary period to ascertain whether or not he did have, that this man did not have the necessary business capacity and he was ruled out by the appointing power on that ground - and the Supreme Court upheld it and this man did not get the job.

There have been so many instances of that, gentlemen, in the past 25 years or since the last World War, that it is no longer funny. Only two or three months ago in Paterson, my home town, a veteran was on the list for appointment as captain of the fire department, they skipped him, a disabled veteran too, the mayor skipped him and it was only after he threatened Supreme Court proceedings by writ of certiorari that the mayor saw the light and that we finally convinced the mayor that he should be appointed and he was appointed.

In 1844 there was no war on. The last war before 1844 was 1812, maybe they felt at that time that it wasn't necessary, but just think of the thousands and hundreds of thousands of veterans we have here in the State of New Jersey since 1844, and yet there is no provision in the constitution for them.

I am not going to comment as to the rights about other people as mentioned, but I am only pointing out to you, gentlemen, that for some reason there was no provision made in the constitution for veterans and disabled veterans

We are responsible for the men overseas today. We represent every man in the State of New Jersey who is in the armed forces. They have a right to look to us. They don't know in Africa what provision they have in the Constitution, they don't know what they have in Guadal Canal or anywhere else. They are looking to the Disabled American Veterans, the Veterans of Foreign Wars, the Spanish American War Veterans and the American Legion,

and we ask you in all fairness, we want you to tell the Supreme Court of our State and the other courts that there is going to be n o more monkey business about veterans and disabled veterans and the only way that you can do that, Mr. President, is by providing a clause in the Constitution because somehow or other every time you use the word Constitution it seems to have a feeling of awe and once that is incorporated in there we feel certain that those who are serving today, who may be able to come back, can say that the Members of the Legislature of the State of New Jersey saw fit to protect their interests.

I have with me here our Department Commander, Chris Edell. I still have about four or five minutes of my time, Mr. President, and I am going to ask you if he can be allowed to have my time to amplify any remarks I have made, with your permission, Mr. President.

SENATOR EASTWOOD: We will be glad to hear from him. Mr. Chris L. Edell, Department Commander of the Veterans of Foreign Wars:

MR. EDELL: Mr. Chairman and Members of the Committee, I am happy to come here and say a few words on behalf of my organization, and the men who have served this country during the time of crisis or emergency, and may I say today we have 62% of the membership of the boys fighting our battle today overseas, actual members in my organization, and for that particular reason we were assembled in Kansas City, Missouri, every Commander, solely for one purpose and that was to see that righteousness and those outstanding privileges have been accorded and extended to veterans down through the years.

Preference means what we feel means preferential. Preferential means just that preference. We don't have to go back so far, may we say in historical days, we can go back if necessary during the time of a great president, President Lincoln, when he adopted civil service to eliminate the spoils system; it was then and only then that veterans came into their wellbeing and were

given that preference and preferential down through the years, eliminating the spoils system by seeing that those men who were actually wounded on the battlefield and the widows of those deceased comrades, and those who were wounded and physically incapacitated, and the veteran who served his country, and in addressing our great nation he said to the Attorney General that they were rightly and justly entitled to that preference and in adopting civil service and universally may I say, as far as the Federal Government is concerned, they were given that preference.

Certainly there is no question or doubt in the minds of this fair thinking Legislature. You have been kind and we ask you to continue to be kind, and that is our reason for being here today, that is our mission today, but it is my firm belief in speaking for my department and organization I feel, we have conveyed our thoughts, which represent those of the boys not only in this State but in every state, that they must come back to a fruitful productive state where employment can be had in every community from which they left and a badge of honor bestowed upon those men who fought for you and me so that the future generation may enjoy the God-given rights of liberty, justice and freedom.

Thank you.

SENATOR EASTWOOD: At this time we will hear from Mr. Max Singer who is Department Judge Advocate of the Disabled American Veterans.

MR. SINGER: Mr. Chairman may I correct the announcement of my name - it is Jacob J. Singer. There was, incidentally, a Max Singer who happened to be National Commander.

SENATOR EASTWOOD: All right, we will make that correction.

MR. SINGER: Mr. Chairman and Members of this honorable body, I am here today representing the Disabled American Veterans of the World War Department of New Jersey in my capacity as Judge Advocate. In a sense that is a legal position in our Department.

I have been accompanied today by Mr. Warren Shaw, State Commander of the D.A.V.; Mr. Bill who, incidentally, happens to be National Service Officer of the D.A.V.; Mr. William J. Dodd, Past National Commander of the D.A.V. of the World War and the present war; and other members representing disabled American veterans organizations on the Veterans Legislative Committee.

I have listened attentively to the arguments advanced by previous speakersand naturally I concur in their views. In viewof the time limitation given each speaker, unfortunately, I cannot elaborate on this program as long as I desire, however, I will be as brief as I possibly can.

We have in the State of New Jersey at the present time some 650,000 men and women who are serving our armed forces, both Army, Navy and Marine, and all but a small percentage of those 650,000 are unaware of this present program and have no knowledge of what is going on in this State House today with respect to our proposal urging that a supplement be added to the present revised constitution.

We are in a sense acting as their spokesmen. We are representing them and you can readily see the acclaim, the spontaneity that exists in various veterans groups, appearing here today requesting a hearing on this most vital and important subject, vital and important to all veterans and to the public in general.

The request or proposal advanced by the State Department of the D.A.V. is as follows and I urge that a supplement be added to Article VI, Section I, and make it paragraph 7 of this particular Article - the Article reads as follows:

"VETERANS CONSTITUTIONAL PROPOSAL

Appointments and promotions in civil service of the State, and of all civil divisions thereof, including boards and commissions maintained out of public funds derived from licenses or taxation shall be made according to merit,

and fitness to be ascertained so far as practicable, by examination, which, so far as practicable, shall be competitive; provided, however, any honorably discharged person who has served in any war of the United States, disabled in the actual performance of duty in any war to an extent recognized by the United States Veterans' Bureau, who are citizens and residents of this State and whose disability existed at the time of his or her application for such appointment or promotion, shall be entitled to preference in appointments or promotions, without regard to their standing on any list from which such appointments or promotions to office, position or employment may be made.

Any honorably discharged person who has served in the military or naval service of the United States in any war, shall be given preference in all appointments and promotions to offices, positions, and retention in employment in the State and of all its civil divisions thereof, including boards or commissions whose funds are derived from licenses or taxation.

They shall enjoy tenure in offices, positions and employment, pension and retirement privileges.

Appropriate laws shall be enacted by the legislature to carry out and enforce the provisions of the section."

That is the proposal I desire to submit on behalf of the D.A.V. Department of New Jersey.

SENATOR EASTWOOD: They have already presented that.

MR. SINGER: I didn't know it had been presented.

I wish to mention one pertinent fact that has been referred to by Comrade Cohn. In his opening remarks he particularized in saying he could not understand the laxity or failure to insert a clause in this proposed revised Constitution with respect to the rights of preference, tenure, civil service and other advantages that would revert to the veteran, any clause not having been inserted in the proposed Revised Constitution - I think I can answer that very simply, Mr. President, in this way-

the reason it had not been inserted in the plan presented here was that you gentlemen, representing this most honorable body, had anticipated this very thing occurring here this morning, this acclaim from all these veterans groups and it was your purpose and intent to hear the views expressed by us and you awaited the outcome of these views and the arguments we would present to you and immediately thereafter you would in all likelihood provide or insert a provision along the lines indicated by us.

Now I have a number of citations here with respect to many decisions that have been rendered by the various courts of our State with respect to the interpretation of our Civil Service laws, tenure act, our preferential act, and I am not going to take up your time in reading them because it would consume some time in doing so, but I am going to submit this memorandum to your secretary and ask that you peruse same from which you will obtain invaluable information.

VETERANS' TENURE

The Statute

(R.S. 38:16-1)

WHAT THE COURTS HAVE DONE TO THE STATUTE:

This statute gives tenure to public employees, who are veterans, except in the case of positions the term of which is "fixed by law". For instance, if there is a statute dealing with a specific position, and specifying the duration of appointments to the position, the Veteran's Act does not apply. There are several such statutes specifying the term of office of various public appointees, such as the state comptroller, treasurer, attorney general, etc. These appointees serve only for the period of their appointment whether they are veterans or not. On the other hand, the purpose of the statute was to give veterans appointed to other employment the term of which is not expressly fixed by law, protection against political and similar manipulation.

This is an old law. It originally entered our statute books in 1888, and it remained there, amended from time to time as changing conditions required, ever since. In its original form it applied only to employees of the state and of the municipalities in the state. Twenty years ago it was amended to include the employees of boards of education. As the act has read for the last twenty years it applies to persons holding employment "under the government of this state, or the government of any county or municipality, including any person employed by a school board of education." There is thus no room for any doubt at all that it was the intent of the Legislature to protect veterans employed in the school system of the state.

4. Board of Education of Bayonne vs Bidgood: 11 Misc. 735: 168 Atl.162

This case was decided by the Supreme Court in 1933 in the section of the court presided over by Judges Case, Bodine and Donges, who are still on the bench.

Bidgood was appointed without term as a chauffeur on a repair truck of the Bayonne Board of Education. He was a World War veteran and after an employment of about three years he was dismissed without charges. There isno statute which fixes the term of office of chauffeurs employed by school boards.

The Supreme Court held:

"In our opinion Bidgood was the holder of a position by virtue of the Veteran's Tenure Act was protected against dismissal except upon charges made against him and after a hearing. We agree with the Commissioner of Education that his dismissal was unlawful."

In other words, the Supreme Court sustained the language of the statute, and concluding that veterans employed by school boards were protected by it, ordered that Bidgood be reinstated in his job.

B. Skladzien vs. Board of Education of Bayonne:
12 Misc. 602: 173 Atl. 600.

This case was decided by the Supreme Court in 1934. It was affirmed by the Court of Errors and Appeals in 115 L.203, with Judges Perkie, Donges, Kays and Wells dissenting.

The case does not involve the rights of aveteran, and it is mentioned here only because it is necessary to be familiar with it in connection with another case that came later. The board of education had appointed Skladzien as its physician for a term of three years. There is no statute fixing the term of office of physicians to boards of education.

The Supreme Court held that since a board of education reorganizes every year, when new officers are elected, each board is a non-continous body and has alife for only one year. It also held that, this being so, no board could take any action to bind subsequent boards, and accordingly could make no appointment for a period beyond the annual date when the board is required by law to reorganize. For example, the board of education in cities reorganizes under the law on July 1st of each year. Such boards can make no appointment under the theory in the Skladzien case for a period extending beyond July 1st, and an appointment for more than one year may be ignored by subsequent boards.

As indicated, the question of the Veteran's Tenure Statute was not involved in any way, as Skladzien was not a veteran. The court did not hold that the Veteran's Tenure Act was not applicable in school districts. That question was not before it. It held merely that when a board undertakes to make an appointment for a fixed period of time, that period can in no event exceed one year.

However, it was the Skladzien case which the court subsequently used as a precedent to destroy the Veteran's Tenure Act insofar as veterans in the employ of boards of education and other non-continuous bodies, are concerned.

C. Evans vs Board of Education of Gloucester City:
13 Misc. 506: 17 Atl.475. Aff'd 116 L. 448: 184 Atl. 813.

This case was decided in 1935.

The board of education appointed a solicitor. He was subsequently dismissed and, being a veteran, claimed protection under the Veteran's Tenure Act. He pointed to the decision of the Supreme Court in Bidgood vs Bayonne Board of Education (the chauffeur's case) and claimed that since there was no statute fixing the term of office of a solicitor, he could not be dismissed without charges and hearing, as prescribed by the Veteran's Tenure Act.

The court held:

"A local board of education is a non-continuous body of necessity organizing each year. Skladzien vs. Board of Education of Bayonne, 12 Misc.602, affirmed Court of Errors and Appeals. Prosecutor's term of office was either fixed by resolution creating the office at one year, or if not so fixed in the absence of statute, presently in force, or ordinance or rule under legislative sanction, the term for one year beginning coterminous with that of the appointing power. Skladzien vs. Board of Education of Bayonne, supra."

" The Supreme Court held in Board of Education vs. Bidgood, 168 Atl.162, that a chauffeur to a board of education held a position and was protected by the Veterans' Act. He was appointed without a term for a monthly salary. The Court of Errors and Appeals had not decided, when that decision was rendered, that local school board officers and employees hold, in the absence of other circumstances, a term coterminous with that of the board making the appointment."

Apparently the reasoning of the court was as follows: The Veteran's Act does not apply to positions the term of which is fixed by law. The Skladzion case decided that, in the case of boards of education, all positions are fixed by law at a term not to exceed the term of the board, to wit,- the law

that makes the board a non-continuous body. Therefore, there are no positions in the school system of this state, the term of which is not fixed by law. And, therefore, no employee in the school system is entitled to the protection of the Veteran's Tenure Act.

This is a most startling result, since as it was pointed out at the head of this memorandum, the statute specifically mentions employees of boards of education.

The effect of the decision in the Evans case is to nullify the Veteran's Tenure Act with respect to persons in the employ of boards of education throughout the State of New Jersey; and in fact, with respect to all public employments, since practically all governing bodies are non-continuous.

The Legislative intent to protect veterans in public employment, expressed by plain and simple language in the statute, has been ripped by construction into meaning absolutely nothing.

The Remedy

It appears that the only way that the strange result accomplished by the Evans case can be overcome is by amendment to the present statute. This amendment should make it clear that the mere fact that an employing body is a non-continuous does not of itself constitute all of its employees as persons serving for a term "fixed by law". Clearly, what was intended to be a position the term of which is "fixed by law". in a position as to which there a specific statute defining the term. Expanding the decision of the Evans case, it is hard to conceive of any public position in the State of New Jersey, whether in the school system or not, which would be protected by the Veteran's Act. Every governing body is a non-continuous body. In commission form of government, the city commission goes out every four years; and in municipalities governed by other forms the term of office of the governing body ends at stated intervals. As a matter of fact boards of education

resemble a continuing body to a greater degree than the governing bodies of municipalities. In cities, one-third of the members of the board of education go out every year, and the remaining two-thirds continue, even though the board reorganizes to elect no officers annually; whereas the term of all of the members of the governing bodies of municipalities, particularly in commission government cities, ends at one time, when the next local election takes place.

It can therefore be said that the Evans case annihilates the Veteran's Act not only for employees in school systems but for employees in every branch of government in the state.

Prior to the Evans case the courts had already done enough to limit the applicability of the Veteran's Tenure Act. For instance, it has been held that a veteran can waive the protection of the statute when he takes his job, and that he does in effect waive it if he accepts an appointment for a stated time. See Hardy vs Orange, 61 L.620, 42 Atl.581. As a matter of fact that very ruling serves as an answer to any objection that might be raised as to the wisdom of retaining the act that gives veterans protection in office against removal, since it is already the law, by virtue of decisions of the courts, that <u>any employing body that wishes to avoid the Veteran's Tenure Act, can do so at the time it employs the veteran by employing him for a fixed time</u>, or by requiring him to waive his rights under the act. <u>Thus, even with the proposed amendment, it will continue to be possible for an employing board which doesn't want to give tenure to veterans, to accomplish that result merely by fixing a term for the employee when he is appointed. It is only when no term is fixed that the amendment will be applicable.</u>

CONCLUSION

The Veteran's Tenure Act should either be repealed, since in its present status, by virtue of the decision of the court, it means nothing; or it should be amended to give it

meaning, and to overcome the effect of court decisions which have rendered it entirely ineffectual, notwithstanding the explicit language of the act."

I want to thank you on behalf of the D.A.V. for extending the privilege and courtesy to appear before you today. I am certain something tangible and satisfactory will be done on behalf of our comrades.

SENATOR EASTWOOD: Thank you very much, Mr. Singer, particularly in your cooperation in conserving time for other speakers. We have a long list and we appreciate your cooperation in that respect.

I will now call upon Judge Alex M. Ormsby representing the Marine Corps League and Counsel to the New Jersey Veterans League Committee.

JUDGE ORMSBY: Mr. President, Mr. Speaker, Members of this splendid Committee, Comrades and Representatives here interested in this question: First, on behalf of the Members of my committee I wish to join with other speakers in registering our satisfaction of being afforded this opportunity to tell you men just what is on our minds. You know, when I sit here and think of John Bill along side of me with 37 pieces of shrapnel in his body and then listen to his eagerness and to the message that in his inimitable style he attempted to give you, then one can appreciate his anxiety to make clear to all of you and to the people of our great State that something must be done in the way of priorities for our veterans.

As I heard Chris Edell, the holder of a Distinguished Service Cross, in his exuberant spirit and love for a veteran strive to paint to you in apanoramic way just what this all important question means; and I think of Jake Singer who, a wounded man more than once, as Department Judge Advocate also strived to get his message over to you, you begin to see what is behind the scenes here in this group, veterans with such spontaneous and quick answers to your very generous call.

Mr. President, your own anxiety to see that our men had this opportunity today is appreciated by all of us, I want you to know that and to thank you gentlemen too in giving us this hearing. I know perhaps some of you personally and if I don't know you personally I know who you are and it is a great sacrifice that you come here but after all it is our judgment that if we give our boys priority to die why should we not give them priority to preference? It is not an unreasonable request and all members of our committee ask you to let the people of the State of New Jersey say whether or not they are satisfied to incorporate the recommendation made by Chairman Bill to this Committee.

Surely we wouldn't be here today in this parliamentary manner arguing the way we are if it were not for the sacrifice made by these men.

I just finished up a term as National Commander of the Marine Corps League and my visitations brought me to very important spots throughout the nation, it brought close-up pictures of situations that happened. Here's a man for example in the last war and a wounded man and it cost him, and to be exact I am going to ask after I say it, $7500 to obtain his preferential rights, so to speak, that this committee is urging now.

So that perhaps out of this great casualty list and we will have a greater casualty list I am sorry to say, many more than ever before in the history of our country, and let's not wait until this group of men come back to give them this consideration because we may have many difficulties, but let's give them this consideration now. It will be a fine thing for the people of the State of New Jersey to write to their boys that are on these fronts to tell them that the members of this Committee and the people of this State of New Jersey believe in giving them preference and, after all, they have to pass an examination in the first instance.

Our veterans don't want any charity. All they ask is justice. Even today our boys in service have to buy bonds, they have to pay income tax, many of them give their own blood and they are in the service and all we ask now for them is that this clause be placed in this constitution that will be presented to the people so that the people will have a chance to pass upon it.

Oh, yes, some will say this might be pressure group - well all of these men don't get anything for belonging to this because this is a labor of love. This Department Commander here doesn't receive any big salary for being Judge Advocate but it is all in the interest of veterandum.

In perusing the original U.S. Constitution, out of 55 men that signed our U.S. Constitution, 21 of them were men that served with Washington and it was their idea at that time to make sure that the men who fought to make the country and protect liberty and justice would always be recognized. That was their spirit, if you check on some of the historical utterances of some of these men. This is not a pressure group because men of all kinds of occupations are making up this group of veterans. It is a universal group made up of classes and that is the appeal that we make for these men. Oh, yes, some men may say "well, I was in the War and I don't need any of these preferences". God has blessed some people with wealth and some people have been blessed with position, they don't need any preference; of course, they don't, but we are fighting if you will, for the veteran that needs consideration. Look at the time some of these young men have given. Some of them have started education and it has been abruptly severed; some have started little businesses and been successful and they have had to give it up and have gone away; some had been

pursuing an architectural course, an engineering course, and they were stopped, they had to give them up, and what are they going to get for it. It isn't so much that they want this but it is this, it is an appreciation from the people of this State.

Judicial-like and lawyer-like we argue from precedent. It has been mentioned here that New York State set the example in peace time. If New York will set that example in peace time, the probability is that they will add further consideration on behalf of the veteran.

Now, there is no denying the fact, please God, when our boys come back here again and tranquility reigns, the boys are going to ascertain who their friends were while they were away. They won't be unreasonable but they will take an inventory of those that remembered them and there is no doubt if our boys have been good enough to fight for their country they will be good enough to run this Country when they come back.

It is a serious question passing up the veterans and as I gaze upon you men I know you are all men of experience, I know you are all men of high character and that you will give our appeal earnest and sincere consideration.

I heartily recommend all of the recommendations made by the Chairman of this Legislative Committee. He has already submitted a copy of his recommendation which, in effect, will protect the disabled veteran and will protect the veterans in general on preference which will keep in mind pension rights, which will keep in mind tenure of office protection, and in general protect the rights that a veteran is entitled to.

The last paragraph says that it is urged that appropriate legislation will be made and will be enacted into law that will make sure. After all eaten bread is soon forgotten. You remember from a practical standpoint the last war when boys came home when they were presented with beautiful pictures of how everything would be splendid, they had no worry, but we know that time soon proved that they were soon forgotten.

In one of my tours as National Commandant I went into Ohio one day and met there the President of the Weaton Steel Company of West Virginia. He was telling me when he came out of the last war for 18 months he went footsore in the United States and couldn't get a job but he had to battle his way, he wanted somebody to give him a chance. That is the object of these clauses to give a veteran a chance. When you come home from service after hard fighting you are nonplussed, you don't know where to go, sometimes you don't know what's going on. He went in there and fought the best way he knew how and today he is President of the Weaton Steel Company at $150,000 a year but he said "Judge, let me tell you, I don't want any Veterans of this war going through what I went through." It is not an easy job going around footsore looking for proper aid and consideration and the way these clauses are drawn they protect the State of New Jersey if you will advert to the reading of them. It concerns primarily the veterans of the State of New Jersey, and it also recognizes that the injuries are recognized by the United States Veterans Bureau, a Bureau that certainly will sanction

only injuries that should be recognized.

I appreciate your kindness in giving me this time and I want to say particularly on behalf of the Marines that all of them sincerely appreciate the consideration of you Mr. President, you Mr. Speaker and you all individually, and I hope that you will see our views and that you will put every recommendation that we recommended here today in that constitution and let the people of our State be the final arbiter, let the people be the chief umpire, let the people of our State send word to the boys in service that we are fighting for them on the home front.

The other day we witnessed the march of death, of thousands of our boys dying, dying under all circumstances and yet we know that had to be because we expected cruelty from the Japs, cruelty from abroad, cruelty from the enemy, but if consideration is not given in the Constitution for our veterans by the State of New Jersey what can those boys expect. That type of cruelty is not the kind you men wish to stand for, so I most heartily recommend to you these recommendations in the interest of these boys, over 500,000 that can't speak for themselves. After all, when you adopt a constitution you want a blueprint where you want good government, where you want a fabric that will transmit happiness, that will transmit all of those qualities even in that original preamble of our U. S, Constitution and, with that in mind, we as Americans, we used to have a gang and called ourselves the H.O.H.A. group - hit one hit all - that is the spirit, we are all together in this fight for civilization, the purse is the purse of humanity. Those boys who fight for humanity, your friends, some perhaps your own sons, they are in there giving everything they have and certainly in conclusion they are entitled to a priority to the things you can give them now and in the ensuing days and months and years.

SENATOR EASTWOOD: Will you submit to a question, Judge Ormsby?

JUDGE ORMSBY: Yes, Certainly,

ASSEMBLYMAN HAND: Isn't it a fact that there are a number of laws in the State of New Jersey on the statute books that

provide for veterans preference and tenure?

JUDGE ORMSBY: Yes, that is so.

ASSEMBLYMAN HAND: Can you particularize that this is consideration which should go beyond the laws - that is what we are interested in.

JUDGE ORMSBY: I thought when Bill spoke he explained that.

ASSEMBLYMAN HAND: Perhaps he did cover that.

JUDGE ORMSBY: He explained that despite the fact that there is legislation on the books, just like in the Chapman case, in his case there is a statute supposedly protecting him, yet it cost him $7500.

ASSEMBLYMAN HAND: If that is covered, all right.

SENATOR EASTWOOD:

Mr. Warren Shaw will speak as Department Commander of the Disabled American Veterans, Mr. Shaw.

MR. WARREN SHAW:

Mr. President, Mr. Speaker and Members of the Committee. I might say that I will be very very brief. The only thing I am asking is that the disabled men be included in this constitution. I have travelled around numerous States to the hospitals and seen these boys now wounded. I have talked to them. There are mothers of some of these boys in certain hospitals--I know they are there--but I am bound under oath not to reveal what I saw. I can't tell the mothers what is wrong with them. "What is the Legislature doing for us?" is the question they are asking." What are you fellows doing?" We have the Lyons Hospital right here in our own State where there are 600 boys from World War II who are mental cases, who are not going to come out for a long time. There are some there who are not coming out at all. Those are the tings we are trying to take care of. Some have their legs and arms off; some with the lower part of their jaw blown away; some with the sides of their heads practically blown off. My appearance here through Judge Advocate is to ask you to be as grateful to the Veterans as you can be in the provisions of the new constitution.

Mr. Chairman, may I ask the privilege of the floor be extended to Mr. William Dodd, Past National Commander?

SENATOR EASTWOOD:

We will appreciate it if he will limit himself to five minutes. We have a long list ahead of us.

MR. WILLIAM DODD:

Mr. Chairman, Members of this distinguished Committee and the distinguished leaders of the Great Veterans Organizations who presented their constructive proposals today and the other groups that are assembled.

I have listened with attentive thought to what has been presented and I want to heartily concur in all the proposals presented by the leaders. Last September I retired as the National Commander and Chief

of the Veterans of the Nation. Previous to that I had seen much in my travels, particularly the disabled veterans of our State of New Jersey. I travelled through every hospital in the country, talked with Governors, Members of various Legislatures and many of the Mayors of various cities and found they were taking seriously the responsibility of what they were going to do for the disabled veterans of this war. I notified my son in the jungles of New Guinea the State of New Jersey would not let him down/or any of the boys. I concur and agree heartily with the policy presented here today.

Now gentlemen, let me make a statement. I have taken this proposed constitution, as drawn up and I went through it from page to page with outstanding constitutional lawyers. It is their impression if this goes through without the inclusion of the proposals presented here today, it will not alone not give any recognition to the veterans in the State, but the very provision you have will bar Senator Littell and his commission, or any member in the legislature from ever giving any consideration to the boys in the service. Now, gentlemen, there is a grave need for the changing of the presently proposed constitution. There is close to a million men already spread around the earth from this State. Approximately 250,000 were released from the service because they are past 38 years of age. The next discharge is the C.D.D.'s, Certificate of Disability Discharge. Less than 20,000 have received money consideration from the United States Government. Approximately 80% of those boys will come back to your State and many who will never receive any consideration from the Federal Government, will not have a chance, if you don't make provision in this constitution to take care of those who come back wounded. Gentlemen, you are not going to do your duty if you don't give it serious consideration, give serious consideration to those boys who will need somebody to give them a helping hand. All of the proposals you are now reading about by the various organizations for a post war progaram won't mean a thing if you put in the constitution at the present time a provision such as you have in the present proposed constitution.

Mr. Chairman, I want in behalf of my Committee to thank you very earnestly for your kind consideration and to urge your consideration to our proposals to this constitution. Let me in closing say that we are ahead of many States.

SEN. TOR HASTWOOD:

We appreciate the group from New Jersey, representing the Veterans organization conserving time. We appreciate your saving time for other speakers. We are certainly most grateful to you. In addition, to being honored by representatives of Veteran Organizations this morning, we also have another distinguished Veteran who has honored us with his presence and who will speak on Combined Pension Funds of New Jersey. Captain Gill Robb Wilson.

CAPTAIN GILL ROBB WILSON:

Mr. Chairman and Mr. Speaker, Members of the Committee. I will take the risk of standing here and having to speak at an angle because I see in front of me here the name-plate of our distinguished Senator from my own county, of whom we are very proud. I would like to stand here behind Wesley's name-plate and talk.

I have been very much interested in these hearings; they are a liberal education. One cannot listen without becoming impressed with the fact that the people, the people are important. Government is of the people, not of law--not of statute--not essentially of institutions. It is of the people. I have been reading the book called, "The Making of An American". I commend it to you. I represent here a group of individuals--fundamentally the school teachers, the educators of this State. I was interest in the comment of one of the boys speaking on the Veteran's viewpoint. He said something that is very significant. I hope it will always be true--that when the constitution is mentioned an expression of reverence comes over the man who mentioned it. I hope that will always be true because our constitution is an enunciation of our philosophy of life and our principles--our attitude toward ourselves and toward life in general. Now I recognize a problem that you men have. It is a problem in which we have had some very bitter lessons--

what to include in and what to exclude from the constitution. I campaigned very arduously for the repeal of the Prohibition Amendment not because I did not believe in temperance, but I did not think that belonged in the constitution--I felt it would engender and generate trouble. But, some things belong in the constitution because they are expressions not only of the mind, but the heart of the people.

I am a member of the State Government and as such, I am a member of the Retirement System of the State Employees. It is very sound actuarially--it has good leadership--it is sound. The Teachers Pension Fund is sound. Major Nicol, Deputy of the State Police told me this morning something I didn't know--The Princeton Survey had found the State Police Pension Fund sound. I understand that the Pension Fund in relation to the Prison is not sound. When Bob Hendrickson was heading up the Committee studying this same thing, several years ago, some of you gentlemen were probably members of the Committee and will remember that they proposed to put in the constitution a very simple provision which declared that the relationship between the State and the various groups in which the State benefitted would be a contractural relationship. That seems to me to have all the semblance of good government. As I travelled around over the State for the last twenty years, naturally I have come in contact with cops, firemen, and all sorts of people under pension systems in our various counties, etc. The crime has always been the same thing. "Yes, sure, we are in the Retirement System, but it doesn't amount to anything". Two or three hundred of them are actuarilly unsound. That is just bad government, boys. I can't see but what the State of New Jersey, in which I am interested in being an employee I want to see it the best run business in the world, with integrity and character in its philosophy. I don't believe that if it is any pension system or fund or retirement development that is unsound, that we have done our whole duty as a business organization until we have made that thing sound.

The New York Constitution has been referred to by the boys this morning--that is because it is the most recent of the State constitutions to be revised and with a great deal of talent. I haven't studied it very thoroughly, but time after time I have heard it referred to. Far be

it from me to want to imitate anything in New York, but apparently they have done a pretty good job on their constitution. I noticed that they had this same over-all chaos in their pension systems, retirement systems in the municipalities of the State. We don't propose to go as far as that here. They included the social security of all government employees in theirs. We don't propose to go that far, but we propose to go far enough to ask you gentlemen to insert and we will hand you this little brief--this very simple phraseology: After July 1, 1945 or 1946, or whenever by Legislative enactment we can make our actuarial systems, our pension systems here in the State sound, that at that time it becomes activated that 'benefits payable by virtue of membership in any State Pension or Retirement System shall constitute a contractural relationship' which phraseology says 'it shall not be diminished or impaired' but on the basis of contractural relationship.

Every year we come up to the State Legislature, to the boys who have to handle the Appropriations Committee and who don't know exactly where they are. We came here this morning, a group of us, Mr. Wood, Sr., Mr. Wood, Jr., Mr. Cook, Mr. Philhower from the New Jersey Education Association Major Nicols from the State Police, Senator Borton from the Civil Service Association. We all want to urge just that same philosophy that the contractural relationship between the State and these employees be considered as definitely an expression of attitude that belongs in the constitution, which, of course, we all are very heartily in favor of. We appreciate your difficulties and your problems. We would like to advance this viewpoint as what seems reasonable to us.

Personal testimony is probably not barred. I might tell you that a lot of the teachers I have met around the State feel that as they come along--they never had much salary--and in their later years they become jittery about this thing. They wonder what will happen to them. Gentlemen, that is surely not sound--it is not human--it is not decent, if we can do anything better. I think by the addition of this--if paragraph 7 in Article VI, we believe you would be doing a constructive job if these additions were made. In any case we would like to present them.

SENATOR EASTWOOD:

Captain Wilson, have you presented to the Committee the written proposal?

CAPTAIN WILSON:

Yes, we have.

SENATOR EASTWOOD:

We will next hear from Professor Bebout of the N. J. Constitution Foundation who appears for modification.

(Professor Bebout asked for a postponement as he had to leave the room).

SENATOR EASTWOOD:

I will ask then, Dr. Leon S. Milmed. He is also representing N. J. Committee for Constitutional Revisions, with Professor Bebout, for modification.

(Dr. Leon S. Milmed - not present.)

SENATOR EASTWOOD:

I will call Mr. John A. Wood, III, who will speak for modification, representing Combined Pension Funds.

MR. JOHN A. WOOD, III:

Mr. Chairman, Gentlemen of the Committee: I am the Secretary of the Teachers Pension Fund and it will take me but a minute to add my word to what Gill Robb Wilson has so ably presented. The fund as it now operates is of course, controlled and set-up by an enabling statute. There has been no question of the fund and its trustees carrying out in the last twenty-five years, all the contributions and benefit provisions to the law problem. The solemnizing of the State Pension promise by incorporating it in the State Constitution which is the proposal that Mr. Wilson has made, would have in my mind two important and fully justifiable effects. It would remove from future generations the attempt of taking too lightly the promises that have been made for public service. The funding and paying of those promises if it were a constitutional provision, would be a promise which future generations could not repudiate if they wanted to.

The second comment is that there are not

$12,000,000 of contributions from State funds provided for in the enabling statute as it stands, those being in part over $24,000,000 of State contributions that have been diverted since 1938. I believe a provision in the State constitution for the solemnizing of these pension promises would bring more closely to the minds and hearts of each year's Legislature the obligation of adequately keeping the promises that have been made.

SENATOR EASTWOOD:

We will hear from Mr. Charles J. Strahan who is representing Combined Pension Funds and will speak for modification.

MR. CHARLES J. STRAHAN:

Mr. Chairman, Members of the Committee. I think the speakers have covered most of the field. I want to point out that the proposed amendment which reads, "After July 1, 1945 or 1946, benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractural relationship and shall not be diminished or impaired." The Legislature at the present time under the present law has the right to raise the amount of premiums the teachers shall pay. We think that every five years if the money is not increased as it should be, that the rate of the teachers pension should be increased. We promised them a certain benefit when they retired and we urge that they get the benefit of half of their pay. We feel that that protection is theirs. Now there is some opposition in relation to the fact that Captain Wilson spoke on that some funds are not actuarilly sound. We believe it is the duty of the Legislature to see that some of these funds are sound and that that condition should be corrected. We think that should be done. Therefore, we feel that this constitutional amendment will give security so that the teachers know they will get benefits. It should be assured through constitutional provision that she will get her benefits. We feel this will be a great source of comfort to the people to know the constitution provides for such benefits.

SENATOR EASTWOOD: Mr. Fred W. Cook, representing Combined Pension Funds, will speak for modification.

MR. FRED W. COOK:

Mr. Chairman, I will not take the time to speak.

SENATOR EASTWOOD: Major William Nicol, of the State Police will speak on modification, representing Combined Pension Funds.

MAJOR NICOL: I would like to say a few words at present, if I may, in addition to what Captain Wilson has said. I would like to just bring out the several points. Our pension set up - we applied to some of the other State Funds to join - they said our work was too hazardous. We organized in 1925 our own Pension Fund, which takes 4% from the men's salaries. What I am trying to bring out is that it does not cost the State of New Jersey anything to keep our fund going. At the present time it is a fund from the moral standpoint of the men in the service. We would like to be assured that it be made sound. The men are thinking of their dependents. That is all.

SENATOR EASTWOOD: Mr. Charles A. Philhower, speaking for modification, representing Combined Pension Funds.

MR. CHARLES A. PHILHOWER: I have nothing to add to what has been presented.

SENATOR EASTWOOD: Mr. Carl Holderman, speaking for modification, New Jersey C.I.O.

MR. CARL HOLDERMAN: Mr. Chairman, Members of the Committee. I should like first of all to support in principle the demands of the Veterans for some consideration in the Civil Service of this State. I speak in behalf of that because we have thousands of members from our Trade Unions who are now serving overseas and who, when they return, want to receive some gratitude from the Nation and from the State in priority in Civil Service jobs.

The history of this country has not shown that the State or Nation has been very grateful to its veterans. It took a rebellion after the Revolutionary War to get some justice for the veterans of Washington's Army and it took a march on Washington in 1930 to get some consideration for veterans of World War No. 1. I don't speak as a veteran. I was unfortunate enough to be too young to serve in World War I and too old to serve today. I do want to go on record that veterans should have priority in Civil Service jobs.

On Section 3, Mr. Chairman, the clause which provides a prohibition for strike by public employees. I want to say a few words about that and I would like to allot some of my time to Mr. Philip Prince, Regional Director, State, County, and Municipal Workers, CIO. We contend that it is the inherent right for workers to organize and bargain collectively. If paragraph 3 is included in the new constitution, it will deprive a substantial number of workers of this right. As long as the State refuses to recognize a workers' organization (in the public service) the State should not refuse their right to strike.

If you will allot Mr. Prince some time, I would like him to present our reasons for asking for the exclusion of this provision.

SENATOR EASTWOOD: Mr. Prince will you give us your full name for the record?

MR. PHILIP PRINCE: Philip Prince, Regional Director, State, County and Municipal Workers, CIO.

Mr. Chairman, Mr. Speaker, unlike the other speakers, we are asking the Committee not to include certain provisions in the draft of the constitution, we are asking and urging the committee exclude paragraph 3 of Section 6 (Mr. Prince refers to Article VI, Sec. 1, Par. 3)

We object to the inclusion in the constitution of the declaration that "strikes of public employees are against public policy". Such a blunt, fragmentary statement of policy is a hasty, ill-reasoned, and entirely inadequate attempt to meet the vast problems inherent in modern public employment relations. Such a declaration deals with only a single and very minor phase of the whole complex problem; and it therefore will not serve to advance sound public personnel administration one inch. It solves exactly nothing.

A recent study made by the Governor's Committee headed by Supreme Court Justice Heher found that the administration of public employment relations is as obsolete and inadequate for its task as the present constitution of the State of New Jersey is for its. Such a situation can be met only by legislation, carefully drawn after full hearing and mature consideration and study, which sets up adequate

and sound machinery and procedures for public employment relations. We think it quite obvious that the problem will not yield to a bold constitutional declaration that strikes of public employees are against public policy; and we urge that no fragmentary and partial treatment of the subject be attempted.

Moreover, the setting up of proper machinery to safeguard and institutionalize the elementary rights of public employees will eliminate any possibility, however remote, of strikes of public employees. In the history of the State of New Jersey there have been less strikes of public employees than other states, and there has never been a strike of those employees responsible for the safety of its citizens and their property. The isolated strikes were caused by the wilful, blind obstinacy and prejudice of public officials, who, rejecting the counsel of the State Mediation Board, the Governor of the State, and the National War Labor Board, refused to deal with their employees and left them no other alternative. We think it indisputable that these few strikes had the same fundamental causation as strikes in private industry, that is, just grievances without proper redress. That cause is not touched, much less removed, by the proposed declaration. Only the legislation we urge can accomplish that.

We believe that under these circumstances, the inclusion of this declaration is a gratuitous effront to all the faithful public employees who, although underpaid and suffering severe privation in present inflationary conditions and deprived of elementary rights of employees, continue to carry on their duties so that the State of New Jersey shall not suffer.

Mr. Chairman and Mr. President, Members of the Committee, I would like to also state that I was very much impressed by the declaration of Captain Wilson who stated that he was opposed very much to the prohibition clause in the National Constitution, not because he didn't believe in temperance, but because it engendered ill feeling against the constitution. The same question will prevail against 70,000 public employees in the State of New Jersey. You state here in the draft of the constitution strike shall be against public policy, yet in one single utterance is their remedy to grievance taken

out. How are they to remedy their problems. I think we would be less than wrong if we believe public employees had no problems. The public official who says his door is always open, you may come in and talk to me at any time, he doesn't do anything. The public employee is not a white collar worker who has a number of degrees, he is an industrial type of worker, a laborer, if you will, who carries on the services of the community or the State and the Nation. On the basis of health, decency and safety they are not able spokesmen for themselves, therefore they organize into associations or unions of their own free choice. The constitution says nothing about their rights and preferences, but it does say it is against public policy to strike.

During my experiences during the last four or five years this question has come up continuously, "How do we remedy our grievances?" "To whom are we to appeal?" The Legislature has not declared itself on the subject. The N.J. Civil Service Commission has no authority in law to step in as a mediatory agency to settle disputes. In addition to that, better than one-half of our counties are not under Civil Service. I have noticed time and time again that public Legislators will declare themselves against the "Spoil System". Nothing has been done to prevent its continuance. The recent investigation of the New Jersey Civil Service, as brief and perfunctory as it was, did not even scratch the surface, indicating the character of the administration and the enforcement power of the N.J. Civil Service Commission. I am not arguing that we ought to include basic law in the constitution outlined. I am arguing against including one phase which should not be contained therein.

Furthermore, the prohibitive statute that is proposed in the draft constitution will discourage public employees as such and they will in a larger number than now, go into private industry where the compensation is much better and where they at least can have the democratic right of belonging to any organization of their free choice.

Another section we are very much interested in is Paragraph 2 of Section 1, Article VI, which reads as follows: "In the Civil Service of the State and all its civil divisions" etc., We

propose that the section be amended in such a manner as to include every public employee under the merit system and its political subdivisions. There are a number of Boards and Commissions who operate as creatures of the Legislature who will have no Civil Service status whatever.

We propose the following wording:

"All offices and positions in the public service shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments to and promotions in, the public service shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive."

We urge the Committee to give consideration to the exclusion of this paragraph. We hope our words will carry some weight in your due consideration.

MR. ISSERMAN: I would like to say a few words, if you will give me some time.

SENATOR EASTWOOD: I will be glad to hear you at this time, Mr. Isserman.

MR. ISSERMAN: The sections which Mr. Holderman and Mr. Prince have touched on I am not going to touch upon. We find fault with Article VI, Section 3. Article VI, Section 3, gives the Legislature broad powers to appoint investigatory committees. We are in accord with the purposes of this section, for the Legislature cannot properly function unless it has adequate investigatory power. But the history of legislative investigations has shown from time to time a tendency to an unwarranted broadening of the scope of the investigation, to infringe upon an individual's private affairs, and to attack unfairly the reputations of respectable citizens upon totally inadequate, or upon no ground at all without affording him adequate opportunity to reply. A very classic example was the action of the investigatory committee not of the Legislature, but of the governor in his last few months of his administration, where people did not get an opportunity to be heard. We believe that every citizen, every person is entitled to be heard whether it is before a Legislative committee, before a governor's investigatory committee or before a trial by jury.

Witnesses have been refused the right to make a record of their own testimony and have been denied the right of counsel. The courts often had before them situations of this kind. Secret hearings, of which no record is made, are not unknown, as are hearings before one man subdivisions, created by the committee without authority, and at times, without the knowledge of even the committee. Therefore, without the slightest vitiating the purposes or salutory effect of the provision, we urge that it be amended so as to provide for certain safeguards against such abuses as we have mentioned.

We urge, therefore, that there be inserted, after the first sentence of the section, the following matter:

"The resolution shall specifically designate, describe and define the matter which the Committee is empowered to investigate and the Committee shall confine the scope of the investigation to such matter. No Committee shall consist of less than three members of the Legislature or of either House thereof, and no Committee shall hold a hearing in the presence of less than two-thirds of its members. All hearings shall be open to the public, and a stenographic transcript of the testimony given thereat shall be made and shall be a public record. All testimony shall be given under oath, which may be administered by the Chairman or any member, of the Committee. Witnesses before the Committee shall have the right to advice of counsel, who may be present at the hearing and who may object to the propriety of any question. Persons with respect to whose acts, conduct, or status testimony is given shall have the right to testify and to call witnesses to testify with respect thereto."

In other words, gentlemen, if we give the Legislature power to investigate, let's protect the people investigated so that they get, what is commonly known, as a square deal.

SENATOR LASTWOOD: I think at this time it might be opportune to adjourn for lunch. As a result of a request I received from Mayor Vincent Murphy, who spoke for other Labor groups, as well as himself, the Committee has set Wednesday, February 9th next to afford a further opportunity to present views on Paragraph 3 of Article VI, which has been discuss ed all this morning by your gentlemen. Wednesday morning of that

same day, the Committee will take up further consideration of Article 5.

MR. ISSERMAN: Will you grant us permission on Wednesday to present our views on Article 1, Bill of Rights?

SENATOR EASTWOOD: Yes, we will be glad to hear you. May I say this: Those present who desire to be recorded, please give your name to the stenographer. If you do not wish to speak orally, you may present your views by giving your name and address, the position you take, and submit a written memoranda. Mail it to me, as Chairman of the Committee. Later, we will be glad to incorporate it into the record. Will you please file all memorandums with the Committee not later than Friday, February 11th next.

(ADJOURNED FOR LUNCH - 12:50)

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SPEAKER - AFTERNOON SESSION

Thursday, February 3, 1944

MR. WILLIAM BECKER - Socialist Party of New Jersey (modification)

SENATOR EASTWOOD: If there is anyone here who has not already registered with the stenographer, will you please do so now, giving the name, address and organization you represent; also whether you are a proponent, opponent, or for modification or changes. I will announce for the benefit of those that were not here this morning, the Committee has suggested that the person speaking limit himself or herself to fifteen minutes. It is not our intention to stifle expression. At the same time it would be helpful to the Committee if you could express your views within that limit of time.

This morning Professor Bebout, representing the New Jersey Committee for Constitutional Revision spoke at another session. He is here now and we will be glad to hear from him.

PROFESSOR BEBOUT: Mr. Chairman, members of the Legislative Committee -- I am speaking here, as I was in the other hearing this morning, in behalf of the N. J. Committee for Constitutional Revision from which you have heard before and which, as you know, has associated with it a number of the leading State-wide civic organizations. The decisions which this Committee has arrived at were adopted on the basis of a rule which required that no position be taken until there was substantially unanimous or general agreement and no position was taken if it was definitely opposed by any important affiliated organization. Although we had to appear here in the category of modificationists, I think I should say that in one sense we are complete proponents of this Article. We are complete proponents in the sense that we are in favor of all of the changes from the existing Constitution which it embraces, and the only sense in which we are modificationists is that we would like to have the new Constitution go somewhat further down the road in several directions that you have already started.

Before I get down to specific cases, I might say that there is one provision which did not appear in the Hendrickson Report -- "strikes by public employees are against public policy" -- which [illegible] this morning, [illegible]

policy" -- which was referred to this morning, and on which the Committee has not as yet had a chance as a body to take a stand. We are in the process of polling the Committee on that and hope to have a definite statement by next Wednesday.

One of the most important features of this Article, from our point of view, is the paragraph writing the merit system into the Constitution. We think this is important, particularly, for the simple reason that it would give some kind of permanence and stability to the principles of the merit system, but also because of the fact that it would, we believe, represent a salutary check on what might otherwise conceivably be somewhat dangerous executive power, because this provision as fully implemented by the Legislature would then be enforceable by the courts and would greatly reduce the potential patronage back of the executive department. In fact, it could be carried so far, conceivably, as to provide that practically all members of the executive departments below the head of the department, should, in effect, be career men and women and once that principle were established under the terms of the Civil Service law by the Legislature the courts would, as I say, be in a position to enforce them.

The question of veterans' preference which was raised this morning has not been specifically acted upon by our Committee. Our Committee, however, by endorsing this provision as it stands might be said, I suppose, by silence to have taken a position on the matter. What I am going to say now will have to be accepted as my own statement, and I am going to try to interpret what I think may be the sense of our Committee. It seems clear to me that paragraph 2 would not rule out a certain amount of reasonable veterans' preference and I don't suppose it was intended to. The words "merit" and "fitness" are broad enough that military experience could certainly be given due weight in determining merit and fitness for such

employment and it certainly would be possible to provide other things; that at least one with military experience should be given preference. Certainly to that extent I am sure the Committee would agree with any safeguard of that principle that might be suggested, but I feel equally sure that the Committee would be very strongly opposed to some of the specific proposals made here this morning which would go so far, in the opinion of many of our members, as to destroy the whole merit principle and I think the reaction from that would probably be the re-establishing of the so-called spoils system, which some of the speakers this morning admitted had originally been very detrimental to the interests of legitimate veterans. So, if there is any tendency to re-write this clause I am sure the members of our Committee would be very much opposed to changes which would have the effect of making anything but competence the basic and primary consideration in the selection of public employees, and they would probably be opposed to the whole civil service provision if such loop-holes were written into it as to destroy that basic and primary consideration. What I have said now is an attempt to interpret what I presume to be the sense of our Committee in the light of such discussion as we have had.

On the subject of Section II, in paragraph 1, stating the State Comptroller, the State Treasurer and the State Auditor shall be appointed by the Senate and General Assembly in joint meeting -- this is one upon which our Committee has not taken a specific stand. I think I should, however, point out that there may be an inconsistency in providing in the Constitution for as many as three legislatively appointed State fiscal officers in the Constitution because our Committee did take the position that in general State administration should be under the control of the Governor and, speaking again for myself, although I believe that this would interpret the sense of the Committee, it seems a little hard to justify having both a post auditor (and I believe we are all agreed there should be a post auditor) responsible to the Legislature) and two fiscal officers operating before the expenditure of public money and it means, therefore, that we will have, if this stands, an unnecessary state department.

Then the Committee would take a definite stand in favor of elimination of prosecutors of the pleas, county clerks, surrogates, sheriffs and coroners from the Constitution. I understand they don't propose to abolish those offices but the Committee could see no more reason for mentioning those county officers than mentioning freeholders, registrars of deeds and other officers of equal importance. Those officers mentioned, of course, are in the Constitution for historical reasons. By continuing to put them in the Constitution unduly lengthens the document and tends to make county government inflexible. It would make it impossible, assuming for example that the Legislature should provide for home rule, for counties and municipalities, for a county to choose its own form of government in any effective sense of the word because it would have to be built around these elective constitutional officers. May I make one other observation in connection with inclusion of these officers.

In the Constitution the terms are continued at three or five-year periods, as the case may be, which doesn't mesh with the two four-year arrangement adopted for the election of the Governor and Legislature. If these officers are to be continued in the Constitution it would seem desirable either to give them even numbered terms or to give the Legislature the right to regulate their terms so that if the Legislature at any time wanted, for example, to eliminate elections in odd years altogether (assuming you do have election in even years) that could be done, or in any event it would be possible to set up a consistent pattern of elections which would recur with regularity and not, as at the present, for some officers to be elected one year in combination with certain others, and others in combination the next year which is confusing. Prosecutors of the Pleas were, as you recall, omitted from the Hendrickson Commission Report. The Committee suggested at that time that that omission would pave the way (I mean the Committee for Constitutional Revision) for the establishing at some time or other, if the Legislature wished to do so, of a real Department of Justice in the State government in which the prosecuting officers in each county might either be more or less in the nature of career men or at least would be definitely responsible to the Attorney General or Governor of the day. Providing for a continuation of the appointment of county prosecutors by the Governor for a five-year term, which doesn't correspond with the Governor's term, would prevent either the establishment of that kind of responsible department of justice in a complete sense or the development of this phase of law enforcement on a career basis and tend to perpetuate the custom in this State of maintaining the prosecutors' offices. In a good many counties they are very largely the arms of the political parties. Understand, these editorial comments are mine and not necessarily the Committee's, although I think they interpret the reasons which led the Committee to approve the Hendrickson Commission's elimination and their desire to have the other county officers also left out.

Turning to Section III, the Committee specifically endorsed Section III as it stands, taken over from the Hendrickson Commission Report. We took no position on the possibility of safeguards such as presented by Mr. Isserman this morning. I suppose the Committee would have no objection -- but we feel that it is very important that this power be established, without any question of a doubt, in its full vigor partly indeed as a check on the powerful executive department which will be established by this Constitution.

ASSEMBLYMAN CAVICCHIA: We couldn't very welleliminate surrogates and county clerks in this Section because we had made Section V an essential part of the county structure.

PROFESSOR BEBOUT: They wouldn't have to be elected by the people though necessarily. There is no doubt that these functions have need to be continued but the method of selecting them by popular election for three or five year-terms isn't fundamental, is it?

ASSEMBLYMAN CAVICCHIA: Well, then, I don't quite get your point.

PROFESSOR BEBOUT: This particular method of selection and the term of offices freezes them into the Constitution and would make it impossible to provide, for example, that they be appointed by some appropriate authority, or that some be consolidated, or that their terms be made consistent with the terms of state officers, so that you would have a coherent pattern of election. The elimination of these officers from mention in the Constitution would not abolish them; it would merely leave a provision for them subject to the Legislature.

SENATOR EASTWOOD: Do any other members desire to submit questions?

ASSEMBLYMAN VOGEL: I would like to direct your attention for a moment to Article VI, Section I, paragraph 2, that portion which deals with the appointment of employees and then talks about "fitness... so far as practicable." Have you interpreted those terms and if you have, will you give the Committee your views?

PROFESSOR BEBOUT: I think that "so far as practicable" is a necessary qualification because it is impossible to choose certain kinds of public employees in a sensible and satisfactory fashion by the method of examination. Unfortunately, however, unless the Constitution were to become as long as the dictionary and write a whole civil service law into the fundamental law, it would be impossible to distinguish in any hard and fast way between those positions for which it was desirable and practical to give examinations and those that weren't. My understanding is, from some correspondence with the New York Civil Service Commission and the National Civil Service Reform League, that this language, which was taken from the New York State Constitution, was interpreted in New York and that the line of cases has picked out fairly a reasonable line between those positions not practicable to be filled by examination and those which can be filled that way and according to the usual rule, if we import this provision from New York, the general line of interpretation goes with it. If this were a completely novel provision I think there would be real reason for questioning it, but since it has been given meaning in a neighboring jurisdiction it seems a satisfactory one. Incidentally, the model state constitution put out by the National Municipal League took it over and I talked with some of the men on that Committee. They deliberately gave up the idea of writing a more detailed provision largely because of the satisfactory results of the interpretation of this provision in New York.

MEMBER OF AUDIENCE: May I have the right to ask this gentleman a question with your permission?

SENATOR EASTWOOD: Will you submit to a question, Professor Bebout?

PROFESSOR BEBOUT: Yes.

MEMBER OF AUDIENCE: If, in selecting the article with reference to civil service, you followed the New York State provision, why did you leave out the veterans preference that New York State included

in that same provision?

PROFESSOR BEBOUT: That was not in the original provision. As I recall it was added in 1938.

MEMBER OF AUDIENCE: That is correct. It was added in 1938.

PROFESSOR BEBOUT: We didn't write this. We are endorsing the provision as it stands.

SENATOR EASTWOOD: At this time we will hear from Dr. Leon S. Milmed of Newark, New Jersey. Dr. Milmed.

DR. MILMED: Mr. Chairman, members of the Committee, in order to dispel any doubt as to the power of the Legislature to enact laws granting preference to veterans under the phraseology of paragraph 2, Section I of Article VI, I would like to submit to the Committee's consideration two proposals regarding the granting of such preference. I believe that would adequately cover the material gone over this morning. The first is that at the end of paragraph 2, Section I, Article VI, this provision be added:

> "Provided, however, that in determining merit and fitness, any honorably discharged soldiers, sailors or marines or nurses of the Army, Navy or Marine Corps of the United States who have been engaged in the actual performance of duty in any war, who are citizens and residents of this State, shall be entitled to preference in appointment, promotion and tenure in such manner and to such extent as the Legislature shall by general laws prescribe."

That, by the way, goes one step further than the New York State Constitution. The New York State Constitution prescribes preference solely for disabled veterans. This would permit the Legislature to prescribe preference both for disabled and veterans who have not been disabled by war.

The second proposal is that at the end of paragraph 2, Section I of Article VI (this is an alternate proposal) be included to read:

"Provided, however, that the Legislature shall by general law prescribe that reasonable allowance or credits shall be made for actual military service by any honorably discharged soldiers, sailors, marines or nurses of the Army, Navy or Marine Corps of the United States, who are citizens and residents of this State in determining the merit and fitness for civil service."

I respectfully submit these two proposals for your consideration.

MEMBER OF AUDIENCE: (Mr. William J. Dodd)

Could I ask this gentleman to make a correction where he says "nurses" to include the Waves, Wacs, Marines or Spars.

DR. MILMED: That would be included under the terminology soldiers, sailors or marines.

MR. DODD: That is still not correct.

SENATOR EASTWOOD: They are a part of those forces.

MR. DODD: But designated as separate groups -- the Waves, the Wacs, etc.

MEMBER OF AUDIENCE: The Women's Auxiliary Corps is a separate and distinct organization.

SENATOR EASTWOOD: It is the Women's Army Corps now.

MEMBER OF AUDIENCE: Yes, it is a separate and distinct unit. The Waves is a separate and distinct unit. The Spars is a separate and distinct unit, etc.

SENATOR EASTWOOD: Well, if we take care of the men we should take care of the girls.

MEMBER OF AUDIENCE: In all the Federal laws they do designate them as such: the Spars, the Waves, the Wacs, etc.

SENATOR EASTWOOD: In order to clarify the point on the suggestion you make, are you in accord with the proposal submitted by Dr. Milmed?

MEMBER OF AUDIENCE: I am not suggesting I am or I am not. I am merely suggesting that we clarify that point.

SENATOR EASTWOOD: Mrs. Edwin Bebout appearing on behalf of the New Jersey League of Women Voters. Mrs. Bebout.

MRS. BEBOUT: Mr. Chairman, members of the Committee and ladies and gentlemen: The League, of course, as you know is a member of the Constitution Revision Committee and many of the things that Mr. Bebout has said today expresses our views on those subjects so I won't go into much detail. Also we will submit a brief in support of our position.

The League has taken a position - well, first, I want to speak about civil service, paragraph 2. We are very glad that civil service is included in this draft of the Constitution. That is something that the League has been interested in and worked for for many years and I was very much interested in the discussion this morning. I think on the part of the League I rather resented some of the statements made as though members of the League of Women Voters weren't interested in the justice and welfare of members of the armed forces and their families. We have usually opposed veterans preference. We haven't taken any position on this matter now, on whether it should be included in the Constitution, because it wasn't in the draft but I am very sure the League would oppose its inclusion. We don't feel that it is a matter which belongs in the Constitution and I feel that the result of anything of as liberal an interpretation as was indicated here this morning would bring about a return of the spoils system and do more harm than good because we think of the civil service of the State as carrying on the business of the State, and if you don't carry that on in an orderly fashion it certainly would result in harm to the soldiers and veterans as well as to all other citizens.

I think we have so many veterans and are going to have so many from this war that they certainly will feel even

more members of the whole body politic than perhaps after the last war unless of a special group, so that we must legislate, particularly in the Constitution, for the good of all, and I know the League of Women Voters in its whole program supports legislation that would fundamentally be of much more value to veterans and their families in bringing about true justice to their needs than this gesture of inclusion in this way in the Constitution.

In the matter of paragraph 3, strikes by public employees, the League of Women Voters has taken a position that we do not wish to see that paragraph included in the Constitution for the very same reason, we don't think it belongs in the Constitution. We feel that it is singling out a special group and a special act of that group for condemnation in the Constitution. We feel that the whole subject of employer-employee relationship is in the process of being worked out and it should be worked out in an atmosphere of freedom of thought and action and consent and, if such a provision is included in the Constitution, it is bound to do just what Dr. Wilson said this morning about prohibition, to bring about very bitter feelings and militate against an orderly solution of difficulties. Furthermore, we have not as yet provided an adequate method of bringing about a solution of disagreements which will inevitably arise between public employees and the State and its divisions and various levels of government. Until that has been done I don't think we have a right to say that any particular method must be condemned in that way. Furthermore, it is condemning public employees for an act which is still permitted to private employees who in many instances would endanger the health and welfare of the people much more than many classes of public employees.

I don't suppose anyone would think of tolerating a strike by police and firemen or even think that the police and firemen would think of striking, but I am thinking of the

general public employee who certainly in many instances is no more critically necessary to our health and to the health and well-being of the public than private employes of private utilities such as the railroads, light and water supply companies and so on.

Then coming to Section II, the League of Women Voters in its program has asked for elimination of the State Treasurer and the State Comptroller from the Constitution. We are very much in favor of a State Auditor. We feel the State Comptroller and the State Treasurer should be a part of the finance system of the State and work with the Governor, as his appointees probably. Anyhow, they should not be frozen into the Constitution, that is the manner of their appointment; and we would also ask for an executive budget in which the Governor would have the help of the officials of the Finance Department and we have asked also that the executive budget should be accompanied by an appropriation bill which, of course, the legislature could use as a base and could modify.

That is accepted now as good procedure and is one of the provisions recommended in the model state constitution in the National Municipal League.

We also ask that prosecutors of the pleas be eliminated from the Constitution and be provided for by the legislature; also that the county clerks, surrogates, sheriffs and coroner be eliminated for much the same reasons that have been given before.

We have asked also for home rule provision. And one of our reasons for wanting these officials eliminated from the Constitution is that they stand very much in the way of any possible experimentation by counties of this State in bettering methods of government. Many counties in other states are trying out what we believe to be more orderly and more businesslike administration of public business and county business is big business. We believe that if the counties would adopt a form of government not controlled by these constitutional offices they might show such good results that they

could take on more local services perhaps and become even more important in our scheme of government than they are now. As it is now, I think it is generally agreed that counties are losing their importance and presumably they will continue to lose it if they don't find some method of providing better government. We believe eliminating those offices from the Constitution would bring that about.

In Section III, I was interested in what Mr. Isserman suggested this morning. The League has not taken any position on that subject, of course, and we are very strongly in favor not only of this power being given to the legislature for investigation but we also believe that the Governor should have the same power and that he should have the power to compel public employees to give the service that the law states they shall give.

We have had some complaints from various local Leagues of officials who are named in the law as full time public servants who do not begin to give anything like that to the position, yet there seems to be no way of requiring that. We think the Constitution should give the Governor that same power and if there is a safeguard necessary to protect witnesses, as was suggested this morning, I feel very sure the League will concur.

We will submit a brief which will cover any points that I did not touch upon now.

SENATOR EASTWOOD: You made reference to an executive budget. Have you presented your views with respect to that subject to the Legislative Committee on the article on finance. I think that Committee is considering that matter today and it probably would be more appropriate for you to present it to that Committee.

MRS. BEBOUT: That has been done.

SENATOR EASTWOOD: May I call attention to paragraph 14 of Section I, Article IV, which gives the Governor power to investigate the conduct of state officers and removal after hearing - do you think that would give the Governor the power that you indicate?

MRS. BEBOUT: It says nothing about local offices, it is simply about state offices and we feel that should be extended to the local levels, both county and local.

SENATOR EASTWOOD: With reference to that, do you think that might invade the theory of home rule. In other words, the electorate passes upon the fitness and efficiency of its own officials -

MRS. BEBOUT: Well, it is done under State law, isn't it? it, and certainly a State does lay down - they allot money in some instances appropriate money for certain services and shouldn't the State be able to find out whether that money is being properly spent, whether it is spent in accordance with what we might call the contract?

I don't know, I am perhaps not prepared to argue that fully but it seems to me that we don't in any way believe that local communities have the right to run their own affairs regardless of all law and order.

SENATOR EASTWOOD: They are usually accountable to the voters, are they not, at periodic elections. There might be some question were you to invade the prerogative of the voters to passupon the character and fitness of their own elected officials.

MRS. BEBOUT: State officials are also elected by votes.

SENATOR EASTWOOD: Yes, but power is given to the legislature and the governor as far as they are concerned.

MRS. BEBOUT: Perhaps it should not be removal from office but it seems to me there should be power on the part of the State to look into matters, especially on complaint of citizens, to find out what has been done.

SENATOR EASTWOOD: You feel there should be authority to investigate.

MRS. BEBOUT: Yes, and give publicity to findings.

SENATOR EASTWOOD: Thank you. I will now call on John J. Goff, speaking for modification, on behalf of Essex Council #1, New Jersey Civil Service Association.

MR. GOFF: Mr. Chairman and members of the Committee: For modification of Article VI, Section I, paragraph 2, of the proposed revised constitution - that Article VI, Section I, paragraph 2, be changed to read as follows:

"In the Civil Service of the State and of its civil divisions and agencies, and in the civil service of the several counties, municipalities, and school districts of the State, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness by standards and procedures as prescribed by law.

"The power of the Legislature to provide for preferences in the appointment and employment of persons who have served in the armed forces of the United States of America in time of war shall not be impaired."

If a new paragraph is added to Article VI:- It would be manifestly unfair to public employes in general to give contractual agreements only to the two State funds as recommended by Captain Wilson and the other speakers, to the exclusion of all other legally constituted existing pension funds of public employes.

I would like to correct one statement made by Captain Wilson. He said the State Association of the New Jersey Civil Service Association was in favor of a contractual agreement for only the two State funds.

The State Association of the New Jersey Civil Service Association is on record that all existing funds should be given contractual agreements, such as contained in Article V, Section VII, of the Constitution of the State of New York.

In answer to the lady from the League of Women Voters, if I may, we are sorry not to be in accord but we as public employees feel that the Section pertaining to strikes by public employees should remain in the Constitution. We feel that it would be

detrimental to the safety of the State and political subdivisions if the power to strike were granted to public employees.

I would like to call the attention of the Committee to the recent strike in Canada in which police and firemen, the entire departments, were on strike for a period of time subjecting that city to very great loss of life and property.

Thank you for giving me the opportunity of presenting these facts.

Before closing, the many reasons why this contractual agreement should be granted to all pension funds rather than the two mentioned this morning is contained in a brief filed by me as Chairman of the Community Association Pension Fund at previous hearings here on the proposed constitution last year on pages 730 and 735. If it be the wish of this Committee, I would be very happy to resubmit that or refer you to it in this printed record, whichever will suffice.

SENATOR EASTWOOD: We will be glad to have you submit any additional memorandum. We will let you be the judge of what you want to do, whether you want to submit it or not.

I believe Mrs. A. A. Van Voorhees is present but, as I understand it, she doesn't desire to speak but is recorded as one appearing for modification from the League of Women Voters and I assume she would voice the opinions of Mrs. Bebout.

MRS. BEBOUT: She was here this morning but is not here now.

SENATOR EASTWOOD: The memorandum I had was that she didn't care to speak.

Mr. Manuel Cantor representing the Communist Party of New Jersey.

MR. CANTOR: Our approach to the entire Constitution is derived from that section of the Bill of Rights, the old Constitution, which declares in paragraph 2, Article I, that all political power

is inherent in the people. The Government is instituted for the protection and benefit of the people and they have the right at all times to alter or reform same whenever the public good may require.

Today there is taking place throughout the world a new upsurge of Democratic feeling and in this process governments are being formed and basic laws will soon be drafted. Certainly it is our opinion that, in a new Constitution being drafted in our own country which is the cradle of Democratic forms of government, every possible safeguard must be included for the expression of the people's will. Therefore, we feel, applying specifically to the principle of Article VI, that wherever there is no important reason for the appointment of public officials that these officials be elected, specifically in Article VI, Section II, paragraph 1, three offices are listed which will be filled by appointment. It is our contention that if these offices are of such importance that they have to be given this specific addition that it is correct to suggest that these three offices should be elective rather than appointive and we would include also the office of Attorney General, and we would limit the term to abide with the general proposal we make in connection with all articles that the term of office be for two years.

As to the Attorney General specifically, we believe it is too important a position not to be filled by the people's will and we could point, if there were need and I think not, to many examples in our own State where the Attorney General has failed to carry out the will of the people; in fact has appeared in litigation as actually an opponent of the people's will.

Similarly applying our principle in paragraph 2, prosecutors of the pleas, in our opinion, as well, should be elected.

Now, Section III, paragraph 1, the only paragraph that deals with investigating powers of the legislature. We favor granting to the legislature such powers, particularly because we

at this time view with some alarm the tendency in the executive article to grant very sweeping powers to the Governor in the section dealing with that article. We expressed our opinion that we hoped in the course of these hearings others would bring forward proposals in addition to the one we made for imposing some curb on these powers, and we feel that granting to the legislature this power of investigation to some degree provides a check on the powers of the Governor. However, we want to repeat this year what we said at the last hearings of the need for inclusion in this section of certain safeguards. I am not going to take time to read them but substantially they are in agreement with those read by Mr. Isserman. We feel they are very necessary because we have had again numerous examples, not only those cited in our own State but in many other states, where power limitation became a power that was abused.

We find Section IV substantially to be approved but we would add again the power of recall. The power of the people to recall an official in addition to the process provided here for impeachment. We are not specifying the specific method. There are various methods in use in other states. We recommend to the Committee that they review various methods but definitely include power of recall.

Now, one word about Section I, paragraph 3, on this question of strikes. We find ourselves in substantial agreement with the position made clear earlier today; in fact I would go a step further to say that in our opinion today, certainly during this war period, not only the type of strike specified here but any strike is against public policy and there are indications that this may be true in the post-war period as well when there will be need for peace and tranquility and for minimizing any strike. However, we feel here that the inclusion is a prerogative that the only effect it will have will be such as was the effect of the Smith-Connolly Act where I think the President's warning has been borne out where the only purpose was to encourage strike rather than discourage it. So we concur in the

proposal to delete this paragraph, this phrase, from the Constitution and leave this matter with the general clause dealing with labor's rights which we, by the way, feel should be included in the Bill of Rights section and we do not feel that this is contrary to the intent of the Feller Bill. The right of labor to organize and bargain collectively and engage in concerted activities for their mutual aid and protection shall not be impaired, and we think that is a most constructive attitude toward most all types of employees.

I want to say a word regarding the position of the veterans organizations here this morning. I want to say, as did Mr. Bebout, that my organization did not consider the specific proposals made but I think I can express substantially their opinion as well. We would favor incorporation of the principle of veterans preference in the basic law of our State. I am not going to repeat the reasons which I think were presented very ably here this morning but I am mindful of the fact that some care must be taken not to jeopardize the merit system thereby, but I believe it is possible to incorporate in such a paragraph the essential elements of the merit system and to lay down the general principle without endangering either.

We are not prepared with the specific wording which would accomplish this. Some suggestions have been made here which seem to substantially cover it but we do feel there must be laid down in the basic law only the general principle and this must be left to legislation by the legislature but I do want to back up one reference made by one of the speakers for veterans organizations. I feel that it has been adequately dealt with. I refer to a case which happened to be a Jersey City case as I recall it concerning the Motor Vehicle Department - the question of discrimination against the minority. It may be claimed that the general principle laid down on merit and fitness will cover the question of discrimination against minority, specifically negroes. I think anyone will agree with me that we have a mountain of evidence that existing laws have not provided sufficient

protection, particularly for the negro people. We are in a period when we must solve this problem of integration of the negro people into the life of our country regardless of what our particular prejudices may be. It is time for us as Americans to root out of our country this evil that is a blot upon our nation and it seems to me that in drafting a fundamental document like the State Constitution we must do something specific on this question. We must open up the doors much wider for the employment of the minority but negroes particularly, not as a political favor with a view to corralling the negro vote but as a matter of right and justice to American citizens having different color skin.

Our proposal is that this be included in the Bill of Rights section by some paragraph to read somewhat as follows: "That no person shall be deprived of or discriminated against in his personal rights, property rights, civil rights or rights of employment on account of race, color or nationality." We feel this should be included in the Bill of Rights but should there be any reason why it is not, we think it advisable that some specific reference be made in Article VI, Public Officers and Employees.

I want to say one word to take specific issue with the speaker of one organization who questioned the timeliness of revision. It has been discussed and I believe that by now it is not a tenable argument and admittedly so. However, it is true that statistics on the soldier vote seem to indicate it would give grounds for conclusions which I believe would be hasty conclusions. In my opinion the fact that the soldier did not vote in the last election is only evidence for the need for a federal act on the question. In passing I would like to say to this Republican Committee that while it is out of the province of this immediate Committee the New Jersey delegation in Congress might have a reminder from the Committee on the question of the Federal Soldiers' Vote.

We will submit later a fuller statement embodying what I have said plus several other things. I think seven days has been prescribed as the limit and we will try to have it in in that time.

SENATOR EASTWOOD: May I call Mr. Cantor's attention to the fact that this is a bi-partisan committee, both Democrats and Republicans. Also I believe there was already introduced in the Legislature a bill on the soldiers' vote.

MR. CANTOR: I will make whatever apologies are necessary on the question of slighting the couple Democrats, but I don't think they can be very effective.

SENATOR EASTWOOD: We will now hear Mrs. F. W. Hopkins, speaking for modification, representing the Consumers League of New Jersey. Mrs. Hopkins -

MRS. F. W. HOPKINS: Gentlemen, Members of the Committee. As I have told you before, the New Jersey Consumers League is a member of the Committee on Constitution Revision. Therefore, we concur with the remarks made by Mr. Bebout earlier before this committee. Our committee has just gone on record in favor of modification in two respects of Article VI on Public Officers and the Employees. Those two paragraphs are paragraphs which we would like to see stricken from the constitution. I think in this particular subcommittee, a good deal of your time has been spent on methods of simplifying the constitution. However, that there has been some proposals and additions in general, I think the feeling of the Consumers League, is that the constitution should be kept as simple and as brief as possible. That is one reason, however, not the main reason why we would like to see paragraph 3 of Section 1, stricken out; also paragraph 2.

Section 1, Paragraph 3, Public Employes. We propose deletion of the paragraph because very briefly, it seems to us it is not in keeping with the character of the constitution and its character as a generally accepted, a body of generally accepted principles. Instead it is a highly controversial matter concerning which public opinion is still in a state of plus. A further opposition is the nature of that statement; it seems much more logical to apply such a statement to strikes, is applicable to policemen and firemen and was put there definitely to protect public life and property. We feel that the whole subject is too complicated a problem to be solved in this summary way in the constitution. We believe it should be striken out. Then also we would like to bring in about paragraph 3, section II. It seems to us that County Clerks, Surrogates and Coroners should not be in the constitution. We are not advocating their removal, we feel that they should not

be in the constitution. That is, as Mr. Bebout remarked, more or less on the level with other county officers who are not mentioned in the constitution.

As I understand it at this time, time is going to be spent on paragraph 3, Section I, on next Wednesday afternoon, is that correct?

I think we would like very much to come down. Mr. Samuel Ferster, who is a member of the Board, he feels he would like to speak on that point later on. Would it be possible for him to do that?

SENATOR EASTWOOD: We would be very glad to have Mr. Ferster speak to us next Wednesday afternoon.

Is Senator Gilbert Borton here? He was here this morning.

(no response)

Is Mr. John A. Wood, II, here. He was here this morning, representing Combined Pension Funds.

(no response)

I will ask Mr. William Becker, representing the Socialist Party, for modification, to speak now.

(no response)

SENATOR EASTWOOD: Apparently that exhausts the list of those who registered to speak here today. Are there any others whom I failed to call their names and who desire to speak?

(no response)

Before the Committee adjourns for the day, may I announce again that this committee will meet Wednesday of next week, February 9th, In the morning we will take up judicial article V. In the afternoon Paragraph 3, Section I, Article VI. The Legislative Committee and the Executive Committee will have sessions next Wednesday morning at 10:30 o'clock, I believe on any phases of any articles assigned to them. Any of you here present who desire to present your views to the Legislative or Executive Committees, will you please communicate that fact to them in advance.

Committee adjourned for the day.

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PUBLIC HEARING ON

PROPOSED REVISED CONSTITUTION (1944) PENDING BEFORE JOINT LEGISLATIVE COMMITTEE TO FORMULATE A DRAFT OF A PROPOSED REVISED CONSTITUTION FOR THE STATE OF NEW JERSEY CONSTITUTED UNDER SENATE CONCURRENT RESOLUTION NO. 1, ADOPTED JANUARY 11, 1944

HELD BEFORE SUBCOMMITTEES ON

Wednesday, February 9, 1944

(Judicial)

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REGISTERED SPEAKERS - MORNING SESSION

Wednesday, February 9, 1944

Mr. Emanuel Wagner	Union County Bar Association (Modification)
Mr. Joseph J. Mutnick	Union County Bar Association and Bar Association of the City of Plainfield (Modification)
Mr. Augustus C. Studer, Jr.	President, New Jersey State Bar Association (Modification)
Mr. George W. C. McCarter	New Jersey State Bar Association (Modification)
Mr. Jacob L. Newman	New Jersey State Bar Association (Modification)
Mr. George P. Moser	New Jersey State Bar Association (Modification)
Mr. John Drewen	As a Member of the Bar - Hudson County (Modification)
Mr. Theodore D. Parsons	Monmouth County Bar Association (Modification)
Mr. Richard J. Fitzmaurice	Essex County Bar Association (Modification)
Mr. Walter H. Flaherty	Union County Bar Association (Modification)
Miss Jean M. Lucas	Secretary of Family & Children's Society, Board of New Jersey Welfare Council (Modification)
Mr. Walter J. Bilder	Speaking individually. Connected with N. J. Committee on Constitutional Revision, and Lawyers Non-partisan Committee on Constitution (Modification)
Dr. Leon S. Milmed	N.J. Committee on Constitutional Revision- Speaking as an individual (Modification)
Mr. Sigurd A. Emerson	Hood, Lafferty & Emerson. Speaking individually (Modification)
Mr. L. Stanley Ford	N. J. Committee on Constitutional Revision (Modification)
Mr. Josiah Stryker	Speaking individually (Modification)
Mr. J. D. Carpenter, Jr.	Speaking individually (Modification)
Mr. Samuel Kaufman	Speaking individually (Modification)
Miss Evelyn Seufert	N. J. Constitutional Revision Committee (Modification)
Mr. George Gildea	Mercer County Bar Association (Modification)
Mrs. A. A. Van Voorhies	N. J. League of Women Voters (Modification)
Mrs. Ralph E. Hacker	State Chairman, Legislation and Citizenship Committee of Women's Clubs (Modification)

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Mrs. Charles Howell	Pennington Women's Club of the N. J. Federation of Women's Clubs(Modification)
Mr. John W. Bill	Chairman, N. J. Veterans Legislative Committee (Modification)
Major Roberts	United Spanish War Veterans - Department of New Jersey (Modification)
Mr. Jack Brennan	Marine Corps League, Department of New Jersey (Modification)
Mr. Alexander F. Ormsby	Past National Commander, Veterans of Foreign Wars
Mr. Ralph W. Wescott	N. J. Constitutional Committee on Revision (Proponent)
Mayor Charles R. Erdman, Jr.	Speaking individually (Proponent)
Honorable Homer C. Zink	State Comptroller (Proponent)
Mortimer Eisner	Speaking individually (Proponent)
Edward Weiss, Esquire	Speaking individually (Modification)

CHAIRMAN EASTWOOD: May I ask any of you who have not registered this morning, if you plan to speak on the judicial article, which is under consideration this morning, and have failed to register, if you will do so now. Give your name and address to the stenographer, and if you represent an organization will you also give the name of the organization.

MR. EDWARD W. WISE: The Monmouth County Bar Association -

CHAIRMAN EASTWPPDL I beg pardon?

MR. WISE: You alloted a hearing to us this morning, do we register?

CHAIRMAN EASTWOOD: Even though it may have been indicated that you are to be alloted time this morning, we still want you to register,

There will be a five minute recess while you register.

(Recess taken at 10:35 o'clock a.m. EWT)

AFTER RECESS

CHAIRMAN EASTWOOD: We will proceed with the hearing now, which I think all of you are familiar with is on Article V, the Judicial Article. I hope all have registered who plan to speak, if you have not, will you do so with the stenographer, giving your name and address and the organization if any that you represent.

The Committee of the whole made certain rules for the conduct of these hearings; one of which is that every speaker will be limited to fifteen minutes. I am sure you will cooperate on that, that we will have the cooperation of all the speakers here this morning because of the number of those who plan to speak. And in addition to that we have a special Article this afternoon to be considered, at which we rather expect to have a large group present.

If you have any prepared statement, will you hand it to the stenographer at the conclusion of your remarks. If you wish to

submit a written statement or a brief later on, we ask that you file that with the Chairman of the Committee not later than Friday of this week.

The Committee also agreed upon a rule that the order of procedure would be, first those who are opponents; secondly, those who are for modification or changes, and lastly, those who are proponents. The list furnished me by the stenographer indicates that there are no opponents present who wish to speak this morning. There are those who are listed as presenting views for modification, and proponents.

I think all of you are familiar with the purpose of the Judicial Article and it will therefore be unnecessary for our Counsel to give you any resume of that. However, there is one statement I am going to ask our counsel, RussellWatson, Esquire, to make, which is to correct an error which apparently appears in the printed copies. I am going to ask him if he will give you that now.

RUSSELL WATSON, Esq. (Counsel to Committee): Mr. President, Mr. Speaker, Members of the Committee:

Article 11, Section IV, Paragraph 1, there is there an inadvertent error. -

CHAIRMAN EASTWOOD: There are additional copies here if any person wishes one.

MR. WATSON: That section contains provisions concerning the retirement of Superior Court Justices, which would work to the benefit of Judges now in office who become members of the Superior Court. Those provisions do not include the Justices of the new Supreme Court, the Chief Justice and the Justices of the new Supreme Court. That was an inadvertency and an error which will be corrected, and a draft of the correction will be sumitted to the Clerk.

CHAIRMAN EASTWOOD: Augustus C. Studer, Jr.,Esquire, President of the New Jersey State Bar Association, will speak for modification. I will call on Mr. Studer at this time.

AUGUSTUS C. STUDER, JR., Esq. (For New Jersey State Bar Association): Mr. President, Mr. Speaker, Members: I have just a few brief preliminary remarks to make. Immediately after election, on the Friday following election, the Trustees of the State Bar Association met in special meeting and authorized the appointment of a committee to cooperate with the incoming legislature and Governor. Such committee was formed with the three branches, Judicial,Executive and Legislative, with sub-chairmen. Mr. Winne is the general chairman.

The Judicial Committee is headed by Mr. George W. C. McCarter, of Newark. He called his committee together almost immediately, and by telegram asked an opportunity to be heard by your Committee while you were studying the proposed Judicial Article. You advised us that we would be heard in due course at a later date.

Accordingly, in December, we wrote your Committee a letter setting forth certain suggestions which we thought were desirable. Later when the tentative draft was made public our Committee made a study of it very carefully and we have concluded on certain modifications which we suggest. They will be spoken about by Mr. McCarter. The modifications have been prepared, printed and handed to you gentlemen.

Mr. McCarter will speak for the Committee appointed by the State Bar Association with reference to these modifications, Mr. Chairman.

CHAIRMAN EASTWOOD: George W. C. McCarter, Esquire, representing the New Jersey State Bar Association.

GEORGE W. C. MC CARTER, Esquire (For New Jersey State Bar Association): Mr. President, Mr. Speaker: Following Mr. Studer's introduction I shall speak directly to each point without any preliminary talk.

The first part of the article that we have any comment on is the very first section, the first paragraph of that section, which now reads: "The judicial power shall be vested in a Supreme Court and -" and then goes on to the other court.

We think there should be added to that a few words so it shall read, "The Judicial power shall be as heretofore, and shall be vested in" and so forth. The purpose of that, Mr. Chairman, is to make sure just what is meant by the judicial power.

We have had hundreds of years of decision on that and we think it would be advisable so that there can be no question that the judicial power in the new constitution shall mean exactly what it has meant in the past. Experience with the federal constitution where there has been such a mass of decisions construing what is a case in controversy within the judicial power of the federal judiciary should teach us that we ought not to take an entirely fresh start but should tie in to what we know has a proven meaning.

I might say right now that same thought pervades a number of our suggestions.

The second suggestion we make is that paragraph 3 of Section 1, should go out. That is the paragraph that says: "The Supreme Court shall sit at the seat of the state government and the Superior Court shall sit in each county except the appellate divisions thereof which shall sit at the seat of the State Government."

We do not think that should be in the constitution. We feel it should be left free to legislative regulation. It might well be sometime thought advisable to permit the appellate division to sit in different parts of the state. That might be a convenient thing for the administration of justice, and I don't see - and when I say "I" I am speaking for the majority of the Committee, I am not giving you my own personal views which do not in all respects coincide with what is here - we think it should be left free to control by the law making body. After all, the legislature should be

given some power to deal with situations as they may from time to time arise. We do not think that the requirement of where the Court should sit should be in the constitution itself.

With respect to Paragraph 4, we have what you might call a textual suggestion, that the word, "terms" which has been used, we think that is an anachronism.

Passing on to Section II, paragraph 2, firstly, there is no reason whatsoever for including in the constitution the sentence; "The Court (referring to the Supreme Court) may, by certiorari allowed by the court or any justice thereof, review any indictment, before trial, according to law."

The jurisdiction of the Supreme Court is purely appellate jurisdiction, except, of course, for its rule-making powers; it is the court of last resort with closely guarded prerogatives, appellate jurisdiction. That is done in a very well thought out way in Paragraph 3 of Section IV of the Article. There is no reason at all for impinging at all on that well thought out and well conceived plan, in this extraordinary provision for certiorari of an indictment. Indictments according to the scheme laid down by the new plan will be in the Superior Court.

If there is any difficulty in an indictment you can move to quash it before a Justice of that court, if he should deny that motion his denial can be reviewed by the Superior Court, all under the provisions of Paragraph 4 or Paragraph 3 of Section IV. That can be taken up by the Supreme Court by its voluntary certification.

I can see no valid reason for making that special provision of a thing that after all is a comparatively unimportant and small part of our jurisprudence. And we think in any case where for some extraordinary reason the Supreme Court will want to review or consider the validity of an indictment it can be done perfectly well under the provisions of Paragraph 3 of Section IV.

Now the next point I will take up is the jurisdiction of the Superior Court. We feel, Mr. Chairman and members of the Committee, that that Court should not include the present county courts. We do not want to be thought that we are in favor of continuing all these different Oyer and Terminer, Quarter Sessions, Special Sessions and what have you, but we think that can well be left to the legislature, and that very definitely there should be no fusion of the county courts with the Superior Court. We think there is a positive benefit in having a local judge, locally appointed in charge of those matters. We do not want to be thought as not believing that in important criminal cases there should not be trial by the highest type of trial judge there is in the state, but that can be done surely under the provision now in the constitutions; that the justices of the supreme court may be made members of any inferior court, so that there can well be legislative provision that the Justice of the Superior Court, assigned to that Court can be ex-officio member of the county court.

You will find, Mr. Chairman, I am convinced, that if the county court is not kept separate from the Superior Court there will start very soon an agitation to re-establish one. I know this draft of the constitution has endeavored to provide for local Judges by providing a resident Justice of the Superior Court for each of the twenty-one counties. That Justice will have very little to do in some of the smaller counties and the constitution contemplates that he shall, by the Chief Justice, be assigned duties elsewhere. In other words, he will either be given something to do outside the county or sit around twiddling his thumbs or go fishing, and he will receive the same pay as any other Justice of the Court.

Now suppose this in one of the other smaller counties and I think this question is most vital and important, suppose in one of the smaller counties a resident Justice is assigned to try an important murder case somewhere else and you need some local work. You go to

your Common Pleas judges now, where will he be? He will be assigned somewhere else. This is why I say there will grow up, I am convinced, agitation to re-establish as an inferior court, the present county courts.

Therefore we do not think they should be included. Of course, if the committee should take that view it would require some modification of the language, in not only this paragraph but in the schedule carrying over the division. We feel that is a very serious point.

The next point I wish to make is in the clause laying down the jurisdiction of the Superior Court. As it now reads it is, "The Superior Court shall have original/general jurisdiction throughout the state in all cases."

In the first place we think the word "original" should come out because the Superior Court has not only original jurisdiction but appellate jurisdiction over inferior tribunals which still continue in existence. Even if you do not adopt the suggestion we have made a minute ago, we think the Superior Court should have general jurisdiction throughout the state including all the jurisdiction and power of all the courts superseded by the Superior Court.

We have had two hundred years of courts in this state. Their jurisdiction has been well established by law, and by law it has been known to be the jurisdiction of our English prototypes, so there can be no doubt of the jurisdiction of the present Supreme Court, the Court of Chancery and the Prerogative Court. We think it very important that the new Superior Court should in so many words be given that jurisdiction. Then we will all know exactly what the jurisdiction of the Superior Court is.

Now as I understand, those who think otherwise say, "What can be plainer than this general language?" Well, that may be so, but it gives an opening for litigation. Of course that will be swell for lawyers. We will have a case and it will take thirty years to settle the jurisdiction of the Superior Court. But I can see no reason why with that broad general grant there should not be a clause

including the jurisdiction of the courts which it supersedes. That I think in so many words will accomplish the purpose of the new constitution and do it in a way about which there can be no mistake.

The next point we make is that we are strongly of the view that the matrimonial jurisdiction should be in the equity and probate section rather than in the law section. I have heard no reason for the change except the reason that it would be to the advantage of the court in dealing, particularly with the matter of the custody of children cases, to take advantage of the probation officer.

Well, to this very day the Advistory Masters use the Probation Officers. I have had it happen in custody cases I have been in myself. The Probation Officers are there, they can be availed of just as well by the Justice assigned to the equity section as by the Justice assigned to the law section. And as I understand it is contemplated that there shall be a justice of the equity section going into each county, so the jurisdiction can be localized by the flexibility of the equity section, and the flexibility of equity practice is one that should be taken advantage of by matrimonial cases. That is what we have always done in the past; there is no real reason for the change, and I think of many disadvantages.

We feel therefore that in order to accomplish that change there should be a change to the language which is given in the bold faced type on Page 5 of the memorandum we have submitted. Namely, that "The Superior Court shall be divided into; "(1) A law section to exercise civil and criminal jurisdiction heretofore exercised by the courts of common law, and

"(2) An equity and probate section to exercise all the jurisdiction heretofore vested in or capable of being exercised by the Court of Chancery, the Chancellor, the Prerogative Court, the Ordinary or Surrogate General, and all other jurisdiction of the Court."

That argument is I may say, what I adverted a few minutes ago, the advantage of tying into the historic jurisdiction. Then I say there can be no doubt what you are seeking to do, because we have

through a couple of hundred years, established and made known to all of you, what those different jurisdictions are.

Now we also think that the clause having to do with the exercise by one section of the jurisdiction of the other, should be slightly modified to read: "But either section shall exercise the jurisdiction of the other so that every controversy shall be fully determined by the justice hearing it."

Permit me to say here, Mr. Chairman, it is not the purpose of our Committee to be a committee of style but under your rules we are required to lay down in black and white the changes we think should be made and we are doing it for that reason. Of course, the actual draftsmanship of a constitution like a piece of legislation, ought to all come primarily from one pen in order that the words may be used with the same meaning all the way through, but that is the view we have.

Now we think Paragraph 4, of Section III, which deals with the allowance of prerogative writs should come out of the constitution, that it is poor practice and regulation. But whether prerogative writs are heard by a single justice or by three justices together constituting an appellate division is a matter to be regulated by practice and not to be put in the constitution. If as I have suggested you give the Superior Court in so many words jurisdiction of the present Supreme Court it will have the power to issue prerogative writs. And whether heard by one Judge or three will be as at present a matter for regulation by rule of the court or by statute. It has no more place in the constitution, I submit then something regulating the giving of notice of trial or the number of days you have to answer a complaint.

The next thing we refer to is Paragraph 2 of Section IV. There the constitution gives the right of appeal to an appellate division, from any order or decree of this Superior Court. Now there are some orders or decrees that should not be appealable. We are in sympathy

with the intent as we see it, of this section, which is to carry over to the law side of the Superior Court the practice now prevailing in the Court of Chancery of permitting appeals of interlocutory orders and not limiting them to appeal from final judgment.

If you want a review of the ruling of a Superior Court Justice on an interrogatory or bill of particulars, reviewable in an appellate division in quick and easy fashion as is done in New York very good. With that we are in sympathy, but you should not put in the constitution the right of appeal from every order made or you will have appeals from orders that never have been subject of appeals and that are purely discretionary and could be taken advantage of by way of appeal only for dilatory grounds.

There should be a clause substantially like that at the top of Page 7 of our brief: "Any final judgment or decree of a single justice of the Superior Court shall be reviewed by an appellate division. Subject to law, the rules of the Supreme Court may provide that any order, judgment or decree of a single justice of the Superior Court may be reviewed by an appellate division."

In other words, make it possible to review interlocutory orders on the law side as well as the equity side, but let that be subject to legislation, by rule of court or legislation, and don't freeze the right of appeal by any orders whether they have been consented to or waived or anything else, into the constitution.

We feel that this provision that "Appeals in cases involving restraints or the appointment of

of receivers, in whatever court pending, be preferred as to argument and disposition" should go out. In other words those are not the only important matters and there should be a rule of court providing for expedition in such cases, for there may come up as there was last summer in the State of New York, over the question of the election of a Lieutenant Governor, a matter of such great importance, that is far more vital to the state as a whole than the question of a receivership of some corner grocery, and the court should be free to give that kind of a case preference over everything else under the sun. Particularly is it bad to have a disposition that might give rise after the appeal of an injunction or a receivership case is taken that the court has to hold up and decide that without doing anything else.

We have that same situation in Sub-Paragraph 1 dealing with the jurisdiction of the Supreme Court and we think that also should go out.

We think sub-paragraph 2, "In the event of a dissenting opinion in an appellate division" should be a "dissenting vote." and I understand from Mr. Watson that principle is to be adopted.

The next point is in Paragraph 2 Section V. We feel very strongly that the words "attorney-at-law" should be changed to "counsellor-at-law." We think the judges of our highest court should have the highest legal qualifications.

Now we come to the method of removal, the issue of good behavior. We think that the provision that the Senate shall initiate, as well as try the complaint, again if a judge is bad and we feel that the experience that has been indoctrinated throughout administrative tribunals throughout the country, not only in this state but elsewhere, that where a body is at once the prosecutor and the judge, the person or cause being tried doesn't get a square deal, so we think that language in Section IV should be changed to read, "The issue of good behavior of a justice of the Supreme Court or of the Superior Court

shall be triable by the Senate on charges preferred by the General Assembly."

We think in that way the issue of good behavior would be a real issue to be tried by the Senate sitting in a judicial way and making the charges have such a tenor rather than a situation as we feel the article as drawn will not bring about, making the man subject to the will of eleven senators. We think there might be the sentence put in: "The Supreme Court may investigate the conduct of any judicial officer."

That in effect may reverse what many people think is an unfortunate decision of the Court of Errors and Appeals ruling on the Court of Chancery investigation of conduct which was almost unconstitutional. I think no judicial tribunal is more fitted to investigate into the alleged misconduct of the Judge of the highest court of the state.

We have given quite some thought to the question of the assignment of judges to equity and law sections. We feel very strongly that the advantage of equity experience should be obtained by a permanent assignment but after reflection a majority of us felt that the constitution is quite right in leaving that in the hands of the assigning power, namely, the Chief Justice. I mention that merely in passing.

That, Mr. Chairman, completes the main part of the Article and leaves only the schedule. As I have said, if some of the suggestions we have made are adopted there will have to be some scrutiny of the schedules. There is only one thing we feel should be changed in the schedules and that is the time when the new courts are to start functioning. By the present draft that is November 1, 1945 We feel that is too soon.

We say this with a certain amount of hesitation because we don't want to be thought to be stalling but the new Supreme Court does not have to be appointed until July, 1945 and

that leaves only a few months for the rule-making body, Mr. Chairman, to bring out all of our new court practice, to draft the rules of the court and then publish them and get them before the bar, and to get the bar acquainted with them. I think we can very properly take a leaf out of the book of the Supreme Court of the United States when it promulgated its recent rules of civil procedure. They had a committee of lawyers; drafts were made and were circulated throughout the United States and I think it was about two years they were engaged in the drafting of those rules, which will be far less thorough-going and changing than that which we are going to be faced with. And for that reason we have suggested carrying it over from November 1, 1945 to July 1, 1946.

With all t With all the skill which draftsmen may show, Mr. Besore, Mr. McMahon, and the other gentlemen who will no doubt have a lot to do with this, it seems July 1st to November 1st is too short a time, both to draft any new rules and get the bar familiar with them, so we make that suggestion.

Thank you.

CHAIRMAN EASTWOOD: I understand, Mr. McCarter, all the suggestions which you have made are contained in the printed brief.

MR. MCCARTER: That is right.

CHAIRMAN EASTWOOD: That is filed with the Committee and the specific language is contained therein?

MR. MCCARTER: Yes, sir.

CHAIRMAN EASTWOOD: May I say that Mr. McCarter has apparently very ably presented the problem on behalf of the New Jersey State Bar Association covering the entire articles under consideration. As I have stated at other meetings we have no desire to restrain anyone from a full expression of their views. However, we have a long list of speakers representing this Bar Association, and individuals, and if the presentation of the views that have been expressed by Mr. McCarter, are your views, will you cooperate with us and limit the making of repititious statements and support the views of Mr. McCarter. That will give the

others who may want to present some divergent views an opportunity to be heard.

We will appreciate your cooperation in that respect while at the same time not desiring to limit anyone in presenting his or her views. If organizations are represented so you may have sufficient time, will you divide the subject matter? That will give you probably more time in which you can present your particular part of the presentation.

In these hectic legislative days Speaker Cavicchia and I seem to have other duties and responsibilities. We have just received a message from the Governor's office that the State Fiscal Commission which is about to organize cannot do so unless we appear there, so we will have to ask to be excused for a few minutes. In order that the hearing may not be delayed I am going to ask Senator Pyne if he will preside in our absence. Senator Pyne will take the chair.

SENATOR H. RIVINGTON PYNE (Acting Chairman): I regret that our Chairman and Co-Chairman have to leave us.

We will now ask for the presentation of Mr. Jacob L. Newman.

MR. NEWMAN:

JACOB L. NEWMAN, Esquire, (New Jersey State Bar Association):

Mr. Chairman and Members of the Committee: Mr. McCarter has analyzed the views of the committee of the State Bar Association in detail and it is not necessary for me to reiterate the views expressed by him; but there are two points in connection with this matter that I desire to emphasize. One I consider of great importance, the other I regard as vital.

The one that I consider of great importance is this: That it is rather curious and unnecessary and rather a backward step to insert into the constitution, that an attorney at law of ten years standing, shall be

eligible to be a Judge. In other words, if a man is an attorney at law and not a counsellor at law, he can neither argue a cause in the Supreme Court nor can he sign his name to a brief, and to think that the man who is judge can be a judge although as an attorney he cannot argue the case before that Court.

That is all I have to say on that subject except that if we are to improve the administration of justice, and to obtain judicial judges, more scholarly and more learned, there is absolutely no reason why they should not have added qualifications as well, if that method exists in New Jersey of being a counsellor at law.

The other point which I consider vital, is the question of good behavior. I desire to be extremely brief but I want to say just a word about the historical cause of good behavior. It was established in England after the rule of the Stuarts, the Kings of England appointed judges who were tyrannical, who abused their trust and the confidence reposed in them. And there was introduced into the British Constitution the Act of Settlement which in effect stated a judge would retain his position during his good behavior. That was a great advance in the administration of justice. It was then adopted into the Constitution of the United States and adopted by a great many of our States in the Union.

In the Supreme Court of Massachusetts that was the rule and at one time, in 1853, when they adopted a new constitution, the question was raised whether the judges should hold their position for life tenure, and during that convention, and I refer it to your Committee for consideration, Mr. Rufus Choate of Boston, delivered a very stirring address and in it he stated this, which I desire to include as to the qualifications for a judge, and why he advocated life tenure.

"He shall know nothing about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing

for his friend; nothing for his patron; nothing for his sovereign. If on one side is the executive power and the legislature and the people, - the sources of his honors, the givers of his daily bread, and on the other an individual nameless and odious, his eye is to see neither, great nor small; attending only to the 'tropidations of the balance.' If a law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it, in which the whole community is on one side, and an individual nameless or odious on the other, and he believes it to be against the Constitution, he must so declare it, - or there is no judge. If Athens comes there to demand that the cup of hemlock be put to the lips of the Wisest of men; and he believes that he has not corrupted the youth, nor omitted to worship the gods of the city, nor introduced new divinities of his own, he must deliver him, although the thunder light on the unterrified brow." That may seem to be idealistic, sirs, but it is not.

Where you have a judge and give him life tenure, you remove him from political pressure; you remove him from what is public clamor. Someone has said the Harlot, Public Clamor is more often taken for her sister, Public Opinion. You are now removing him from that and all these pressures. He doesn't at the end of his term have to seek reappointment with his hat in his hand because, forsooth, he may have delivered an opinion that doesn't suit some branch of the public.

I say you have made a great advance; I am heartily in sympathy with the idea of the life term, but having done that magnificent job you have deliberately though not intentionally taken it away when you say the question of good behavior shall be left to the Senate. In other words a man is charged with nothing but by the very people who accuse him he is to be tried. It is against all Anglo-Saxon principles of law and it will just do what you are avoiding and seeking not to do, by creating life tenure. In other words, you are

putting him at the mercy of eleven Senators, who not only accuse him but who try him and then say, "You are not going to sit any longer because you have violated the rule concerning good behavior."

Therefore I say we have a workable plan in this state, in the United States; let's stick to it, and see that the Supreme Court, as Mr. McCarter well pointed out, may investigate the acts of any members of an inferior court and may investigate and bring that investigation to the proper tribunal for consideration. Namely, that he should be put on charges, whatever the charge may be; particularly the Supreme Court charge, and all charges by the Assembly, tried by the Senate, and if found guilty then he should be voted out of office. But it should not be left to the Senators to try and accuse him.

In other words you are trying to remove by life tenure politics; and by leaving it to the Senate you are putting it right back into the realm of politics.

I trust I have made myself clear. I consider that the vital point. I urge it for your earnest consideration. The first point is important; the last one I consider the vital one.

Thank you!

CHAIRMAN PYNE: Thank you, Mr. Newman

We will now hear from Mr. George Moser, of the New Jersey Bar Association.

GEORGE MOSER, Esquire, (New Jersey Bar Association)

MR. CHAIRMAN: I am a member of the committee of which Mr. McCarter is Chairman, and agree with everything he said on the subject. However, the Committee did not cover one section and I shall confine my remarks to that. Section V, Paragraph 5, of the Judicial Articles. It deals with the mandatory retirement of Judges upon their attaining the age of seventy years. You have already seen and heard other members of the Committee who have spoken; you will probably hear

from some others who will follow later in the day.

I am the youngest man on the committee, and I have been chosen to speak on this subject probably because I had the privilege of entertaining, I might say as chairman, at dinner members of our Hudson County Bar who had attained the age of seventy years; at least who had been practicing for fifty years, and by that I think we can conclude they were over seventy because they had to be twenty-one to be admitted.

I would like to mention the names of our guests that night: Judge Speer, Judge Carey, William H. Carey, and Albert C. Wall, Honorable Edward Maxson former Banking Commissioner of the State of New Jersey. They were all present. We had invited but prior engagements prevented their attendance, Vice Chancellor Fielder, Vice Chancellor VanWinkle, and Mr. Raynier J. Wortendyke, and Judge Robeson of Bayonne.

Each and every one of those men, with the exception of Vice Chancellor Fielder and Vice Chancellor VanWinkle, who are on the Chancery bench, are actively working in the practice of law in the State of New Jersey. I think every one of those men had the ability - and had that ability years ago - to have been on the bench, and as you all know, Judge Speer, Judge Carey and Judge Robeson, were on the bench. I think if they had been on the bench two or three or four or five years ago when attaining the age of seventy, the bar would have lost a lot if they had been subjected to this paragraph, and ipso facto upon becoming seventy they had been retired.

That is the wording in this section that I think is really objectionable. The section reads:

"No Justice of the Supreme Court or of the Superior Court shall continue in office after he has attained the age of seventy years.

Subject to law, the Chief Justice may assign any such judicial officer who has attained the age of seventy years to temporary service

in the Supreme Court or in the Superior Court as need appears."

I don't think that is any consolation to a judge. First it places too much discretion in the Chief Justice, and secondly, I think it will lead to litigation. We have a situation where it is mandatory if this constitution is adopted that there be a resident judge in the county. Let us assume one of the smaller counties where there is only one member of the Court who would be eligible for constitutional appointment as resident judge attained the age of seventy years just before the term as provided for in the constitution starts. There is nobody who could take that constitutional office and if there were cases to be tried and the Chief Justice assigned a judge temporarily to take that constitutional office, I think we, as lawyers, can see it would be a perfect reason for exception and bring about litigation. I don't think we need it.

I think in the first place seventy years is too young, because as I said before, you take a man just because they are seventy years of age and take them from the Court. I think that is wrong. I think that probably could be seventy-five. I think there should be a provision in here definitely giving the legislature the right to fix by law the right of retirement for judges.

Another thought is, in the latter part of the sixty-eighth or sixty-ninth years of a man's life, if he happens to be on the bench, how is he going to operate? Is he going to try and rush everything through and thereby bring about litigation, or is he going to say, "Well, I have only six or eight months left", and therefore he is going to assume a sort of lackadaisical attitude or whatever we may want to call it. I don't say that any of the judges would do that deliberately, but it is a possibility, and if we can avoid possibilities when bringing about a new constitution, I think we should do it.

Then we have the situation here of the men who are on the bench. While I haven't gone into the personal history of these men, I have analyzed it in the way I did it in the first instance. I have taken the Lawyers' Diary, the date of their admission and adding twenty-one years to that - and I think in some cases, if I may use the expression, I am certainly giving some of these gentlemen a break because I don't think every man was admitted to the bar at the age of twenty-one, and I have a schedule attached to the memorandum I would like to file in which I have the members of the Supreme Court, Court of Chancery and CircuitCourt who appear to be sixty-seven years of age or over at the present time. I took sixty-seven because this constitution will not go into effect until 1945, which will put them up another year, or possibly two years in each case because I did not know the birthday of the various members.

But the members of that Court would be Chancellor Campbell, Justice Parker, Justice Case, Justice Donges, Justice Porter, Vice-Chancellor Lewis, Vice-Chancellor Fielder, Vice-Chancellor Berry and Vice-Chancellor Stein and Vice-Chancellor Woodruff. As I said, they are over sixty-seven years of age. I think we all know most of those men and I don't think we can say that in one or two or three years they should ipso facto become ex-judges. I think there are many more useful years in their lives.

Then there are four members of the Court of Errors and Appeals who would be eligible as I understand it to be superior court judges. Of the four, Judge Wells, as I have calculated it is approximately sixty-seven years of age and Judge Thompson over sixty.

Thank you very much.

MR. HAND: Mr. Chairman -

CHAIRMAN PYNE: Is there a question?

MR. HAND: Mr. Moser, are you aware of the fact that under the schedule these judges you name would serve until they reached the age of seventy-five?

MR. MOSER: Finish out their terms, would they not?

MR. HAND: Finish out their terms, and if they went over the age of seventy, they can continue to seventy-five.

MR. MOSER: I hand't gone into that. If that is so, then my schedule is of no value, if they go on to seventy-five. That is in line with my thought and if they go to seventy-five, then I have missed the point; if they go to seventy-five; they are good enough to go to seventy-five.

Why do we say new judges, what was the seventy-five?

MR. HAND: The new judges understand what they are undertaking.

MR. MOSER: That is very true, but let me answer that if I may in a second.

Aren't we by limiting the judge to seventy years of age, taking out as we know the record a certain group of good lawyers who would make grand judges. The man who at sixty or sixty-one might do a good job for the next fifteen years, but who could not give up a good practice for ten years, or who at the end of nine or ten years could not go back into active practice as a lawyer. I think you are making a mistake.

MR. HAND: I might say the committee has studied the schedules in many other states and in many other states the retirement age is as low as sixty-five or thereabouts.

MR. MOSER: We are writing a constitution for the State of New Jersey. I think our experience is such we would not be reducing it. I talked to a man coming over on the train this morning. I don't know what the situation is going to be when ten million men come out of the armed services. The life expectancy might go below seventy, but let us not deal in the realm of possibility. Let us look at the experience we have had.

If we give the legislature the right to fix the retirement term, it could legislate a law that would cover that.

MR. HAND: This committee appreciates your suggestion. They, of course, want them. I don't want you to misunderstand me.

MR. MOSER: Of course not, and I don't mean to argue directly, Mr. Hand, but I thought I would give you the thoughts I had in my mind.

CHAIRMAN PYNE: Mr. Moser, another question.

BY BERNARD W. VOGEL: Mr. Moser, has your committee given any thought to the age at which a judge should become constitutionally senile?

MR. MOSER: May I say, Mr. Vogel, this is not the attitude - and I made this claim on opening - this is not a committee report. The committee did not touch on this matter. This is my individual report; as a member of the committee, but making it as an individual because of the fact the committee did not touch on it.

MR. VOGEL: May I address the question, then, to you, sir, have you given it any thought?

MR. MOSER: No, I wouldn't say that I had. I don't think you can discuss that generally. Based on experience I would rather answer it this way: I don't have within my own personal knowledge any judge in the State of New Jersey who became senile at the age of seventy.

That may be a backward way to answer your question, but when I say I haven't given it any particular thought, I can give you that as my, shall I say, my own personal knowledge.

MR. VOGEL: I should like to suggest that I don't wish my question to be misinterpreted in the light that I agree with the limitation. I thought possibly you had given some thought to that and that is the reason I would like to have the information.

MR. MOSER: I had given thought, as I say in the report, to men as I know them at seventy years practicing and very active in practice before the Courts.

MR. VOGEL: I would like to say I agree with you.

CHAIRMAN PYNE: Mr. Moser, we don't want to keep you speaking all day, but I think Senator VanAlstyne has a question.

MR.. MOSER: I will be glad to reply.

MR. DAVID VAN ALSTYNE, JR.: I just want to get clear your recommendation, sir, is it that there should be no age limit of any kind in the constitution?

MR. MOSER: I am afraid I cannot go that far because in life tenure I think there probably must be some provision in there to cover the situation that if a man would become senile, if he was there until he was eighty-five years of age because he was there for life and you couldn't get him off the bench, he would have a right to sit there until he was ninety, if he lived, there must be some way to cover the situation, but I think seventy is too young.

MR. VAN ALSTYNE: I am trying to find out. Do you think some age limit should be fixed in the constitution?

MR. MOSER: Yes.

MR. VAN ALSTYNE: Or should it be left entirely to the Legislature?

MR. MOSER: I say in my memorandum I think there should be a permissive retirement at one age and a mandatory retirement at another age.

Following is memorandum of Mr. Moser re Revised Constitution 1944, Judicial Section:

> As a member of the Bar and possibly because I have had the privilege of being Chairman of a dinner given to the members of the Hudson County Bar who were admitted over fifty years, I am particularly interested in Article V, Section V, paragraph 5, of the Judiciary Article of the Proposed Constitution.
>
> Probably my reason for being interested is that among our guests at the dinner hereinabove referred to were the Honorable William H. Speer, Honorable Robert Carey, Honorable William H. Carey, Honorable Albert C. Wall, Honorable Edward Maxson, and among those invited who could not attend because of other engagements were the Honorable Marshall W. Van Winkle, Mr. Raynier J. Wortendyke and the Honorable James F. Fielder.

Of the foregoing, Vice Chancellor Fielder and Advisory Master Van Winkle are sitting regularly on the Chancery bench and the others are all practicing lawyers.

By reason of their fifty years of admission at the Bar, we must know that they are over seventy years of age. Yet as I know these men, and as I believe a great many of the members of the Committee know these men, we would refuse to say, that if they were sitting on the bench when they attained the age of seventy years of age, two, three or five years ago, that they should have then been sent into retirement.

It is with those thoughts in mind that I think we should examine paragraph 5 of Section V which provides as follows:

"No Justice of the Supreme Court or of the Superior Court shall continue in office after he has attained the age of seventy years. Subject to law, the Chief Justice may assign any such judicial officer who has attained the age of seventy years to temporary service in the Supreme Court or in the Superior Court as need appears." (underscoring mine).

The scrivener of the Constitution has seen fit to use the directory word "shall" in the first sentence of this paragraph. As I understand the meaning of that, upon the attainment of seventy years by any Supreme Court Justice or Justice of the Superior Court, he will, ipso facto, become an ex-judge no matter how good he might be, mentally or physically.

The second sentence in the paragraph is of no consolation to the men who have given the better part of their lives to the bench, because it places too much discretion in one man, to wit, the Chief Justice. Then again much litigation could be brought by reason of the words, "temporary service." What does that mean?

Let us assume that the resident Superior Court Judge provided for in paragraph 1 of Section III shall have attained the age of seventy years at the beginning of one of the terms to be fixed pursuant to paragraph 4 of Section I, and that there was no other resident Judge of the County to be served, who could be assigned to take his place. It might be questioned whether the Judge who has attained the age of seventy years could sit to hold that term, because as I see it, that would not be a temporary assignment, but would be an assignment under the Constitution as the resident Judge for that County.

There are many other questions that might be raised in connection with matters to be disposed of that might bring about litigation over this paragraph when there appears to be no need for it.

Another thought that should be considered when we fix a mandatory resignation age of seventy years is that in the last year of a man's life on the bench, to wit, through his sixty-ninth year, we cannot say that he would maintain his position with equal vigor, knowing that in a few months he will have to cease sitting. It might also bring about (in that period of time on the bench) hasty decisions to crowd in the last remaining work before mandatory resignation all of which would result in unnecessary litigation.

There are two thoughts that I have with reference to the paragraph:

First, I think the age of seventy years should be increased to at least seventy-five years if we are to have a mandatory resignation age. If it is felt that they should be in a position to retire upon attaining the age of seventy years, then we could word the paragraph in the alternative, giving a Justice of the Supreme Court or of the Superior Court the right to retire at the age of seventy years with mandatory retirement at the age of seventy-five years. Then add to the paragraph the absolute right in the Legislature to fix terms of retirement. Let us not take the best years of a Judge's life and fix a Constitution so that he has to get off the bench at a certain time without letting him know that the Legislature shall have the right to fix the terms of retirement.

As I go over the list of our Supreme Court Justices, Vice Chancellors and Circuit Court Judges, I find from the date of their admission to the Bar, that some of them are now close to the seventy mark. Some of them will be seventy years of age when their present terms expire, which will be close upon the heels of the adoption of the Constitution if it is adopted as presented. Schedule is annexed hereto.

These men are all active at the present time. To send them out into retirement within the next two or three years would be unfair to them, and as we look over their seasoned records, it would be unfair to the public.

It is respectfully submitted that this article have your attention so that the suggestions made may be adopted.

Respectfully submitted,

(Signed) George P. Moser.

Schedule of members of the Supreme Court, Court of Chancery and Circuit Court who appear to be sixty-seven years of age or over at the present time:

Chancellor Campbell

Justice Parker

Justice Case

Justice Donges

Justice Porter

Vice Chancellor Lewis

Vice Chancellor Fielder

Vice Chancellor Berry

Vice Chancellor Stein

17 of the 33 Judges whose ages were considered are over 60 at the present time.

This does not include the lay Judges of the Court of Errors and Appeals who would be eligible for continuance in the Court under the schedule attached to the Constitution. Of them, there are 4 who would be eligible. Of the 4, Judge Wells is over 67 years of age and Judge Thompson is over 60 years of age.

MR. VAN ALSTYNE: Thank you.

CHAIRMAN PYNE: Next, Mr. John Drewen, a member of the Hudson County bar.

JOHN DREWEN, ESQ.: Mr. Chairman, gentlemen of the Committee:

I speak for myself. It relates to a subject upon which Mr. Mc Carter has briefly touched, but a subject that I think requires some slight emphasis and I shall be brief.

We have referred to the language of Article V, Section III, sub-paragraph 3, "The Superior Court shall be divided into:

(1) A law section, to exercise civil and criminal jurisdiction at law and matrimonial jurisdiction and jurisdiction in cases involving the allowances of alimony and maintenance and the custody of children." My object is to speak with respect to the last which has to do with marital and domestic relations jurisdiction.

As Mr. McCarter said, with emphasis, it seems to be the consensus of opinion that only an oversight could have accounted for the placing of that jurisdiction on the law side of the Court, because that sort of thing is unknown to us. It is an innovation that can be startling if you think about it long enough. Now we are in a war with all its social and domestic dislocations increasing every day. How long the war is going to last no one knows, but we can be sure that this grievous measure of dislocation will be increased before the war comes to an end and in all likelihood this Court having to do with matrimonial relationships, and the custody of children, will be a very important Court and a very busy one, and will need all the wisdom and wealth of strong guidance and precedent possible.

Mr. McCarter said another thing to which I shall refer. He spoke in happy praise of tying together that wealth of precedent which is available. I respectfully suggest, gentlemen, that the mere treatment of a Court so important as a Court of matrimonial and custodial relationships as a supercargo, so to speak, and say merely that it shall become a part of a law Court without doing more is embarking on an untried course when that above all else is one of the last things we should attempt to do.

May I remind you in passing that the Court of Matrimonial relations, as we have it, supplemented by the Probation Officer feature, and that has been mentioned by Mr. McCarter, is a system, a court, a jurisdiction, a body of law

and precedent that are well worth saving and probably would have been saved in this constitution, if, as I have already said, they were not the victims of an oversight.

The present Court, as we know it, is a reform Court. Prior to 1933 matters of reference, especially uncontested cases, were a thing of patronage, I guess that would be a fair word to use, and uncontested cases were heard in private offices and for one reason or another, that system was overcome by the new order, which we have today, which became in 1933 a situation where we have a designated court, we have a designated bench, we have men who have shown themselves competent at least, the jurisdiction is competent to discharge the services it is desired to discharge. Why it could not have been saved does not appear. But I respectfully submit that to turn away from the stride of reform that is manifest in that court as we now know it will bring some strange questions. As to whether matrimonial cases and custodial cases should be subject to jury trial, who shall say? But we shall have to enter upon the task of building up new precedents and where that will lead I don't think anybody can be sure.

One thing more. I am the last one who would make a suggestion that would put a statute or a statutory provision into the constitutional instrument, but I think it is wisdom itself where it can be properly done to avoid the stress and strain of legislation upon subjects if they are very grave in planning for matters that can be provided for in the constitution. Are we to have the old system of references returned throughout the State? Are matrimonial courts to be county courts? Is every county to have its matrimonial records, its custodial records? Are we to turn away from the system that places all of that within the jurisdiction of the Court of Chancery at Trenton? I don't see how anybody can tell; whether or not there is to be one deviation or another from this system of things as we presently know it will very likely

depend upon the outcome of all kinds of legislative stress and coersion and petition and the like.

Now I say the only good that would be served by incorporating in this proposed instrument a simple modifcation of the sections to which I have referred would be to save the jurisdiction of the Court and make it a party of the equity side of the law Court, giving us the advantage of all the experience that has gone into its growth and into the certainty of its principles. Let us, as Mr. McCarter has said, tie in to this wealth of precedent where it does exist.

Now there are two other gentlemen here who are my colleagues, Mr. Theodore Parsons, of Monmouth County and Mr. Richard Fitzmaurice, of the Essex County Bar. Whether they are to be heard following me is for them to say and whether the committee can hear them following me. It would be more convenient perhaps for them, but without taking time to read it, I shall respectfully submit to the stenographer a proposed draft of section 3, paragraph 3, and of section 4, paragraph 1 of the schedules which I respectfully submit provides in a proper way for the things that I believe should be a matter of grave concern to this committee.

(The following schedule was submitted by Mr. Drewen.)

SECTION IV
Paragraph I.

1. On or before July first, one thousand nine hundred and forty-five, the Governor shall nominate and appoint, by and with the advice and consent of the Senate, a Chief Justice and six associate Justices of the new Supreme Court from among the persons then being, the Chancellor, The Chief Justice, the Justices of the Supreme Court, such Judges of the Court of Errors and Appeals as are attorneys-at-law of this State of ten years standing, the Vice-Chancellors, the Advisory Masters and the Circuit Court Judges. The remaining judicial officers above enumerated and the Judges of the Court of Common Pleas, in office, when the Judicial Article of this Constitution takes effect, shall constitute the Justices of the new Superior Court, each during good behavior for the period of his term as Chancellor, Chief Justice, Justice of the Supreme Court, Judge of the Court of Errors and Appeals, Vice-Chancellor, Advisory Master, Circuit Court Judge or Judge of the Court of Common Pleas, as the case may be, which remains unexpired at the time said Article takes effect notwithstanding that he may then have attained the age of seventy years. Any such Justice of the Superior Court may be reappointed at the expiration of his said term if he shall then have been an attorney-at-law of this State in good standing

for at least ten years and shall not have attained the age of seventy-five years and, if re-appointed, any such Justice shall hold office during good behavior without limited term except that his term as Justice of the Superior Court shall terminate at the age of seventy-five years.

ARTICLE V
SECTION III
Paragraph 3

The Superior Court shall be divided into (1) a law section, to exercise civil and criminal jurisdiction at law, and (2) an equity and probate section, to exercise matrimonial jurisdiction and jurisdiction in cases involving the allowance of alimony and maintenance and the custody of children as heretofore exercised by the Court of Chancery, and to exercise all other jurisdiction heretofore exercised by that Court. Each section of the Superior Court shall have such parts as may be provided by rules of the Supreme Court, which rules may provide that either section shall exercise the jurisdiction of the other when the ends of justice so require.

Thank you.

CHAIRMAN PYNE: Thank you, Mr. Drewen.

Will you submit to a question of Mr. Hand?

BY MR. HAND: Mr. Drewen, there has come to our attention I think two points in this case. Perhaps you can answer them, if so we would appreciate it. One is that in most states of the Union, matrimonial cases are handled in the law section of the court system.

Secondly, that there is nothing particularly inherent in matrimonial causes which should place them in the equity court.

MR. DREWEN: I have a thought which I will candidly express on the first phase of the question, and it is this: I don't see how you can rely merely on the fact that in one or more of our sister States matrimonial causes are within the jurisdiction of the law courts. What you would have to know would be the history of the jurisdiction in those States. That would tell you whether or not it was a good thing in those States. Perhaps if you could speak to an expert who helped administer that law they might say that our system was better. I say merely going to a book and finding out what was done in another State with matrimonial and custodial

cases, that they were administered by the law courts and not heeding our own experience where we have a wealth of precedent and where we are doing well, I think we should continue to do so with what guidance we have.

Thank you very much.

CHAIRMAN PYNE: Mr. Drewen, you spoke of two gentlemen who were with you. Are they ready to speak?

MR. DREWEN: Mr. Theodore Parsons, of Monmouth and Mr. Fitzmaurice of Essex.

CHAIRMAN PYNE: Mr. Parsons is next on our list from the Monmouth County Bar.

THEODORE PARSONS, ESQ.: Mr. Chairman: Adding to what Mr. Drewen has said, I was a member of the State Bar Committee and I want to say that I am entirely in accord with everything that Mr. McCarter has said and in our memorandum as filed, and as he has suggested includes.

I feel that our committee, however, did not go quite far enough on this question of matrimonial cases being in the court of equity. Furthermore our law here in New Jersey is based upon the English common law as I understand it, and I think we can well go to England's experience when they reformed their judiciary, set up their common law court. They found it necessary after that, in 1937, to establish a summary court dealing with matrimonial matters and the custody of children.

Now everybody that has practiced law before 1933 knows the very unsatisfactory conditions we had here in this State in matrimonial matters, with references and untrained men handling them, and the tremendous strides that have been made since 1933 with the Advisory Master, also what the Advisory Masters have accomplished. I feel from personal knowledge and talks with other lawyers who practiced with me before 1933 and have practiced since what the present matrimonial courts of New Jersey have accomplished has been, first, expedition. It has

been very obvious to all, very apparent the results that you can quickly get in matrimonial matters, applying for maintenance and you can thereafter, which is an advantage, get a quick hearing on the merits.

In New York, there is a system somewhat after the proposed constitution as contemplated and I have been advised by New York lawyers that where an application is made for alimony pen dente lite, that being done and again with the hearing not coming on for a year or over, you disrupt conditions that may be cured and you create conditions that are harmful and irreparable by the time of final hearing. And that our system here in New Jersey has worked out with the children and for the husbands and for the wives involved far better than that in New York. It is a progressive system and it is an advanced system.

I want to say that I do feel of all the judicial officers in the State that the schedule likewise overlooks a judicial officer who has served, who has received an appointment to serve for seven years; under those appointments he gives up his private practice and it does seem to me that under the schedule there should be included not only circuit court judges and circuit court justices and vice-chancellors, but Advisory Masters who have been appointed and who have served. Those men have given up their practices and are specially trained in this branch. And of all the branches of law that the country lawyer practices in, this branch is most troublesome because it involves the wife and the children growing up and it involves human relations and with us country lawyers are more trouble than anything else. I do say, and I will state, that for the past eleven years since this new system has come in, since we have these trained Masters in the matrimonial courts where there is quick action, it has been of tremendous good to the public and to those people who must come before that court.

I feel that in your schedule you have overlooked judicial officers who have rendered most efficient services at a sacrifice to themselves. They have as I say, been forced to give up their practices and cut themselves loose and why those men should not have the same rights as the superior court judges in the new constitution to continue to render the services they have given would seem to be accounted for as Mr. Drewen commented that it was apparently created as a side issue simply thrown in with the law courts which I submit is a backward step rather than a forward step.

(The following memorandum and suggestions were submitted by Mr. Parsons)

MEMORANDUM RE PROPOSED CONSTITUTION

Jurisdiction over Matrimonial Causes and Proceedings concerning Children should not be given to a law Court as is proposed in the draft.

The transcendent importance and the social side of this class of litigation should command attention.

Apparently a consequence of committing jurisdiction to a court of law as proposed in the draft would be jury trials, and surely that would be deplorable.

From time to time students of jurisprudence and social workers have expressed themselves on this subject in reports and legal periodicals.

Read a few lines from an article in a law-school periodical:

> The system of strict law operates absurdly in the solutions of problems arising in domestic relations*** A woman may have the status of a wife and a man that a husband but beyond that point each case is entirely unique. Here the spirit of reasoned discretion which is the essence of equity should be rampant***
>
> The system of A versus B is manifestly unsound in divorce proceedings.

Matrimonial causes and proceedings about children should be dealt with in a separate court, the judges of which are vested with discretionary power as in the present equity court.

Certainly jurisdiction should not be in law courts upon which, to use Dean Wigmore's words, "-the curse of technicality-" is laid.

Such causes and proceedings should not be"smothered by legal procedure" as they would be with jurisdiction vested in a court of law.

And they should be dealt with expeditiously.

A committing of the jurisdiction to a law-court would be a retrograde movement --- a clear mistake--- which would surely be corrected later because of the ill consequences that would follow such commission.

When England revised its marriage laws in 1937, it committed the jurisdiction over Matrimonial Causes and Children to a separate court --- "Court of Summary Jurisdiction"--- and with a clear and express intention of providing that the judges should have discretion and that the causes and proceedings should be heard and determined with expedition; and it arranged for

> "separating the hearing and determination of domestic proceedings from other business".

SUGGESTIONS 1, 2 & 3

In the present posture of matters suggestions are made so that "domestic proceedings" --- or using different langugage ---- let us say "matrimonial causes" --- and proceedings involving children ----

1. Should be committed to the equity side of the proposed Superior Court and not to the law side of that court;

2. Should be committed to a separate court with equitable jurisdiction; and specifically, that such causes and proceedings

3. Should be committed to the present Matrimonial Branch (under or as a branch of the equity side of the proposed Superior Court).

STATEMENT

The Matrimonial Branch of the Chancery Court was set up by Chancellor Campbell as a reform on April 1, 1933. It was set up as a separate court really, with a well-defined jurisdiction including the inherent jurisdiction of the Court of Chancery as well as all statutory jurisdiction relating to matrimonial causes and proceedings concerning children.

And, in the same year to complete the new court's efficiency, the Probation Officers in the different counties were geared to the new court by an act of the Legislature, (Laws 1933, Chap. 349, page 908). The setting up of the Matrimonial Branch really abolished all special masters so far as matrimonial causes were concerned; and since 1933 the Matrimonial Branch has functioned well and efficiently. And since 1933 the Matrimonial Branch has done as much work as any other New Jersey court.

In 1933, because of the state of the law Chancellor Campbell appointed ten Advisory Masters as the Matrimonial Branch to serve "indefinitely" and "during" his "will and pleasure".

Then came --- with a recognition of the best thoughts, which was that all judges of higher courts should be full-time judges --- the act of the Legislature of 1941 (Laws 1941, Chap.307, page 827).

By virtue of the provisions of this Act of 1941 and their appointment the present Advisory Masters constituting the Matrimonial Branch were appointed for a term of seven years and thus received tenure of office and it is to be noticed that they were obliged to give up practice in order that they might be appointed and this they have done.

The present Matrimonial Branch has not cost the State a single penny since its creation eleven years ago.

Indeed, after providing for the compensation of the Advisory Masters from the fees paid by litigents there has been continuously a very substantial excess left with the Clerk of the Court and to the credit of the State.

Providing that litigants shall pay their way in matrimonial matters is in the modern pattern. It is the English method and made so after their experience otherwise. In England an uncontested divorce proceeding costs litigants in fees and for lawyers the same as in New Jersey.

It is said that the Court of Chancery is "antiquated" but it cannot be said that the Matrimonial Branch is antiquated. However, the name "Advisory Masters" is antiquated.

FINAL SUGGESTION

The present Matrimonial Branch should be continued in the equity side of the Superior Court with its present well-defined jurisdiction.

The present advisory Masters, who have tenure of office as stated, should be continued until the expiration of their terms of office (after which time provisions should be made for the continuance of the court).

Under such designation and to receive such compensation as may be fixed by the Chief Justice from time to time,

And to sit at places as may be fixed by the Chief Justice from time to time.

The present Chancery Rules so far as they affect matrimonial causes and children should be continued in force until the Chief Justice promulgates rules.

CHAIRMAN PYNE: Thank you, Mr. Parsons.

Mr. Drewen, will you introduce the other gentleman?

MR. DREWEN: Mr. Fitzmaurice, of the Essex bar.

CHAIRMAN PYNE: Mr. Fitzmaurice, do you wish to speak?

RICHARD J. FITZMAURICE, ESQ.: Mr. Chairman and members of the committee:

I had expected to confine my remarks exclusively to the subject of the discussion covered by Mr. Drewen and Mr. Parsons. They have both absolutely been far more able in

covering the facts I had in mind, far more potent in voice for the State Bar Association. Following the suggestion of your Chairman, I will submit to the stenographer a memorandum which I prepared in extension of those remarks.

CHAIRMAN PYNE: Thank you very much. We would like to have that now.

(The following letter was submitted by Mr. Fitzmaurice)

"February 8, 1944

"To the Honorable, the Committee of the
Legislature on Proposed State Constitution.

Gentlemen,

I take the liberty of respectfully submitting the following comment and suggestions for your consideration with respect to the proposed changes affecting the present court procedure in the proposed constitution, and with particular reference to jurisdiction over matrimonial causes and proceedings concerning children.

As I understand it, it is proposed by Paragraph 2 of Section II, that the Law Section of the proposed Superior Court shall have matrimonial jurisdiction and jurisdiction in cases involving the allowance of alimony and maintenance and the custody of children. A consequence of committing this class of litigation to a court of law, as proposed, would be jury trials, and surely that would be deplorable. The application of the system of strict law would appear to operate absurdly in the solutions of problems arising in domestic relations. Experience teaches that each case is entirely unique and that the spirit of reasoned discretion, which is the essence of equity, should prevail. Jurisdiction over matrimonial causes and proceedings concerning children are and should remain in the equity branch.

Taking cognizance of the wholly unsatisfactory conditions under which the uncontested matrimonial causes were handled, and which was common knowledge, the Chancellor put into effect the present matrimonial branch of the Court of Chancery, approximately ten years ago. The Legislature, in its wisdom, recognized the efficacy of this separate and distinct entity, specializing as it does in its exclusive jurisdiction over matrimonial causes and proceedings concerning children, by its adoption of the statute (2:2-14) in 1941, empowering the appointment by the Chancellor of advisory masters to hear divorce and matrimonial proceedings and fixing their tenure.

The proposed constitution is, of course, in the nature of a reform of the existing constitution, and the lessons learned by its operation for almost a century. The adoption of the matrimonial branch of the Court of Chancery in 1935 was considered in the nature of a reform. The judges (advisory masters) selected by the Chancellor, and their tenure and compensation later determined by the Legislature, are recognized as well they must be, as specialists in this class of litigation, which is of such transcendent importance. This matrimonial branch, so-called, is recognized as a distinct and

separate entity within the framework of equity jurisprudence. This class of litigation should be dealt with in a separate and distinct court, the judges of which are vested with discretionary power as in the present equity court, as distinguished from the proposed Law Section of the proposed Superior Court. Such causes and proceedings should not be subject to the legal procedure, technicalities and delays of a court of law. Time and experience would surely establish the fallacy of such allocation.

England, in revising its marriage laws in 1937, committed the jurisdiction over matrimonial causes and children to a separate court - the "Court of Summary Jurisdiction" - expressing a clear and express intention of separating the hearing and determination of domestic proceedings from other business and providing the judges should have discretion and that the causes and proceedings should be heard and determined with expedition.

With the above in mind, I respectfully suggest the Committee's consideration of the following suggestions:

(a) Matrimonial jurisdiction and jurisdiction in causes involving the allowance of alimony and maintenance and the custody of children should be committed to the equity side of the proposed Superior Court and not to the law side of that court; or,

(b) Such causes should be committed to a separate and distinct court with equitable jurisdiction; and,

(c) Should be committed to the present and existing matrimonial branch, under or as a branch of the equity side of the proposed Superior Court; and,

(d) The present advisory masters of the matrimonial branch should be appointed as members of the proposed Superior Court.

As to the cost of the maintenance of a separate and distinct court having jurisdiction over matrimonial causes and proceedings concerning children, the information at hand indicates that after providing for the compensation of the advisory masters by the above-mentioned statute, from the fees paid by litigants, there has been continuously a very substantial excess to the credit of the State.

If, as is said and argued, that the Court of Chancery, as such, is antiquated, it cannot be said that the matrimonial branch of said court, in its very nature a separate entity, is antiquated. It may well be said that the creation of this matrimonial or separate branch of the Court of Chancery, and its modern, efficient and expeditious functioning during its ten or eleven years existence, anticipated the reform contemplated by the proposed changes affecting the Court of Chancery."

"Respectfully yours,

S/ Richard J. Fitz Maurice
Richard J. Fitz Maurice "

CHAIRMAN PYNE: Now, Mr. Henry Wise of the Monmouth County Bar.

EDWARD W. WISE, ESQ. (MONMOUTH COUNTY BAR): Mr. Chairman, I would like to introduce Mr. Ward Kremer, Chairman of the Judiciary Committee of the Monmouth County Bar Association.

WARD KREMER, ESQ. (FOR MONMOUTH COUNTY BAR): Mr. Chairman and members of the committee:

The Monmouth County Bar Association recently adopted a resolution favoring the retention of the Court of Chancery as it is presently constituted. Therefore in behalf of that resolution our sub-committee on the revision of the constitution here today will, of course, at the end of this argument submit a copy of the resolution and brief supporting it. I will be as brief as I can, but let me say at the outset the more I have listened to the arguments of the State Bar Association here this morning on the various aspects of the judicial article in fact every article here, that has been advanced, leads practically to that conclusion. The only thing lacking is that the gentlemen who have spoken have not taken the final step.

For instance, I notice in the brief submitted by the State Bar Association, on page 10, this plain statement: "There is no sense, however, in having an equity section unless the judges are assigned to it permanently, in order that they may become and remain specialists in their field". I am sorry that Mr. McCarter, when he was on his feet, did not emphasize that, but seemed in some way to resent some of the implications of that statement, because I regard that as the plain truth and correct and furnishes the text of my argument.

You will notice that most of the fire in the argument this morning is directed to paragraphs 2 and 3 of section 3 of the Judicial Article. This paragraph 3, which says, "The superior court shall be divided into:

(1) A law section and an equity section, and that

either section shall exercise jurisdiction of the other court. Now, gentlemen, I don't want to try and state my qualifications at any length, but I have been a member of the Bar for 30 years come this July. I have been a District Court judge for ten years. I can truthfully say I have had a fairly extensive practice in this State and in the United States Supreme Court and I have acquired, and I think we have all acquired, a very wholesome respect for the judicial system of New Jersey as at present constituted. I doubt that this committee and the legislature would enact a change simply for the sake of change. If there is one characteristic outstanding in our system as it exists today, that characteristic is specialization. By that I mean we have Circuit Court judges who devote themselves exclusively to the trial of jury cases. We have equity jurists who deal in nothing but equity problems. We have Orphan Court judges who deal with those matters, and we have Advisory Masters dealing with matrimonial cases.

Now it is inconceivable, and I say this particularly to those members of this committee who I understand are not lawyers, because I take it that all the lawyers on the committee would take it at its face value, but it is inconceivable that any man could do what this constitution would require him to do, namely, be an equity judge one day, sit at jury trials the next and sit in Orphans Court on another day with the required degree of skill and ability he acquires under the present system, in which he devotes himself to that one particular field of law. To do that which this constitution proposes we will create of a judge a jack of all trades and master of none. I want to say to the members of this committee who are laymen, I want you to draw an analogy between our behavior and that of the medical profession.

The day of the general practitioner in medicine is gone. If you have a heart condition, you go to a heart specialist.

Or you go to an eye, ear, nose and throat specialist if you have certain symptons. You have your surgeon, you have your medical man, you have your anaesthetist, and in medicine for a long time it has been a well recognized fact that no one practitioner can be expected to master every phase of the very vital and varied field of medicine. And one of the out-standing reasons assigned why the medical science has attained the great progress that it has made within the last two generations is the very fact of specialization. They have recognized that. They didn't go back two generations.

We in New Jersey have been particularly fortunate that we have put on the equity bench, and I may say to you that my remarks here insofar as this reference is concerned are directed for our committee solely, in the removal of the equity court as such. As an individual I shall dare to express myself before I sit down, but we have equity men, one of them I call to mind since 1925 has been devoting himself exclusively to equity matters and it must be obvious and probably apparent that he is far more experienced and skillful in dealing with those matters than the circuit court judge who sits and hears jury trials and has the rules of evidence and the matters of schedules at his fingertips in the lower court. I may say in passing that I should no more care to go to an equity judge and ask for a writ of certiorari or a writ of mandamus than I should care to have to go to a superior court judge who up to this point has been a county judge sitting in the Orphans Court and ask for an injunction. I think the rule works both ways. I don't think either would have the skill in the other's field of specialist.

I have heard enough here this morning to realize that a good deal of the reason behind this proposed article arises from what is done in our sister States. Personally, gentlemen, I am not much impressed with what is done in our sister States. I don't think in many important aspects you are either. We know in almost every state in the Union judges are elected. I am not here to advocate the election of judges,

but I notice in the draft of this constitution you didn't follow that plan just because they elect judges in other States in the Country. We feel that the appointment of judges by the Governor is preferable or a more desirable system than what they adhere to. But I mean this. Why should you be concerned because in New York they happen to have a Chancery Division instead of a special Chancery Court. I have made some inquiries of lawyers whom I consider of the highest type in New York and they tell me if you have an equity matter you go to Part I of the Special Term if it is an unlitigated matter. If it is a litigated matter, you go to Part II. If it results in what would be a final hearing in New Jersey you get in Part III or Part IV, and those Parts are presided over by a Supreme Court Justice who is sitting for ten months handling what? They are sitting in the trial of jury cases, and their minds are oriented with the rules of evidence and the procedure in civil suits and suddenly they find, come next morning, they must go and be equity judges. Can you believe that that system is as good as the system we have here? That practically summarizes the argument that is appended to the resolution adopted by the Monmouth County Bar Association.

I want to ask your indulgence and it won't take two minutes to say what impresses me as a citizen and as a lawyer. If one seems to be convinced that we need a special Court of Appeals, and that as far as I see it is the only salutary feature of the Judicial Article, the rest of it in the important aspects is largely a change in nomenclature and I am not interested in names. You merely abolished the name of Oyer and Terminer, if you wish a Court of General Sessions. But I am interested as a general practitioner in this, and this I am speaking for. When you go into an Orphans Court in the morning on a matter covering an estate, you want a man experienced in this line of

work, and that you have under the present system. When you go into the Circuit Court to try a jury case you have a man today who is aloof from the practice and contacts in that county in which he sits because he comes ordinarily from another county. It is a splendid system because the Circuit Court judges usually come from some place else and don't know the litigant and don't know the lawyers particularly, but he is an expert in that line of work and he should be kept there as he is today.

The Advisory Master has acquired a knowledge of matrimonial cases that no lawyer will ever acquire because he is an expert in his field. We are well off. As Mr.Parsons said about the abolition of the system of Advisory Masters, if you do that you take a step backward in the enactment of this entire article and time will prove it.

What you should do is make some changes in procedure to eliminate a great many of the defects that Mr. McCarter has so ably pointed out. You can create a special Court of Appeals of which the present members of the Supreme Court will not be members so it can function separately and independently and generally after that it will leave our judicial system the way it is.

Thank you very much.

(The following brief and resolution were submitted by Mr. Kremer)

"BEFORE THE JUDICIARY COMMITTEE
OF THE LEGISLATURE.

In Re Article V.of the Proposed Revised Constitution (1944).

MEMORANDUM FILED ON BEHALF OF MONMOUTH COUNTY BAR ASSOCIATION

The Monmouth County Bar Association has adopted a resolution objecting to that feature of Article V.of the Proposed Revised Constitution (1944) which calls for the abolition of the Court of Chancery as at present constituted. The

Association is on record in favor of the retention of the Court of Chancery. A copy of the resolution is appended hereto and marked Schedule "A". This memorandum is filed in support of that resolution.

Article V., Section III., Paragraphs 2, 3 and 4, contain the provisions against which criticism is chiefly directed. Paragraph 3 provides, in substance, for the division of the Superior Court into the law section and equity and probate section, and then continues to provide as follows:

> "But either section shall exercise the jurisdiction of the other when the ends of justice so require."

Paragraph 4 empowers Justices of the Superior Court and an appellate division thereof to grant prerogative writs.

Members of the Superior Court under this Constitution would obviously have powers to function indiscriminately in law and equity matters. The section means that a law judge may grant injunctions, entertain suits for specific performance, and in short, exercise any of the functions now exercised by a Chancery Court Judge. Members of the present Chancery Court who become Superior Court Justices may exercise all the functions now performed by Supreme Court Justices. They may issue prerogative writs; they may be designated to sit in the trial of jury cases.

These proposed sections would change the entire character of the administration of justice in New Jersey, at least so long as the present personnel of the Court is continued in office. We have enjoyed heretofore the benefits of specialization in the administration of the law. Circuit Judges sit in the trial of jury cases, and do that almost exclusively. Naturally, they become widely experienced and expert in their particular field. Equity jurists spend years on the Bench, devoting them-

selves exclusively to the solution of equitable problems. Orphans' Court Judges deal in probate matters. Supreme Court Justices, besides their general appellate work, gain a wide experience in the field of prerogative writs. It is inconceivable that any Judge, if he had to meet daily the problems arising in the various fields mentioned, could become an expert in any one of them as he can and does become under our present system. We believe that the present system has resulted in the attainment by the persons occupying the Bench of a high degree of skill and ability in their respective fields. We believe that skill and ability would, of necessity, be lessened if we are to live under a judicial system in which every Judge at times deals with every field of the law.

Of course, we recognize the fact that under the proposed revision, the Chief Justice may assign members of the Supreme Court to sit in the various divisions. It may be argued that ordinarily he would assign present equity Judges to sit in equity matters in the equity section of the Court. However, such an argument, in itself, reveals the weakness of the proposed revision. If it be argued that the new system will, to all intents and purposes, be identical with what we now have in so far as the administration of equity is concerned, then there is no sound reason to make a change, with all the confusion and with the many difficulties which will arise throughout the period of transition from the present system to the new system. If the proposed revision means pronounced and drastic change (and that is apparently the fact), then it is a change for the worse, for the reasons above set forth. Certainly, a system in which litigants appear before Judges who deal with jury trials, Orphans' Court matters, equity problems, and all other legal matters in succession, can never be expected to produce the results obtainable under our present system of specialization.

To demonstrate this fact, we need only look at the medical profession. The day of the general practitioner is gone. Physicians specialize in surgery, diseases of the heart, anaesthesia, eyes, ears, nose and throat, and many other particular fields of medicine. Men devoting themselves particularly to their special problems make new discoveries daily, and the general public receives the benefit of the vast progress in medical science. The practice of specialization is undoubtedly the principal reason for the great advances in medical science. No one would suggest seriously that this system of specialization should be abandoned, and that doctors once more should return to a system in which every doctor tried to devote himself to every problem arising in his profession. That would amount to going back two generations in the practice of medicine.

Yet, we are confronted with a proposed change in our judicial system which has exactly such implications. The Monmouth County Bar Association is, therefore, strongly opposed to a change which would do away with the separate administration of equity by the Court of Chancery. As the words of its resolution point out, the decisions of this Court have become models throughout the country in the administration of equity jurisprudence. Article V. should be so revised thatthe Court of Chancery is retained as at present constituted.

Respectfully submitted,

COMMITTEE OF THE MONMOUTH COUNTY BAR ASSOCIATION ON THE JUDICIARY ARTICLE OF THE PROPOSED REVISED CONSTITUTION.

Ward Kremer, Chairman
Jacob Steinbach, Jr.
Edward W. Wise
J. Victor Carton
Maurice A. Potter

SCHEDULE "A"

RESOLUTION

BE IT RESOLVED by the Monmouth County Bar Association as follows:

1. The recognition of equitable principles is essential to the proper administration of justice.

2. No judicial system can function efficiently without recognition of those principles and their constant application.

3. The New Jersey Court of Chancery has attained a position of eminence and authority in the United States of America, and in its administration of justice has enunciated principles of equity and has rendered opinions and decisions which are respected and followed throughout the nation and are looked upon as models of equity jurisprudence.

4. The Court of Chancery as at present constituted is an integral part of the State's judicial system and is equally as important as the courts of law in the administration of justice.

5. Any change in the State's Constitution or in its judicial system which would interfere with the application of equitable principles in the administration of justice would be injurious to the best interests of the people of this State and to their rights of person and property.

6. Any change in the State's judicial system which would deprive the judiciary of the benefit of the experienced jurists on the Chancery Bench would hamper and impede the administration of justice and remove a vital safeguard in the protection of the rights of persons and property.

Therefore, the Monmouth County Bar Association is opposed to any revision of the State's Constitution which would terminate the existence of the Court of Chancery as at present constituted, and is opposed to any interference with the applica-

tion of equitable maxims and principles, or to any change which would impair the efficiency with which the Court of Chancery can and does function under existing constitutional and statutory provisions.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Governor of the State and to members of the Legislature from Monmouth County, and to the members of the Judiciary Committee on Constitutional Revision."

CHAIRMAN PYNE: Chairman Cavicchia and Chairman Eastwood are back now. After introducing the next speaker, I will turn the chair over to him.

I believe Mr. Emanuel Wagner representing the Union County Bar Association would like to be heard.

EMANUEL WAGNER, ESQ. (UNION COUNTY BAR ASSOCIATION):

Mr. Chairman, members of the Committee:

Anything that I would say would be repetition of the arguments that have been advanced on the subjects that the Union County Bar Association are interested in. They have been so well stated that I will not repeat any of them. However, I should like to call the attention of the committee to the fact that the Union County Bar Association appointed what it considered a very competent committee to give very careful consideration to the Judicial Article and without attempting to be captious for minor flaws, but confined itself merely to two items in which it takes special interest. One of those is Article 5 of Section I, paragraph 3, which requires the appellate judges to sit at the seat of government. There does not seem to be any rhyme or reason for that and it doesn't make sense. Judges ought to sit where it is most convenient for lawyers and litigants. We suggest that that be eliminated from the proposed revisions.

Now as to Article V, Section 3, paragraph 3, the Union County Bar Association suggests a separate equity court, branch or section. In the absence or impossibility of that,

it recommends that that be retained and incorporated in the Equity and Probate Section of the Court as a distinctly functioning entity and comprehensive jurisdiction, which is inherent in the present equity court, so as to preserve the value and benefits of that system of equity administration.

Thank you.

CHAIRMAN EASTWOOD: Mr. Joseph J. Mutnick, representing the Union County Bar Association and the Plainfield City Bar Association.

JOSEPH J. MUTNICK (Union County Bar Association, and Plainfield Bar Association): Mr. Chairman, there is little I can add to the splendid arguments that have been advanced by Mr. McCarter and the other speakers who followed him. I want particularly to emphasize in behalf of the Bar of the City of Plainfield the thought and the plan of retaining the matrimonial branch of the Court of Chancery, inherent within the Court of Chancery. I am directing my remarks especially to Article V of Section III, paragraph 3. The present matrimonial branch has not cost the State a single cent. It has functioned well, we all know of its affairs which have been pointed out in detail and the work of Advisory Masters. Those of us who practice in that Court realize that matters have been disposed of expeditiouslyand promptly and efficiently. And may I say by experts well-grounded in matrimonial matters. This constitution which, with all due respect to the law, has relegated this to the Common Pleas, I doubt seriously that it could be disposed of as expeditiously and as advantageously as it has been.

I want to make this one observation, Mr. Drewen spoke of it, about the expedition with which the work is discharged. I am told on very good authority that one of the Advisory Masters sitting in Union County has disposed of four hundred cases in the past year and disposed of over one thousand motions. I question and doubt seriously that were you to

eliminate that work and relegate it to the Common Pleas judge with the numerous other matters he would have to discharge in his jurisdiction that he could dispose of that amount of business. It requires no argument to show that that branch of the Court of Chancery has functioned splendidly. I question even if there is any room for improvement based on the results that have been clearly indicated. I simply want to refer my remarks to that portion of the Article to which I referred in saying that the matrimonial branch should be retained as part of a comprehensive system of our equity jurisdiction.

I have also been asked to speak in behalf of the retention of the present Advisory Master. I have been asked by the Union County Bar Association to read into the record the following report, and with your permission I would like to do so.

"The Union County Bar Association at meeting assembled at Elizabeth, New Jersey, on the 7th day of February, 1944, does hereby commend to the Governor of the State of New Jersey and the Judiciary Committee of the Legislative Revision Commission the sterling work, character and services of Honorable Dougal Herr, Advisory Master of the Court of Chancery of New Jersey, and whose vicinage embraces Union County.

"The members of this Association have had the pleasure and experience of practicing before Advisory Master Dougal Herr and have found him to be an upright judge, learned in the law and possessed of rare judicial temperament and ability -

CHAIRMAN EASTWOOD: Mr. Mutnick, has that anything to do with the question we are considering here today?

MR. MUTNICK: Only insofar as it concerns -

CHAIRMAN EASTWOOD: Do I understand the Union County Bar Association advocates only Mr. Herr --

MR. MUTNICK: No, only so far as the retention of the Advisory Masters, as to the type of men.

CHAIRMAN EASTWOOD: It seems to me that is purely personal testimony.

MR. MUTNICK: I am frank to say it is quite so. It was intended by the members of the Union County Bar Association to be -

CHAIRMAN EASTWOOD: I am sorry, but I will have to rule that it cannot be made a part of the record and I will ask you to confine yourself to the consideration of the Judicial Article.

MR. MUTNICK: All right.

In speaking for the Plainfield City Bar as well as the Union County Bar Association, I would like to say that we would like to retain the matrimonial branch as now constituted. I would like to make the further observation as Mr. Kremer stated that we should not be guided by what other States do. I have been practicing for twenty-five years and I well remember my college days when one of the old professors would say, "get the decisions of Massachusetts and New Jersey and then you have something." I think New Jersey as a common law State with Massachusetts is outstanding in the legal procedure because we have been in the van and our Court of Chancery as set up or may be, I think would be regrettable at this time to dispense with that Court as a separate entity.

May I, Mr. Chairman, urge the petition here signed by the various members of the Plainfield City Bar Association and may I file it?

CHAIRMAN EASTWOOD: All right, present that to the stenographer.

(The following petition and resolution were submitted by Mr. Mutnick):

"TO THE SUB-COMMITTEE On Judicial Provisions Dealing with the Proposed Revised Constitution Now Pending before the Joint Legislative Committee:

We, the undersigned members of the Plainfield Bar Association do hereby petition your committee to retain the present Court of Chancery intact in the Revision of the New Judicial Court System now pending before the Joint Legislative Committee."

(Signed by 12 members of the Plainfield Bar Association)

"TO THE JOINT LEGISLATIVE COMMITTEE

HONORABLE SIRS:

"The Union County Bar Association at its annual meeting held on Monday, February 7th, 1944, adopted a resolution recommending to your committee and favoring the following modifications in the proposed revised constitution (1944):

"(1.) Article III, Section IV, Paragraph 7 relating to Lobbying should be eliminated. Reason: This subject is within control of the Legislature and can be prohibited and controlled by statutory enactment,

"(2.) Article III, Section V, Paragraph 4. There should be eliminated the provision reading: "nor in any event to invalidate any law except in proceedings brought within two years from the effective date thereof". Reason: Persons incapacitated and others whose rights do not arise until after the two year period has elapsed might have their property rights affected or entirely destroyed. Otherwise the effect is to sanctify any error by mere lapse of time. An actual case may not arise within the two year period.

"(3.) Article III, Section V, Paragraph 7. A permanent law revision agency is favored as essential. Objection, however, is made to the mandatory revision every ten years. The time and the occasion should be left to the Legislature as necessity determines. Frequency of revision beyond necessity may be merely confusing instead of producing the clarity and simplicity which are the natural objectives. A mandatory ten year revision would subject taxpayers to an undue burden and lawyers would not be able to keep abreast of these continual revisions.

"(4.) Article III, Section VI, Paragraph 6. This section should be amended by inserting the words "adopt zoning ordinances to" on the second line between the word "may" and "limit" so that the same should read: "(6.) The legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances to limit and restrict, to specify districts and regulate therein buildings and structures" etc. to the end thereof. Reason: The constitutional amendment adopted by the people relating to zoning contains the words "zoning ordinances" and we feel that no municipality should be permitted to regulate zoning except by a duly adopted ordinance previously authorized by act of the legislature.

"(5.) Article V, Section I, Paragraph 3. Strike out the words "at the seat of government" and substitute "at such place or places as may be designated from time to time by the Chief Justice". Reason: In order to make hearings before the Appellate Division more flexible this matter should be entrusted to the good judgment of the Chief Justice. Appellate Divisions should sit where the business of the Court require sessions.

"(6.) Article V, Section III, Paragraph 3, We favor a separate equity court, branch or section. In the absence or impossibility of this, we recommend that there be retained and incorporated in the equity and probate section of the court as a distinctively functioning entity, the comprehensiveness of jurisdiction and practice inherent in the present equity court, so as to preserve the demonstrated value and benefits of that system of equity judicature.

"Further resolved that copy or copies of this resolution be presented by one of our members, Mr. Emanuel Wagner, to the Joint Legislature Committee at its hearing to be held on Wednesday, February 9th, 1944.

"The foregoing resolutions were adopted at a meeting of the Union County Bar Association held on Monday, February 7th, 1944.

(Signed) Harrison Johnson
(Harrison Johnson)"

CHAIRMAN EASTWOOD: At this time I call upon Josiah Stryker, Esquire, who appears for modification.

JOSIAH STRYKER, ESQUIRE: Mr. Chairman, I am a member of the Judiciary Committee of the State Bar Association of which Mr. McCarter is Chairman. In many respects I agree with what Mr. McCarter has said. In some respects I represent not only myself but a minority of that committee.

I wish to direct my attention first to the first paragraph of Section I of Article V. As is well known that provides for the abolition of the Court of Chancery and confers its jurisdiction upon the superior court. Now, that is a very radical change in our judicial system. I don't suggest that it should not be made simply because it is a radical change, but I do urge very earnestly that unless it is clear that the administration of justice in this State will be improved by abolition of the Court of Chancery, then I believe that every one in this room would agree with me that it should not be abolished.

I have been practicing law in this State for over forty years and I am convinced and several of the members of this committee of our State Bar Association are also convinced that the administration of justice will be impaired rather than improved if we are to abolish the Court of Chancery. This minority is not alone in this view.

In December, of 1942, Judge Lippincott, who is also a member of this committee and who is now ill in the hospital, otherwise he would be here; sent out a call to every member of the State Bar Association. He asked them to reply as to whether they favored the abolition of the Court of Chancery or whether they favored its retention. I have annexed to the memorandum which I have filed a tabulation of that result. He received 765 replies. Of that number 492 definitely expressed

their choice that the Court of Chancery should not be abolished. Only 273 favored the abolition of the Court of Chancery.

So that I hope, gentlemen, you will not assume from the fact that not many lawyers are here urging on this floor that the Court be retained, that there is not a very decided sentiment among the members of the bar in favor of the retention of this court. I have discussed this matter not only with members of the bar, but with leaders in industry throughout the State and I have found among them a very decided sentiment for the retention of the Court of Chancery.

Now as I have been able to see I know of but three reasons which have been urged as to why the Court of Chancery should be abolished. One of those reasons is that sometimes it is difficult for a lawyer to tell whether his case should be started in the Court of Chancery or a law court.

Another reason is that sometimes a defendant in an action at law may have a defense which is not cognizable at law and it is necessary for him to go into the Court of Chancery to assert that defense.

And the third reason is that only Delaware and New Jersey, of all the states in the union, have Courts of Chancery.

With your permission I should like to consider these reasons briefly. Under the first reason, that sometimes it is difficult to tell whether to go into the Court of Chancery or a court of law, is adequately covered by our existing practice under which a case which is mistakenly commenced in one or the other courts may now be transferred to the appropriate court. These cases are so few that it seems to me it is utterly absurd to abolish the Court of Chancery which has served this state well for many years merely because sometimes a lawyer may make a mistake and go into the equity branch instead of

going into the law court, particularly since that mistake is not fatal and all that happens is that they have to transfer it to the appropriate court.

The other is that sometimes there are equitable defenses which make it necessary to go into the Court of Chancery to assert. I am speaking of equitable defenses to actions at law. But in instances that rarely happens. I believe, if the members of the bar who are here, will cast their minds back over their experience they will find that in their practice that situation has been but very rare. In over forty years of practice I have been engaged in but one such case.

Now if that is of sufficient import to warrant a constitutional remedy the remedy is simple and easy without abolishing the Court of Chancery. All that need be done is to insert a provision in the constitution which will permit a court of law to entertain an equitable defense.

I think the third reason whichapplies perhaps most strongly, or which appeals most strongly perhaps to the layman, is the fact that only in New Jersey and in Delaware is there a Court of Chancery. That reason does not appeal very strongly to me, and I am very glad to tell you why it does not. If it could be shown that the states which formerly had a Court of Chancery and had changed to what is regarded as a more modern system, had improved the administration of justice by making that change, then there would be something in the argument. That in my judgment, gentlemen, cannot be shown. I have had occasion frequently to read equity decisions in other states and my reading of those decisions convinces me that in those states where equity is not administered by specialists there is a very much inferior knowledge of the principles of equity and in a very important respect, as to

the application to the cases which come before it.

I may say that that is well illustrated by an extract from a provision of Pomeroy's Treatise on Equity, which Judge Speer, who has asked me to say that he agrees with my views and would have been here but for an engagement which made it impossible for him to come, gave me. Mr. Pomeroy says: "Every careful observer must admit that in all the states which have adopted the reform procedure there has been to a greater or less degree a weakening, decrease or disregard of the equitable principles of the administration of justice. The tendency, however, has plainly and steadily been toward the giving of undue prominence and superiority to purely legal rule and ignoring, forgetting or suppressing of equitable courts. In short the principles, doctrines and rules of equity are certainly disappearing from the municipal law of a great number of the states. This deterioration will go on until it is checked either by a legislative enactment or by a general revival of the status of equity throughout the ranks of the legal profession."

"I need not dwell upon the disastrous consequences of the tendency above described, if it should go on as it is to its final state."

Those remarks, gentlemen, were written by one of the ablest equity lawyers I know of; they were not written in support of my opinion or with any such argument in mind. They were his expression of what happens when you abolish a separate court of equity, and what has happened. That is well illustrated by our sister state of New York.

Compare, if you will, the decisions of the Court of Chancery in that state when it had a Court of Chancery with the slip-shod decisions which are had now in the trial terms in equity cases in that state. If it could be shown that equity is better administered in the state that has this socalled more modern system than it is now in New Jersey, that might be worthy of consideration. In my judgment that cannot be shown and no

one with whom I have discussed this subject has even attempted to show it.

And the reason why we have a better administration of equity under our system than the other states have under theirs is because our equity jurisdiction is administered by specialists, by men who have devoted their lives to the study of equitable principles. We have had in this state many great Chancellors and great Vice-Chancellors, whose decisions have been a landmark of equity jurisprudence. Are we going to sacrifice that merely for the sake of coming in line with other states where the result of coming in line with the practice of other states cannot be demonstrated as an advantage and will, I think unquestionably, produce a deterioration of the administration of equity? And I think it will also produce a deterioration in the administration of law.

I agree with what Mr. Kremer has said, that it is better and tends towards efficiency to have jury cases tried by the judges who devote their lives to that branch, and to have equity cases tried by the judges who devote their lives to equity.

Now it may be suggested that since we will have a special equity section that we can preserve the advantages. Well, I think that is doubtful - very doubtful. In fact under this present constitution I think it is almost impossible. This present draft provides that the assignment shall be annually made to the sections. Some of the advantages might be retained if there were a permanent assignment to the section or an assignment for a long period of years, but I think it would only be some of the advantages. I think if we abolish the Court of Chancery we run the hazard of sacrificing the efficient administration of equity that we have had in this state for many years.

Now I wish to make some remarks with regard to section II - I mean to paragraph 2 of Section I -

CHAIRMAN EASTWOOD: May I ask how much more time you want? I believe you have had fifteen minutes now.

MR. STRYKER: I don't wish to trespass on anyone else's time. If the committee believes that I should finish in -

CHAIRMAN EASTWOOD: We want to hear you if you will indicate how much time you want -

MR. STRYKER: If the Committee will tell me how long I may have -

CHAIRMAN EASTWOOD: Will you indicate how much time you want?

MR. STRYKER: I can finish in ten minutes or I can finish in five minutes, if the Committee will tell me -

CHAIRMAN EASTWOOD: Is the Committee agreeable to allowing ten minutes additional time to Mr. Stryker?

THE COMMITTEE: (Agrees)

MR. STRYKER: (continued) Paragraph 2 says in all matters in which there is a conflict between the equity and the common law equity shall prevail subject to the rules of the Supreme Court, every controversy shall be fully determined by the justice hearing it. I understand there is a similar provision in the English Judiciary Act and in the laws of several states. Notwithstanding that, I must confess I don't know what it means. I have asked every lawyer I have met since I read this if he could tell me what it means and I haven't found one who is willing to hazard a guess as to what it means. That mere fact that the bar doesn't understand this paragraph is to my mind a serious criticism of its provision.

Does it mean merely that a recognized equitable defense is cognizable in a law court or will be under this? If it does then it means it is unnecessary because other provisions cover that. Does it mean that defenses which are now recognized as defenses to actions at law; for example unclean hands, will

in the future be defenses to actions at law? I don't know whether it does or not and I don't believe anybody else knows whether it means that or not. Does it mean that laches may be pleaded in actions at law to the extent that they may be pleaded in equity? I might multiply questions.

It has been suggested by some lawyers to whom I talked that what it means is that the judge before whom the case is tried shall aplly his own ideas of justice of the case regardless of what the established rules of equity may be. I do not so construe it, but the mere fact that some able members of the bar have suggested that construction is to my mind an indication that it is not sufficiently clear to be in the constitution.

I suppose it is an effort to prevent the deterioration in equity which has happened in these other states. If that is its purpose I submit that it will not be accomplished because the administration of equity is bound to deteriorate unless it is administered by men who have been adequately trained in equity and a man cannot be adequately trained in the practice and principles of equity if he devotes a large part of his time to the trial of criminal cases or the trying of civil cases, jury cases.

Now as I say some part of the benefit of the court of equity could be maintained if the judges were to be assigned permanently to the equity section, and yet if you're going to do that, why not retain what we have which is a better system?

I have a memorandum which I will not attempt to cover, which I have filed with the committee.

There is one other thing I shall mention. Under the provisions of the proposed constitution a radical change has been made as to the jurisdiction of the courts. That is the jurisdiction now exercised by the Supreme Court. It is well established that certain courts have exclusive jurisdiction as to certain matters. For instance, prerogative writs may only be issued from the Supreme Court. Injunctions may only be issued from the Court of Chancery. I can find nothing in these provisions which confers exclusive original jurisdiction upon this proposed Superior Court. I find in the constitution a provision that the legislature may create inferior courts and give to those inferior courts a part of the jurisdiction of the Superior Court.

Does that mean that any part of the jurisdiction of the Superior Court may be conferred upon an inferior court? It may. If it does, then a legislatively created court might issue injunctions to enforce specific performance; certiorari is the language, a justice of the Superior Court may issue a certiorari but the language of another provision is any part of the jurisdiction of the Superior Court may be granted to a legislatively created inferior court.

Now there is one other thing I want to mention, when a prerogative writ is returnable before a single justice as is provided a single justice might grant an order to show cause for mandamus; he might hear and grant peremptory mandamus and there would be no appeal unless the principle of mandamus is destroyed by this general article.

Furthermore, if the prerogative writ is returnable into the appellate division then there is no appeal as a matter of right from the judgment of the appellate division. It is a policy of this provision, a policy with which I agree, that every litigant must have the right of one appeal, but that policy has not been invoked with respect to

prerogative rights: as to that very important branch of jurisdiction involving important questions of law and important questions of fact. If the writ is returnable into the appellate division there is no appeal as a matter of right unless a constitutional question is involved or unless the appellate division has a dissenting opinion, which I understand now is to be changed to a dissenting vote.

Just one other matter and I am through. I agree with all Mr. McCarter has said with regard to the issue of good behavior being prosecuted and tried by the Senate. There is only one suggestion I wish to make with respect to that. Mr. McCarter suggested that the issue of good behavior, that the charge should be made on that issue by the Assembly and should be tried by the Senate. That would involve a majority vote of the Senate. My suggestion is that the issue of good behavior should be presented by impeachment and tried as any other impeachment. I can think of no reason why a judge should be subject to removal without as great safeguards as are thrown around any other civilian, and the mere fact that he may be subject to removal or the issue of good behavior which may not involve what is now an impeachable offense, but it is even more important for his protection that the safeguards which are thrown around the ordinary impeachment and the trial impeachment should be preserved.

I have submitted a memorandum which covers many of the points I have not mentioned here.

Thank you.

CHAIRMAN EASTWOOD: May I inquire whether the specific changes you have suggested are included in your memorandum?

MR. STRYKER: Textual changes have not been, and if I may explain -

CHAIRMAN EASTWOOD: We will be very glad to have you do that. We are not requiring it but we should be glad to have it.

MR. STRYKER: The reason why I haven't included them is this. It seems to me it is a very dangerous practice to have half a dozen or a dozen people suggest texts for a constitution. I have seen that happen sometimes with an act of legislation. An act may be prepared, then someone presents an amendment to get him what he wants; someone else presents an amendment entirely inconsistent with what he wanted and when you get through with the amendments you have a hodge-podge and nobody can tell what it means. I think it is much better, if I may suggest the principles and if the committee wishes to follow those principles to have one draftsman make the draft. Although I am frank to say if the committee wishes me to prepare any of these things I will be happy to do it.

CHAIRMAN EASTWOOD: It must be made as a voluntary action on your part, -

MR. STRYKER: Well -

CHAIRMAN EASTWOOD: (continued) - because we wouldn't want to suggest the thought that whatever you may ask for you are going to get, as you have indicated everybody that asks for something is going to get it.

MR. STRYKER: I didn't mean to suggest that; but my notion is it is very easy to present something and say, "Here, put this in the constitution." Now unless that is adopted you haven't helped the committee a bit. And it is very hazardous to adopt it because there may be other amendments made or other things in the constitution which wouldn't agree with that at all.

CHAIRMAN EASTWOOD: Thank you.

Mr. Stryker, will you submit to a question by Senator Hand?

MR. STRYKER: I will be glad to.

BY MR. HAND: Mr. Stryker, you gave a very fine presentation of the Court of Chancery and said among other things, as I recall, that equity judges should be trained in equitable jurisdiction. I presume this training would be by first training in law school, then by wide equity practice in Chancery Court. What have you to say as to the Vice-Chancellors who have been law judges, prosecutors, circuit court judges and then are suddenly appointed to the equity side?

MR. STRYKER: I am very glad you asked that question for I think I omitted what is perhaps the most important experience in the development of equity judges, and that is the trial of equity cases. I have seen that happen; I have seen a Vice-Chancellor go on the bench without very much qualification as a Vice Chancellor; I have seen them devote their lives to the administration of equity and I have seen them develop into splendid Vice Chancellors.

My point is this, whether a man is well trained in equity or whether his training in equity is poor, if he is diligent and faithful and intelligent, if he devotes his whole time to equity he will develop into a good equity judge. If the same man tries criminal cases one morning, jury cases another morning, he isn't able to devote his time to equity and the chances are he will not develop into a good judge of any kind.

Thank you.

MR. MILTON T. LASHER: Mr. Stryker -

CHAIRMAN EASTWOOD: Assemblyman Lasher.

MR. LASHER: As I understand your position you are primarily concerned with the preservation of an equity jurisdiction as distinguished from the Court of Chancery itself in this state, and following that, if that is so, is it not true that a large part of our equity jurisprudence has been established by the Court of Errors and Appeals, few members of which have ever specialized in equity?

MR. STRYKER: I think that is true to a limited extent, Mr. Lasher, but I think the situation in New York well illustrates what I mean. New York has an outstanding Court of Appeals but their trial courts are far from outstanding.

Now it is of great importance to have had original trial court experience and the principles which apply to the trial. He must act alone; sometimes with competent assistance from counsel, sometimes without it but he decides his case alone. Now when a case goes to the Court of Errors and Appeals all the members of that court consider it in conference and the duties which they perform are quite different. I think there is no better illustration of what I have in mind than the situation in New York, -

MR. LASHER: Thank you.

MR. STRYKER: (continued) -- where they have an outstanding Court of Errors and Appeals and a very inefficient court of trial and equity.

(The following suggestions for modification were submitted)

"ARTICLE V.
Section 1.

"Paragraph 1 vests the judicial power in a Supreme Court, a Superior Court and in inferior courts of original limited jurisdiction. The second sentence of this paragraph provides that such inferior courts "may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution as may be provided by law." I am by no means clear as to the meaning of this sentence, and my difficulties are not solved by reference to the dictionary definitions of the word "integrate." These definitions are: "to form into one whole; to make entire; to complete; to round out; to perfect" or: "to unite (parts or elements) so as to form a whole, also, to unite (a part or element) with something else, especially something more inclusive." Would it not be possible to more clearly state just what is intended by this language?

"Under this section the Court of Chancery would be abolished and its jurisdiction conferred upon the Superior Court. This would be a very radical change in our judicial system. I respectfully submit that such a change should not be made unless it is clear that the administration of justice will be improved thereby. Such consideration as I have been able to give this matter, based on more than forty years' experience at the New Jersey Bar, convinced me that the administration of justice will not be improved but will be impaired if this change is made. I know that many other members of the New Jersey Bar share this view.

"In December, 1942, Hon. William D. Lippincott, of Camden, N. J., former judge of the Court of Common Pleas of Burlington County, communicated with each member of the State Bar Association, asking them to state whether they were opposed to the abolition of the Court of Chancery as a separate court or whether, on the other hand, they were in favor of the proposal of the Commission on Revision of the New Jersey Constitution which proposal, so far as the abolition of the Court of Chancery is concerned, was not materially different from the present draft of the proposed Constitution.

"He sent out 1,713 requests and received 765 replies of which 492 expressed opposition to the elimination of the Court of Chancery as a separate court and only 273 favored the proposed judiciary amendment so far as the Court of Chancery is concerned. I am annexing hereto a copy of a tabulation prepared by Judge Lippincott, showing the questions upon which the opinions were expressed and the result by counties.

"It is my understanding that the advocates of this proposed change attempt to support it on three grounds:

"1. That sometimes it is difficult to determine whether an action should be brought in a Court of Law or a Court of Equity.

"2. That occasionally a defendant in an action at law has a defense thereto not cognizable at law and under our system he is obliged to assert that defense by Bill in Equity.

"3. That New Jersey and Delaware are now the only states in the United States which have separate Courts of Equity.

"I shall briefly consider these grounds:

"1. Under the existing law, suits mistakenly brought at law or in equity may be transferred to the appropriate court. Such cases are relatively so few in number as to afford no substantial ground for the abolition of the Court of Chancery.

"2. The cases in which it is necessary to go into the Court of Chancery to assert an equitable defense to an action at law are also relatively few. I think that every practicing lawyer, when he reviews his experience at the Bar, will readily concede that the cases of this character in which he has been engaged as counsel have been quite rare. I recall only one which I have had in my practice. If this matter is of sufficient importance to demand a constitutional remedy, it could readily be provided without abolishing the Court of Chancery by simply authorizing Courts of Law to entertain equitable defenses to actions pending therein.

"3. The reason which perhaps impresses the layman most strongly is that no other state in the United States except Delaware and New Jersey has a Court of Chancery. To my mind this is no adequate reason for a change unless it appears that the abolition of a separate court of Equity in those States which previously had such a court has improved the administration of justice in such states, or unless it appears that because of their so-called modern system the administration of justice is better in those states than in New Jersey under our present system. While I have had no opportunity to make a comprehensive study of the administration of equity throughout the United States, I have frequently had

occasion to read reports of equity cases in other jurisdictions, and particularly in some of the jurisdictions which follow the New York system. I believe that there is no sound basis for the view that the abolition of the Court of Chancery in any jurisdiction has improved the administration of equity in such jurisdiction. I am also convinced that the decisions of our Court of Chancery show a sounder understanding of equitable principles and a better application of those principles in the decision of cases than is shown in many other states having the so-called more modern system.

"The better administration of equity in this State is, in my judgment, due to the fact that our equity judges devote their lives to the study and administration of equity jurisprudence. Unlike the judges of many other states they are not required to divide their attention between equity and civil and criminal law. Our Court of Chancery has been recognized throughout the country as a court in which the great principles of equity are understood and intelligently applied. We have had many great Chancellors and Vice-Chancellors of outstanding ability whose decisions have been landmarks of equity jurisprudence, not only in this State, but throughout the country.

"If the proposed change is made we at least run the risk of sacrificing this advantage, for I find nothing in the present draft of the Constitution which gives any assurance that any judges of the proposed Superior Court will devote their lives to equity jurisprudence to the exclusion of other branches of judicial work.

"I think it is also true that the law judges who exercise original jurisdiction will do better work if their work is confined to law as distinguished from equity. I am not suggesting the changes in the text of the proposed Constitution which would be necessary if the Court of Chancery is to be retained. The drafting of such changes would, however, involve little difficulty.

"I am in doubt as to the meaning of Paragraph 2. I have discussed it with many other lawyers and have found no one who is at all certain as to its meaning or application.

"1. Does it mean merely that an equitable defense to action at law which is cognizable in the Court of Chancery may now be entertained by the law section? If so, the first part of such paragraph would seem to be unnecessary because of the provisions that every controversy may be fully determined by the justice hearing it.

"2. May this provision be construed to mean that defenses which are now recognized as good defenses to an action in Chancery -- e.g. unclean hands or laches (as distinguished from the Statute of Limitations) -- shall be constituted as defenses to an action at law? If so, this would be a radical change in remedial law and one of very doubtful utility.

"3. May this sentence possibly mean, as has been suggested by some members of the Bar, that under this provision the opinion ofthe justice hearing the cause as to what is fair or just in the particular case, although such opinion is not based on any established principle of law or equity, shall prevail regardless of the rules of law which would otherwise be applicable? I do not so construe this paragraph,

but the fact that others have done so suggests the hazard. This provision, if so construed, would make the decision of every cause depend upon the sense of justice of the judge hearing it, rather than upon established principles. Trial judges would be uncertain as to whether their sense of justice would coincide with that of the Appellate Courts and lawyers and litigants alike could form no reliable opinion as to their rights under any given circumstances. I suggest that this provision be eliminated or clarified.

"I have one other suggestion with regard to this paragraph. The last sentence provides that every controversy shall be fully determined by the justice hearing it. Under our system, questions offact arising in actions at law are determined not by the justice but by the jury. Questions of fact arising in equitable actions are determined by the Court. I assume that it is not the intention to in any way substitute the decision of the Court for the decision of the jury on questions of fact in actions at law. If, however, an equitable defense is interposed to an action at law, does the Court or the jury determine controversial questions of fact upm which such defense is based?

"Section I. Paragraph 3.

"I suggest that both the Supreme Court and the Appellate Divisions of the Superior Court should have the power to sit elsewhere than at the seat of the Government. Emergencies may arise which will make it advisable for these courts to sit elsewhere. A provision in the Constitution requiring them to sit at Trenton is unnecessary and may prove to be harmful.

"Section II. Paragraphs 1 and 2.

"I believe that Sections 1 and 11, creating a Supreme Court as the Court of last resort will be an improvement in our judicial system. For many years I have believed that the judges of our highest court have too many duties to perform in addition to their appellate work. I can see no occasion, however, to authorize the direct review of an indictment by the Supreme Court before trial. It would seem to me that the Appellate Division of the Superior Court might well exercise this jurisdiction with a discretionary right of appeal to the Supreme Court.

"Section II. Paragraph 3.

"I think it is inadvisable to give the Supreme Court power to make rules as to evidence. This, in my judgment, is a very close approach to legislation by the Supreme Court instead of the exercise of judicial power.

"Section III. Paragraph 1.

"Under this paragraph any judge of the Superior Court may exercise all of the original jurisdiction of the Superior Court, subject to rules of the Supreme Court. Under paragraph 3, however, of the same section, either the law or equity section is required to exercise the jurisdiction of the other section when the ends of justice so require. This latter provision is mandatory. I assume that the trial judge of the section must determine when the question arises in any given case whether the ends of justice require the exercise of the jurisdiction of the other section. Does this mean that a judge of the law section may issue an injunction or decree specific performance or grant any other remedy which, under our present system, only the Court of Chancery can grant?

"With further reference to paragraph 3 of Section III, it would seem to me that if the Court of Chancery is to be abolished, matrimonial jurisdiction and jurisdiction in cases involving the allowance of alimony and maintenance and the custody of children should be allotted to the equity and probate section. The law judges have had no contact with these questions, while our present equity judges are familiar with the practice and the principles involved.

"Section III. Paragraph 4.

"This paragraph provides that any justice of the Superior Court or an Appellate Division thereof may grant prerogative writs. This clearly permits the granting of prerogative writs by a justice assigned to any section of the Superior Court or to any Appellate Division. Inasmuch as the legislature under Paragraph 1 of Section 1 has the power to establish inferior courts of original limited jurisdiction which, to the extent of the jurisdiction conferred upon such courts, will have concurrent jurisdiction with the Superior Court, may the legislature authorize judges of such inferior courts to grant prerogative writs? This question is prompted by the radical change which the proposed Constitution would make in our judicial system. Under the present system only the Supreme Court may grant prerogative writs. Since, under the proposed Constitution, no exclusive original jurisdiction is conferred upon the Superior Court may it not be forcefully argued that any part, although not all, of the original jurisdiction of the Superior Court may be granted by the legislature to an inferior court created by it?

"The granting of prerogative writs should involve not only a knowledge of the law but sound judicial discretion. The power to grant such writs should, in my opinion, not be so widely distributed. The improper granting of a writ may do great harm although it may subsequently be dismissed.

"The hearing on any prerogative writ may, under the proposed Constitution, occur before a single justice. This gives a single justice of the Superior Court the power to grant a peremptory mandamus, a power which is not now exercised by a single justice of our Supreme Court.

"The policy of the proposed Constitution is to give every litigant one appeal, as a matter of right. With this policy I am in accord. It seems, however, not to have been extended to the very important field of the prerogative writs because, if they are returnable before the Appellate Division, no appeal as a matter of right exists except in the cases enumerated in Paragraphs 3 of Section IV.

"SECTION IV.

"Paragraph 1 of Section IV does not require, although it permits the establishment of, an Appellate Division solely for equity appeals or equity and probate appeals. If we are no longer to have original equity jurisdiction confined to judges who are specialists in that field, the tribunal which hears equity appeals will be a very important tribunal. Its work should be confined to equity and probate appeals.

SECTION IV. Paragraph 2.

"I think it is inadvisable to give an appeal as a matter of right from every order, judgment or decree of the Superior Court. Certainly there should be a right of appeal from any final order, judgment or decree. Appeals from interlocutory orders or decrees in equity cases should also exist as a matter of right. The Supreme Court or the Legislature, in my opinion, should have the power to regulate by rule appeals from interlocutory orders in law actions.

"Paragraph 2.

"In my opinion the second sentence should be eliminated from Paragraph 2. While this sentence expresses a practice which should be followed in most cases it may prove to be a harmful provision if inserted as a mandatory requirement which cannot be modified by rule of court or by the legislature.

"Paragraph 3. Sub-division 2.

"I would suggest that this sub-division be modified to read "in the event of a dissenting vote in an Appellate Division."

"SECTION V.

"Paragraph 2.

"I would suggest that as to all appointments except those made pursuant to the schedule, the appointee be required to be a counsellor-at-law in good standing for at least ten years.

"Paragraph 4.

"The provisions of Paragraph 4 seem to me to be unwise. The Senate should not be authorized to prefer charges against judges, prosecute such charges and determine the guilt or innocence of the accused. Judges should be subject to impeachment in the same manner as other civil officers, in which event the Senate will perform only judicial functions when charges are made against a judge. Since many judges under the proposed Constitution will hold office during good behavior rather than for a definite term, it is possible that cause for removal of a judge will exist, which under ordinary circumstances might not be regarded as a ground for impeachment, in the case of an official appointed for a definite term. If, however, this is the case, it becomes even more important to safeguard the rights of the judge by having his case heard before a Tribunal which does not act in the multiple capacity of preferring, prosecuting and determining the truth and sufficiency of the charge and fixing the penalty. There is no merit in providing for appointment of judges for life unless faithful and competent judges are assured of continuance in office during good behavior. The tenure of no judge should be subject to the will of eleven senators.

"Paragraph 5.

"I question the wisdom of a Constitutional provision requiring retirement at the age of 70. Paragraph 1 of Section IV of Article XI permits a judge of the Superior Court to be reappointed under certain circumstances if he is under the age of 75 years; but I find no provision in the proposed Constitution which, under any circumstances, permits a judge of the Supreme Court to hold office after he becomes 70 years of age. We have had in this State and throughout this country judges of outstanding ability who have rendered distinguished service of great value after the age of 70. I would suggest that the Legislature be authorized to provide for voluntary retirement at an age to be fixed by it -- and for mandatory retirement at an age to be fixed by it: not less, however, than 75 years.

"SECTION VI.

"Paragraph 6.

"This provision provides that the Chief Justice shall annually assign the justices of the Superior Court to the counties and to the sections. This provision for annual assignment lends emphasis to the statement made in the earlier part of this memorandum that we have no assurance that under the proposed Constitution equity jurisprudence will be administrated by specialists in that field. If the Court of Chancery is to be abolished, some, but by no means all, advantages of our present system could to some extent be preserved by assigning judges to the equity and probate section either permanently or for a long period of years.

"ARTICLE XI.

Section 3.

"Under the proposed schedule the adoption of the new constitution would not terminate the period of service of any judicial officer except of such members of the present Court of Errors and Appeals who are not attorneys-at-law of ten years' standing. These judges, however, have had experience in the Court of Pardons.

"Paragraph 3, Section 3 of Article XI provides for a commission on parole. Would it not be in accordance with the spirit of this schedule to have the judges of the Court of Errors and Appeals who are not eligible for judicial appointment serve on the parole commission during the period for which they were appointed as judges of the Court of Errors and Appeals?

"The above suggestions are submitted in the hope that they will be helpful to the Committee which is charged with work of tremendous importance and great difficulty.

Respectfully submitted,

(Signed) Joseph Stryker

"Result to December 28th, 1942 of poll taken by William D. Lippincott on proposal of Commission on Revised Constitution of the State of New Jersey, to eliminate the Court of Chancery as a separate and distinct court.

- - - -

	Opposed to Proposal	In Favor of Proposal	Total Number of Votes Cast	Total Membership in County
Atlantic	20	9	29	61
Bergen	33	18	51	104
Burlington	17	2	19	28
Camden	61	12	73	144
Cape May	9	1	10	13
Cumberland	8	1	9	22
Essex	94	102	196	452
Gloucester	6	2	8	13
Hudson	101	36	137	338
Hunterdon	4	4	8	15
Mercer	22	12	34	96
Monmouth	11	6	17	26
Middlesex	22	9	31	75
Morris	8	6	14	30
Ocean	6	1	7	11
Passaic	25	27	52	118
Salem	5	1	6	11
Somerset	6	8	14	29
Sussex	4	0	4	14
Union	19	13	32	79
Warren	11	3	14	34
TOTALS	492	273	765	1,713 - 110*
				1,603

* Deceased or resigned: 28
In Service : 82"

CHAIRMAN EASTWOOD: In view of the proximity to the adjourment hour for lunch it seems futile to call on someone else at this moment, so we will adjourn until two o'clock.

(Noon recess taken at 12:52 P.M., EWT)

(GEORGE GILDEA, ESQUIRE, appearing on behalf of The Mercer County Bar Association presented memorandum to the stenographer because he was unable to appear at the afternoon session and make the personal presentation)

"Trenton, N.J.February 9, 1944.

"TO THE LEGISLATIVE COMMITTEE HOLDING PUBLIC HEARINGS UPON
ARTICLE V OF THE PROPOSED REVISED CONSTITUTION OF
NEW JERSEY:

"Gentlemen:

"At a meeting of the Mercer County Bar Association held on January 31, 1944, a motion was adopted disapproving Article V of the proposed revised constitution. A further motion was adopted recommending that there be substituted for Article V the plan of Court reorganization prepared by a committee of the State Bar Association and presented at one of the regular meetings of the Association, a copy of which plan is hereto attached.

"With reference to the qualification of judges of State wide courts, our County Bar Association adopted a motion suggesting that the revised constitution provide that such judges must be counsellors at law of at least ten years' standing.

"The undersigned were appointed a committee to present the views of the Mercer County Bar Association to your Committee.

"There seems to be almost universal approval by the members of the Bar of the establishment of a separate court of appeals consisting of seven members. We think most lawyers would prefer to have it called the "Court of Appeals of New Jersey".

"If the Court of Chancery is not to be continued, then we believe that there should be a Supreme Court of State wide original jurisdiction, containing a Chancery Division presided over by a Chancellor. It is our belief that if a Chief Justice of the Supreme Court is to be charged with supervising the administration of both the Law and Chancery divisions of the Supreme Court, his time will be so consumed by his administrative duties that his usefulness as a judge will be seriously impaired. A Chancellor to head the Chancery Division, charged with the duty of administering that division, would relieve the Chief Justice of this part of the administrative work.

"It is also our belief that the great majority, if not all, the lawyers of the State do not favor the abolition of the county courts. It is agreed that we have too many county criminal courts and that only one such court is needed in each county. So long as the State is divided into counties, the county is the logical unit for the administration of criminal, probate and certain civil jurisdiction. Certainly it cannot be the intention to hear these matters at any place except the county seat, nor to have the records kept at any other place. Giving this jurisdiction to a State wide court seems to us to be streamlining simply for streamlining's sake, and that no useful purpose will be served, but that on the contrary great confusion will be caused. Certainly no improvement can be perceived in this particular.

"We also believe that the great majority of the lawyers do not believe it advisable to transfer jurisdiction in matrimonial cases to a law division of any court. The principles applied in these cases are more analagous to principles of equity than the rules of law, and the body of the law on this subject

in New Jersey has been developed by equity judges. A few years ago it was found that because the number of matrimonial cases had so greatly increased the Vice Chancellors could no longer hear them. It became necessary to set up what was virtually a separate division in the Court of Chancery for the handling of matrimonial cases. These cases dealing with the domestic relations of wives, husbands and children, are of such importance that they require the careful treatment and consideration which can be given only by judges specializing in them and not encumbered by other judicial labors. Prompt hearing and decision is of the utmost importance, especially in maintenance and custody cases. Whatever State wide court has general original jurisdiction after the constitution is revised, matrimonial cases should be heard, we believe, by a special section of the Chancery or Equity division."

Respectfully submitted,

S/ Frank J. Backes
S/ William Abbotts
S/ William A. Moore
S/ Louis B. Levine
S/ Kenneth H. Lanning
S/ George Gildea (Chairman)

"SECTION I.

General

"1. The judicial power shall be vested in a Court of Appeals, a Supreme Court, and such inferior courts as now exist and as may be hereafter ordained and established by law; which inferior courts the Legislature may alter or abolish, as the public shall require.

"SECTION II.

The Court of Appeals.

"1. The Court of Appeals shall consist of the Chancellor, the Chief Justice of the Supreme Court and five Justices of Appeal, or a major part of them.

"2. The Court of Appeals shall be vested with all jurisdiction and power heretofore vested in the Court of Errors and Appeals, and such additional appellate jurisdiction as the Legislature may by general prospective act provide. The Legislature may by general prospective act empower the Court of Appeals to provide by rule that appeals be taken only by its leave. The Court of Appeals may by rule designate one or more of its members to pass on applications for leave to appeal, applications to continue or dissolve restraints, or other interlocutory matters.

"3. The Secretary of State shall be clerk of this court.

"4. No member of the Court of Appeals who has given a judicial opinion in the cause in favor of or against any matter complained of shall sit as a member or have a voice on the hearing or for its affirmance or reversal, but the reasons for such opinion shall be assigned to the court in writing.

"5. Whenever by reason of disability, disqualification or absence a majority of the Court of Appeals shall not be available, the Court of Appeals may temporarily assign one or more Justices of the Supreme Court to the Court of Appeals.

"SECTION III.

"(as now)"

"SECTION IV.

The Supreme Court

"1. The Supreme Court shall consist of the Chancellor, the Chief Justice of the Supreme Court and thirty Associate Justices. The number of Associate Justices may be increased or decreased by law but shall never be less than twenty.

"2. The Supreme Court shall be vested with all the jurisdiction and power heretofore vested in the Court of Chancery, the Chancellor, the Prerogative Court, the Ordinary or Surrogate General, the Supreme Court, and the Justices thereof.

"3. For the more convenient dispatch of business the Supreme Court shall be organized in two divisions, the Chancery Division and the Law Division.

"4. The Chancery Division shall, subject to the provisions hereof, exercise the jurisdiction heretofore vested in or capable of being exercised by the Court of Chancery, the Chancellor, the Prerogative Court and the Ordinary or Surrogate General. The Law Division shall exercise all the remaining jurisdiction of the Supreme Court as herein constituted.

"5. The Chancery Division shall consist of the Chancellor and such number of Associate Justices as shall be assigned thereto. The Law Division shall consist of the Chief Justice and such Associate Justices as shall not be assigned to the Chancery Division.

"6. In both the Chancery and Law Divisions all appeals from inferior tribunals and such other matters as, subject to law, the rules of the Supreme Court may provide, shall be heard before three Justices sitting together, which bench of three Justices shall be called an Appellate Court. Subject to law, rules of the Supreme Court may provide that any judgment, decree or order of a single Justice may be reviewed by an Appellate Court.

"7. Without prejudice to the provisions of this Constitution relating to the distribution of business in the Supreme Court, all jurisdiction vested in the Supreme Court shall belong to each division alike, and subject to the provisions hereof relative to Appellate Courts, may be exercised by a single justice.

"8. Subject to rules of the Supreme Court every controversy shall be fully determined by the Justice hearing it.

"9. The Chancellor, the Chief Justice, and the Senior Justice of Appeal, or a majority of them, shall assign Justices to the Chancery or Law Division, and from time to time reassign them as the business of the Court may require.

"10. There shall be a Rules Commission, consisting of the Chancellor, the Chief Justice, the Senior Justice of Appeal, four Justices of the Supreme Court, two appointed by the Chancellor and two by the Chief Justice, two Counsellors at Law and two laymen, all appointed by the Governor. All appointments shall be at the pleasure of the appointing power. The Rules Commission shall be convened and presided over by the Chancellor, or, in his absence or failure for any reason to act, by the Chief Justice. The Rules Commission shall make rules for the transfer of any cause or issue from the Law Division to the Chancery Division, from the Chancery Division to the

Law Division, and from an inferior Court to the Supreme Court and the Appropriate Division thereof; rules as to the Administration of all the Courts, and, subject to law, as to pleading, practice and evidence in all causes, and rules as to all matters as to which by this Constitution rules of the Supreme Court may be made.

"11. The Supreme Court shall appoint and remove the Clerk of the Supreme Court who shall hold office during its pleasure. Such Clerk shall succeed to the duties heretofore performed by the Clerk of the Supreme Court, Clerk in Chancery and Register of the Prerogative Court.

"12. The Chancellor shall be administrative head of the Chancery Division, and the Chief Justice of the Law Division. As such they shall have power to assign the Justices of their respective divisions to specific duties and causes, and to prescribe records and reports from them and from inferior Courts and Judicial officers.

"SECTION V.

"Appointment, Tenure and Removal.

"1. The Chancellor, the Chief Justice, Justices of Appeal, and Justices of the Supreme Court shall be counsellors at law of ten years standing. They shall be appointed by the Govenor by and with the advice and consent of the Senate. The Justices of Appeal shall be chosen from the Justices of the Supreme Court who have been such for at least a year, and when so chosen shall, except as to those first to be appointed, create a vacancy in the Supreme Court.

"2. The Chancellor, the Chief Justice and the Justices of the Supreme Court shall, when first appointed, hold office for seven years, and if reappointed shall thereafter hold office during good behavior. The Justices of Appeal shall hold office during good behavior.

"3. All judicial officers shall be subject to impeachment. All judicial officers except the Chancellor, the Chief Justice, and the Justices of Appeal may be removed from office by the Court of Appeals after notice and hearing upon the issue of good behavior.

"4. Anything herein contained to the contrary notwithstanding, the term of office of any judge shall end on the first day of January next after he shall have attained the age of seventy-five years.

"5. Justices and judges of every court shall, at stated times, receive for their services such salary as may be provided by law, which shall not be diminished during their term of appointment. They shall hold no other office or position of profit in the government of this State, or of the United States, or of any instrumentality or political subdivision of either of them. No member of the Court of Appeals, of the Supreme Court, nor such other judicial office as may be provided by law, shall during his continuance in office engage in the practice of law or other gainful occupation.

"6. Judges of inferior courts, other than Justices of Peace, Police Judges, Recorders, Magistrates, and the like shall be appointed by the Governor by and with the advice and consent of the Senate. They shall hold their offices for such

terms as may be fixed by law. The Legislature shall provide by general law for the appointment of all other judges.

"SECTION VI.

"1. The Chancellor and Chief Justice now in office shall continue in office for the term for which they were appointed. If re-appointed they shall hold office during good behavior. The Justices of Appeal first to be appointed shall be selected by the Governor, by and with the advice and consent of the Senate, from among the Justices of the Supreme Court, Vice Chancellors and Circuit Court Judges now in office, and shall be so selected that no more than four members of the Court of Appeals as originally constituted shall be members of one political party. The Justices of the Supreme Court, Vice Chancellors and Circuit Court Judges, and such of the Judges of the Court of Errors and Appeals as are counsellors at law of ten years' standing, shall become Justices of the Supreme Court as newly constituted and shall continue in office for the terms for which they severally were appointed. If re-appointed they shall hold office during good behavior.

"2. This amendment to the Constitution shall not cause the abatement of any suit or proceeding pending when it takes effect. All causes then pending in the Court of Errors and Appeals shall be transferred to the Court of Appeals. All causes then pending in the Court of Chancery and the Prerogative Court shall be transferred to the Chancery Division of the Supreme Court; all causes then pending in the Supreme Court as heretofore constituted shall be transferred to the Law Division of the Supreme Court. Matters argued or submitted but undecided when this amendment takes effect shall be decided by the judge or judges to whom they were submitted, and the appropriate order, judgment or decree shall be entered as that of the division or court to whom the cause shall have been transferred.

"3. The various inferior courts now in existence shall continue in existence with their jurisdiction unimpaired until the Legislature shall otherwise provide."

J

REGISTERED SPEAKERS - AFTERNOON SESSION

Wednesday, February 9, 1944

Mr. Sol Kantor	Speaking individually (Modification)
Mrs. Herbert Dobbs, Upper Montclair	American Association of Social Welfare Workers, New Jersey Chapter (Modification)
Mr. Charles L. Chute, Mountain Lakes, N.J.	Executive Director, National Probation Association (Modification)
Mr. Joseph D. Ward (wishes to speak after John Bill and associates)	Department Commander, Catholic War Veterans (Modification)
Mr. William R. Jackson, Newark	Citizens Committee for Inter-racial Unity (Modification)
Mrs. Myra Blakesley, Newark	Citizens Committee for Inter-racial Unity (Modification)
Mrs. William Milwitsky, Newark	Citizens Committee for Inter-racial Unity (Modification)
Mr. Harold Letts, Newark	Citizens Committee for Inter-racial Unity (Modification)
Rev. Gerald R. Minchin	Citizens Committee for Inter-racial Unity (Modification)

(Do not wish to speak, but wished to register)

Mr. W. G. Brandley, Caldwell	(Modification)
Mr. John A. Booth, Montclair	(Modification)

SENATOR PYNE: Ladies and Gentlemen: In the absence of the chairman - I don't know when the other members of the committee will be here - I don't see any reason for holding up matters. It is my intention to proceed, at least for the time being, until the chairman comes back. The first name on the list is Miss Jean M. Lucas, Secretary of the Family and Children's Society, Board of New Jersey Welfare Council. Is Miss Lucas in the room?

MISS LUCAS: I am here.

SENATOR PYNE: Will you proceed, Miss Lucas.

MISS LUCAS: I would like to speak as an individual, not a lawyer, but as one who has come in contact over a long period of time with matters of a matrimonial nature and the custody of children. I have seen these matters proceed through the Common Pleas Court and attempt to find settlement in the Juvenile and Domestic Relations Court, and have had hearings before Chancery and before the Supreme Court. I would like to stress what has been said here before about the importance of matters of equity being considered by persons who have had long experience in dealing with matters of equity. I think, since I am not a member of the legal profession, I may dare say that, in making matters clear to persons who are accustomed to criminal proceedings and to legal proceeding with a jury, there seems to be a great deal of difficulty in appreciating the very delicate matters of conscience which must rule questions which are involved in the custody of children and matrimonial affairs. Therefore, I would like to urge a modification and reconsideration of matters of equity being placed in the law side of the courts.

One of the members this morning spoke of conditions which will follow immediately after the settlement of the war, or even a truce, and I think as a social worker I am more aware of what these family dislocations are and I feel sure that members of the bar would be staggered by some of the problems of which I have already become aware. Women, for instance, who are collecting allotments from two men

as their husbands; two women, who have no knowledge of each other, each collecting allotments; children who are without a name in the community. These are matters which are going to cause the greatest difficulty, not only in their settlement but in accomplishing any kind of absorption by the community socially. Therefore, it seems to me that any crowding of the law courts with causes with which people are less familiar is going to cause a greater crowding than we have ever seen before.

When I look back to the time of the establishment of the juvenile court, one of the reasons for its establishment was that the Common Pleas Court was so crowded there needed to be some kind of relief for that court. To think that the courts would again take up these matters of equity and law through the same channels, and through an appointment which, at best, could last for a year, I can only look forward to a great state of confusion. In our county, where I am obliged to appear very many times in all the courts, we have had great success and great relief for the children of our county through the consideration which we have had from the Advisory Master, who has taken time from his own time and leisure to consider the best interests of the children as disassociated from property.

All during the morning I have been concerned with one thing, and that is that we are considering the higher courts, to which a very small percentage of our population at any time has access, and I wonder at the consideration of this committee which excludes any consideration of a Juvenile and Domestic Relations Court when the largest proportion of our population must have access to that court. I think it was Mr. Stryker who this morning spoke of the fact that if there is an adequate court at the first level, you have a very much more efficient form of legal procedure. I would like to speak to that point and urge a reconsideration of the alignment of the juvenile court in this whole procedure because the largest number of our citizens touch the lower courts -- the magistrates courts and the juvenile courts. One lawyer said

to me not so long ago, "For twenty-five cents you get twenty-five cents' worth of justice." That seems to me a comment in itself and the fact remains that many citizens receive a very erroneous idea, we hope, of the justice which is possible in this country because of the way our lower courts are set up and because of the confusion which exists as to their relation to the higher courts. Therefore, I urge that there be reconsideration, and the fact that there has been, on many occasions, some question of the constitutionality of the Juvenile and Domestic Relations Court should not pass unnoticed at this time of reorganization.

SENATOR EASTWOOD: May I make an announcement at this time? We had assigned this afternoon starting at 2 o'clock, to representatives of several labor organizations. In view of the fact that there are still several people to be heard here with respect to the Judicial Article, I have arranged with Senator Pascoe, Chairman of the Legislative Committee, to hear the representatives of labor, so that our time, as well as your time, will be conserved. If those who have come here this afternoon in support of the labor interests will go immediately to the Assembly Chamber, the committee over there is now in session and will shortly hear you, so there will be no loss of time on the part of anyone. It will not, in any sense, limit those who are presenting their views to the Judicial Committee this afternoon. There are two sections dealing with labor, one of which is in the article being considered by the Legislative Committee and the other is under Judicial, so it well might be considered by either committee. If those who are interested in the labor organizations will go to the Assembly Chamber immediately, the committee there will hear the representatives very shortly.

I might also announce that an organization communicated with me about giving them a hearing on Article I, the Bill of Rights, and I indicated that we would be meeting this afternoon. Therefore, after we have completed the hearing on the Judicial Article, that group will then be given an opportunity to be heard.

We will hear now from Mr. Walter J. Bilder who is associated with the Committee on Constitutional Revision. I believe he is speaking for himself.

MR. BILDER: Yes, sir.

Mr. Chairman and members of the Committee: I desire respectfully to urge a revision of Paragraph 2 of Article V, Section V of the proposed revised constitution, in particular the language as follows: "The issue of good behavior of a Justice of the Supreme Court or of the Superior Court shall be triable --

ASSEMBLYMAN HAND: You mean Paragraph 4, Section V.

MR. BILDER: This provision empowering the Senate to both prefer and try charges of misbehavior against judges is, in my opinion, wholly bad, because it violates the basic principle of democracy by placing the decision of a vital governmental matter, potentially at least, in the control of the representatives of a minority of the people; that is to say, the determination of whether or not a judge shall continue to hold office is made, by this provision, to depend on the judgement of the majority of a political body, which may in a given case consist of members elected by only one-sixth of the population of the State. Thus, eleven Senators elected in those counties whose aggregate population amounts to less than 700,000, out of the State's total of 4,000,000 people, will, under this provision, be able to question or to refrain from questioning the behavior of a judge of our high courts and to determine such a question if they will to raise it. Nor is the problem posed by this provision altered essentially by the possibility that the majority of the Senate in a particular case may be composed somewhat differently, so that its constituent Senators represent one-fifth or one-fourth or even one-third of the population. The crucial fact remains that a vital governmental decision can be made by the representatives of a minority of the people of the State. This fundamental conflict with the basic principle of

democracy is enough to condemn the provision utterly.

But let us consider how this provision for removing judges from office comports with the provisions whereby these judges are placed in office. These judges are appointed by the Governor, with the advice and consent of the Senate. The Governor is the representative of all the people in the State, elected by them in a state-wide vote. Judges appointed by the Governor may be truly said to be designated by the will of all the people in the State, since all the people in the State place the Governor in the office whose functions included the appointment of judges. But the power to remove a judge from office, although different from the power to place him in office, is certainly the exact equal of it, just as the power to destroy, although different, is exactly equal to the power to create. By giving a majority of the Senate the power to remove judges, the provision under discussion makes it possible for the representative will of a minority of the people to undo the effect of the representative will of a majority of the people. Is it to be supposed for an instant that this is what the majority of the people of New Jersey now desires? Is it to be supposed for an instant that this is what the people of New Jersey can reasonably be expected to approve? Indeed, is it to be supposed for an instant that this is what men eligible for high jduicial office in this State would regard as constituting a tolerable and satisfactory condition on which to take and hold such office? Would such a condition of judicial tenure be conducive to a substantial independence of the judiciary-tenure on condition of being looked upon at least without disfavor by the representatives of a small minority of the people of the State? Nor could any reassurance be derived by judges from a confidence in the sense of their own worthiness or rectitude, for the term "good behavior" is one which is undefined and to a considerable degree relative. It may possess various meanings for various persons under various circumstances. Indeed, its variability is its true value and utility.

From a particular interpretation of a particular majority of the Senate, there could be no appeal. To be sure, the final judgment of such a matter, however, debatable, must in the necessities of government be placed somewhere, but the principles of our form of government commit us to a reliance, not upon the will of a minority, but upon the will of the majority of the people. On the other hand, a judge whose behavior was reasonably suspected of being bad might nevertheless be continued in office at the will of the representatives of a minority of the people. Thus, upon occasion, the behavior of a judge might be thought proper to be called in question by five-sixths of all the people in New Jersey; yet, from such a questioning, the will of the remaining one-sixth of the population, representatively expressed, could grant him sovereign exemption. Is such an untoward possibility to be created now by the ill-advised use of a century-awaited opportunity of the people of this State to frame a sound and sagacious arrangement of their government?

If it be said that the proposed provision simplifies the method of safeguarding against judicial misbehavior by entrusting the public interest in the matter to the care and responsibility of one instead of both branches of the Legislature, the ready answer is invest the single power in that branch which is in plain fact representative of the people democratically; namely, the Assembly. What is there, except the fictitious prestige of historic accident and traditional survival, to give preference to the Senate over the Assembly; or, if we are to follow high example in the matter, why take away from the popular branch of the legislative assembly even that power which our own federal government, no less than England, still preserves in their respective systems, for in the case of the United States judges and English judges, impeachment is by the popular branch of the legislative body.

Again, if we would look to the worthy example of another State, we could scarcely do better than to see what the great State of New York, with 13,000,000 people, has ordained in this

regard. Under its constitution, which has undergone studied surveillance and revision only recently the removal of a high judge necessitates the concurrent action of two-thirds of the members elected to each branch of the Legislature, and in respect to inferior court judges, a recommendation of the Governor is a condition precedent to proceedings looking to the removal of a judge by the State Senate empowered thereupon to act alone in the matter. And by the way, the State Senator in New York is truly representative because New York is divided into senatorial districts and there is a representation comparable with our own assembly representation.

Therefore, I urge a provision that will either retain the arrangement for impeachment as it presently exists under our present constitution, or perhaps it would be well-advised to adopt a suggestion which has been made, I believe by Mr. Stryker, Mr. McCarter, perhaps others, that trial should be by the Supreme Court and impeachment by the Assembly, not by the Senate.

Now I turn to another matter that is related to this subject. Although the proposed constitution makes the tenure of high judges conditional upon "good behavior", it fails to furnish any constitutional agency with the power to ascertain the facts upon which the fulfillment or the breach of that condition may be determined. For while power to investigate the conduct of a judicial officer is explicitly denied to the Governor by the proposed constitution, the power given to the Legislature in that regard is to investigate a judge's "fidelity" and his "performance of his office", but it is obvious that fidelity and performance of office are terms which, separately or together, are far from comprehending all that is denoted by the term "good behavior". And in that regard, I should like to read an excerpt from an article, a very authoritative article, which appeared in the Harvard Law Review some years ago on the subject of impeachment of judges.

> "To determine whether or not an act or a course of conduct is sufficient in law to support an impeachment, resort must be had to the eternal principles of right, applied to public propriety and civic morality. The

> offense must be prejudicial to the public interest and it must flow from a wilful intent or a reckless disregard of duty to justify the invocation of the remedy. It must act directly or by reflected influence react upon the welfare of the State. It may constitute an intentional violation of positive law, or it may be an official dereliction of commission or omission, a serious breach of moral obligation, or other gross impropriety of personal conduct which, in its natural consequences, tends to bring an office into contempt and disrepute.
>
> While the offense must be committed during incumbency in office, it need not necessarily be committed under color of office. An act or a course of misbehavior which renders scandalous the personal life of a public officer shakes the confidence of the people in his administration of the public affairs, and thus impairs his official usefulness, although it may not directly affect his official integrity or otherwise incapacitate him properly to perform his ascribed functions."

Therefore, it is perfectly clear that the power given to the Legislature to investigate fidelity of judges and performance of duty nowhere near embraces the large scope of the term "good behavior", and so I say that points the need for amending the proposed draft appropriately to substitute or add, if you please, to the language "fidelity" and "performance of his office", his "good behavior", because if you are going to give judges life tenure and then go on to say that their lives hang by the thread of good behavior, surely you must give someone the power to ascertain the good behavior. Therefore, that power should be given to the Legislature and, by the same token, the Legislature should be given explicitly in the constitution the power to examine, to subpoena, the explicit power to subpoena, not leave it to be implied, to subpoena not merely public officers and employes, to require them to testify but to subpoena any citizen and to be in a position to enforce the subpoena and compel testimony.

If you could indulge me for an additional --

SENATOR EASTWOOD: How much more time will you take? I think your fifteen minutes are up. There are quite a number of other speakers.

MR. BILDER: Can you allow me two minutes to say something on a subject on which I come unprepared?

SENATOR EASTWOOD: Is it on the Judicial Article?

MR. BILDER: Yes, and in response to a suggestion made by Mr. McCarter.

SENATOR EASTWOOD: All right, we will extend you two minutes.

MR. BILDER: Mr. McCarter's suggestion, and I think he spoke for the State Bar Committee, was that in the phrase "the judicial power shall be vested" shall be introduced the words "as heretofore" after "the judicial power", and I made these notes here. The words "as heretofore" are obviously suggested by Article VI, Section I of the present constitution, where they appear not after the words "judicial power" but after the name of the highest court. There, obviously, they were intended to define the jurisdiction of the highest court and to equate it to the jurisdiction theretofore exercised by the Governor and the legislative council which composed it. Here, however, those words are given a totally new and different connection by being related not to a court but to one of the three main branches of the government. In our political theory as well as in both our present constitution and the proposed constitution, all powers of government are divided into three main categories: executive, legislative, and judicial. A constitution which provides separately for each of these powers must provide for each of them comprehensively and exhaustively and must dispense the totality of judicial power among the courts established by the constitution; otherwise, some judicial power will necessarily be left unprovided for and uninvested in the courts established by the constitution. The addition of the words "as heretofore", suggested by Mr. McCarter, after "judicial power" inevitably will be understood to mean a limitation of the extent of "judicial power" as a category of governmental power, which is intended to be invested in the courts established by this proposed constitution. That is a matter of the greatest moment and may touch the welfare of the people of the State more vitally than any other which can be imagined. Those who urge it ought to be invited and expected to adduce the most weighty and convincing reasons,

including impressive precedents, for inserting these portentous words for introduction into our constitution in the place indicated.

SENATOR EASTWOOD: I might state, for the benefit of those who were not here this morning and who are speaking this afternoon, that one of the rules made by the Committee as a whole for the conduct of these hearings was that each speaker be limited to fifteen minutes. If you represent an organization, in order to give your organization sufficient time for presentation of your views, we suggest you divide the subject matter of your presentation so that there will not be any repetition. That will give you, we think, fuller opportunity to present your views.

At this time, I will call upon L. Stanley Ford, Esquire, of the New Jersey Constitutional Revision Committee.

MR. FORD: Mr. Speaker and Gentlemen of the Committee: I would like to speak briefly to you and I will take much less than fifteen minutes allotted to me. I want to speak generally in support of the Judicial Article as proposed by this committee. The suggestions made by Mr. McCarter this morning were very good. I support them with one exception which I will allude to in a moment. However, it has been brought to my attention that there has been a desire on the part of the committee studying this Judicial Article to carry the theory of the integration of the courts not only from the Supreme Court to the Superior Court, including the county courts, but on down to the smaller courts in the several counties. It has been suggested that this is difficult to do in the constitution. I submit gentlemen it should not be done in detail in a constitution, obviously, but I likewise submit that with the condition which we presently have existing, where there are as many different judicial district courts as there are judges thereof, each with their own local group rules, each with their own procedure, each following their own ideas of practice, We should,if possible, bring these district courts -- these courts into which the common people come every day, these lower courts in which we younger lawyers practice -- into line with the system

of an integrated court generally. I submit that can be done by the change of about three words in this constitution.

I direct your attention to Section I, Paragraph I of the Judicial Article, the last sentence of which presently reads: "Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution, as may be provided by law." I submit, gentlemen, by a change of that first "may" to "shall," and by a slight change in the balance so that it will read, "Such inferior courts shall be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution, as may be provided by law", we would have in the constitution a mandate to the legislature to bring within this unified court system, which you gentlemen have so ably and well worked out, all the smaller and lower courts. I direct your attention to the fact, gentlemen, that you provide later that the Supreme Court shall make rules governing the administration of all the courts, and at another point later on in the article, Section VI, Paragraph 1, etc., you say: "The Chief Justice of the Supreme Court shall be the administrative head of all of the courts in this State ....." Now, gentlemen, if you are to be consistent with your plan of integration, if you say the Supreme Court shall provide the rules and if you say the Chief Justice shall be the administrative head of these courts - and I think these are excellent ideas -- I think then you should go one step further and by law integrate the district courts, and I refer to all the district civil and district criminal courts, into this court plan which has been/worked out. Then we will no longer have what we today, with Judge So-and-so of the District Court setting up his own rules.

We in Bergen County today have five civil district courts and had, until a few nights ago, two criminal district courts. Each of those five district courts has their own local rules, each of them operates under their own general jurisdictional ideas, except, of course for the broad idea that they can't exceed five hundred dollars.

But I point out that as long as we are going to have one system of courts, one system of rules and regulations, one system for the administration of justice, it should not be confined to the higher courts. It should get down to thepoint of the common people. The people who really go into these lower courts are entitled, as the lady pointed out earlier, to more than they are presently getting in this fashion. I think by that simple process you will then direct the Legislature to integrate those courts with the present court plan as set up here. I am not speaking in opposition to the plan which Miss Seufert suggested to you at the last hearing. She has a much more detailed plan detailed plan and it may be better. I submit that if you decide a detailed plan should not be included in the constitution, then the method I have suggested should be adopted. In any event, it should be accomplished by one method or the other.

For a moment I should like to have the temerity to address a few remarks in answer to what Mr. Stryker and Mr. Kremer have said and what I read in the newspapers Mr. Carpenter will say when his turn comes, with respect to the general plan. As I said at the last hearing, Iam just a country lawyer. I come from the wide open spaces where we were able to get along with one system of jurisprudence; where we didn't find it necessary to have a court of law and a court of chancery. True, we were but farmers and true we probably didn't have great weighty matters such as you have here in New Jersey. I refer to the rather backwoods State of Ohio, with its cities of Cleveland, Cincinnati and Dayton, where we copied the system of jurisprudence which is used by the other states in the Union, substantially of one court; that is, with the exception of New Jersey and Delaware- and Mr. Stryker omitted one that we are classed with now,Mississippi. We in New Jersey are classed with Delaware and Mississippi as being the only three states in the Union that presently have a separate Court of Chancery. I don't argue that simply because we are the only three states in the Union using it, it is a bad system, but I submit if the reasonable people of New York, Massachusetts, California,

Illinois, and we farmers from Ohio, could get along with one system of courts and law for so many years, and so well then I think we can do it here in New Jersey. Mr. Stryker and others argue that we are going to abolish the idea of specialization. I say it is utter nonsense and ridiculous. If you read the constitution, you will find there is nothing in this proposal which you gentlemen have submitted, - I need not tell you which makes it mandatory upon the Chief Justice to take a Chancery Judge and make a law judge out of him. I can't imagine that any intelligent Chief Justice of the State will transfer a Chancery Judge to the law side and vice versa, back and forth, every year. I think he should have the power to do it, so we can thereby correct conditions which may exist locally, but I think that the power is rightly vested as you have placed it, and when you talk about not integrating the county court in the system to me it is utter nonsense. Here you gentlemen have provided a system by which we can all know what the rules and regulations are in all the courts and counties of the State. We are admitted to practice law in the State of New Jersey in all the counties. We don't follow the Pennsylvania system in that regard. When it is suggested there is only going to be one Common Pleas Court judge, or one Superior Court Judge assigned to a county, I need not point out to you gentlemen there is nothing whatever in this constitution that says there may not be two, three, four or five, if necessary, resident in and sitting in that county. But to say the county courts should be omitted from the system and left to be little independent kingdoms of their own as they are today, I say is wrong. I say the principle you have established of an integrated court system a system which will abolish the system we brought over on the Mayflower from England and which England herself abolished in 1875, is a sound one and I think you gentlemen are to be congratulated upon the plan you have adopted, and I hope that by no means will you be dissuaded from carrying out that plan and putting into effect a complete unified court system which will be the outstanding model in the country.

SENATOR EASTWOOD: Mr. Ford, will you submit to a question by Speaker Cavicchia?

MR. FORD: I will be very happy to.

ASSEMBLYMAN CAVICCHIA: Mr. Ford, you suggested a substitution of the word "shall" for "may" in the constitutional provision for the integration of the inferior courts, "as shall be provided by law". Do you mean that one act of the Legislature would do that and then the Legislature could not make any changes in the inferior courts?

MR. FORD: No, sir, that is not my thought as to the effect of that word. If the Legislature by the constitution may integrate and may setup, I assume that by that same law they may provide means for changing. The thought I have in mind is we should bring within this system, by law, all of these inferior courts. Obviously, it can't be done in a constitution. I think the Legislature can do it if it is directed to. My objection is to the use of the word "may". I don't think they will get there and do it unless they are made to do it.

ASSEMBLYMAN CAVICCHIA: The result would really not be any different, would it, whether the word "may" or the word "shall" is used? You would have the same result.

MR. FORD: Except that I have reason to believe that a majority of the Senators and Assemblymen and, certainly of you gentlemen, who take your oaths to support the constitution, if the word "shall" is there, you will do it; if the word "may" is there, you will consider it something you may pass on to your successors in office.

ASSEMBLYMAN CAVICCHIA: I see. I misunderstood the point you were making.

MR. FORD: I am sorry. I am glad you asked the question.

SENATOR EASTWOOD: George Gildea, Esquire, who represents the Mercer County Bar Association, was here this morning and couldn't stay. He stated he would submit a written memorandum of his views.

I am going to take the liberty at this time,

if I may, of calling upon Mortimer Eisner, Esquire, who appears individually, because of the urgency of his departure.

MR. EISNER: Mr. Chairman, I have only an authorization from Mr. Ex-Justice Charles Black of the Supreme Court, which he gave me over the telephone last week, and in which he told me that the views he had expressed in a letter transmitted to me at the time of the hearings of the Joint Committee the summer before last represent his mature and deliberate judgement on this subject and that he would like his views, which were incorporated in the minutes of those proceedings, likewise incorporated in the minutes of these proceedings. He suggested I might read that part of the letter which he transmitted to me with a report which covers four or five pages and which I certainly will not trouble you with. I would just like to read this one paragraph as expressing the views of a man who was for many years a Circuit Court Judge, who sat as a Supreme Court Justice, who sat on the Court of Errors and Appeals, and who in 1909, as a member of the New Jersey State Bar Association, helped to provide and draw up, with a committee then appointed, many of the changes which are incorporated in the Judiciary Article which you have here today. Just this part of the letter I would like to read:

> "My dear Mr. Eisner:
>
> I received a copy of the proposed New Jersey Constitution which you kindly sent me, with a request that I send you in writing my views as to Article V, Judicial. I am, with this, sending you a printed statement, a written statement by me in reference to the proposed judicial amendments of 1909. Article V is somewhat more comprehensive and radical than the amendments of 1909, but for the purpose of this discussion they may be considered from the same point of view. My subsequent service in the Circuit Court and as Justice of the Supreme Court and on the Court of Errors and Appeals amply demonstrates to my satisfaction the soundness and desirability of the present proposed judicial amendments, Article V."

The letter continues at length with a number of phases of his own experience, which I won't burden you with, and then in the report is included his statement of the report of the subcommittee of the New Jersey Bar Association on Judiciary Amendment of July, 1909. I should like that made part of the record here.

There are just two more points I would to refer to. First, with respect to Article V, Judicial, Section I, Paragraph 3, there has been some reference by Mr. McCarter - I don't know of anybody else - with respect to hearings of the appellate divisions to be held only in the State Capital. May I presumptiously add a few words to Paragraph 3 as it stands, which I think will cure that situation, so that it would read, "The Supreme Court shall sit at the seat of the State Government and the Superior Court shall sit in each county except the appellate divisions thereof, which shall sit at the seat of the State Government and at such other places as the rules of the court shall provide." In other words, that would save this provision and give the additional flexibility if we needed to have an appellate division sit at various other places in the State of New Jersey.

The only other point I have to make is that I would like to add my observation to what has been said with respect to the impeachment provision; I think that should be changed. I think, as it stands, it is dangerous, and I think the sentiment of a lot of members of the Bar is this should be modeled more after our traditional procedure.

Subject only to that, Mr. Chairman, I should say that, like many other lawyers, I do not share the apprehension of Mr. Stryker or those other people who feel that by passing Article V, our administration of justice will deteriorate in New Jersey. On the contrary, I am hopeful it will be much improved as the years go on.

SENATOR EASTWOOD: Mr. Eisner, may I ask you whether you have given consideration, in connection with your suggestion that the section regarding the trial of judges and the question of good behavior be changed, to the fact that there will be what is practically life tenure for all the judges, and you still advocate the impeachment proceeding through the House of Assembly, which I think experience shows is very difficult to get under any circumstances?

MR. EISNER: I agree with you. There is that conflict; you have to weigh life tenure against impeachment. But I think we have to make a change; I don't think this article, as it stands here, is good. I think it is too dangerous to let stand.

SENATOR EASTWOOD: At this time, I will call upon James T. Carpenter, Esquire, who appears individually, I believe.

MR. CARPENTER: I appear here in the belief that you gentlemen are really seriously concerned, as I am, with having a framework of a system of court set up that will really give us an improvement in the administration of justice in this State. Justice Black referred to, in his letter, the proposed amendments of 1909. As I remember, those admendments provided for no separate Court of Appeals or Supreme Court as you have set it up here, and that, I think, was the reason those amendments were defeated. They provided, as I remember, one court with a law division, another court with an equity division and an appellate division, and it provided in each county a county law court. Had those amendments provided one other thing; that is, the independent appellate court which you call the Supreme Court, they would have been ideal.

My criticism of these proposals comes from thirty-five years of practice in our courts of this State. Ten years ago, or fifteen years ago, I would have advocated combining the Supreme Court or the law courts and the Court of Chancery, but in the last ten years I happen to have had some experience in Chancery, in equity cases, in other courts in other States. I know something about the administration of the equity system in other States, and I will tell you that nobody, I think can

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soundly criticize this statement: the lawyers of New Jersey who practice in the Court of Chancery, who practice equity, and the judges of New Jersey who administer equity, are without peer in this country. What is the reason for it? It is because we have retained a system, from the foundation of this State, of a separate Court of Chancery and separate courts of law, and our lawyers and judges are trained in the administration of equity, which is a very serious and very important branch of the law. Having that framework, why tear it down? I know the criticisms of the court, but aren't they all due to matters of administration? Are you going to improve the system by putting in the hands of a Chief Justice, appointed for life as Chief Justice, full power and authority to administer all these lower courts? Who is the check on him, may I ask, except the power to remove for improper conduct? If you get in this Supreme Court that you set up a Chief Justice who doesn't administer his court carefully and efficiently, the way you want him to and the way I want him to, you have him shifting cases out of one judge's hands and into another's, or a judge from this spot to that spot just for some reason of his own, good or bad, you are going to have an administration of justice under this system you are setting up that is worse than anything we have had heretofore.

Therefore, I suggest this to you: You wouldn't want to tear down the State House, would you, just becauseyou don't like some of the employes here, or the State Prison because it is old and the men running it were appointed by a former Governor? Then why would you tear down this Court of Chancery, which is one of the finest courts in any State system, just because you don't like the administration of it or because you think Vice Chancellors should be appointed by the Governor? Change that; I don't care about that; that is a political question you won't settle anyhow but you are going to perpetuate the administration of equity. You provide that right in this article. And why not, gentlemen? Up to the time of Chancellor Walker taking office, we had in this State

a Court of Chancery that was without peer in the land--Chancellor Pitney, Chancellor Runyon, Chancellors Green, McGill and Magie. Nobody in the world ever criticized that court until the politician, they say, laid his hands on the court. That is going to end from now on, you say, but that, gentlemen, is due, not to the court or the way it is set up, but to the appointment and confirmation of appointees. Having a structure that is fine, why tear that down?

Let us go into the Superior Court a minute, and let me give you some criticism of that. You are going to set up a Superior Court with all the jurisdiction of the Chancellor, with all the jurisdiction of the courts of law and crimes in this State, and the judge in Cape May or the judge in Sussex will be given the full power of the court. He can issue injunctions, he can issue writs of certiorari, mandamus, quo warranto, and try them. Gentlemen, I speak as a lawyer who came from a small county and went to Hudson, where I have been practicing for thirty-five years, and I will tell you that it is a rare man in those smaller counties who is equipped by training and experience to handle those cases of the prerogative writs, injunctions, appointment of receivers, and what-not, because you are going into a speciality line that should only be handled, so far as those powerful writs go, by specialists. I point out one illustration to you: Some years ago, in the Court of Chancery, an experienced Vice-Chancellor appointed ex parte on the application of the lawyer a receiver for the Wilson Packing Company. He undoubtedly thought he was doing the right thing but it was an application that should never have been granted ex parte; it should have been after notice, because the defendant was first entitled to a hearing under the showing of the bill, and that created such furore in this State and throughout the country that our rules regarding the appointment of receivers were changed. If an experienced judge will let down like that, what do you expect of these inexperienced men?

One more thing: Any one of these judges throughout the State, and there will be a multitude of them under this amendment,

will have power to tie up municipal improvements, to compel the payment of money out of public treasuries by writs, and do incalculable harm before the remedy can be applied. I ask you to go slow, go slow. If you want to have an efficient system, take over the jurisdiction that the Chancellor has and either leave it as it is or give it to a Court of Chancery or an equity division in a Superior Court; put the law division where it belongs but don't try to marry brother and sister, because you are bound to have some weakminded decisions.

There is one other thing I want to point out. This provision regarding the Senate initiating and putting a man on trial, trying him, and judging him violates the due process clause of the federal constitution. The decisions of the Supreme Court of the United States point out what is due process of law. This Legislature could not set up a court in this State, give the judge the right to prefer charges, try the case, and decide it. That is not due process of law, and if you are going to give this Senate a stranglehold on every judge in this State and let the Senators say to a judge, "You decide this case involving a political question the way we want, or we will kick you out of office," - the minute you do that, you tear down our courts.

SENATOR EASTWOOD: Dr. Leon S. Milmed, connected with the New Jersey Committee on Constitutional Revision.

DR. MILMED: I am speaking individually. I would like to preface my remarks with this quotation which is found in the report of the special committee to suggest remedies and formulate proposed laws to prevent delay and unnecessary cost in litigation. It is found in the American Bar Association's Reports of 1909, Volume 34, Page 578. This special committee was a committee appointed by the American Bar Association to go into the problem of suggesting remedies and formulating proposed laws to prevent delays and unnecessary cost in litigation. The first principle that it lays down is this, and I quote: "The whole judicial

power of each state, at least for civil causes, should be vested in one great court, of which all tribunals should be branches, departments and divisions. The business, as well as the judicial administration of this court, should be thoroughly organized so as to prevent, not merely the waste of judicial power, but all needless clerical work, duplication of papers and records, and the like, thus obviating expense to litigants and cost to the public." It is in line with this recommendation from this special committee, made away back in 1909, that I would like to commend this legislative committee for drafting a proposed article such as we have in Article V. These remarks which I will make are intended to aid the committee in re-drafting, so far as possible, some of the provisions in this section so that the intent of the committee to create an integrated court system in this State will be carried out.

First of all, I would like to make this recommendation. We find, in paragraph 2, of Section I, a provision that: "...every controversy shall be fully determined by the justice hearing it." Then we find in Paragraph 3, Section III a division of the Superior Court into two separate sections: one, law; and the other, equity and probate, and a statement beneath that, "...but either section shall exercise the jurisdiction of the other when the ends of justice so require." I submit to you gentlemen it is not clear as to whether or not, under these provisions, an action at law that is met with an equitable defense can be tried in the law section, and it is not clear whether or not an equity action that is met with a legal defense, a purely legal defense, can be tried solely in the equity section. What the words "when the ends of justice so require" mean will be for judicial interpretation, and we are laying ourselves open to a lot of cases to come up before the appellate courts to determine just what is meant by this particular phrase, or whether or not a judge can determine that legal defense can be interposed in an

equitable action or an equitable defense can be interposed in a legal action is proper. I would suggest the phraseology of that last provision, "but either section shall exercise the jurisdiction of the other when the ends of justice so require," be changed to read as follows: "but either section shall have general jurisdiction in law and equity so that every controversy shall be fully determined by the justice hearing it."

The next provision I would like to go to is the provision which states, in Paragraph 3, Section I that the appellate divisions of the Superior Court shall sit at the seat of the State Government. I submit that even at the present time we need appellate divisions in various parts of the State. We need at least two - one in the northern part of New Jersey and one in the southern part of New Jersey, so that lawyers from Cape May and Atlantic City would not have to travel to Trenton to have their appeals argued. If we are to follow the system laid down in New York, we should have these appellate divisions distributed throughout the territory of the State.

The next recommendation I would like to make deals with Paragraph 3, that same Paragraph 3 I referred to a little while ago, of Section III. In Subsection (1) of that paragraph, we find that matrimonial jurisdiction is given to the law section. The article states: "...a law section, to exercise civil and criminal jurisdiction at law and matrimonial jurisdiction, etc." Since we are dividing our judicial system into two separate sections: one, law, and one, equity and probate, it would seem from the phraseology in this paragraph that in a matrimonial action which is given to or delegated to the law section of the court, an equitable defense will be of no avail. For instance, equitable estoppel in a divorce action would be of no avail, thereby leaving a lot of people, I submit, out in the cold.

There is one other provision I would like to deal with, Section V, Paragraph 4. That has to do with the removal of judges of the Supreme Court or the Superior Court. I would like to follow the recommendations made this morning and this afternoon that charges be preferred by the Assembly and those charges be heard by the Senate. I would also like to add this provision which we find in the New York constitution. I think it is a very good provision and should be given serious consideration: "...but no officer" -- that is, a judicial officer, "shall be removed by virtue of this section except for cause which shall be entered on the journal nor unless he shall have been served with a statement of the cause alleged and shall have had an opportunity to be heard." I think that that procedure, which is followed in most of our provisions that we find in the constitution with respect to administrative boards in this State, should be followed with respect to judicial officers. They should be given an opportunity to know the charges presented against them and an opportunity to be heard. That, I submit, is true due process of law.

Some doubt was created this morning with respect to the original general jurisdiction of the Superior Court. I would like to touch on that for just a moment. Ithas been stated, I believe, that the original general jurisdiction of the Superior Court will be tampered with if these inferior courts, that are permitted to be constituted by law, are given the original general jurisdiction, or part of the original general jurisdiction, of the Superior Court. I believe that the answer to that statement that was made -- I believe that that is the correct phraseology of it is found in the constitution itself, in this proposed constitution, which gives to inferior courts only original limited jurisdiction, and in Paragraph 2, Section III, we have the statement: "The Superior Court shall have original general jurisdiction throughout

the State in all cases." I believe that that doubt as to whether or not inferior courts could at any time exercise general jurisdiction is adequately taken care of in this proposed constitution.

SENATOR EASTWOOD: I understand, Dr. Milmed, that the views you have expressed here are your own individual views and not the views of the Committee for Constitutional Revision.

DR. MILMED: That is correct.

SENATOR EASTWOOD: We will next hear from Mr. Samuel Kaufman, who is speaking individually. Mr. Kaufman -

MR. KAUFMAN: I speak for myself and address myself, first, to Section II, Paragraph 1, that portion of the paragraph which permits the Chief Justice, or, in his absence, the Justices of the Court presiding, to designate a Justice or Justices of the Superior Court to serve temporarily when necessary to provide a quorum. I am opposed to that because that in effect preserves some of the evils of the old system which we have been endeavoring to remove for many years. We have been clamoring for an independent court of appeals. What we have now is a system whereby the Supreme Court Judges sit in our court of last resort. You now vest the Chief Justice with not only great administrative power but with the additional power, which no otherlaw officer has ever had before, to constitute the Supreme Court by picking men from the inferior court. I think we should have, if we are going to have an independent system, a new system, a Supreme Court composed of Supreme Court Justices who do nothing else but serve in the Supreme Court, who have no functions in the court below, and who will dispatch their work with celerity and ability and untrammeled by the labors of the inferior court.

I refer next to Paragraph 3 of that section, which provides that the Supreme Court shall have power also to make rules as to pleading and practice and evidence. I have no objections to the rules as to pleading and practice, but I do vigorously oppose the power in the Supreme Court to make rules with respect to evidence which shall have the force of law, because if we are to have three separate units of government, the legislative, executive and judicial,

the power in the Supreme Court to make rules of evidence entrenches on the legislative and may destroy the whole field of stare decisis, so far as the rules of evidence are concerned, by Justices of the Supreme Court who are in power. I have heard Mr. Stryker and Mr. Carpenter and Judge Kramer with respect to the retention of the Court of Chancery as an independent unit and with their views I wholly concur, but if it should come to pass that the Court of Chancery is to be abolished and the jurisdiction of equity is to be set up in the Superior Court, then I think that certain safeguards should be inserted in order to preserve the continuity of the great law of equity as it exists in New Jersey today.

Having taught equity for many years and practiced as a specialist in that court, I have read every decision of our State in the field of equity and I doubt if you will find a baker's dozen decisions whereby one Vice Chancellor said, "I refuse to follow the decision of another Vice Chancellor," or, "I overrule it," and that is because of the peculiar nature of the Court of Chancery; it was the Chancellor, and when there was a conflict and conference as to what rule of law shall prevail in equity, either the Chancellor took over the writing of the decision so as to make it his official act, or else the body of Vice Chancellors voted what the law was. Unless you transfer the Court of Chancery as a unit with some such safeguard, you will then have the situation where every Superior Court Judge is a king in his own right and you may have as many decisions in equity as you have in the New York Supreme Court, where I can find you as many precedents in the field of equity as there are Justices of the Supreme Court, and as many in the appellate divisions as there are divisions, because they are not bound as they are in New Jersey. The same situation prevails to a great extent in the United States District Court, where the judges of the United States District Court in various districts are not bound by other United States District Court Judges' decisions, especially in the field of equity, and that is why you find that great divergence of opinions and precedents in New York on every topic; because each Supreme Court Judge is a unit by himself and he has refused to follow coordinate judges and he has said, "I overrule them."

The second safeguard that I think ought to be interposed is this: Under our old constitution, the Court of Chancery being a constitutional court, we know what its jurisdiction is. It is entrenched in the law, but when you abolish the Court of Chancery, there is nothing in the constitution, as I see it, that denotes the whole circumference, the ambity of equity jurisdiction, and that is borne out in a great measure by the article that Mr. Stryker referred to when he said that in conflict between law and equity, equity shall prevail, which I don't understand and what I don't understand terrifies me. I don't know if that destroys the common law of the State. If it does, I would be opposed to it because common law and equity in this State have morticed and tenoned beautifully for two hundred years, but I address myself to this phase: May the Legislature, which now cannot enlarge, for instance, the jurisdiction of the court of equity, and I speak as a technician now, in matters not germane to the court of equity -- may the Legislature, which cannot take away from the jurisdiction of the court of equity, as a constitutional court, now do those very things under the present constitution? If it does or if it can, I would be opposed to it because I have in mind that decision which is exemplified by the great case of In Re Heddan or In Re Hand. If you will remember, during prohibition days, our Legislature got tired of the normal processes of law, where a man was indicted by a grand jury, was tried in the criminal courts, acquitted or convicted, as the case may be; they thought it took too long and they passed a statute which vested the power in the Court of Chancery to treat the offense as a nuisance and to abate it by a summary proceeding. Our Court of Chancery said the statute was constitutional, was perfectly all right, abated the nuisance, there were no jury trials, there were no indictments by grand jury, and our Court of Errors and Appeals reversed it because they said the Legislature had no right to take away from the common law courts and from the citizen of the State the right to be indicted by a grand jury in a criminal offense and that merely calling it a

nuisance didn't take away the criminal features thereof. I see possibilities, under the present setup, where the Court of Chancery is not a constitutional court, where a Legislature might do two things: It might enlarge the jurisdiction of the Court of Chancery in matters not germane to the well-recognized fields of equity jurisdiction; it might take away from the Court of Chancery those things which have always been in the Court of Chancery from the days of the English High Court of Chancery down to the present time, and I think those two matters - one, the safeguarding of the continuity of the decisions which shall be uniform; and the other, the preservation of the inherent jurisdiction, because in New York you haven't got it today - are very important.

Then, with respect to that section of the constitution which has been referred to heretofore under Section V, Paragraph 2, that a judge may be appointed who is an attorney of ten years' standing, I really think that is humorous; it is Gilbert & Sullivan, because it brings to mind at once an attorney cannot come into a court presided over by a judge who is not an attorney. And it seems to me if you retain the distinction between attorney and counsellor at law - abolish it if you want to; it is perfectly all right with me; I am a counsellor, it makes no difference to me, and I am not looking for a judgeship - but if you are going to retain the distinction between attorney and counsellor at law, it seems to me that a man who is too lazy to take the examination or who cannot pass it should not be appointed to preside over a court and at the same time bar from admission to the court room an attorney of similar standing. So long as you have the distinction, let us keep our judicial ranks as heretofore.

SENATOR EASTWOOD: John J. Francis, Esquire, of Newark, member of the Essex County Bar Association --

MR. FRANCIS: Mr. President and Members of the Committee: If it were not for the extreme importance of this document we are discussing I don't suppose anyone would dare rise at this late hour, and after so much discussion, without prefacing his remarks by saying, "Stop me if you've heard this one." However, because it is so important I think, perhaps, some little repetition is not entirely amiss.

With that in mind I would like to refer once more to the provision of Section V, Paragraph 4 of the constitution, which has to do with the trial of the issue of good behavior of judges in the Senate. I don't believe that the Senate should initiate and try that issue. I don't think it is a good thing to have in this constitution. Presumably, before the charges were drawn, some investigation would be made by the Senate. I am afraid that that investigation - consciously or unconsciously - might be substituted for the actual trial; at least, it seems likely that some ineradicable impressions or conclusions might be reached by the Senators during the course of that investigation which would prejudge the issue and make a fair trial impossible. I don't believe that under a democratic system any one body should have the power to investigate, to prosecute and to judge on so important a problem as the right of a judge to hold office. The idea of giving a judge life tenure is to remove him, as far as possible, from politics and from political considerations and, I think, also to establish and maintain the complete independence of the judicial branch of the Government which is so essential under our created form of Government. To provide for the investigation, prosecution and adjudication of a judge's good behavior by a body which is - with all due respect to the Senate - by its very nature subject to political implications, is to give life tenure at the end of a chain. If we must have trials of judges outside the judiciary itself, I think that certainly the investigation and charges ought to be drawn in the House and the trial had in the Senate, where it can be approached with a fresh mind. But I don't believe judges ought to be tried in the Senate or the House at all. Members of the Senate, for example, for many years have been considered judges of the qualifications of its

members. They have a right to say who shall sit and who shall not sit. Why shouldn't the judges have the same privilege? I do not think that members of our judiciary are not equally as zealous of the good character and good behavior of the men who make up their body as the members of the Senate. That being so, why shouldn't the judges themselves be presented with the issue of good behavior for determination? There might be some question as to the manner in which that issue should be presented. I think, having in mind that a Supreme Court Justice might be involved, perhaps it would be a good idea to consider the possibility of having a provision for charges to be drawn either in the House or in the Senate, the court to try the Justice set up by the Governor from the remaining Justices of either the Superior Court or the Supreme Court. In that way I think you would get a fair and equitable and, what is much more important, a judicial determination of the issue of good behavior.

I would like to suggest also, with respect to Section IV, Paragraph 3, which deals with permissible appeals to the Supreme Court, that an additional paragraph be added, a Paragraph (5), in language somewhat like this: "In all causes where a prerogative writ is granted to review a matter which was not originally determined by a judicial tribunal, and where such a writ is heard in the first instance in the appellate division of the Superior Court." It is obvious that where prerogative writs are granted under this constitution either by a single Justice returnable in the appellate division, or by the appellate division itself, returnable there, that appellate division will be the court of origin and last resort in connection with the determination of that writ. To illustrate: A zoning matter, for example, where there is an application made to a building inspector and is turned down. An application is made for a writ of certiorari, we will say, to review that action, and the writ is made returnable before the appellate division with leave to take testimony. The record is made then by testimony and presented under the writ to the appellate division, which hears the cause for the first time, so that the appellate division constitutes the trial court and when it has determined the issue, then, under this constitution, there is no right of appeal at all. It seems to me that another para-

graph should be added to the permissible appeals in order to allow, as a matter of right, an appeal to the Supreme Court when, in cases of prerogative writs, the appellate division is both the trial court and the court of last resort. I would suggest, also, that the power to grant prerogative writs should not be so widespread as provided in Section III, Paragraph 4. As this paragraph now stands, all the Justices of the Superior Court will have the power to grant prerogative writs. I don't think anybody knows how many judges there will be yet but it means perhaps fifty or sixty - maybe more - Justices, spead throughout the State, will have this tremendously important power to grant writs. I don't think that that power should be so widespread, and that some further limitations upon it ought to be ordered by this constitution. It seems to me that it would be more in keeping with the solemnity of the writs and with the conception of their importance to provide, instead, that the appellate division of the Superior Court, or any Justice thereof, of such diviision, may grant prerogative writs. This will serve the purpose of centralizing and limiting the power to grant those writs to a greater extent than is indicated presently by the constitution.

That suggestion, I think, will go along with this one I would like to make with respect to Section IV, Paragraph 1 of the constitution: That states, at the present time, that there shall be two or more appellate divisions as prescribed by the rules of the Supreme Court. I think either that should read "three or more appellate divisions as prescribed by the rules of the Supreme Court," or, perhaps better still, "There shall be established in the Superior Court appellate divisions as prescribed by rules of the Supreme Court." I suggest that for this reason: It is obvious from the nature of the appellate jurisdication conferred on the appellate division that two such divisions are not going to be sufficient to handle the work. You have to keep in mind that these two appellate divisions will have all the present jurisdiction of the Supreme Court, a nine-man court, unless the constitution is changed. They will have appellate jurisdication over interlocutory orders and probably they will have appellate jurisdiction in Workmen's Compensation proceedings. Those compensation appeals are now handled in the Court

of Common Pleas and many of them die there, you know, after decisions. So, you will have all this additional appellate work in the appellate division - six men can't handle that work without nervous breakdowns, and recognition of that fact makes it plain at the very outset of the Superior Court that there is going to have to be at least three appellate divisions. They just can't do the work otherwise. When this happens I think probably some members of the public are going to say, "Look at these judges. They didn't even give the two appellate divisions suggested in the constitution a chance. They wanted to take care of some of their brethren so they started right out with three." Why hand them that problem? Isn't it better to say "three or more" and eliminate it, or simply say "There shall be such number of appellate divisions as the rules of the Supreme Court prescribe "? In that way, you raise no question as to what the intentions are in creating the appellate division.

Just one more thing: That is the matter of nomenclature - one of form and not of substance - which appeals to me and which may not be of importance to the men who drew this constitution. I think the courts ought to be called Supreme Court and Court of Appeals, not Court of Errors and Appeals but Court of Appeals as they presently are substantially called. I think that is more in keeping with the notion of our courts that has grown up over the years and notions of our jurisprudence as we have had them. When this constitution is adopted, as it unquestionably will be, and we have been operating under it a few years, a lawyer appears in court and cites a Supreme Court decision. The question is going to arise immediately as to whether he is talking about the court of last resort under this constitution of the court of intermediate appellate jurisdiction, which is the present situation. It is important enough, it seems to me, to change these names from Supreme Court to Superior Court and have the top court the Supreme Court, to eliminate the confusion that will arise in the future on that account. I don't think there is any magic in the words "Superior Court" that does not exist in "Supreme Court". I think there is an even sounder reason for using "Supreme Court" instead of "Superior"Court, as it now exists, and then Court of Appeals as the court of last resort. Under this

constitution the jurisdiction to grant prerogative writs resides in the Superior Court. Heretofore that power has existed in our Supreme Court and it came there at the inception of the State Government, when the Supreme Court was created, and it was put on jurisdictional level with the King's Bench in England, which had the power over prerogative writs. To lawyers in New Jersey, Supreme Court has been synonymous with prerogative writs and our jurisprudence has grown around that notion. Why should we abandon this background just because, my notion is, some lay group has rather whimsically suggested that the Supreme Court to the lay mind means top court and that to use Court of Appeals for the court of last resort is to use excessive superlatives. I think tradition and the association of names in the development of our practice in courts is more important than worrying about excessive superlatives.

Those are the only suggestions I have to make. I offer them for your consideration.

SENATOR EASTWOOD: Thank you, Mr. Francis.

Is Arthur Connelly, Esquire, of Newark, here?

No response

Mrs. A. A. Van Voorhies of the New Jersey League of Women Voters?

No response

She was recorded this morning as one who desired to present her views.

Mrs. Ralph E. Hacker, State Chairman, Legislation and Citizenship Committee of the Women's Clubs?

No response

Before calling upon those whose names were registered this morning as proponents, I would like to take the opportunity of reading two letters which have been forwarded to me by two outstanding members of the Bar, who were unable to be present personally. One of them is from John R. Hardin, President of The Mutual Benefit Life Insurance Company, for many years a member of the firm of Pitney, Hardin and Skinner - the firm now is, I believe, Pitney, Hardin and Ward - and reads as follows:

"I regret that I cannot be in Trenton at the hearing on the Judiciary Article of the new constitutional draft on February 9th instant. If present I would have voiced my approval of the Judiciary Article as published by order of the Legislature. It accomplishes, in my opinion, a highly desirable and practical revision of the State's complicated and archaic judicial system and provides workable machinery for a transfer from the old to the new. The acceptance of the Article by the people of the State would provide a modern simplified framework for the speedy and efficient administration of civil and criminal justice. It does not completely accord in all respects with some of my strictly personal ideas, but I find the differences too trifling to justify objection to the admirable whole presented in the draft.

"I would greatly appreciate it if, in my absence, your Committee deems my view as of sufficient importance to deserve such attention, it would accept this letter as an expression of the approval I would unreservedly give if personally present.

"I have given much consideration, both before and since the referendum vote, to the subject matter of a new constitution, and as citizen and lawyer I feel a deep sense of obligation to the Governor and the Legislature for the prompt attention given to the mandate of the referendum, and for the practical result presented in the draft of the new Constitution now offered to the people of the State.

"With high personal regard, I am,

Yours very truly,"

(Signed) John R. Hardin

The other letter is from a New Jersey practitioner of many years who is highly respected by all the members of the Bar and all who know him, Thomas N. McCarter, and reads:

"My dear Senator Eastwood:

"When the Constitutional Commission first promulgated a draft of a new constitution I carefully examined the same and thereafter wrote a letter to former Senator Schroeder, who was Chairman of the Joint Legislative Committee on Constitutional Revision. I enclose a copy of this letter dated September 8, 1942. On December 8, 1943, after the present revision of the constitution had been made public by the legislative committees having the same in charge, I carefully re-examined the whole subject and thereafter wrote a letter to the Honorable Daniel E. Pomeroy, in response to a request for my views on the subject made by him, a copy of which letter is enclosed.

"While there are certain matters in the pending revision that I wish were a little different, such for example as the requirement for annual legislative sessions instead of biennial sessions, I have lived long enough to know that you can't get everything you want in this world, and I am in entire sympathy with the adoption of the proposed constitution in its present substantial form. I cannot better express my views on the whole subject than they are set forth in the enclosed copies of letters to former Senator Schroeder and to Mr. Pomeroy.

"Very truly yours,"

(Signed) Thomas N. McCarter

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I would like also that copies of the letters to Mr. Pomeroy and Senator Schroeder be made a part of the record. They read as follows:

"My dear Dan:

"Since our talk of a week ago, I have carefully restudied the plan on Revision of the New Jersey Constitution as promulgated in 1942. Upon the whole, I think it is a very fine work and I marvel that the Commission was able to produce a unanimous report. I have also carefully read whatever has been published of the hearings that have been held by the legislative committees in Trenton before which appeared several ex-Governors. Their views apparently do not differ very much from the bulk of the report of the Commission Each of them had some views of his own, which I think can be welded together quite easily into a comprehensive whole. It will be a wonderful thing for the State if such a Constitution can be adopted in a way that will stand any test.

"I do not think I can add much to the discussion. I cordially go along with a four-year term for the Governor; with biennial sessions limited as set forth in the report of the Commission. I feel that perhaps it is a mistake to limit the Governor perpetually to one term. I sympathize with those who think that after an intervening term he should be available for another election, but this is quite a detail. I think it should take a two-thirds vote of each House to override the Governor's veto. I am especially interested in the reform of the courts, and while if I were the final doctor I would call the new Appellate Court the Court of Appeals, as it is called in New York, that is merely a change in nomenclature. I feel that it is a mistake to limit appointees to that Court from the Judges of the Superior Court, or whatever else it may be called. It would preclude appointment to that Court of a distinguished practicing lawyer, such as took place in New York this Winter when the Governor appointed Mr. Thatcher from the bar to the satisfaction of everyone.

"I seems to me that paragraph 7 of section 4, and paragraph 2 of section 7 in the proposed new Constitution as drafted, are matters that should not be in the Constitution but should be the subject matter of legislation. I consider it a mistake to load up the Constitution with matters that do not belong in it.

"I do not know that anything can be done about it, but paragraph 5 of section 7 seems to me to be an anachronism. I do not object to the pari-mutual amendment. On the contrary, I voted for it. But to permit this and in the same article technically speaking at least to constitutionally forbid a quiet game of bridge in one's house, seems to me a great inconsistency. I also raise the question whether paragraph 6 of article 7, which is copied from the present Constitution, should be retained in its exact wording, when the present value of real estate and assessments based thereon have rendered it a nullity.

"Of course there remains the danger that the courts (who may not like the proposed changes) will hold that this method of amending the Constitution is neither by way of a constitutional convention, nor by the method of amendment pointed out in the present Constitution, but I do not believe that this will prevail. All government is inherent

in the people. The people have spoken by legislative act and at the last election by a large majority the voters directed such a Constitution be presented at the ensuing general election. If the new Constitution be thus adopted, I think it would be going some to thwart the will of the people as thus expressed.

"It may interest you to know that fifty years ago, when I was a young lawyer, I wrote a brochure calling attention to the archaic system of courts in this State, which was quite widely distributed. Unfortunately it is out of print and I cannot find any copy of it. Some ten years later on, when I became Attorney General and thus had greater opportunities to familiarize myself with the situation, I became more than ever convinced that judicial reform was imperative. It so happens that I am the only living person who has held this office, except the present incumbent.

Very truly yours,"

(Signed) Thomas N. McCarter

" Honorable Daniel E. Pomeroy,
230 Park Avenue,
New York City."

"My dear Senator Schroeder:

"Forty years ago it was my privilege to be the Attorney-General of New Jersey. It so happens that I am the only living person who has occupied that office except the present incumbent. My activities in the intervening period have been along other lines, but have been of such a character that I have kept in touch with the machinery of the state government generally speaking, and its judiciary system in particular. Throughout all this period of time I have been strongly of the opinion that the judiciary system of this state is archaic, cumbersome and unsound in principle. It certainly has not kept pace with modern systems, such as the federal system or that of other states, as for example New York.

"I do not propose to go into the matter in detail but to state my views thus generally. I have made a very careful examination of the proposed constitution recommended by the State Constitutional Commission and now before your committee for hearings. While here and there there may be certain details in it that are not thoroughly satisfactory, upon the whole I consider it a well-reasoned and highly satisfactory plan and one that will prove to be a great benefit to the state, not only so far as changes in judiciary system are therein recommended but also as to other matters, such as the change in term and time of election of the Governor and the members of the Senate and House of Assembly, and the adoption of the principle of biennial sessions.

"I hope your committee will see its way clear to recommend it favorably to the Legislature and that the Legislature will enact such legislation as will bring the matter before the voters of the state for ultimate decision. One important matter is omitted from the draft and that is the question of some change in the method of taxation so as to relieve the unjust burden now cast upon real estate, but that important question can I think with propriety await a

more convenient day and later on be covered by a specific amendment in the practical and more convenient way provided by the proposed new constitution for the consideration of amendments.

Very truly yours,

(Signed) Thomas N. McCarter

Honorable Lloyd L. Schroeder,
Chairman, Joint Legislative Committee
on Proposed Constitutional Changes,
210 Main St., Hackensack, N. J. "

I find that erroneously the name of Sigurd A. Emerson, Esquire, was checked as having spoken, and I assumed he had presented his views while I was absent. We will be glad to hear from Mr. Emerson at this time, expressing personal views.

MR. EMERSON: Mr. Chairman and gentlemen of the Committee: I am expressing my own views and I will try not to transgress upon your time by repeating anything I had in mind which has already been said. I would like to address a few remarks with regard to the court of equity. As you who are lawyers know, equity deals with that branch of the law wherein the law itself is defective. Equity is a fluent subject. It grows; it grows with our times, it grows with changing conditions as it must meet new conditions as they arise. I think it has been shown in other States and in our federal courts that where a judge is sitting in law and in equity, where he rotates from one to the other, he does not develop into a good equity judge. I think it is also recognized that if you place a man upon the bench and you assign him to both duties, he does not become a good equity judge. I don't think a man has to be a good equity judge when he starts, but if he devotes all of his time to the administration of equity, he gradually develops, he absorbs the equity that is necessary to properly administer that court.

I believe it is not the intention of the present administration to rotate judges so that they will sit in equity one month and then law another month, or one year in each, but I do think that in this constitution which is being developed and prepared, and I must say it is excellently prepared except for this question I am raising and

some other refinements that you gentlemen are working on at the present time, provision for a separate court of equity or the permanent assignment of judges to an equity branch would be most desirable. I think it is a thing that would result in the most beneficial administration of equity in the State. I have been practicing over twenty years now in the law and equity courts and I have come to the strong conviction that that is necessary and desirable. I think if you gentlemen are not familiar with it yourselves, all you have to do is ask our own federal judges who sit in law and equity; they will tell you how they feel. I have spoken to some of them. You talk to your New York judges who sit in law and equity. Read your New York supplements and try to find good equity law - there isn't any. And I see no reason why we should not continue to develop equity and grow with equity as is required and as our people are entitled to have. I think the only way that will be accomplished is in one of two ways, either having a separate court of equity or having a permanent assignment of judges to equity.

SENATOR EASTWOOD: Thank you.

Miss Seufert, did you wish to speak today? I believe you spoke the other day, did you not, on the Judicial Article?

MISS SEUFERT: Yes. I wanted to state that the New Jersey Committee on Constitutional Revision last week recommended the entire unification of the courts by including the inferior courts as an integral part, as a constitutional part, of the system. The Committee requested that a detailed plan be presented. We have ready a draft of this plan. It is rather rough. In a week's time, it is difficult to get a really good job done. We can file this draft with you, or we would prefer to make a better job, a finer job, and give it to you at a later date.

SENATOR EASTWOOD: How much additional time will you need to complete the draft in the form in which you would like to present it? I understand you were to submit a memorandum, as all others were, in supplementing the remarks made the other day.

MISS SEUFERT: Yes, we have that, but we put it in the form of a proposal to make the inferior courts part of the constitution.

SENATOR EASTWOOD: I believe you presented that view, did you not, when you spoke recently?

MISS SEUFERT: We did not present the plan.

SENATOR EASTWOOD: That was to be submitted in writing.

MISS SEUFERT: We have that now in a rough form. We can present it to you as such; otherwise, if it is agreeable with the Committee, we would like a few more days to polish it off in more detail.

SENATOR EASTWOOD: Do you believe you will be able to get it in the form that will meet your desires by Monday?

MISS SEUFERT: Oh, yes, sir.

SENATOR EASTWOOD: All right, will you do that, please?

MISS SEUFERT: Yes, sir.

There seems to be an error there. I did register as a modificationist, to speak an an individual. There is one matter which I would like to bring up as a modificationist, but if you are going to have further hearings, I would be glad to wait until that time. I know there are people here on another subject who are anxious to talk.

SENATOR EASTWOOD: Yes, we have some others on the Judicial Article, if you would care to yield to them.

MISS SEUFERT: Surely.

SENATOR EASTWOOD: We don't want to deprive you of the opportunity to be heard.

MISS SEUFERT: I will be glad to wait, sir.

SENATOR EASTWOOD: All right, thank you.

At this time, I will take the opportunity of calling upon Ralph W. Wescott, Esquire, who speaks as a proponent, I believe, associated with the New Jersey Committee on Constitutional Revision.

MR. WESCOTT: Mr. Chairman, members of the Committee: Seeing that a memorandum may be submitted in writing by Friday, I will try to use that method to cover notes taken on the exceedingly interesting statements made here today, rather than trespass too long on the Committee's time.

In passing, let me say that in substance I approve heartily of the article as now printed, but speaking, not as one of the Committee nor

as a lawyer but again, as I did last year in the Assembly, as a citizen, as one who has been in and out of the law and around the law in various States in various countries, as practitioner and as observer, I do just want to make two remarks to the Committee, in view of the brilliant and often constructive and sagacious things that have been said but more in view of some of the emotional things that have been said. I would like to remind the Committee that lawyers, like many other people who have a skill, are tempted to develop, perhaps unconsciously, an exaggerated notion of its importance. No one so far today has referred, very specifically at any rate, to two of the great essentials that are closely related in the administration of justice. Those two elements are time and money. I think this Committee has kept those great elements in mind. I think the great object here is to set up a framework under which justice may be efficiently administered. Whatever tends to that end should be approved. Whatever seems to impede it, I am sure the Committee is endeavoring to work out.

We have heard a great deal about specialists, and by and large as I have grown older, and I have been in the practice for upwards of thirty-five years, I have appreciated more what I used to hear my grand old father sometimes say, in the trial of civil causes, "God save us from specialists." They become narrow, they become biased, and I don't fear, as has been expressed by many men who can speak more accurately and eloquently than I can ever hope to be, taking ajudge and putting him today in one kind of work and tomorrow in another kind of work. Every successful lawyer has to do that, and where do the judges come from but the ranks of the attorneys and counsellors? Don't be bothered by that kind of magical specialistic nonsense. Go over and talk to Augustus Hand or his brother, Learned, who sit in the southern district of New York in the federal courts. Go to any capable judge in any court where the proposed system is more or less in vogue, and you will find that a capable man can administer the system. Though we are not dealing here with qualities of judges - that has to be left to the appointive power - we are dealing here merely with the framework under which capable men may be put to work on this socially essential plan. That is the problem. Let us keep it in mind and not be too much drawn

aside by sentiment and refinements of procedures suggested here that have little to do with the main task before this Committee.

ASSEMBLYMAN CAVICCHIA: Thank you.

Mayor Charles R. Erdman of Princeton?

(No response)

Comptroller Zink?

(No response)

Mr. Isaac Nutter?

MR. NUTTER: I am here.

ASSEMBLYMAN CAVICCHIA: Are you going to speak on the Judicial Article?

MR. NUTTER: On the Judicial Article in the main. I am speaking for the Union League of Atlantic City. In Article I, Section IV--

ASSEMBLYMAN CAVICCHIA: Mr. Nutter, that is a separate consideration. You are going now to the Bill of Rights.

MR. NUTTER: No, I am just going to make one statement and get away from it; in other words, it has been covered. I just want to say that I O.K. a certain statement made here, and go on, or I can go directly--

ASSEMBLYMAN CAVICCHIA: Will you confine yourself to the Judicial Article now, please.

MR. NUTTER: All right.

Article I, Section VI asserts--

ASSEMBLYMAN CAVICCHIA: Mr. Nutter, are you talking on the Judicial Article or on the Bill of Rights?

MR. NUTTER: I am talking about Section VI.

ASSEMBLYMAN CAVICCHIA: We are considering at this moment the Judicial Article, Article V. When we have finished with that article, then we will go to the other.

MR. NUTTER: As to the Judicial Article, I just want to reiterate what has been said by Mr. Stryker as to the Court of Chancery; I think it ought to be retained. As to the rest of my argument, it is on Section II and Section VI, Paragraph 2, on Page 6. I suppose that would come under civil liberties.

ASSEMBLYMAN CAVICCHIA: It is not the Judicial Article. Will you wait then until we get to that?

MR. NUTTER: Yes.

ASSEMBLYMAN CAVICCHIA: Has Mayor Erdman come in?

MR. ERDMAN: Yes, Mr. Chairman. I want to appear in support of the Article as drafted. I think it is a step forward and one which the State and the people of the State have been waiting for, for at least fifty or sixty years. Some ten years ago we made a study of the movements for judicial reform, as well as the movements for constitutional change in the State, and we found no article of our present constitution that has been under fire more than the one which we are now discussing. I might say it seems to me one reason we haven't had a change before this is this very thing that has been discussed here at length - namely, whether we are to retain a separate independent court of equity or whether we are to have a unified and consolidated court system. I think the other movements which were put on the ballot in 1909 and 1903 - and on several other occasions almost put on - in each instance were beaten for one reason; namely, that the reorganization did not go far enough: they would not merge the two courts. Therefore, it didn't satisfy those who were looking for a better court system and, of course, it didn't satisfy those who never want any change at all, so we didn't get it. I think now, though, your committee has proposed a forward-looking document. It has proposed one which is long overdue in this State, and I am sure that the remarks that were made here this morning- it was said that lawyers of Burlington and Camden Counties had been polled some two years ago almost and were overwhelmingly in favor of retaining the Court of Chancery. I think at that time they were not aware of the fact that we were going to have a vote on the question and I think that possibly if that poll had been taken after the returns of the election held last November, we might have found a change in sentiment, because I find, as I have gone around the State that certainly among the laymen, and after all they have a right to be heard on the question of a court system, there is no one point on constitutional revision about which they are more unanimous in their feelings than the

proposal you have here. I just want to say that certainly it seems to be the right solution to a problem which has needed attention for many, many years. I am glad it is now here and I hope your committee will stick by its guns and will carry on as you have in proposing this particular change.

SENATOR EASTWOOD: The Honorable Homer C. Zink, former State Senator and now State Comptroller, planned to be here and speak as a proponent but he was unable to remain. However, I have received word from him that he will submit a memorandum in writing in support of the Judicial Article as contained in the proposed revision.

Mr. Joseph D. Ward --

MR. WARD: Yes sir.

SENATOR EASTWOOD: You wanted to speak on the Judicial Article?

MR. WARD: No, sir, on Article VI - you haven't come to it yet, I believe.

SENATOR EASTWOOD: All right. My memorandum didn't indicate whether or not you wanted to be heard on the Judicial Article.

I will call on Mrs. Herbert Dobbs of Montclair associated with the American Association of Social Workers, the New Jersey Chapter.

MRS. DOBBS: I merely wish to read a statement formulated by a committee of the New Jersey Chapter of Social Workers.

The PROPOSED CONSTITUTION (1944) makes no mention of the Juvenile and Domestic Relations Court. In view of the questions which have arisen from time to time concerning the constitutionality of this act under the 1844 Constitution the Committee may wish to examine the proposed constitution to make sure that it will permit the continuance of a juvenile court having a jurisdiction similar to that now provided.

To meet the needs of children in modern society, it is important that there be a juvenile court with exclusive jurisdiction to deal with children who need court care and having authority to deal adequately with parents and other adults who contribute to the delinquency of children.

The following addition to ARTICLE V is therefore proposed

SECTION VII

The legislature may establish juvenile courts, and courts of domestic relations, as separate courts, or as parts of existing courts, or courts hereafter to be created, and may confer upon them such jurisdiction as may be necessary for the correction, protection, guardianships, guidance, and disposition of delinquent, neglected, or dependent children and minors; provided, that children shall not be charged with or convicted of crime. "Such courts may be granted jurisdiction for the punishment and correction of adults responsible for or contributing to such delinquency, neglect, or dependency, and to compel the support of the wife, child, or poor relative by persons legally chargeable therewith who abandon or neglect to support any of them."

SENATOR EASTWOOD: In view of the fact that there are a number of people who have come from some distance to be heard today, we will continue and give them an opportunity to be heard, rather than adjourn the session and have them come back another day. We hope as many members of the Committee as possible will remain. However, a record is being taken and all of the members will receive a verbatim copy of what will be presented by the speakers. If some of the members leave because of other engagements, I am sure the speakers will understand the situation.

The next speaker is Mr. Sol Kantor of Perth Amboy who wants to speak on the Judicial Article.

MR. KANTOR: I don't intend to be very long, Mr. Chairman, because many of the ideas I had in mind have been discussed today. If you will permit me, I would like to read from an article that appeared in one of the New York papers by Senator Desmond of Newburgh, New York, which I think covers some phases of this subject:

> "The cries for judicial reform that have rung out during the last five years as the newspapers recorded startling revelations in the cases of Judges Manton, Martin, Capshaw, Rudich and others, resound today in even greater volume because of the Aurelio case. Our people have the right to demand that the next Legislature take action to prevent recurring scandals. I will introduce at least three bills. One will provide for creation of councils on judicial character and fitness, composed of nonpartisan representatives of the bar, labor, agriculture and industry. These councils would

> have the duty and power to investigate and approve all proposed nominees for judicial office before their nominations could become valid. A second would enact into law the code of judicial ethics of the American Bar Association - at present merely a pious expression of an ideal. A third would permit the Court of Appeals, after a hearing, to remove judges now removable by the State Senate, as a swifter, less expensive and less political method of getting rid of unworthy judges. Additional suggestions for judicial reform sent to the writer will be gladly received and carefully studied."

Senator Desmond sent me several proposals of amendments to the New York Constitution which embodied some of the things discussed here today. I won't go into them but I will submit them to the Committee for their consideration.

It seems to me that we should retain the present Court of Errors and Appeals in name; that is, it should be an appellate tribunal only and nothing else, if for no reason other than from a historical standpoint. The lower court should be either the Supreme Court or Superior Court. They worked that out fairly well in New York State, so far as that is concerned, and I think the head officer of the Court of Errors and Appeals should be designated as a Chancellor to distinguish him from the Chief Justice of the Supreme Court or Superior Court, as the case may be.

There has been some discussion here today as to the difference between atterneys and counsellors. I want to say I have been in practice since 1924 and I am not a counsellor. It seems to me silly and foolish, when you admit a man to practice, to restrain him from doing certain things,which is not done in other professions. I will take for example the doctors, dentists, engineers, architects. When a man is admitted to practice, he practices in the entire field; there are no limitations whatever. I cannot prosecute a fifty-dollar appeal from the district court to the Supreme Court, but I can defend a murder case. I can try any kind of technical case in the Court of Chancery or county courts, but a fifty-dollar appeal I have to have a counsellor sign for, submit it on briefs or have a counsellor argue it for me.

I am not in favor of life term for judges. That may sound startling but I think the best example of that is the United States Supreme Court

itself. Within the ten years last past, they have created a condition we have never had existing in this country before. It has reached such a stage that an attorney doesn't know how to advise his client; he doesn't know how the United States Supreme Court will decide a given case. They have thrown all precedents aside; procedure means nothing. Giving a man life term doesn't prove the quality of a judge. If he is going to be a good judge, he will be a good judge whether he is appointed for five years or for life; if he is going to be a bad judge, he will be bad just the same.

In the removal of judges, it seems to me the method we now have or the method suggested in the proposed constitution is very weak indeed, because if you go back the last hundred years you will find that practically no judges have been impeached. I don't know whether or not you have had the experience of trying to remove a judge from office; I have. I did present to certain members of this Legislature charges against a certain judge I thought were proper, backed by documentary evidence, not by my word but by documentary evidence. It took me seven months to get a so-called hearing. When finally I got the hearing, nothing was done about it. It seems to me some sort of council should be created, appointed by the Governor, composed of members of the Bar, labor, etc., who could hear these charges, these complaints, who could interpose objections to any judge who is suggested to be nominated, and then if any judge in office is found to have committed misfeasance or malfeasance in office, he could be tried either by the Senate or the Assembly or by the Joint Legislature, as the case might be.

I think there has been some discussion previously about assigning judges to various counties. It has been my experience, in the years I have been practicing, that under the system we now have, the Chief Justice assigns Justice So-and-so for the County of Middlesex, for example. He sits there for years, sometimes as long as fifteen years or more. In that long period of time he acquires certain friendships and certain connections to the detriment of certain other people. I say there should be some compulsion that a judge should not sit in the same county continually, taking into consideration place of residence. If you have a

judge residing in Middlesex, don't ship him all the way to Cape May but somewhere around Middlesex, so he can be in some different circuit every different term.

I think, and I will close with this, that this entire constitutional revision may have been inspired in the first instance from the abuses that come out of the courts. Certainly, the provision concerning judiciary power has. To my mind, as an attorney, the most important thing about the revision of the constitution is this very Article V, because ultimately all the quarrels or all the controversies come to the courts, and unless you have in the judiciary men who have the courage and backbone to stick for what they think is right, the entire constitution itself is nothing but a scrap of paper and isn't worth the paper it is written on, because these judges can twist it around to suit themselves, which is what some of them do now. I respectfully submit that before we even think of revising the constitution, so far as Article V is concerned, we be extremely careful, even more careful than as to any other article, because the courts will, in years to come, have to interpret the meaning of the various articles in the constitution itself that is now proposed, and if we don't have on the bench the proper type of men, of character and of courage, then all the work we have done now for ourselves and future generations is just a waste of time.

SENATOR EASTWOOD: If I am not mistaken, I believe that completes those who have registered a desire to be heard on Article V, Judicial. I will therefore give an opportunity to those who came here today to--

MR. CHUTE Mr. Chairman, I think my name is down there - Charles L. Chute, I want to say a few words on the Judicial Article.

SENATOR EASTWOOD: If it is, it apparently wasn't given to me. However, we shall be glad to hear you now.

MR. CHUTE: I am a resident of Morris County, New Jersey, but I am the Executive Director of the National Probation Association in New York:

SENATOR EASTWOOD: I beg your pardon. Your name is on another list here that was not presented to me.

MR. CHUTE: Mr. Chairman and Members of the Committee: I am going to speak briefly in following up the brief statement read by Mrs. Dobbs, who represents the social workers of this State. I have been working with that committee of men and women who are interested in social welfare, and have assisted them in drawing up this brief amendment which we have presented to your secretary here.

We are very much interested in this Article and feel, as so many speakers have said today, that it is very progressive and would be an excellent set-up for New Jersey; it has long been needed- bringing the courts together in a unified whole - but there is no mention here in this Article of that very important court in our State, the Juvenile and Domestic Relations Court. No doubt, the committee has in mind that that is a matter for legislation entirely, but it seems to many of us citizens in this State interested in welfare that it would be very desirable and helpful to the welfare of the children and families of this State if there might be a brief section added to this Article providing that the legislature may establish a real state-wide system of Juvenile and Domestic Relations Courts. We have that today but it is not adequate and not state-wide except so far as county judges give some time to the handling of their juvenile cases. I come from Morris County, where I am familiar with the situation, and there our County judge holds Juvenile Court once a week, frequently in the evening, and hurries through his juvenile calendar. It is not a satisfactory set-up from our point of view for a real State System of juvenile courts. On the other hand, in four counties we have separate Juvenile and Domestic Relations Courts with special judges, but unfortunately those judges are not fulltime judges. They also practice law and there is a great deal of contention as to their qualifications and work. We realize this is a matter largely for legislation, but if provision can be made in the constitution that the legislature may set up Juvenile Courts and Courts of Domestic Relations with proper jurisdiction and power; it will be a sort of guide to the legislature in further proceeding along this line. This section read by the lady here, Mrs. Dobbs - I want to explain, since I assisted with it, where it came from and the purpose of it. I might say this

suggestion follows the constitutional provision of the State of New York for Juvenile and Domestic Relations Courts quite closely. It has been found necessary to amend the constitution in New York in order to make it possible to set up a state-wide system on juvenile courts throughout the state and to give the legislature the power and instructions to establish these courts. The first part of this article follows the language of the New York State law and similar provisions are in the constitutions of other states of the Union. This provision is that: "The legislature may establish juvenile courts, and courts of domestic relations, as separate courts, or as parts of existing courts, or courts hereafter to be created....."

We didn't feel that the constitutional convention would want to tie the hands of the legislature or solve the question as to whether there should be entirely separate juvenile courts throughout the State or whether there should be a state system of juvenile courts, or whether we should continue our present county system, or whether there might be a district system for these courts, combining several counties into one court, in the case of the smaller counties of the State, in order to get a fulltime qualified staff working with children and family cases. So, this authorizes either plan the legislature may decide upon, either separate State courts, separate county courts, or as parts of existing courts. It may be that it will seem wise to establish a division of the Superior Court to have juvenile jurisdiction, but there is no mention in the Contitution as to this at present. By providing that the legis-' lature may establish these courts and outlining the jurisdiction they should have, and do have in many states as follows, we will be setting up something of great social value to the State: "Conferring "upon them such jurisdiction as may be necessary for the correction, protection, guardianship, guidance and disposition of deliquent, neglected, or dependent children and minors...," Then this provision which follows the present New Jersey law, "... provided, that children,"- they would be defined as they are now defined, as youngsters under 16 years of age - "shall not be charged with or convicted of crime." That is in the law now and we feel that since it is sometimes in doubt and dispute, it would be very helpful to have it placed in the constitution. Then, "Such courts may

be granted jurisdiction for the punishment and correction of adults responsible for or contributing to such delinquency, neglect, or dependency, and to compel the support of the wife, child, or poor relative by persons legally chargeable therewith who abandon or neglect to support any of them." It outlines the essential powers that a Juvenile and Domestic Relations Court should have and it gives these courts status and place in the constitution, which they now do not seem to have.

I submit that recommendation.

SENATOR EASTWOOD: If you have a written memorandum, we will be glad to have you file it with us now or later.

Is Mrs. Charles Howell present?

MRS. HOWELL: Yes.

SENATOR EASTWOOD: Do you want to speak on the Judicial Article, Mrs. Howell?

MRS. HOWELL: Yes.

SENATOR EASTWOOD: Mrs. Charles Howell, representing the Pennington Women's Club, New Jersey Federation of Women's Clubs--

MRS. HOWELL: We desire to include in the constitution a unified and simplified system of lower courts, as well as the excellent system now proposed for the higher courts.

SENATOR EASTWOOD: I think that now that does complete the list of those to be heard on the Judicial Article. Have I missed anyone?

(No response)

There are several persons here representing the Citizens Committee for Inter-racial Unity, and I assume those representing that group desire to be heard on Article I, the Bill of Rights. Mr. William R. Jackson of Newark--

MR. JACKSON: I am the Chairman of the Citizens Committee for Inter-racial Unity, and we represent forty-five organizations serving the needs of Newark. These organizations are a cross-section of all races, creeds and colors. We have with us today four people, three of whom would like to speak. The first person is Mrs. Myra Blakeslee, Executive Director of the New Jersey Good Will Commission.

MRS. BLAKESLEE: Senator Eastwood, I will speak very briefly. I am not speaking for the article, although the Good Will Commission is heartily in favor of this amendment to the Bill of Rights. I want to say the recommendation forwarded to you as the recommendation of the Good Will Conference was not drafted by the Commission or any one group but by a conference held December 15 in Newark at which there were representatives of fifty State organizations. The conference was planned by State organizations and carried out by them under the sponsorship of the Good Will Commission. So, the recommendations, which include this one on the Bill of Rights, are the recommendations of the organizations which attended the conference and are merely forwarded to you by the Good Will Commission.

MR. JACKSON: The second speaker is Mrs. William Milwitsky.

MRS. MILWITSKY: The Newark Inter-racial Council feels very strongly that the constitution should be a means of protection for all people in the State. We know that when we voted for revision, we voted to retain the Bill of Rights, but we feel that we can retain the Bill of Rights and make it apply to all in the State who need protection at present, since the situation has changed in a hundred years, and we feel that Article I, Section IV should read, "No person shall be denied the enjoyment of any civil right merely on account of his religious principles, race or color, nor any citizen because of national origin."

MR. JACKSON: The next representative was the Reverend Gerald R. Minchin but he had to leave.

The last person with us is Mr. Harold Lett, Executive Secretary of the New Jersey Urban League.

MR. LETT: Mr. Chairman and gentlemen of the Committee: I want to speak specifically to the recommendation, the specific recommendation, given by Mrs. Milwitsky on the addition to Paragraph 4 of Article I. I know it has been discussed and argued that because of the mandate of the voters, such an amendment may not be added to any section of Article I. I think I might say, with all due respect, that legal opinion has been divided upon that particular issue. I think perhaps

the more serious objection that has been raised is that such an amendment to the Bill of Rights might well make the whole constitution much more vulnerable to attack, and I should like to say respectfully that the same will apply to the inclusion of many of the provisions already in and some of those that have been recommended. The whole idea of revision is one of bringing our organic law up to date in a way that certainly, from point to point, is going to offend those who would rather have it stay in its archaic state, so that in every sense we are exposing the whole move of constitutional revision to challenge from various points of view, representing the millions of citizens of the State of New Jersey. We therefore submit that the recommendation that we have to offer presents no more serious challenge than is already involved, for instance, in departmental reorganization, reorganization of the judicial system, etc.

I think it is terribly important that this simple-seeming phrase or clause be included in the paragraph mentioned because in 1844 the makers of the constitution at that time were painfully conscious of one particular thing, having escaped, as they had, religious persecution from the various sections of Europe from which they and their forefathers had come. They were painfully conscious of the necessity for protecting all minorities against any religious persecution, and the organic law of the State and Nation included that as a necessary part of organic law. That was in a period of adolescence of our State and our Nation. Presumably, now we have reached a state of maturity and in our attempts to achieve a more perfect form of democratic society, we have gone through the growing pains that have been an essential part of the adjustment of peoples from various cultural and racial backgrounds to each other. We have seen that the subterfuges or the roundabout attempts to have temporary legislative acts remedy these points of friction have proven faulty and weak. They have not done it because our organic law has failed to recognize these very important points of tension, these points of tension which today have catapulted the entire world into this terrible thing. It is the weakness of those who are strong, who are complacent, who are satisfied, who ignore the fact that invasion of rights upon a weak minority is a greater invasion upon that which they seem to cherish. We contend that

in the enactment of the revised constitution, we must be cognizant of the importance for protecting the rights of racial groups, or nationality groups, who today throughout the State of New Jersey are the victims of prejudice and who do not find adequate recourse through the statutory provisions which have been attempted from time to time.

We seriously recommend, therefore, that the Committee consider the inclusion of the words "race or color nor any citizen because of national origin", so that from the semicolon point in Paragraph 4 of Article I, it shall read, "and no person shall be denied the enjoyment of any civil right merely on account of his religious principles, race or color, nor any citizen because of national origin."

MR. JACKSON: We thank you for your kind consideration.

SENATOR EASTWOOD: Thank you, Mr. Jackson.

MR. WARD: I would like to be heard; I will not take up very much time. I want to refer to Article VI, Section I, Paragraph 2, which we claim, as far as it goes, is O.K. but not satisfactorily far enough. We recommend, with one or two changes in words, that the veterans' constitutional proposal submitted by the New Jersey Veterans Legislative League, which is composed of five organizations mentioned in their written schedule, be adopted and added to Article VI, Paragraph 2. We heartily endorse their proposition that this be part of the constitution. I will submit the memorandum and not take up any more time.

SENATOR EASTWOOD: Thank you very much, Mr. Ward. That is the recommendation, I believe, the veterans' representatives made the other day when they presented their views.

MR. WARD: That is right.

SENATOR EASTWOOD: Which your organization is endorsing.

Isaac Nutter, Esquire, Union League, Atlantic County--

MR. NUTTER: Mr. Chairman and members of the Committee: I shall be exceedingly brief, because with the exception of one point, the argument that I hoped to present has been well covered; that is, in Section IV of Article I, and I substitute for my brief the brief of Dr. Elias S. Hardge, N. A. A. C. P., who filed a brief with you some days ago.

As to Article III, Section VI, Paragraph 1, the right of labor to organize, instead of presenting to you my argument in that case, I recommend the brief that has been filed by the labor unions today with the other committee.

That brings me, for the purpose of argument, to Article I, Paragraph 6, as to search and seizure. The United States Court has decided that where there was an unlawful search or seizure and evidence was obtained under that unlawful seizure, that evidence shall be suppressed. In our Supreme Court, they have decided that where there is an unlawful seizure of a private home, even though the evidence received was illegally acquired, that evidence could be used in the trial of a defendant whose private home had been searched. I am recommending that there be some legislation that will protect the poor citizen, so that when there is an unlawful seizure, the Supreme Court of this State will have power to suppress that evidence. I am at the present time trying a case in Atlantic City where a house was entered and searched without a search warrant, and the officers of the law not only remained on the first floor but went to the wife of the defendant in her private room, seized her money, seized her locked box, after breaking open her private bedroom door, and then when we objected to the evidence received under that illegal seizure, we were faced in court with the fact that our Supreme Court has decided that evidence can be used. After trying the case of the crime and acquitting the defendant, we applied to the County Treasurer and the Board of Freeholders for the money, to the amount of $1700, that had been illegally seized, and they say that they don't know whether or not they have the authority to turn that money back to the rightful owner, all based upon the fact that our Supreme Court has decided that that evidence can be used. Therefore, when we couldn't use a writ of replevin because our client couldn't identify the denominations of the money, we had to go into court and file action, quasi action you might call it, in tort, in order to convince the Board of Freeholders that they have a right to return that money. I can't understand that. The search and seizure act in the United States Constitution is practically the same as the search and seizure act in our State Constitution, and the United States

Supreme Court has decided that evidence thus illegally received should be suppressed but in our Supreme Court they say that evidence can be used. We are recommending some legislation so that the Supreme Court will have the authority to say that when such evidence is illegally received by the entering of a private home without a search warrant, we can get some relief.

May I cover just one other question. It is unfortunate that I am sent here by two groups. This that I am going to say bears upon the civil rights of one group. It was customary, wherever we had a murder case, that the Supreme Court Justice would try it. Here in recent years, it has been referred to the Court of Common Pleas. I only mention that because you are about to have a Superior Court and it is very necessary that if they are going to cover the jurisdiction that you have given them in this constitution, either the Bar Association should recommend the applicants for those jobs or we should be very careful in selecting men capable, with judicial poise, when they have so much jurisdiction. I have tried fifty-four murder cases since I have been practicing. None of them have gone to the chair and only three to the State Prison. Two of those who went to State Prison went there because the case had been referred to a Common Pleas Judge. He typewrote the charge or had it typewritten and we couldn't turn his head from what he had written for the charge, and every request that was made was turned down unless it was in that charge. Very often, in taking a charge of that kind, all of it will not apply to the facts of a particular case. Therefore, I think that we ought to retain, at least in murder cases, provision that the Supreme Court Judges sit and try them, or we ought to be very careful about the kind of judges we assign for a murder case because a man's life is very valuable. Not only should there be a capable judge sitting on the bench, but he ought to have a capable lawyer trying the case in order to protect his life.

SENATOR EASTWOOD: Thank you, Mr. Nutter.

Arthur J. Edwards of Montclair, New Jersey.

MR. EDWARDS: I am speaking personally, although I happen to be Recording Secretary of the Newark Inter-racial Council.

I am speaking in my own behalf now, with respect to Article I. When the Federal Constitution Convention met in 1787, they included a number of scattered rights through the body of the constitution, but when it came to the discussion of ratification, many States said, "We want somethink more definite," and a virtual gentlemen's agreement was arrived at whereby James Madison later offered the present Bill of Rights to our constitution and it was added to it. The New Jersey Bill of Rights is practically identical with the exception of three or four articles that relate to use of State money for private institutions, etc. When the Feller Bill was submitted last fall, I gave considerable thought to the question of whether that excluded any addition to the Bill of Rights which was not inconsistent with what it contained, and I arrived at the personal conclusion it was not so. I happened to get into a debate on that subject this morning in the Executive Committee meeting and two or three of the Senatorial members of that Committee said it was their opinion that the Feller Bill did not prohibit the inclusion in the revised constitution of things which were properly placeable in the Bill of Rights and things which were not consistent with what was already there.

Judge T. M. Cooley years ago said that nothing belongs in the Bill of Rights except something pretty well established as being the law of the land - I think he said it should be the common law from England, but anyway it should be the law of the land- and the law in New Jersey as declared by our Supreme Court, or by three members of the Supreme Court, not so very long ago, says, "It is, of course, settled that the dignities, equalities, and rights of citizenship cannot be legally denied to members of the Negro race." That is so well established, as a matter of fact the Judge, when he wrote that, didn't even take the trouble to cite any other case or any situation at all. He just says, "It is, of course, settled that the dignities, equalities, and right of citizenship cannot be legally denied to members of the Negro race." Therefore, I think that qualification is enough a part of our law now so it can be put in the constitution, and I ratify the suggestion there be added to Section IV of Article I the words "race or color". Whether or not we want to

go further than that, I don't know. I limit my recommendation to that and alternatively, since we have before us the Chairman and Vice Chairman of the Joint Committee that takes jurisdiction all over the lot, I think practically those same words might well be added in Article VI, relating to public officers and employees. It won't be quite as inclusive there but it is nice window-dressing of the same type, and I would amend Section I, Paragraph 2, in this sense, "and all appointments and promotions shall be made according to merit and fitness," adding the words "without regard to race, creed or color, to be ascertained, etc."

I make those suggestions.

SENATOR EASTWOOD: Thank you, Mr. Edwards.

That seems to have exhausted the list of those who had registered. Are there any others who want to be heard before we adjourn?

MR. BILL: We don't want to take up your time but something has been said on the revisions we submitted, the veterans' constitutional proposal, and since then we have had--

SENATOR EASTWOOD: Didn't you present the views of your group fully the other day? In fact, I think your group remained here all day and even had the opportunity of answering some of the others who spoke in the afternoon.

MR. BILL: We were here when there were some statements made. When we came back after eating, we found out--

SENATOR EASTWOOD: I think it ought to be understood this hearing is not intended to permit rebuttal.

MR. BILL: We are not precenting rebuttal.

SENATOR EASTWOOD: As I understand it, you want to speak in answer to statements made by other speakers.

MR. BILL: I notice they did the very same thing in a different way. There was one other thing--

SENATOR EASTWOOD: I am sorry to interrupt you, Mr. Bill. We are not going to permit any rebuttal in these hearings.

MR. BILL: This is not rebuttal.

SENATOR EASTWOOD: We wanted to give everyone full opportunity for expression. That has been given, and these hearings would be prolonged indefinitely if we permitted everybody who appeared here to speak

to in turn offer arguments in rebuttal at the conclusion of the hearings and presentation of other views.

MR. BILL: The only one thing is we would like to get an interpretation of civil divisions. Some constitutional lawyers tell us, in connection with civil divisions, Paragraph 2, Section I, of Article VI, there is a question as to interpretation, whether that would cover all the municipalities and the boards of education and school districts. Not being a lawyer, I couldn't well go into that constitutional question, whether or not it will cover it, but there seems to be doubt in some legal minds as to whether civil division would cover all that. We in New Jersey have had more cases on this question than other States. Therefore, we should be very cautious about it, whether it will cover, and does cover, the boards of education and school districts. We did file a short brief showing a case relating to the school boards.

SENATOR EASTWOOD: The brief you submitted covered the very point you presented now.

MR. BILL: We didn't cover the civil divisions.

SENATOR EASTWOOD: Will you submit an additional memorandum covering it?

MR. BILL: We shall be glad to.

We have one more man, Mr. Brennan, who hasn't spoken. He represents the Marine Corps League. He had intended to say something.

SENATOR EASTWOOD: If it is new matter, we will be glad to hear him; if it is merely rebuttal, I am going to rule it cannot be presented.

MR. BRENNAN: My name is Jack Brennan, and I am National Trustee of the Marine Corps League.

SENATOR EASTWOOD: Did you register today, Mr. Brennan?

MR. BRENNAN: I did, sir.

SENATOR EASTWOOD: Apparently, your name was not given to me - I am sorry. All right, Mr. Brennan.

MR. BRENNAN: You have been so kind and gracious, and I know you and Mr. Cavicchia have had to use a lot of patience today, that I feel the marines should congratulate you on your marine-like forti-

tude.

We feel that, in line with what was said last Thursday, there should be something in the constitution relating to veterans' preference rights, etc. We know that your Committee is as fairminded as, and need not take your hats off to, the legislators of New York State, who included in their State Constitution an amendment pertaining to veterans' rights. We know that you gentlemen understand full well what the marines and the soldiers and sailors are doing today, that you can well see they do need an amendment for veterans' rights and preference in this new constitution.

I am not going to say more. I could speak longer but you gentlemen look rather tired. I do hope you will give a great deal of consideration to this amendment. We feel that after listening to marines who have come back and told us about what they have gone through and the fact that we know of marines selling pencils on the streets of various cities and of marines refused employment because they are so disabled, they must have some rights in the law, in the amendments, that will give them some preference. We at home sometimes do not fully appreciate what those boys have gone through. We must compensate them in some way for the time they have spent and the help they have given to the country. I know, as I stated before, that you will do no less than the great empire State of New York and will agree to put into the new constitution an amendment to protect the veterans of not only this war but of all wars.

SENATOR EASTWOOD: Thank you, Mr. Brennan, for cooperating with us.

Is there anyone else who has not been heard, who registered and who desires to present any view? If anybody desires to present any further written statements, will you please have your memorandum or brief in our hands by Monday.

The hearing is adjourned. We will announce, through the press, any further hearings.

WILLIAM A. MOORE
COUNSELOR AT LAW
TRENTON, NEW JERSEY

February 8, 1944

Honorable C. Wesley Armstrong
Broad Street Bank Bldg.
Trenton, New Jersey

Dear Senator:

I am enclosing amendments to the present proposed revised constitution which I think should merit deep consideration at this time.

First of all, I believe that New Jersey should have a Court of Claims similar to the Court of Claims of the United States Government which could hear all claims against the State of New Jersey except those sounding in tort. I think our present method of adjusting claims against the State is very cumbersome and very unfair to the claimants.

Secondly, I believe the Court of Claims should be included in the proposed revision of the constitution because in so doing, it will eliminate all pressure on the legislature in any later attempt to provide for a Court of Claims by special legislation.

Various attempts have been made to establish a Court of Claims and if I am correctly informed, each of these attempts provided for a court with special judges, clerks and offices which would run into considerable sums. Naturally, pressure groups looking for new positions would insist upon passing an act of this kind to create new judgeships and jobs regardless of cost.

By including the Court of Claims in the proposed revision and assigning the work of this court to the appellate divisions of the Superior Court, we, therefore eliminate all expenses entailed in the creation of a new and separate court.

The State of New Jersey should have such a court. The sole fact that the Congress of the United States has seen fit to establish such a court in the Judicial branch of the government and that this court has functioned successfully and to the satisfaction of litigants, is sufficient in itself to warrant our following the same procedure in this State.

Furthermore since the legislature has in its membership a large number of lawyers, the merit of such a court would be readily apparent to each body thereof. I think and fully believe that this is the opportune time to provide for a Court of Claims and that it is not unconstitutional in anyway to provide for such in the Constitution of this State.

I respectfully submit my ideas of the amendments that should be made to establish this court. With kind personal regards, I am

Respectfully yours,

(signed) William A. Moore

SUGGESTED AMENDMENTS TO THE PROPOSED REVISED CONSTITUTION (1944)

ARTICLE V

JUDICIAL

SECTION 1

1. The judicial power shall be vested in a Supreme Court, Court of Claims and in a Superior Court and in inferior courts of original limited jurisdiction, which inferior courts may from time to time be established altered and abolished by law. Such inferior courts may be integrated with the Superior Court in any manner and to any extent not inconsistent with this Constitution as may be provided by law.

3. The Supreme Court and the Court of Claims shall sit at the seat of the State Government and the Superior Court shall sit in each county except the appellate divisions thereof which shall sit at the seat of the State government.

4. The Supreme Court the Court of Claims and the appellate divisions of the Superior Court shall hold continuous yearly terms and the sections of the Superior Court exercising original jurisdiction shall hold such terms as may be fixed by rules of the Supreme Court.

SECTION 1Va

1. The Court of Claims shall be presided over by one or more of the appelate divisions of the Superior Court. Appeals from the Court of Claims shall be heard by the Supreme Court.

2. The Court of Claims shall have jurisdiction to hear and determine the following matters:

All claims founded upon the Constitution of New Jersey or any law of the Legislature, upon any regulation of an executive department, upon any contract, express or implied with the Government of the State of New Jersey, or for damages liquidated or unliquidated, in cases not sounding in tort in respect of which claims the party would be entitled to redress against the State of New Jersey either

in a court of law or equity if the State of New Jersey were suable.

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THE SENATE

STATE OF NEW YORK

ALBANY

January 31, 1944

Sol Kantor Esq.,
Perth Amboy National Bank Building
Perth Amboy,
New Jersey.

Dear Mr. Kantor:

Regarding your letter of January 27th, enclosed please find copies of three bills which I recently introduced in the New York State Senate:

(a) Concurrent Resolution of the Senate and Assembly proposing amendments to the constitution in relation to the removal or retirement of justices of the supreme court and of certain other justices and judges.

(b) Concurrent Resolution of the Senate and Assembly, proposing amendments to the constitution, in relation to the appointment and retention in office of justices of the supreme court.

(c) An act authorizing the creation of a state debt and providing for loans to be made from the proceeds thereof pursant to article eighteen of the New York State constitution.

When printed copies of other constitutional amendments I plan to introduce become available I shall be glad to send them to you. The above bills are all I have introduced to date relating to the state constitution.

With best wishes, I am,

Sincerely yours,

(signed) Thomas C. Desmond

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STATE OF NEW YORK

Nos. 18 351 Int. 18

IN SENATE

January 5, 1944

Introduced by Mr. DESMOND__ read twice and ordered printed.
and when printed to be committed to the Committee on the Judiciary -committee discharged said bill amended, ordered reprinted as amended and when reprinted to be recommitted to said committee

AN ACT

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY
Proposing amendments to sections nine and seventeen of article six of the constitution in relation to the removal or retirement of justices of the supreme court and of certain other justices and judges

Section 1. Resolved (if Assembly concur), That section nine of article six of the constitution be amended to read as follows:
9. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace justices of the municipal court of the city of New York, and judges or justices of inferior courts not of record, may be removed by the senate on the recommendation of the governor,

if two thirds of all the members elected to the senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the (journal) Journals
Notwithstanding the foregoing provisions, a justice of the supreme court, a judge of the court of claims, a surrogate or special surrogate, a judge of a court of general sessions, a county judge or special county judge or a justice of the city court of the city of
New York, may be removed for cause or may be retired for permanent mental or physical disability preventing the performance of his judicial duties by the court of appeals after a public hearing in banc, either upon its own motion or upon the recommendation of the appellate division of the department within which the justice judge or surrogate was elected or appointed, provided, however, that no justice judge or surrogate shall be so removed or retired unless he shall first have been served with a written notice of the proceeding therefor and a statement of the cause or disability alleged and shall have been given an opportunity to be heard. Removal or retirement pursant to this section shall be upon the concurrence of five of the elected judges of the court of appeals. Justices of the municipal court of the city of New York, judges and justices of all courts of inferior local jurisdiction of children's courts and courts of domestic relations and justices of the peace and police justices may be removed for cause or may

be retired for permanent mental or physical disability preventing the performance of their judicial duties by a majority of the justices assigned to the appellate division of the department within which the judge resides, after a hearing as hereinabove specified for removal or retirement by the court of appeals. Judicial officers retired for disability in accordance with this section shall receive thereafter such compensation as the legislature
may direct provided that no such compensation shall exceed the

benefit that would be payable to the member by the retirement system to which he is a member or entitled to be a member.

2. Resolved (if the Assembly concur) That section seventeen of this article of the constitution be amended to read as follows:

17. The electors of the several towns shall at their annual town meetings or at such other time and in such manner as the legislature may direct elect justices of the peace whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term they shall hold for the remainder of the unexpired term. Their number, classification and duties shall be regulated by law. (Justices of the peace, justices of the municipal court of the city of New York, and judges or justices of inferior courts not of record and their clerks may be removed for cause after due notice and an opportunity of being heard by such courts as are or may be prescribed by law) All (other) judicial officers in cities whose election or appointment is not otherwise provided for in this article including all judicial officers holding courts of special sessions, magistrates' courts or other inferior local courts of criminal jurisdiction in the city of New York, shall be chosen by the electors of such cities, or appointed by some local authorities thereof as may be prescribed by law. The boards of supervisors or other officials exercising power now vested in such boards, may fix the compensation to be paid or allowed to justices of the peace for their services in criminal matters; but the powers or duties in criminal matters now exercised by justices of the peace may be transferred by law to inferior local courts of criminal jurisdiction the territorial jurisdiction of which outside of cities may be defined by the respective boards of supervisors.

3 Resolved (if the Assembly concur) That the foregoing amendments be referred to the next regular legislative session convening after the succeeding general election of members of the assembly and in conformity with section one of article nineteen of the constitution be published for three months previous to the time of such election.

STATE OF NEW YORK

No. 82 Int. 82

IN SENATE

January 10, 1944

Introduced by Mr. DESMOND read twice and prdered printed, and when printed to be committed to the Committee on the Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

Proposing amendments to article six of the constitution in relation to the appointment and retention in office of justices of the supreme court

Sect[illegible]olved (if the Assembly concur) That sections one a[illegible] article six of the constitution be amended to read respec[illegible] as follows:

Secti[illegible]e supreme court is continued with general juris -

diction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or hereafter may be prescribed by law not inconsistent with this article. The existing judicial districts of the state are continued until changed as hereinafter provided (The supreme court shall consist of the justices now in office and their successors together with such additional justices as may be authorized by law. The successors of said justices shall be chosen by the electors of their respective judicial districts.)

The legislature may alter the judicial districts once after every federal census or state enumeration, each district being bounded by county lines and thereupon reapportion the justices to be thereafter elected in the district so altered.
The legislature may from time to time increase the number of justices in any judicial district, except the number of justices in any district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand, of the population thereof as shown by the last federal census or state enumeration. Any justice of the supreme court, except as otherwise provided in this article, may perform the duties of his office or hold court in any county.
2 The division of the state into four judicial departments is continued as now constituted by law. Once every ten years, the legislature may alter the boundaries of the judicial departments, but without increasing the number thereof, and each department shall be bounded by the lines of judicial districts. The appellate divisions of the supreme court are continued and shall consist of seven justices of the supreme court in each of the first and second departments, and five justices in each of the other departments. In each appellate division four justices shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.
The governor shall designate the presiding justice of each appellate division, who shall act as such during his term of office and shall be a resident of the department. The other justices of the appellate divisions shall be designated by the governor from all

the justices (elected to) of the supreme court, for terms of five years or the unexpired portions of their respective terms of office if less than five years. The justices heretofore designated shall continue to sit in the appellate divisions until the terms of their respective designations shall expire From time to time as the terms of the designations expire or vacancies occur, the governor shall make new designations. He may also on request of any appellate division make temporary designations in case of the absence or inability to act of any justice in such appellate division, for service only during such absence or inability to act. In case any appellate division shall certify to the governor that one or more additional justices are needed for the speedy disposition of the business before it the governor shall designate an additional justice or additional justices; but when the need for such additional justice or justices shall not longer exist, the appellate division shall so certify to the governor and thereupon service under such designation or designations shall cease. A majority of the justices designated to sit in any appellate division shall at all times be residents of the department.
Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination.

The several appellate divisions, except as hereinafter provided, shall have and exercise such original or appellate jurisdiction as

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is now or may hereafter be prescribed by law. Each appellate division shall have power to appoint and remove its clerk and attendants. No justice of the appellate division shall, within the department to which he may be designated to perform the duties of an appellate justice exercise any of the powers of a justice of the supreme court, other than those of a justice out of court and those pertaining to the appellate division, except that he may decide causes or proceedings theretofore submitted, or hear and decide motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the supreme court and exercise any of the powers of a justice of the supreme court in any judicial district in any other department of the state. From and after the last day of December, eighteen hundred and ninety-five, the appellate division shall have the jurisdiction now exercised by the supreme court at its general terms and by the general terms of the court of common pleas for the city and county of New York the superior court of the city of New York, the superior court of Buffalo and the city of Brooklyn, and such additional jurisdiction as may be conferred by the legislature. The justices of the appellate division in each department shall have power to fix the times and places for holding special and trial terms of the supreme court held therein and to assign the justices in the departments to hold such terms; or to make rules therefor.

2. Resolved (if the Assembly concur) That section four of article six of the constitution be amended to read as follows:

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4. The official terms of the justices of the supreme court shall be fourteen years from and including the first day of January next after their election. The supreme court shall consist of the justices now in office and their successors, together with such additional justices as may be authorized by law. The successors of said justices shall be chosen by electors of their respective judicial districts. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the supreme court, the same shall be filled for a full term at the next general election held not less than three months after such vacancy occurs; and until the vacancy shall be filled, the governor, by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

3. Resolved (if the Assembly concur) That article six of the constitution be amended by inserting therein a new section, to be section four-a to read as follows:

4-a. If, at any general election, the qualified votes of any judicial district shall, by a majority vote of those voting on such question, elect to have vacancies in the office of justice of the supreme court filled in the manner provided by this section whether occurring by expiration of term, creation of new office of justice of the supreme court or otherwise, the governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose

names shall be submitted to the governor by a non-partisan judicial commission established and organized as provided in this section. Each persons so appointed a justice of the supreme court shall hold office for a term ending December thirty-first following the expiration of one year from the date of such appointment.

At least two months prior to the holding of the general election next preceding the expiration of his term of office, a justice so appointed may file in the office of the Secretary of state a declaration of candicacy for election to succeed himself. If such a declaration be not so filed by any such justice the vacancy caused by the expiration of the term of office of such justice shall be filled by appointment by the governor in the manner hereinbefore prescribed by this section. If such a declaration be so filed, the secretary of state shall submit at said general election to the electors of the judicial district qualified to vote thereon a question in substantially the following form: " Shall justice .....
.....
(Here the name of the justice shall be inserted)
of the .....
(Here the title of the court shall be inserted)
be retained in office as a justice of the supreme court?" The submission of such question shall be subject to the same provisions of law which govern the submission by the secretary of state of other propositions or questions required by law to be submitted to a popular vote. Such question shall be submitted without any party designation or emblem. If a majority of the votes cast upon such question be against retention in office, the vacancy caused

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by the expiration of the term of office of such justice shall be filled by appointment by the governor in the manner hereinbefore prescribed; otherwise said justice shall be declared to have been elected and shall hold office for a full term of fourteen years from the first day of January next ensuing after such election, and at the expiration of each such term, such justice shall be eligible to seek retention in office by election in the manner prescribed by this section subject only to the provisions of section nine of this article governing removal for cause and section nineteen of this article imposing a limitation as to age upon the length of service of a justice of the supreme court. Subject to the provisions of section nine of this article governing the removal of justices of the supreme court and the provisions of section nineteen of this article imposing a limitation as to age upon the length of service of a justice of the supreme court, the justices of the supreme court in a judicial district in which such justices are selected pursuant to the provisions of this section, holding office at the time this section takes effect shall continue to hold their offices until the expiration of their respective terms of office.

There is hereby established in and for each judicial district of the state a non-partisan judicial commission which shall consist of seven members, one of whom shall be a justice of the appellate division of the supreme court of the department embracing such judicial district, who shall be designated by the governor to act as chairman of the commission, three of whom shall be attorneys and counselors at law residing within such judicial district, to be elected by all of the attorneys and counselors at law residing within such district in a manner to be prescribed by law, and

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three of whom shall be residents of such judicial district who are not attorneys and counselors at law, to be appointed by the governor. The terms of office of the members of a judicial commission shall be fixed by the appellate division of the supreme court of the department embracing the judicial district for which said commission is established. No member of a judicial commission, other than the chairman thereof, shall hold any public office or trust, and no member thereof shall hold any official position in a political party. It shall be the duty of a judicial commission to nominate and submit to the governor, when and as requested by him, the names of three persons qualified for appointment by the governor to fill a vacancy in the office of justice of the supreme court. A judicial commission may make such nomination and submission only upon the concurrence of a majority of its members. The members of a judicial commission shall receive no salary or other compensation for their services but they shall be entitled to receive their traveling and other expenses actually and necessarily incurred by them in the discharge of their duties. The expense of a judicial commission shall be paid out of the state treasury.

The legislature shall enact such laws, as may be deemed necessary or appropriate to carry this section into effect.

4. Resolved (if the Assembly concur), That the foregoing amendments be referred to the next regular legislative session convening after the next succeeding general election of members of assembly, and in conformity with section one of article nineteen of the constitution, be published for three months previous to the time of such election.

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STATE OF NEW YORK

No. 281 Int. 271

IN SENATE

January 20, 1944

Introduced by Mr. DESMOND-- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT

Authorizing the creation of a state debt and providing for loans to be made from the proceeds thereof pursuant to article eighteen of the constitution

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The creation of a state debt to the amount of thirty-five million dollars is hereby authorized for the purpose of providing moneys out of which the state may, in the manner hereinafter provided, make or contract to make loans to cities, towns, villages and authorities pursuant to and in accordance with the provisions of the public housing law. Such debt shall be contracted as a part of the debt authorized by section two of article eighteen of the constitution.

2. The Commissioner of housing, subject to the terms and conditions of the public housing law, is hereby authorized to enter into

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loan contracts not to exceed in the aggregate the sum of thirty-five million dollars, with cities, towns, villages and authorities.

3. The amount of the state debt authorized to be incurred and the amount of loan contracts authorized to be made under this act shall be in addition to the amount of the debt authorized to be incurred and the amount of loan contracts authorized to be made by chapter nine hundred forty-six of the laws of nineteen hundred thirty-nine, as amended by chapter six hundred twenty-two of the laws of nineteen hundred forty-one.

4. This act shall take effect immediately.

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The following was submitted by Walter H. Flaherty:

To: The Sub-Committee on Judicial Provisions

"Mr. Chairman and Gentlemen:

"My objective in appearing before your honorable body today is for the purpose of soliciting your consideration of a modification of that portion of the proposed revision of our State Constitution having to do with awarding to the law section of the court system matters dealing with matrimonial jurisdiction and jurisdiction in cases involving the allowance of alimony and maintenance and the custody of children.

"In the United States, where there have never been any ecclesiastical courts, as in England, jurisdiction to annul marriages or grant divorces has usually been vested in courts of equity or courts having equitable powers, and while I believe, and firmly so, that the courts of this State, as well as the judicial system of our country, and for that matter, courts of every well-organized nation in the world, should undergo such necessary changes as to keep abreast of the social and economic progress of the times, nevertheless, I do not feel that we ought arbitrarily and without sound reason change jurisdiction over matrimonial causes from the equity to the law division.

"With the vesting of jurisdiction over matrimonial causes in our Court of Chancery, many rules and principles of the ecclesiastical law were applied, for instance, the defenses of condonation, recrimination, and connivance, were a few examples wherein the ecclesiastical law has been followed. In some other instances, the ecclesiastical rule has been flatly rejected in favor of equitable considerations.

"The dissolution of marriage, it seems to me, should not be made the subject of a law decision, but rather that of equitable consideration. In law the Statute is strictly construed and many interpretations may be expounded by the new set-up, wherein if the equity section had jurisdiction, our precedents would be more consistently followed. For instance, the voluminous law and equity decisions; the procedural rules in law and equity; the different rules of evidence in law and equity, would undoubtedly make it quite difficult for a law judge to be from time to time transposed into the equity section. And I say equity section because matrimonial jurisdiction heretofore was and is an equity subject. The transition would most likely cause confusion and in all probability some of the fine points of equity in matrimonial causes would be lost sight of.

"I realize that there are various states in our Union whose judicial set-up permits matrimonial causes to come under the jurisdiction of its law section. I believe that New York has such a set-up, and while I cannot quote any particular authority for what I am about to state, I nevertheless offer it for what it is worth. I remember discussing divorce matters some time ago with several lawyers in New York and mention was made by them of the fact that they were not pleased with matrimonial matters coming under law jurisdiction, and for that matter, some of the judges, whose names they probably mentioned at the time and which I do not recall at this moment, were themselves not pleased with the system. However, be that as it may, I realize that the Constitution as now proposed shall not be substantially, if at all, modified by reason of these and future discussions, but in connection with the Constitution taking matrimonial causes from the equity branch and placing same in the law division, consideration should be given to some self-evident consequences.

"I believe that one of the best means I have of elaborating on this subject is to bring to your consideration one who is, I know, the very spirit of our court of equity, an outstanding exponent of that for which I speak , a man whose judgment almost invariably is unquestioned in matters pertaining or incidental to divorce. The man I speak of is Advisory Master Dougal Herr, who, by the way, is a Republican; I am a Democrat. As a member of the Bar of this State, I believe that I can well express myself about Dougal Herr. I remember when matrimonial matters were heard before Special Masters. I recall some ten years ago such matters being placed exclusively in the hands of the Advisory Masters. At that time Dougal Herr had a lucrative practice and in order to devote his entire attention to his judicial duties, he surrendered his personal business. The set-up under the proposed constitution legislates this man out of public office and in doing so not only the Bar but the people of this state shall sustain a serious loss. I say a serious loss because here is a man before whom litigants and opposing attorneys have appeared; tried their cases, and left the court, both sides whether they lost or won, having felt satisfied that justice had been done; and I challenge anyone to appear before you and make a statement to the contrary. Undoubtedly your honorable body has heard many splendid reports about Dougal Herr and the responsibility on your shoulders of allowing matrimonial causes to be subject to the law section instead of equity is a grave one; for in devising the means and ways for taking care of the various Justices, Judges and Vice-Chancellors, great consideration would also have to be given to the retention of Dougal Herr, either in the equity section of the Superior Court or in an Appellate Division thereof, especially having to do with matrimonial causes.

"From his years of experience and the knowledge acquired I know, and I believe I voice the sentiments of every lawyer in this State he would lend wisdom and respect to any Court he might be appointed to.

"The judicial set up of our State has from its very beginning been the object of admiration and respect by the Bar and courts of our sister states. We have produced men of great ability who even to this date, as in the case of Judge Herr, are often spoken of in the courts of other states. Look through the equity reports and you will find many decisions written by him which are outstanding for their judicial brilliance. This State cannot afford to lose the judicialtemperament and acumen possessed by such a man.

"Having thus spoken I sincerely urge your honorable body to devise the ways and means of permitting equity under the Proposed

Constitution to retain matrimonial causes and thereby secure for the Bar and people of this State that brilliant judicial person - Dougal Herr.

Respectfully submitted,"

(signed) Walter H. Flaherty.

Dated: February 9th 1944

EIGHTY PARK PLACE
NEWARK, NEW JERSEY

WILLIAM H. SPEER February 8, 1944

The Honorable Josiah Stryker
744 Broad Street
Newark, 2 New Jersey

Dear Mr. Stryker:

I am in accord with the memorandum which you propose to submit to the sub committee of the Legislature on judicial provisions of the proposed revised Constitution of New Jersey, and authorize you to state to the said committee that I had intended and desired to be present and state my views with respect to what I conceive to be improvements in said proposed revision, but have been to my great regret prevented from so doing today because of an inescapable business engagement in Newark. I, therefore authorize you to state to the sub-committee that I am in accord with your views as expressed by you in your memorandum and that I would add thereto the following observations with respect to the Court of Chancery:

"Some of us of whom I am one are in favor of retaining a separate Court of Chancery, and if this be not done then in having a separate division in the Superior Court to which Judges will be permanently assigned.

"The history of the Court of Chancery in New Jersey, with its incomparable array of outstanding equity-lawyers and its development of a rounded system of equity-jurisprudence shows that the Court of Equity here contributed in a large way to New Jersey's reputation so aptly characterized by the well-won term 'Jersey Justice.' This very revision committee has borne testimony to this by providing in effect that generally in all matters in which there is conflict or variance in the rules of equity and the rules of common law, the rules of equity shall prevail. This is the provision now imbedded in England's unwritten constituion. It is of the utmost importance therefore, to preserve this stream of equity- principles unalloyed and unimpaired. There will still have to be here as there is in England, equity-reports and not such a confusion of reports as characterizes the New York system. If we are to continue the high character and reputein equity, which we have so justly won, that court or division should be administered by a body of experts in equity jurisprudence.

"In the last edition of Professor Pomeroy's Equity Jurisprudence the views above expressed find confirmation. He says 'Every careful observer must admit that in all the states which have adopted the

Reformed Procedure there has been to a greater or less degree a weakening, decrease or disregard of equitable principles in the administration of justice . . . . The tendency however, has plainly and steadily been towards the giving an undue prominence and superiority to purely legal rules, and the ignoring forgetting, or suppressing of equitable notions . . . . In short, the principles, doctrines and rules of equity are certainly disappearing from the municipal law of a large number of the states, and this deterioration will go on until it is checked either by a legislative enactment, or by a general revival of the study of equity throughout the ranks of the legal profession. . . . I need not dwell upon the disastrous consequences of the tendency above described if it should go on its final stage Even a partial loss of equity would be a fatal injury to the jurisprudence of a state. So far as equitable rules differ from those of the law they are confessedly more just and righteous and their disappearance would be a long step backward in the progress of civilization.'"

It is true that the inclusion in the proposed revision of the Constitution of the provision with respect to the situation where the rules of the common law with reference to the same subject matter and those of equity are in conflict or at variance, the rules of equity shall prevail would have a very beneficial effect upon the matter but all the above-quoted observations of Professor Pomeroy, with regard to the tendency of the rules of law to prevail over those in equity, and the supreme importance of not diluting or deteriorating the rules of equity by breaking down those barriers which heretofore have protected equity from such deterioration have lost none of their force and should be borne in mind in the establishmentof the judicial system under the proposed revision.

Very truly yours,

(signed) William H. Speer

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VETERANS CONSTITUTIONAL PROPOSAL

Appointments and promotions in civil service of the State and of all civil divisions thereof including boards and commissions maintained out of public funds derived from licenses or taxation shall be made according to merit and fitness to be ascertained so far as practicable, by examination which so far as practicable shall be competitive: provided, however any honorably discharged person who has served in any war of the United States, disabled in the actual performance of duty in any war to an extent recognized by the United States Veterans' Bureau who are citizens and residents of this state and whose disability existed at the time of his or her application for such appointment or promotion, shall be given preference in appointments or promotions, without regard to their standing on any list from which such appointments or promotions to office, position or employment may be made.

Any honorably discharged person who has served in the military or naval service of the United States in any war shall be given preference subject to a disabled veteran in all appointments and promotions to offices positions and retention in employment in the State and of all its civil divisions thereof including boards or commissions whose funds are derived from licenses or taxation.

They shall enjoy tenure in offices, positions and employment, pension and retirement privileges.

Appropriate laws shall be enacted by the legislature to carry out and enforce the provisions of this section.

Above proposals recommended to be added to Article 6 Paragraph 2 ,proposed by

United Spanish War Veterans Department of New Jersey
Veterans of Foreign Wars " " " "
Disabled American Veterans of the World War
Department of New Jersey
Marine Corps League Department of New Jersey
Army and Navy Union " " " "

Before the Joint Legislative Committee constituted under Senate Concurrent Resolution No. One adopted Jan 11, 1944.

CRITICISMS AND SUGGESTIONS OF JAMES D. CARPENTER, JR., RE ARTICLE V OF THE PROPOSED CONSTITUTION RELATING TO THE JUDICIARY.

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The second sentence of Article V, Section 1 reading: "Such inferior courts may be integrated with the Superior Court in any manner and to any extent not inconsistent with this Constitution, as may be provided by law." would place in the legislature power by statute to give to district court judges sitting in a city or county, or even justices of the peace, original jurisdiction in matters of law and equity probate matters and crimes that are reposed in the Superior Court by Section 3 of Article V. I seriously doubt if this was the intention of the framers of the draft. If that was the intention then the entire sentence in my opinion should be deleted. It seems to me that the first sentence in Section 1 is all that is required, and the second sentence is unnecessary and may lead to mischievous consequences.

Re Section 1 Par. 2: Great doubt has been expressed between lawyers as to the meaning of this paragraph. The courts have never yet said that "in all matters in which there is any conflict or variance between equity and common law, equity shall prevail." We have in New Jersey a fine body of decisions demarking the jurisdiction of the law courts and the Court of Chancery and showing in what respects equity follows the law and in what instances and under what circumstances equity will restrain the pleading or enforcement of strictly legal rights.

I respectfully submit that the entire Par. 2 should be deleted from the draft, first because its meaning is doubtful, second because it is unnecessary, and third because the intention is not to change the fundamental laws of the state in matters relating to the respective jurisdictions of law and equity but to set up a system of courts which can more efficiently administer justice. The provision that every controversy shall be fully determined by the justice hearing it may be accomplished by an order of the Supreme Court after the adoption of the Constitution, and, in my opinion not put in the Constitution itself.

Par. 3: May I respectfully submit that it is unnecessary and unwise to require as long as this Constitution remains in effect that both the Supreme Court and all the appellate divisions of the Superior Court must sit at the site of the State Government. The business of the court may very well require from time to time a branch of the Supreme Court to sit elsewhere than in Trenton. In my own practice I have known of branches of the Supreme Court to sit in Newark and in

Jersey City. There is no necessity for this provision, and I suggest that it can be improved by the mere addition of the words: "or elsewhere, as the business of the Supreme Court and Appellate Divisions of the Superior Court may require."

SECTION 11

May I respectfully suggest that there should be a distinction in the Constitution between members of the Supreme Court and members of the Superior Court. I think it correct to call the members of the Supreme Court "Justices". The members of the Superior Court should be called "Judges". The members of the United States Circuit Court of Appeals, the highest intermediate court in the federal system, are called "Judges", and I think it well in our system to use the same term.

Par. 2 of Section 11 seems to conflict with Section 1V, Par. 4. Section 11 gives the Supreme Court appellate jurisdiction only, but Section 1V gives it also power to review findings of fact, set aside verdicts as inadequate or excessive, and "exercise such original jurisdiction as may be incident to the complete determination of the controversy." This provision, therefore, conflicts with Section 11, Par. 2, and in a manner inconsistent with the powers given to such appellate courts as the Supreme Court of the United States, the Court of Appeals of New York, and other strictly appellate courts. I suggest that Par. 2 should read:

> "The Supreme Court shall be the court of last resort and shall have and exercise all the jurisdiction heretofore reposed in the Court of Errors and Appeals, except as limited herein."

In the second sentence of Par. 2, the word "certiorari" should be eliminated and the word "order" should be inserted. Certiorari is a cumbersome and ancient writ. These are the days of simplification and speed, and certainly if the court has the power to grant the ancient writ of certiorari, it can accomplish the same thing by a simple order.

SECTION 111

Section 111, granting the Superior Court original and appellate jurisdiction throughout the state in all cases with an appeal in a limited number of cases to the Supreme Court, works a mighty change in the administration of justice in New Jersey.

The first thing it does is to abolish the Court of Chancery, but at the same time it sets up "an equity and probate section to exercise all other jurisdiction of the court" excepting the jurisdiction given to the law section. That jurisdiction is civil and criminal jurisdiction at law, matrimonial jurisdiction, jurisdiction in cases involving the allowance of alimony and maintenance and the custody of children. Under a strict interpretation, the equity and probate section necessarily will exercise all the appelate jurisdiction of the court. Was this intended?

Furthermore, it is an assumption fairely to be made that the "equity and probate section of the Superior Court is to take the place of the Court of Chancery" after removing from it the time-honored jurisdiction of the Chancellor in matters involving matrimony, alimony and the maintenance and custody of children.

Throughout her history New Jersey has had a Court of Chancery. Its jurisdiction is well defined and it has a body of decisions of which any state may be proud. Indeed, New Jersey is unique among the states in having such an outstanding court.

Criticism of the Court of Chancery in my judgment is largely unfounded, and generally is predicated upon narrow personal grounds. It has its origin in the political character of certain appointments and it is not peculiar to this court or this state. Unfortunately, appointments made solely from political considerations are made in every state and to every court high and low throughout the length and breadth of this land. Fortunately, only a few judges have been found unworthy of their trust. High moral character and real professional ability should be the yardstick by which persons considered for judicial appointments should be measured, and so long as we adhere to this standard courts will be beyond criticism. The history of the Court of Chancery from the earliest beginnings down to the time of Chancellor Walker shows beyond any question that the Court of Chancery as set up in our present Constitution can be the greatest state court in the land.

Why, therefore should this court be abolished? No one has suggested that we tear down the State House or the State Prison, which are perfectly sound and useful structures, merely because they are old or because we do not like the employes put in office by the last administration. One may live in a perfectly comfortable house built a generation ago, but we do not tear it down merely to get rid of the housekeeper.

Furthermore, I suggest that it is a mistake to throw jurisdiction in matters of alimony, maintenance and custody of children from the equity and probate section of the Superior Court into that section whose judges will administer the criminal law. Matters involving domestic relations and the care and custody of infants should be handled by judges who are administering equity who have a fine regard for the maintenance of the home and the rights and the interests of children. Judges who sit on the criminal bench on the other hand, day by day deal with the rougher elements of the community they have to be tough, and in the due administration of justice they necessarily have to break up homes and administer the law with a cold and impartial hand that should not be lifted in a court of equity

It is respectfully submitted the administration of justice in New Jersey can be immeasureably improved by

(1) Establishing the Supreme Court as contemplated in the proposed amendment giving it all of the jurisdiction of the present Court of Errors and Appeals in all cases, with appeals to such court limited as in Section IV, Par. 3.

(2) Providing a separate Court of Chancery such as we have always had in New Jersey with its jurisdiction unimpaired. Whether vice chancellors should be appointed by the Chancellor without confirmation or by the Governor with confirmation, is a political question that I do not propose to discuss, and I think is immaterial if we can only keep in this state the administration of law and equity separate and distinct, as it has always been.

(3) Providing a Superior Court which shall have original as well as appellate jurisdiction throughout the state heretofore exercised by the Supreme Court, the Circuit Courts, Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer and Court of General Sessions. By statute and by rule the practice in such a law court could be made very simple and efficient in administration. The prerogative Court could

well be abolished and its jurisdiction given to the Court of Chancery.

The proposal in the draft under consideration that a judge in either the law section or the equity and probate section may exercise the jurisdiction of the other when the ends of justice require it; that any justice may grant prerogative writs and hear the same, necessarily includes the power of any Superior Court Justice located in any county of the state to grant injunctions, appoint receivers and exercise all the extraordinary powers heretofore exercised by the Chancellor as well as the Justice of the Supreme Court. It must be remembered that Chancellors as well as Justices of the Supreme Court have heretofore exercised a very sound discretion and judgment in granting the prerogative writs, as well as injunctions and restraints of all kinds. The courts in the past have zealously guarded the prerogative writs, and the rules under which injunctions may be issued have been tightened from time to time to restrain abuse that has crept into the administration of the law, not only in New Jersey but elsewhere.

After 35 years of practice in this state, it seems to me unthinkable that we should give to every law judge in the State of New Jersey the power and authority in his own discretion to grant injunctions and the prerogative writs; that it is a great step backward at this stage to permit everyone of the multitudinous judges who will be sitting in the Superior Court to exercise discretion in granting injunctions, appointing receivers, and in granting the prerogative writs which have been so zealously guarded in this state in the past. I have no doubt that many of the judges who will be appointed, particularly in the smaller counties of the state, will have had no experience in such matters. Such matters will come before them so seldom that they cannot possibly become the specialists that our Chancellors, Vice Chancellors and Supreme Court Justices have become in the past. The proposals I fear will lead to confusion and they hold the possibility of great harm.

SECTION LV

I have three criticisms under Section 1V that can easily be corrected.

Par. 2, second sentence, permits appeals to an appellate division "in cases involving restraints." I suggest the use of the words "the issuance or refusal of an injunction" in place of the word "restraint." The word "restraint" would include matters of replevin where a person's property is seized by the Sheriff pursant to a writ; or one's arrest on a capias or for the commission of any crime or even a motor vehicle violation; or an injunction.

Par. 3, clause 2: The word "opinion", I suggest be changed to "vote", for frequently judges dissent by vote but do not file a dissenting opinion.

I suggest that in Par. 3, Clauses 3 and 4, the word "certification" should be changed to "order". This suggestion is merely made in the interest of simplification.

Par. 4: My criticism of Par. 4 is touched upon above. The Supreme Court under the suggested draft is to be purely an appellate court. Hence it should not be given the duty of weighing the facts in every appeal and exercising such original jurisdiction as may be incident to the complete determination of a controversy. The court should hear and decide appeals on the law and affirm or reverse, permitting juries and the lower courts to determine the facts. Under this provision the Supreme Court, which is intended to be purely an appellate court, would have the greater part of its time consumed by

hearing arguments on the facts, by attempting to weigh the facts and determining the facts, which should be finally determined before the case reaches a court of the dignity of the Supreme Court.

SECTION V

Sec. V, Par. 4: This Section permits the Senate to prefer charges against a judge, try him, and by judgment on conviction remove him from office and disqualify him to hold and enjoy any office of honor, profit or trust in the state. The tribunal which tries the judge should not prefer the charges and should not prosecute them. The present Constitution is far better for it provides that charges shall be preferred in the Assembly. The trial is conducted by the Assembly and the Senators sit as judges on the trial. While the present system is cumbersome and subject to severe criticism, I nevertheless feel that the Constitution should provide a different method of preferring the charges and trying them. It is suggested that the charges be preferred either by the Governor or by the Attorney-General; that they be tried by the Attorney-General before the Senate. This will prevent the Senate being placed in the position of prosecutor, judge and jury.

SECTION Vl

The second paragraph of this Section has no place in the Constitution; if wise, it should be provided by statute, and the fourth paragraph that the executive director shall have "such other duties as may be delegated by the Chief Justice", would probably permit him by order to hear motions and decide cases.

The last sentence in Par. 3 should be clarified. The appointment of the Clerk of the Supreme Court and the State Clerk of the Superior Court should be made "with the approval of the Governor in writing." The present language makes a nod or a telephone call sufficient, and in case there was a dispute as to whether such approval had been given, of course the appointment would have been made notwithstanding.

Dated: February 8, 1944. Respectfully submitted

James D. Carpenter, Jr.
75 Montgomery Street
Jersey City 2, N. J

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J-2

(The following recommendations were submitted by
Leon S. Milmed, J.S.D.
30 Nairn Place
Newark, New Jersey)

RECOMMENDATIONS RE: ARTICLE III, SECTION VI, PARAGRAPHS 6 AND 7 OF THE PROPOSED CONSTITUTION

Re: Paragraph 6

To dispel any doubt as to the power of municipalities to prescribe for use zoning of lands and buildings and structures, and to provide more fully for the accomplishment of the purposes of use zoning, it is recommended that Paragraph 6 of Article III, Section VI be rewritten to read as follows:

> The Legislature may enact general laws under which municipalities may limit and restrict to specified districts and regulate therein, land uses, uses of buildings and structures, and buildings and structures according to their construction. The Legislature may similarly limit and restrict the uses of property adjacent to any public parkway, highway, other public improvement or public place for the protection and conservation thereof. Such laws shall be deemed to be within the police power of the State and shall be subject to repeal or alteration by the Legislature.

Re: Paragraph 7

In order to provide an adequate limit within which excess condemnation of property for public use may be made, it is submitted that Paragraph 7 of Article III, Section VI be rewritten to read as follows:

> Any agency of the State or any political subdivision thereof, which is empowered to take or otherwise acquire private property for any public highway, parkway, other public improvement or public place, may be authorized by law to take or otherwise acquire the fee or any lesser interest. The Legislature may authorize cities and counties to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased. No taking provided for herein shall be without just compensation.

PUBLIC HEARING ON

PROPOSED REVISED CONSTITUTION (1944) PENDING BEFORE JOINT LEGISLATIVE COMMITTEE TO FORMULATE A DRAFT OF A PROPOSED REVISED CONSTITUTION FOR THE STATE OF NEW JERSEY CONSTITUTED UNDER SENATE CONCURRENT RESOLUTION NO. 1, ADOPTED JANUARY 11, 1944

HELD BEFORE SUBCOMMITTEES ON

Tuesday, February 15, 1944

(Judicial)

J

REGISTERED SPEAKERS - MORNING SESSION

Tuesday, February 15, 1944

Honorable J. H. Thayer Martin	Counsel for the Newark Chamber of Commerce (Modification)
Leonard J. Emmerglick	Member of the Bar (Modification)
Arthur J. Edwards	Montclair, N. J. (Commendation)
Spencer Miller, Jr.	Representing N. J. Constitution Foundation
Evelyn Seufert -and- John Bebout	N. J. Committee for Constitutional Revision
Mrs. Charles S. Maddock, Jr.	State President, Federation of Women's Clubs
Mrs. Ralph Hacker	State Chairman of Legislation and Citizenship
Elias A. Kanter	Newark, N. J. (Modification)

CHAIRMAN EASTWOOD: I wonder if all of those who want to speak before the Judiciary Committee have registered?

May I have a list of those who have registered to speak today? (Chairman is then furnished with a list of appearances as entered)

CHAIRMAN EASTWOOD: Is Spencer Miller, Jr. present, representing the New Jersey Constitution Foundation?

MR. JOHN BEBOUT: Mr. Miller had an appointment that caught up with him and he had to leave. He left his statement and asked me to read it or file it with the Committee, whichever you prefer.

CHAIRMAN EASTWOOD: Well, it is a very short statement, he showed it to me. Will you read it, please?

MR. BEBOUT: All right. The first one has to do with the Judicial Article, entitled "Memo for Statement on Judicial Selection and Tenure."

"An independent judiciary, composed of well-qualified judges, is a vital necessity in the efficent functioning of constitutional government. It is a most important ingredient of good government. Most students of government would agree that your committee was well advised to adhere to the system of appointment rather than election of judges, and to depart from the system of short-term appointments which has made it necessary for New Jersey judges to be constantly mindful of the politics of re-appointment.

Can we not, in this new constitution, go a step further? A number of states have been experimenting with judicial nominating and qualifying councils. Would it not be well to provide for such a council to inform or limit the governor's discretion in the selection of judicial nominees? After all, the principal reason for putting the power of appointment of judges in the governor and the senate is not that it is inherently an

executive power to appoint the members of the judicial branch; but rather that, on the whole, the governor and the senate have proved a safer repository for this power than popular election, the legislature alone, or the judiciary alone. A well balanced judicial nominating council, composed of representatives of the courts, the legislature, the bar and the lay public, charged with the sole responsibility of giving the governor a list of qualified persons for each judicial appointment, would hardly be subject to serious political abuse and should go a long way toward taking judicial appointments entirely out of the sphere of patronage politics. If it is not considered best to freeze the precise size and composition of such a nominating council into the constitution, the legislature might be given the right to set up such a council according to certain broad specifications. This would further serve to balance the threefold functions of government and go a long way toward dissipating the fear that the new constitution may create on over-powerful executive."

Now Mr. Miller informed me that this statement was submitted in his own name as an individual.

He also had a statement which I understood he planned to present at the end of these hearings as President of the New Jersey Constitution Foundation. Do you want me to read that?

CHAIRMAN EASTWOOD: Yes, if you will.

MR. BEBOUT: "As you bring your hearings to a close on the Proposed Revised Consitution, I should like to speak officially and briefly for the New Jersey Constitution Foundation. The Foundation, as a research and educational body, does not appear as an advocate. The sole function of the Constitution Foundation is to provide and disseminate useful information concerning our state constitution and government. It is inevitable, therefore, that the Foundation has taken a great interest in the draft of a proposed new constitution

prepared by your committee and in the public hearings that have been conducted on the various provisions of that draft. We have already tendered the good offices of the Foundation to Governor Edge and he has expressed the desire that this offer be made direct to your committees. The Governor added that he felt sure that you would wish to make use of such services as we can render. As we see it, we can be helpful in two different ways:

(1) By giving the proposed revision the widest possible circulation and encouraging informed discussion of its provisions.

(2) By giving your committees a report on matters of detail and draftsmanship.

We have already distributed by mail and in other ways, several thousand copies of the proposed revision and issued news releases on it which have had wide publication. Most of our weekly radio broadcasts will be devoted to it for the next several weeks. Members of our staff and volunteer research associates have been making a very careful textual analysis of the proposed revision, and we shall be prepared to submit a report on their findings very soon.

In a word then, we would offer you our help on the important task of draftsmanship to insure a constitutional document which is as sound and as clearly stated as is possible; and then to aid both the Legislature and the people of this State in the widest and most informed discussion on their Fundamental Law."

CHAIRMAN EASTWOOD: May I say for the benefit of those who have not been in attendance at hearings of the Revision Committee that the Committee has adopted rules for the hearings, among which is the rule that each speaker will be limited to fifteen minutes. If you have any written memorandum or brief will you file it with the stenographer today, as today is the last day for public hearings.

Is the Honorable J. H. Thayer Martin present?

(Chairman is informed Mr. Martin appearing before Legislative Sub-Committee at this time)

CHAIRMAN EASTWOOD: Mr. Leonard J. Emmerglick, a member of the bar, who desires to speak.

MR. LEONARD J. EMMERGLICK: Gentlemen: I wish to respectfully submit for your consideration a proposal for modification of the Judicial Article. I am able to present this morning a concrete proposal looking to the accommodation and fitting into the present framework of courts provided for in the Article of a separate independent court of equity. Before going into the details, I ask your indulgence to permit me to make a statement of the reasons which prompt this proposal.

CHAIRMAN EASTWOOD: We have no objection to your making the statement if you will limit the entire time you consume to fifteen minutes, Mr. Emmerglick.

MR. EMMERGLICK: I think I can do so, Senator.

From 1845 until about 1900 the states gradually gave up their separate courts of chancery. That was a period when the task of law was to adjust the exercise of free wills. Men then had large areas of freedom - and the statutes and legislation which hedged in their conduct were not very many in that day of the simpler way of life. But since 1900 there has been a notable shift in the details of law and the freedom which men now enjoy is hedged in by numerous statutes and regulations to meet the demands of our very complex and interwoven actions. The needs of every individual are much greater than they have been and so that the task of law has shifted and today the task is to satisfy human wants. You gentlemen know that very well because that is your principal occupation as member of the legislature, but it is a function of the courts to some degree shared with you, and for which they are in a measure responsible. Every time a judge meets a new set of facts, he engages in deciding the case and in a

small way an act of legislation. Every time he extends or reshapes a rule he legislates. That process has been very well described by Justice Cardoza in his book which he calls, "The Nature of the Judicial Process". And as people go on doing more and more things in their daily lives the occasion presented to the courts for that type of legislation increases and as our lives develop that will continue to be so.

Now what is the human want for which people turn to the courts? It is the desire for justice fashioned to the exact facts of the individual case - for individualized justice. Now as a nation, almost exclusively with rare exceptions, we have destroyed the instrumentalities by which that kind of justice was provided in the separate courts of chancery, and with what result? The administrative process flourishes and the judicial process, both in the state court and the federal court, and particularly in the equity jurisdiction, is discredited in the eyes of the public.

The administrative tribunal in many instances does not compete with the judicial process. There are agencies engaged principally in rate making or licensing; I am speaking now of that great body of administrative agencies, federal and state, which apply law to disputed facts. You will readily recall many of them. They displaced the courts. Their effort is to give effect to the individual and the peculiarities in each case and to shape their judgment and determination exactly to the individual needs of the case. By statute or regulation very frequently these agencies are required to hear these matters as proceedings in equity. Even in the absence of such regulation sound judicial administration patterns itself after equity. We can now see in the administrative process a purpose to adapt the principles and methods of equity.

It will serve no good purpose to take up your time measuring the one by the other, the virtues of the administrative process, and then tracing it back to show its origin

in equity jurisprudence. The point I would like to make is this. This is a new way of getting equity from an administrative tribunal and it is due in the main to the absence throughout this country of separate equity courts, possessing cumulative experience and perfected techniques to serve as institutes for individualizing justice.

Now this great special administrative tribunal has not grown up as part of the judicial branch of government, on the contrary it is attached to the executive branch, and here is a fact of the utmost importance. Those who place faith in the individual as well as the administrative do so because it stands in opposition to the judicial branch, in opposition to the courts and to their methods. That is the principal characteristic which attracts those who espouse the administrative tribunal. Here they think is the kind of corrective check which opposition alone can produce.

Now the Court of Chancery grew up in opposition to courts of law. The citizens turned to the Chancellor in England, not for protection against the King, but for protection against the strict law, and here was this individual court which was identified with opposition to the cold mechanical application of general law.

Now when we merged throughout this country and England the law courts and the equity courts something was destroyed and that was this element of standing in opposition to strict law. There was no place where individualized justice was the exclusive function to be performed by the judicial branch of government. Where the individual needed individualized justice he had to go to the court which had at one and the same time stood for strict law and opposition to it. Quite a difficult thing for a court to do when we consider the courts are operated, manned and made by merely human beings.

This merger destroyed the principal checks and balances which no longer existed within the judiciary. Even where specialization of judges on the equity side of the merged court was maintained, as is to a degree provided for in the Judicial Article, the final result was the same. A court which had the obligation to protect and cultivate the common law had to be approached by the individual who needed individualized justice. The court which day in and day out sustained the right of a holder in due course, of a promissory note against all varieties of deceit between maker and payee, applying the same pattern to every one of its victims, had to be approached by the man whose case required made-to-measure justice. I am not speaking principally of the quality of judicial action which resulted, but I am speaking of public onfidence which resulted when law and equity which are fundamental opposites are fused together. The litigant asks, whether he be the private citizen or the head of an administrative agency, "What kind of justice can I get from a merged court of equity where I get equitable justice, as the law works, from a law and equity complementing each other instead of being opposites. Within the legislative branch of government one house checks the other. Within the executive branch, one agency, checks another. What is there unseemly about one court balancing another in response to their inherently opposed functions?"

The climate of opinion, gentlemen, gave rise to this strong attachment for administrative tribunals as one after another sprang up and was quickly embraced. The individual looks to the courts for the best method of seeking equity, but he finds in the administrative agency a more specialized one.

Now why is so much confidence placed in this element of opposition? Our experience proves it to be indispensable. We adhere to a constitution which sets up three departments

of government, or three branches of government. Not a day goes by but that we see the wisdom of having legislative power to check the executive, or we see the wisdom of having the judicial power to check the executive in the proper case.

And what I have pointed out, in individual government we maintain a system of checks and balances. In the jury system which we still cherish, it is simply a proposition to preserve for the public a check upon the lawmakers and upon the courts and upon the law enforcement officers. The jury represents the power of the public to act in opposition to its own laws. Why would they appeal to the legislature then to correct evils in the statute or absence of statutes. But by reposing in the jury the authority to render a general verdict the public retains the power to act in opposition to its own laws in order to do individual justice.

Now it was thought when this merger took place from 1845 to 1900 that if you added equity to law you would enrich law and simplify the procedure, but when you undertook to homogenize law and equity the equity, as opposition, is dissolved in the mixture. So that all of the improvements we have made in the procedure in the court has not reversed this movement toward the administrative process. We have simplified pleadings, we have broad discovery procedures, we have a great many procedural improvements for the functioning of the courts, but they have simply made the judicial method more flexible and do not supply the element of opposition. There is still lacking that external independent judicial check upon the strict law method for the proper occasion. Now to spend a moment or two on the subject of the enrichment of the law by the merger of equity into it.

The practice of law codes in taking the equitable principles and making them into legal principles is an ancient one. It is part of the great process by which moral principles are first converted into equitable principles and then

converted into principles enforced by law codes. Now precisely in that way and without the benefit of merger the most valuable principles applying in our law codes have come about. The doctrine of the simple contract, the obligation of a man because he had given a promise in exchange for another promise was originated in equity and then taken into the law. The right of the assignee of rights, of intangibles, to sue upon them, was first recognized in equity and then adopted by law. Our entire notion of fraud was a creation of the Court of Chancery of England and then taken into the law. The fiduciary duties which we apply to trusts and which have been adopted by the law courts were originated in equity. This is not an isolated view. The doctrine of estoppel was originated in the equity courts and taken into the law courts.

There has been since the merger of the law and equity courts no notable improvement or advance or speed-up in that process. I think you can hardly find a valuable important legal principle today which since the age of the merger was taken into the law courts directly from the fields of morals as distinguished from the equitable principle. On the other hand where you do have the mergers you have the law courts diluting the equitable principles by their incorporation into that jurisdiction.

If I may I would like to take two or three minutes to illustrate that point.

SENATOR EASTWOOD: I think you have two minutes more left.

MR. EMMERGLICK: I wonder if I might ask for an extention of five minutes?

CHAIRMAN EASTWOOD: I am afraid not. We have had others who have spoken here on this matter and we have others to speak. They have done so in fifteen minutes and we will ask you to finish in two minutes.

MR. EMMERGLICK: Yes, thank you.

I was saying there was a limit to the law courts to fix the equitable jurisdictions, but that they were

diluting equitable jurisdiction and sometimes they disappear. In a number of states that is true because we find in those we have the doctrine that you must prove intent to deceive in an action at law. You don't have to prove intent in equity. That you see is a watering down of this doctrine of fraud by the law courts, taken into itself from the equitable jurisdiction. We have within the decisions in the courts of this State of bailee, this is a subject of special deposits in banks. This transaction was an averment or if the word be preferred, a trust. I don't want to take time to distinguish between a bailment and a trust or the important difference of fiduciary transaction, but compare with that the observation of Vice-Chancellor Backes in which he laid down as a guide for the trustee the supplication, "Lead us not into temptation.", from the Lord's Prayer. Howfar the law courts have gone from that in the light of bailments and trusts and saying that substantively is the same thing. I would like to go on, but the limit of time prevents.

Seventy-five years ago the courts of this state, the law courts, refused to permit a mortgagee to sue a pruchaser of the mortgaged premises who had assumed payment of the mortgage debt. The law courts insisted that the mortgagee sue the mortgagor and recover and collect a judgment, and then that the mortgagor burden the courts again with a suit against the grantee to recover and collect the same amount of money from that grantee. But equity granted a remedy to avoid this needless circuity. For about seventy-five years neither the legislature nor the law courts did anything to relieve that situation and just the other day that change was made.

Well, a separate equity court then is not merely a comforting symbol. It is a laboratory for the development of principles and methods and techniques for treating cases as single, unique situations. Applying the rule of morality increasingly to the conduct of men by themselves. If we are satisfied that we have gone as far as we want to go, as far as we can go in taking morality

into the law, then we have now reached that state of progress that no further development is possible and then we may abolish separate equity courts without harm, but we can't do that obviously if we go on expanding our ways of living. What were moral obligations become so important that we must make them into legal obligations. We have only to do so, gentlemen, by means of having at our disposal a separate equity court which is occupied with conscience and with the converting of moral obligations into legal obligations and then the law takes and makes them into rules of law.

Now for my proposal:

1. I respectfully submit the Judicial Article ought to be altered and modified to provide for an independent, but integrated Court of Chancery, parallel with the Superior Court, to exercise the equity and prerogative jurisdiction.

2. The court to consist of a Chancellor and Vice-Chancellors to be appointed by the Governor and confirmed by the Senate. The number of Vice-Chancellors to be fixed by statute, but to be not less than five.

3. Pleading, practice and procedure to be regulated by rules made by the Supreme Court so we would have uniform procedure throughout all courts.

I have just one point -

CHAIRMAN EASTWOOD: How long will it take you to state that point?

MR. EMMERGLICK: It will take me about thirty seconds.

CHAIRMAN EASTWOOD: All right, finish please.

MR. EMMERGLICK:

4. Appellate Division to consist of the Chancellor and two Vice-Chancellors. Appeal to it a matter of right. Appeal from it to be like appeals from the Superior Court in all respects. And, finally,

5. Chancellor shall preside over Appellate Division, assign Vice-Chancellors to it and to the vicinages, which shall be

fixed by the Chancellor. Chancellor or any Vice-Chancellor may exercise the equity jurisdiction. Appointment and authority of Masters to be fixed by the rules of the Supreme Court.

That is my proposal: I respectfully lay it before you. I am reminded in doing so of the words of Lincoln, whose birthday we just celebrated; his warning, that "We can meanly lose so much, nobly save the last great hope of earth."

Let us nobly save the last great hope of earthly justice for the individual in this State.

CHAIRMAN EASTWOOD: Mr. Arthur J. Edwards, Montclair.

MR. BEBOUT: He must be in one of the other hearings, he was here.

CHAIRMAN EASTWOOD: I see listed here John Bebout and Evelyn Seufert, of the New Jersey Committee of Constitutional Revision. I believe you both spoke the other day at a Judicial Article hearing representing -

MR. BEBOUT: I didn't speak on the Judicial Article -

CHAIRMAN EASTWOOD: All right, I will ask you at this time, Mr. Bebout, if you will speak representing the New Jersey Committee for Constitutional Revision.

MR. JOHN BEBOUT (FOR NEW JERSEY COMMITTEE FOR CONSTITUTIONAL REVISION):

I probably should clarify that matter of representation a little bit. Miss Seufert and I at the request of that committee and the encouragement of your committee attempted to write several of the proposals we have talked about into a draft of the Judicial Article. Most of the principals of this draft have been discussed by the committee for constitutional revision and for the things they do I will tag them.

We represent the committee, but in several details and one or two important features, we are making the proposal which the committee itself has not passed upon, but we are putting it in because we think they may be helpful to you in your deliberations and we will tag them as our own personal recommendations.

The primary purpose for the formation of this draft was to carry out the proposal of the committee for complete integration of all courts into a constitutional court system. This draft we hope accomplishes that by providing that the jurisdiction now exercised by all the courts of original jurisdiction, including the criminal courts, the judicial courts and the courts of municipalities, shall all be vested in the Superior Court, or as we now call it, the General Court. I take it your draft accomplishes that, but our draft goes further and gives a General Court exclusive jurisdiction of all such matters except matters arising under municipal ordinances which may be by legislation confined to the municipal court, subject to the proviso that any matter brought before municipal courts shall before trial be transferred to the general court at the request of either party or on order of the Chief Justice. So much for the principals upon which we attempted to achieve this complete integration of the courts themselves.

Now as to some other matters, in preparing this draft we took advantage of your very excellent draft and some of the proposals of the Bar Association Committee which appealed to us, and some other sources. In order to make the merging of the jurisdiction of the law courts mandatory in the General Court it seemed to us desirable to provide for somewhat more freedom or flexibility in the matter, setting up sections and other parts of the General Court which you called the Superior Court, than your draft does, so I will read you the Section on that, it is paragraph 3, of Section III of our draft.

"3. The General Court shall be divided into such sections, departments, parts, or special tribunals, as may be prescribed by law or by rule of the Supreme Court not inconsistent with law; provided, however, that there shall always be one or more law sections to exercise civil and criminal jurisdiction at law and an equity section to exercise all jurisdiction not otherwise assigned by law or by rule."

Notice we do not say equity and probate, on the theory that what should be done with the probate jurisdiction might well be left open; it could be assigned to the equity section or otherwise dealt with. The equity section is made residuary legatee for all jurisdiction not otherwise assigned.

Then we attempt to meet somewhat the problem Mr. Emmerglick talked about, that is his problem of providing specialized expert handling of certain types of cases. We are making this proposal, which was inspired by the proposal I understand was made last week in behalf of persons interested in juvenile courts, which was to the effect that if it isn't certain that there would be an inherent right in the legislature to provide for a system of especially trained qualified Referees to assist the court in handling juvenile cases that such provision should be made, and so written this paragraph.

"4. The Supreme Court may by rule not inconsistent with law provide for the appointment of Referees to aid the justices of the General Court. The legislature may provide by law for the appointment of especially qualified persons to serve full time and for terms fixed by law as referees in particular sections, departments, or tribunals of the General Court."

The theory of that being this particular juvenile matter. The problem also met in this field of administrative adjudication that Mr. Emmerglick was talking about is the entirely different kind of qualifications that a person would have to possess other than being an attorney or a counsellor for ten years. It would be much more important if a man were in the General Court with that as his full qualification, it would be pretty difficult to make sure that there were a sufficient number of persons especially qualified to handle juvenile cases or certain other types of administrative matters, to make it possible for the Chief Justice to provide fully experienced specialized persons for the handling of each of these various types of jurisdiction. We are a little afraid that unless there is this possible provision with the inherent rigidity in a unified court might result in some stifling of judicial progress.

We feel the elimination of the present distinction between the completely separated law and equity court is important, and that that specialization is only one and perhaps not the most important form of specialization which should be provided for, and we are not therefore in fact supporting Mr. Emmerglick's proposal to provide a separate court of equity.

I have already covered the matter of municipal courts which would, of course, as in your draft still be under the supervision of the Chief Justice and the judges of which subject to removal in accordance with law.

We have made very few changes in Section IV of the draft to agree to some extent with the Bar Association recommendation that the provision giving the right to review from any order of the General Court might result in undue multiplicity of appeals. So we have taken the first sentence of that proposal, namely that

"Any final judgment or decree of a single justice of the Superior Court shall be reviewed by an Appellate Division."

I should add also that we agree with them in eliminating the provision at the end of Section III concerning prerogative writs. We feel it unfortunate to freeze procedures concerning them into the constitution.

Now we come to the matter of judicial selection and qualification.

The Committee for Constitutional Revision, as you recall, favored a fifteen year term rather than a life term for judges. Speaking for myself, and I think also for Miss Seufert, we favor the life tenure, but we recognize the fact if we are going to have life tenure certain safeguards should be set up.

This draft follows the committee's preference in providing for the fifteen year term while providing certain other safeguards, which made certain people a little skeptical about life tenure and men willing to accept it. We, therefore, would like to urge your consideration of these safeguards which

could go along very well with the plan of life tenure after a trial period of seven years.

We propose, as Mr. Miller suggested, the creation of a Judicial Council and we provide the rules for this Council,

"The proposition and rules of procedure of the Judicial Council shall be determined by law, provided, however, that the members of the Council shall not exceed nine in number and shall include representation from the Judicial Department, the organized bar and the lay public. The Judicial Council shall assist the Governor in the selection of judicial nominees and shall perform such other duties as may be assigned by constitution or by law."

Briefly we propose in the case of a vacancy in which a person is eligible for reappointment, the Judicial Council will hold a public hearing on the question of reappointing such persons. The Council may thereupon recommend the appointment of the justice or may submit his name to the governor, together with a list of other persons deemed eligible for such appointment, or in its discretion give its reasons for advising against such re-appointment. If the Judicial Council advises against the reappointment, or if the governor refuses to reappoint a justice recommended by the Judicial Council, or if there is no justice eligible for the appointment, the governor shall consult with the Judicial Council who will supply one or more public lists of names of persons qualified in their opinion for appointments. If the governor nominates a person proposed by the Judicial Council he shall send the name to the Senate together with the recommendation of the Council; but if he nominates a person not proposed by the Judicial Council, he shall send to the Senate a message giving his reason for the nomination together with a report by the Judicial Council on the qualifications of the person nominated.

Now another safeguard in addition, to be sure we have carefully protected the method of selection designed if possible to eliminate consideration of patronage politically, one of the

safeguards for life tenure is, of course, a removal power which really works. A good deal of opposition has been experienced to giving the Senate the power of preferring and trying charges. We make a proposal that any justice shall be liable to removal by the Senate for nonfeasance, misfeasance, or malfeasance in office or for conduct unbecoming a justice on charges preferred either by the General Assembly or by the Supreme Court or by the Judicial Council.

Then we provide that the Supreme Court or the Judicial Council may investigate the conduct of any judicial officer.

We come now to the administrative and this is the last part. The problems which a good many are troubled by when you think about giving a General Court jurisdiction in all the matters, including the minor ones that they will have, is how to make the court convenient to litigants all over the State. That never seemed to us to be a problem except in the minds of those who could not see why by law it could be provided that there shall be located offices or places for holding court which are just as convenient or more convenient than those places available today.

We, therefore, provide as many offices shall be established in each county as may be necessary for the convenience of the public. Such offices shall be in charge of persons authorized to act as county and district clerks of the General Court, who shall be subject to the law and rules of the Supreme Court, issue and receive papers and to admit to bail and so forth.

The Chief Justice shall, subject to law and the rules of the Supreme Court, provide for sittings of any section, part or other sub-division of the General Court in as many localities in each county as the needs of justice and the convenience of the parties may require.

In deference to the request of the Committee for Constitutional Revision that all county officers be eliminated in-

cluding county clerks and surrogates we have provided, the Supreme Court shall by rule subject to law prescribe the qualifications and provide for the designation or appointment and the suspension or removal of persons authorized to act as county and district clerks of the General Court.

I think I have used about all of my time. Those are the essential differences between this plan and the draft you have before you.

CHAIRMAN PYNE: Miss Seufert is also registered. Have you anything to add to that, Miss Seufert?

MISS EVELYN SEUFERT: No, Mr. Chairman, thank you.

CHAIRMAN PYNE: Mr. Arthur J. Edwards, of Montclair,

(no response)

Mrs. Ralph Hacker.

MRS. RALPH HACKER: Pardon me, Mr. Chairman, our State President is here, may she speak first. We are practically together.

CHAIRMAN PYNE: Pardon me?

MRS. HACKER: Mrs. Charles S. Maddock.

CHAIRMAN PYNE: I haven't her name here.

MRS. CHARLES S. MADDOCK: I signed in, sir.

CHAIRMAN PYNE: Maddock, M-a-d-d-o-c-k. Oh, I beg your pardon, I didn't understand the name.

Mrs. Charles S. Maddock, State President of the Federation of Women's Clubs.

MRS. CHARLES S. MADDOCK (FOR NEW JERSEY STATE FEDERATION OF WOMEN'S CLUBS):

Mr. Chairman, the New Jersey Federation of Women's Clubs has formally supported the principles of revision of our State Constitution. We, the duly elected members of its Board of Trustees, therefore appreciate the opportunity of appearing before this committee to express our views on modification of certain sections of the tentative draft. We feel that the revised constitution as submitted represents a long step forward in the evolution of our state

government and have been impressed with the impartiality with which the hearings have been conducted.

I have other members of my Board with me, but we are trying to cover the three hearings simultaneously.

There are certain provisions we heartily endorse and which we hope will be written into the final draft. First is the bill of rights. I spoke here the other day as an individual without the backing of my Board because it had not been presented to the Board then, and pointed out what I thought the Board would bear out, that we should not break down into groups and classes all the persons, my reason is that when you break down into classes or groups or faiths you are focusing on a difference where focus should not be brought to bear. All is inclusive, and we feel the bill of rights should be retained.

We also feel that Article II, the distribution of powers of government should be retained as in your proposed draft.

Then in Article V, Section 4, paragraph 1, the separate Supreme Court division in the new constitution is considered by competent authors highly desirable.

We are in accordance with Article V, Section 5, paragraph 1. We suggest the advisability be explored of a balance between appointed and elected judges with a view to minimizing/control machine of the judiciary of the State. They are the only real suggestions.

We have followed the course of revision in our organization with close study and I give you my word we shall come up in November knowing what we are voting for.

CHAIRMAN PYNE: Thank you, Mrs. Maddock. Have you any specific proposal in writing?

MRS. MADDOCK: There is more than that one thing I repeated before today. It is in your hands.

CHAIRMAN PYNE: Now,Mrs. Hacker.

MRS. RALPH E. HACKER (INDIVIDUALLY):

As a member of the Board of Federation, I endorse Mrs. Maddock's comments.

I am now speaking as an individual on the question of modification of the Judicial Article. The time for accurate study of the proposed constitution for laymen has been much too brief. Certain provisions, however, require modification in my opinion.

It is my thought that the higher judges of our courts, called in the draft Superior Courts, should be elected rather than appointed. Irrespective of how strong a political organization is, they would hesitate to run as a candidate for a judicial office one who might be absolutely unqualified and incompetent. Without an election campaign in which there would be the opportunity for public disapproval to be expressed such individual, if political reasons warrant it, may be quietly appointed. In my opinion appointive judges appreciate the fact that they owe their appointments to the politicians from whom they may receive them and also that they thereafter are dependent upon the politicians for re-appointment. On the other hand elective judges have a greater sense of independence because they feel if their record is good they can be successful at the polls despite political opposition. To balance the elective system for the higher judges the judges for the lower courts should be appointed.

The proposed constitution continues the old appointive system for all judges. Section 4 of Article XI continues all the present judges in office for the balance of their terms and creates them Superior Judges. The Superior Court is given jurisdiction of both law and equity and a Justice thereof may grant prerogative writs. This embraces jurisdiction of all law existent in the State. It means that the judges of the Court of Common Pleas of a rural county now receiving $3500.00 to $4000.00 a year would be elevated so that he would possess not only the present powers

of a Justice of the Supreme Court, but also the powers of a Vice-Chancellor. A new salary would be fixed by statute which would probably be an annual increase for each of them of $10,000.00 or $12,000.00. These judges heretofore sat in the ordinary criminal case or accident suit. This work has been such that they have obtained no experience in equity proceedings or in actions involving prerogative writs which would be included in their new duties. There would be some thirty odd judges in this category alone. This represents an increase in salaries for these judges alone of from $300,000.00 to $360,000.00 additional that it has been recently estimated.

It should be also borne in mind that through the election of the machine's candidate for governor, which possibility we can never rule out, the control of the appointment of judges would perpetuate the control of the judiciary. This also applies to the appointment of the prosecutors.

We realize the tremendous interest in the constitution because as lay people we realize that the bulwark of our liberty is the judicial provision and the courts are the final arbiters.

CHAIRMAN PYNE: Mr. Elias A. Kanter, Newark, New Jersey.

ELIAS A. KANTER, ESQUIRE: Gentlemen:

After reading the newspapers giving the accounts of the addresses delivered before you and having listened to some that were made during the course of discussions on the revision as proposed by the commission, some more recently, I wonder whether the various modifications that have been proposed do not to your mind indicate this important thing: That there seems to be a very respectable body of opinion, men of all walks of life, of lawyers and laymen and teachers and whatnot, I say there is a respectable body of opinion that is against the present draft of the revision.

I want to present a little different viewpoint and I would like to argue this question from a little different viewpoint than it has heretofore been argued. I recognize, gentlemen, that this committee is composed of thirty members of the legislature. I recognize that a majority of this committee is composed of the dominant political party of the legislature. I recognize that all of your gentlemen are practical men. I recognize that you come from all parts of the State. Now I can't when I am a citizen talking to a constitutional convention, which you are in substance, be asked to divorce my mind from those practical considerations. I must approach this question from the standpoint of a discussion with you and I am awfully happy that there is just a small group here today because I want this to be a consideration in the nature of a discussion. I am not trying to give you my ideas, I am only trying to reason with you. I say we must approach this thing from the standpoint of what is the practical thing to do.

Now the word politics has a lot of significance in differing ways, but essentially the word politics means what is a good thing as a matter of policy. I want to discuss the draft you have before you from that angle, if I may, very briefly this morning. I don't propose to go into every feature of this constitution, but I do say to you gentlemen, having had some experience in the courts, you know what these difficulties are all about.

How do these things come up? I think what I may say to you will appeal to you, I think a good many of you are lawyers, you will know what I say is essentially so. I am not asking any radical changes. People here express various views, we know unless they are politically expedient, you will never get people to go for them. There is no use arguing. There is no use arguing to a senator or a member of the assembly on something which consistently it is found his policy is against. There is no use arguing

that question with him. I say let's talk about practical matters.

Of course you have to approach this from the broad public viewpoint. You are planning a great document and making history, but you have to take this document and give it practical application. And you can't divorce your mind from the practical everyday affairs and say this is one thing and the other thing is another thing, please put these all together and out comes a lot of hash. We have to have a substantial document to have some chance of success when it comes before the voters. After all what is the use of your working on this, what is the use of my studying this and reading the constitution from the time I was admitted to the Bar every time I had to argue a case before the Court of Errors and Appeals, what is the use of going through all that work if as a result of your work you are not going to accomplish something? We are not just going to have a law school course. We are dealing with practical matters. We are dealing with the framework of government. If we approach it from that angle we have very little to consider.

I suggest that we have to consider that I think the people of New Jersey gave you a mandate in drafting this revision to have certain things in mind. One thing in mind primarily is that you keep the bill of rights, Article I, exactly as it is. You have done that precisely. Precisely, even gentlemen, as I shall criticize you concerning the inclusion of a phrase that should go out. I think that you proposed to keep the bill of rights intact, but I think you have run into a little inconsistency on that and that is this. You have proposed - and you will pardon me for talking about another article, because I am talking about the Legislative Article, but I must of necessity talk about that because all of these Articles are inter-related - when you talk about the bill of rights you keep those rights by legislation and by appeal to the courts. So you have to consider all of these things together. You can't take an isolated phrase and take a

broad viewpoint of it. You have said each one of the bill of rights twenty-one paragraphs shall be incorporated. You have followed the mandates of the people and I think you have acted wisely.

I say the inconsistency arises in this, Legislative Article III, Section 5, paragraph 4, you have continued the present provision of the constitution which prohibits inclusion of this matter. What you have done I think rather unwisely, perhaps inadvertently, certainly will be a very serious thing if continued. You have said to avoid improper influence which may result in intermingling of the same thing without proper relation to each other each law shall embrace one subject. That is the wording of our present constitution. However this paragraph shall not be given effect to invalidate, I am skipping - any law except in proceedings brought within two years from the effective date thereof. That means in simple language even though the legislature should pass a statute which violates the constitutional provision, that statute will remain on the statute books unless suit over which dispute arises has been pressed within two years. Gentlemen, I respectfully submit that is inconsistent and will be improper and will work very serious detriment in practice.

I may speak from my own experience. I was before the Court of Errors and Appeals within the last few years arguing on a statute enacted by the legislature in 1885. It was a statute in regard to a religious corporation. I don't believe the legislature ever realized that it transferred from corporation A - from religious corporation A - the property of that corporation to religious corporation B. I argued to the Court of Errors and Appeals that the statute was valid, but the Court of Errors and Appeals said, no, that statute is in effect since 1885 and the litigation came up in 1937 or 1938. Can you imagine if you passed the provision in your present constitution, corporation B - I was on the losing side - I would have gotten the property improperly I think as the

Court of Errors and Appeals pointed out. I respectfully suggest as the first modification that you eliminate something new, something untried and, I think, something dangerous. I don't think you are going to get any popular support by including it and suggest that that provision should go out.

I want to point out one more thing to you gentlemen in the possible sense that it may well be argued there are twenty-one rights in the bill of rights, guaranteed under this constitution. If one of those rights come into question in the statute and if the statute has not been attacked in two years there is, I think, serious question what the court may do with it. Why fool with that question? Why place it open to public objection? I, therefore, strongly recommend to you gentlemen that you consider the elimination of that provision.

Then, gentlemen, I think there has been no controversy on this question. I think from the discussion you have heard you ought to be convinced that the Appellate Divisions should be at liberty to sit at different places other than Trenton and I point out this fact. I was speaking the other day to a lawyer from Cape May County and he told me one of the difficulties they have in the southern tier of counties, when they have to get some court business done in traveling great distances and coming all the way to Trenton, and it is a difficult matter to get from some of those places to Trenton. I submit the Supreme Court could provide by rule that the Appellate Divisions shall sit in Atlantic City, in Camden, in Trenton or in Newark. After all there is a lot of business coming from the norther section of the State and I don't see why if I should have to argue an appeal I should have to come here and have to waste a day's time. Of course, it is a great thing for me as I get an additional fee for coming to Trenton two or three times, but why should I have to do it when I could go from my office to the Court House, argue the appeal, go back to the office and do some work. I say the Appellate Divisions under the constitution should not be restricted or rigidly limited to sitting in Trenton. I urge that as a practical recommendation.

You know, gentlemen, I am talking very frankly.

Now I come to a third, and one of my very strong and serious objections. Section 2, Article V, paragraph 3. There is a provision that the Supreme Court shall make the rules of procedure, pleadings, practice and evidence. Gentlemen, if there is anything wrong, if there is any duty you should not entrust to the courts, it is that. Don't convert them into legislative bodies. If I come down to the legislature if I want you to put some law in respect to the rules of evidence, you hear me, you hear my opponent, decide that question and then in light of your experience you make the law. The legislature only should make the laws of evidence. Gentlemen, it is a historical truth, and I wish I had time to illustrate it, it is historically true that you change substantive rights by changing rules of evidence. You men who are lawyers know that that is a fact. I am not going to try and illustrate it, but you can imagine the chaos that will ensue if the Supreme Court today under your setup of seven judges sitting decides to make a rule of evidence, concerning the proof of a will let us say, or any other common piece of evidence, concerning the proof of a document or a promissory note or a bond and mortage or whatever instrument may come into controversy, and the Supreme Court makes a rule of evidence, then is the legislature going to change it tomorrow and then will the Supreme Court amend the legislature's act the day after tomorrow? Keep the legislative power where it is and keep the judicial power where it is, don't give the courts legislative powers, for if you do then you are going to run into trouble and you are going to have it subject to the difficulty the legislature always runs into. I say don't give them that power. I have read from forty-five constitutions of different states and I don't see it in there any place. The only people who agitate that are the doctrinaires, it originated in law books on evidence. Some fellow's professor on evidence told us about it, and the first thing you know some other fellow graduates from that school and he says, oh, he is a grand professor; and then some other

professor comes along and then you have rules of evidence. Don't do it, gentlemen, you will get in trouble. Strike it out if you will.

Gentlemen, I come to another serious objection if I may. You gentlemen will observe I am talking with some knowledge of some recent affairs. You have a provision in here that your justices shall be removable on a majority vote, shall be removable on charges preferred by and determined by a majority of the Senate. Now let's get down to earth on this thing. We know that the Senators are men elected from certain parts of the State. We know Senates have certain political duties. We know that Senators are changing. I don't say that is so of this Senate, but we know some Senates have been more politically minded than others. We know in the course of time other Senates may be more politically minded than the present Senate, and when you entrust to eleven men the job and the obligation of determining the question of behaviour of a judge you are giving the Senate a power which it should not have, it is not a democratic power, gentlemen. You are departing from the present procedures very dangerously, I think. When a judge is removed from office the consequences are awful. May I tell you gentlemen this, you will pardon me for trying to say that even to you, but may I remind you of this, that in the history of New Jersey there has, up to 1934, been only six impeachments. I think five of those were Justices of the Peace who had fights with their litigants in their various courts. In 1934 there was an impeachment of a judge and a comptroller of the State, both charged with the same offense. You gentlemen well remember it. The judge was convicted by the Senate, but the Comptroller was acquitted on the same evidence. Now as I recall from the newspaper accounts at that time, they felt the Senate had regarded the question rather politically. Now should we allow merely eleven members of the Senate to determine that issue of good behaviour. That is a very substantive matter.

You may think what I do now is good behaviour but the other fellow who hears me talk will say, "Kanter is in very bad taste, in bad behaviour." If I was a Supreme Court Justice or a Superior Court Justice, eleven members of the Senate might remove me. You know that issue is not reviewable by the courts. The courts do not inquire into what the Senate does. Don't gentlemen, try to have the public think the Senate is trying to get control of the courts, so leave it where it is; impeachment by the House and trial by the Senate.

CHAIRMAN PYNE: I hate to interrupt you, but you have already had twenty minutes, can you continue and complete in two or three minutes?

MR. KANTER: I will do it in three minutes, less than that. Thank you very much for your indulgence, Mr. Chairman.

You have provided for the elimination of Advisory Masters. As a practical matter I urge this before you. During or prior to this year there were some four thousand divorce cases heard in the Court of Chancery before Advisory Masters. You know every divorce case must be heard. You don't file an affidavit of proof and get a judgment against the defendant. The case must actually be heard. Some are quite complicated, some are very highly contested. This year divorce cases will run at the rate of six thousand a year. A man in position to know - I don't speak with entire confidence or entire knowledge of this - but I speak with confidence in the statement that next year and the year following we are going to have ten thousand divorce cases. Who are going to hear them? Are you going to set up some more judges after you have your set up under the constitution? Ten thousand divorce cases are a lot of cases. Some of the Advisory Masters are very fine. You gentlemen on the committee know one of these Advisory Masters who is preeminent in his field. They represent excellent judges; let's keep them.

Those are my suggestions, all of them are practical, as I said they are all down to earth and I strongly urge their consideration.

CHAIRMAN PYNE: Thank you, Mr. Kanter.

Mr. Arthur J. Edwards, Montclair, speaking on commendation - is that the proper word?

MR. ARTHUR J. EDWARDS: (Montclair) That is the word, yes, sir.

Mr. Chairman, Mr. Vice-Chairman, Gentlemen:

I desire to address you and to bear testimony that, in my opinion, the Committee on the study of Revision has done a remarkably strong piece of work in its production of the Proposed Revised Constitution (1944) which you are considering. With the further refinements in provisions and wording which I am confident the present Joint Committee to formulate a draft of a Proposed Constitution will give it and the final adjustments while under consideration by the two Houses, I know that the Constitution as finally agreed upon will merit the approving vote of the people on November 7, 1944, which I am equally confident they will give, converting your agreed-upon draft into the veritable fundamental law of the state.

It seems particularly appropriate that in this presence I should repeat what I recently said in a radio broadcast to the state:

"I think that the Legislative Revision Committees are to be congratulated for the proposals which will constitute a substantial renunciation of legislative powers, which the legislature has asserted in increasing measure during the past century. This will return these powers to the executive and administrative head - the Governor - where they belong. Among the powers renounced are the right to create offices and fill them, to hold up confirmations of governor's appointments, over-ride the governor's veto by a simple majority vote and create offices with terms not matching that of the appointing governor."

It is true that, as former Governor Charles Edison has stated, it "bears the scars of compromise." But is that not true of

most great state documents, the text of which has had to be arrived at by methods of give and take among popular representatives reflecting the great variety of beliefs, opinion and prejudice of the people of our American commonwealth. The "scars of compromise" are no more basic here than were those necessary to obtain agreement upon our Federal Constitution in Philadelphia in 1787; equal representation of each state - great and small - in the Senate, representation in the House of Representatives in proportion to population including in addition to free persons "three-fifths of all other persons", and the postponement until 1808 of any prohibition of the "importation of such persons as any of the states now existing shall think proper to admit," and the agreement upon a Congress with enumerated powers only, strengthened by the X Amendment adopted two years after the organization of the new government, providing that:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

These compromises of 1787 unquestionably contributed immeasureably to the unity and strength of the new nation. It is not too much to expect that the compromises of 1944 will serve as honorable a purpose in the coming years.

I have also publicly expressed the opinion, based on my extensive research into constitutional revision in other states, that the procedures by which the final form of our revised Constitution has been and will be agreed upon when completed is the most thorough-going and careful exemplification in any state this far of "the right of the people at all times to alter or reform the same (their form of government), whenever the public good may require it." And a demonstration, as well, that this principle of popular sovereignty - which when added to our New Jersey Constitution

in 1844 was already embodied in the constitution of twenty of the twenty-five other states then in the union in substantially the same form - is not merely a high sounding rhetorical phrase but is a fundamental andworkable principle, the practical operation of which is now being soundly exhibited.

I think it highly expedient that the various successive steps in the New Jersey operation of revising its constitution which will have extended in logical order from November, 1941, to November, 1944, should be assembled and set down in the record to show the integrated character of the procedure. You are all thoroughly familiar with these steps, but the larger public may not appreciate how they are all an essential part of a well planned whole. Briefly, they included:

November 18, 1941. Authorization by the Legislature of the appointment of the Commission on Revision of the New Jersey Constitution "charged with the duty of inquiring into the subject of constitutional revision and of suggesting in what respects the constitution of New Jersey should be changed and make recommendation to provide for the more effective working of present-day representative processes."

Appointment of the Commission composed of seven leading citizens of the state, who after five months study and deliberation submitted, in May, 1942, their recommendations to the Governor, the Legislature and the people of the state, in the form of a completely revised draft of the constitution.

June 15, 1942. Appointment of a Joint Legislative Committee to hold hearings to ascertain the sentiment of the people as to the various proposals for change and report thereon;

July 8 to September 18, 1942. Public Hearings held in the State House resulting in the giving of testimony by citizens of the state, later published and filling 857 pages in "Proceedings before the New Jersey Joint Legislative Committee," etc.

September 28, 1942. Reports of Committee. Majority report recommending postponement of action until after the war. Minority reports recommending submission to the people of the question whether the Legislature should proceed with revision and submit its product to the people.

March 15, 1943. Introduction by Mr. Feller of Assembly No. 180, and passage later in the year of this as Chapter 217, Laws of 1943, authorizing the submission to the people at the next General Election of the public question:

"Shall the 168th Legislature be authorized to agree, by a majority of the members elected to each of the two houses, upon a revised Constitution for the state", with instructions as to provisions to be included, "and to submit the same as a whole ** to the people for their approval and ratification or rejection**."

November 2, 1943. General election, question approved by a vote of 395,631 for and 241,297 against, a majority, in favor, of 154,334.

November, 1943. Appointment of Legislative Committee to study the subject of revision and submit to the 1944 Legislature recommended draft of revised Constitution.

January, 1944. The Committee having reported to Governor Edge, the Governor submitted to the Legislature the complete text of Proposed Revised Constitution (1944) and the Legislature appointed Joint Legislative Committee to formulate a draft of a Proposed Revised Constitution, based on the two drafts already before it by the Revision Commission of 1942, and the 1943 Committee to study revision.

February, 1944. Joint Legislative Committee, in three subcommittees, hold public hearings on five different days, the equivalent of fifteen days hearings.

We may reasonably anticipate the following further procedure:

Committee Conferences and submission of Joint Committee report of their recommendations to the Legislature.

Consideration and debate on report and agreement by a majority of each house upon the final draft of the revised constitution.

Spring, 1944. Publication of agreed-upon draft and widespread circulation for information of public.

Fall, 1944, Notice of Election and vote on public question, approval or rejection of the proposed revision.

November 7, 1944. General election and anticipated approval of the Legislature's proposed revision.

Our presently to-be-agreed-upon revised constitution will thus be the integrated product and combined study and recommendations of a commission, public hearings by two joint legislative committees, the drafting work of the commission and of two joint legislative committees and of one session of the legislature sitting in effect as a constitutional convention, one election by the people directing the legislature to agree upon a revised constitution and the second popular election in November, 1944, to approve or reject the finished product.

"Present-day representative processes" could hardly have a better opportunity to function and demonstrate their effectiveness and working efficiency, and we anticipate approval of this thorough-going procedure by the people at the November general election. There seems to be nothing more to be thought of to make the procedure complete and conclusive.

Having from the start of this operation in 1941 a rather intimate view of the procedure behind the scenes I thought this matter of integrated character of the whole proceedings, from 1941 to 1944, should be in the official record.

(Senator C.Wesley Armstrong now acting Chairman)

CHAIRMAN ARMSTRONG: Is the Honorable J. H. Thayer Martin here?(No response)

That seems to conclude the list of those wishing to express their views on this subject.

Is there anyone here who has not been heard, who would like to be heard at this time?

(No response)

If not we will declare a short recess until we get word from Senator Eastwood as to what procedure he wants to follow from now on.

(Short recess taken at 12:20 o'clock p.m.)

AFTER RECESS

CHAIRMAN EASTWOOD: I want to state now that we have now concluded hearing all of those who have expressed a desire to be present and present their views on any phase of the Constitution allocated to the Judicial Committee. The Hon. J. H. Thayer Martin, appearing as Counsel of the Newark Chamber of Commerce, is engaged in presenting views, pertaining to the Executive Article, and I informed him that we have been waiting for his appearance here, and wanted to give him an opportunity to be heard orally if he desired to do so. He said if it was agreeable to the Committee he would prefer to submit his suggestions and recommendations in a written memorandum and I informed him that the written memorandum would be made a part of the record, and that each member of the legislature would get a copy of it, and he said that he would be very content to present it that way, in fact it would suit him just as well.

I believe in all the public hearings we have had we have given a complete opportunity for everyone to be heard who had expressed any such desire. We appreciate the cooperation of all those who have appeared before the committee in presenting their views on the proposed revision of the constitution, and I believe today will conclude the public hearings, having exhausted as I have stated, all of those that have expressed any desire to be heard.

Therefore the Committee will adjourn today and proceed to a consideration of the final form of the constitution to be presented formally to the legislature for the legislature's consideration.

So unless there is some member of the committee that has some comment to make, the committee will adjourn sine die.

SENATOR VAN ALSTYNE: Mr. Chairman, I would like to congratulate you on the fair and excellent manner in which you have conducted these hearings.

CHAIRMAN EASTWOOD: I appreciate very much the comment of Senator VanAlstyne.

(Adjournment taken at 12:40 o'clock, p.m. EWT)

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(The following proposals were submitted by Mr. John Bebout and Miss Evelyn Seufert, of the N. J. Committee on Constitutional Revision)

"ARTICLE V

JUDICIAL

Section 1.

"1. The judicial power shall be vested in a court of Justice which shall consist of a Supreme Court and a General Court.

"2. In all matters in which there is any conflict or variance between equity and common law, equity shall prevail and, subject to rules of the Supreme Court, every controversy shall be fully determined by the justice hearing it.

"3. The Supreme Court shall sit continuously and the appellate divisions of the General Court and the sections thereof exercising original jurisdiction shall sit as may be fixed by rule of the Supreme Court.

"Section II

"1. The Supreme Court shall consist of seven justices, namely: one Chief Justice and six associate justices. Five members of the court shall constitute a quorum. The Chief Justice or, in his absence, the justice of the court presiding as provided by law shall designate a justice or justices of the General Court to serve temporarily when necessary to constitute a quorum.

"2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all cases designated in this Constitution. The Court shall also have jurisdiction of the adminission and discipline of members of the bar.

"3. The Supreme Court shall make rules governing the administration of all of the Courts in this State. It shall have power, also, to make rules as to pleading, practice and evidence, which may be applicable to all of the Courts in this State, and which shall have the force of law unless changed or abrogated by law.

"Section III

"1. The General Court shall consist of such number of justices as may be authorized by law, but not less than fifty, each of whom may exercise the original jurisdiction of the court subject to rules of the Supreme Court. There shall be at least one resident justice of the General Court for each county who shall be appointed from the residents of the county and who shall reside in, and shall annually be assigned by the Chief Justice to sit in the law section or sections of the General Court in said county, but who shall be subject to assignment, from time to time, to sit without the county, only if and when his duties within the county shall not require his presence there.

"2. The General Court shall have original general jurisdiction throughout the State in all cases.

"3. The General Court shall be divided into such sections, departments, parts, or special tribunals as may be prescribed by law or by rule of the Supreme Court not inconsistent with law; provided however that there shall always be one or more law sections to exercise civil and criminal jurisdiction at law and an equity section to exercise all jurisdiction not otherwise assigned by law or by rule. Any section may exercise the jurisdiction of any other section so that every controversy shall be fully determined by the justice hearing it.

"4. The Supreme Court may by rule not inconsistent with law provide for the appointment of referees to aid the justices of the General Court. The Legislature may provide by law for the appointment of especially qualified persons to serve full time and for terms fixed by law as referees in particular sections, departments, or tribunals of the General Court.

"5. The Legislature may authorize the governing bodies of municipalities to establish municipal tribunals with jurisdiction limited to questions rising under municipal ordinances; provided that any matter shall be transferred before trial from a municipal court to the General Court at the request of either party or on order of the Chief Justice.

"Section IV

"1. There shall be established in the General Court two or more appellate divisions as prescribed by rules of theSupreme Court. Each such appellate division shall consist of three Justices of the General Court who shall be assigned for that purpose by the Chief Justice of the Supreme Court and shall sit therein, solely, for three years. There may be established in the General Court, by rules of the Supreme Court, temporary appellate divisions as need appears. Each appellate division shall hear appeals from sections or other subdivisions of the General Court designated by the rules of the Supreme Court.

"2. Any final judgment or decree of a single justice of General Court shall be reviewable by an appellate division.

"3. Appeals to the Supreme Court may be taken only:

(1) In capital cases and cases involving a question arising under the Constitution of the United States or of this State, which appeals shall be taken directly to the Supreme Court and shall be preferred as to argument and disposition;

"(2) In the event of a dissenting opinion in an appellate division;

"(3) On certification by an appellate division; or

"(4) On certification by the Supreme Court,

"In all other cases judgments and orders of an appellate division shall be final.

"4. The Supreme Court and the appellate divisions of the General Court, in addition to considering questions of law, may also set aside judgements, wholly or in part, where the finding of fact was against the weight of evidence or the verdict excessive or inadequate and may exercise such original jurisdiction as may be incident to the complete determination of the controversy.

"Section V.

"1. There shall be council on judicial qualifications hereafter referred to as the Judicial Council. The composition and rules of procedure of the Judicial Council shall be determined by law, provided, however, that the members of the Council shall not exceed nine in number and shall include representation from the judicial department, the organized bar, and the lay public. The Judicial Council shall assist the Governor in the selection of judicial nominees and shall perform such other duties as may be assigned by the constitution or by law.

"2. The Chief Justice, the Associate Justices of the Supreme Court, and the Justices of the General Court shall be appointed by the Governor with the consent of the Senate. If an appointment is to fill a vacancy resulting from the expiration of the term of a Justice who is eligible to succeed himself, the Judicial Council shall hold a public hearing, on the question of reappointing such Justice. The Council may thereupon recommend the reappointment of the Justice or may submit his name to the Governor, together with a list of other persons deemed eligible for such appointment, or in its discretion give its reasons for advising against such reappointment. If the Judicial Council advises against reappointment or if the Governor refuses to reappoint a Justice recommended by the Judicial Council, or if there is no Justice eligible for reappointment, the Governor shall consult with the Judicial Council and obtain from them one or more public lists of names of persons qualified in their opinion for the appointment. If the Governor nominates a person proposed by the Judicial Council he shall send the name to the Senate, together with the recommendation of the Council; but if he nominates a person not proposed by the Judicial Council he shall send to the Senate a message giving his reasons for the nomination, together with a report by the Judicial Council on the qualifications of the person nominated.

"3. All Justices shall, prior to appointment, have been attorneys of this State in good standing for at least 10 years.

"4. All Justices shall be appointed to hold office during good behavior for terms of fifteen years and, subject to the provisions of this constitution, shall be eligible to reappointment.

"5. Any Justice shall be liable to removal by the Senate for nonfeasance, misfeasance, or malfeasance in office or for conduct unbecoming a Justice, on charges preferred either by the General Assembly, or by the Supreme Court, or by the Judicial Council.

The Supemre Court or the Judicial Council may investigate the conduct of any judicial officer. During the time between the preferring of charges against a Justice and his conviction or acquittal, he shall be suspended from exercising the duties of his office. Judgment in case of conviction shall not extend further than to removal from of ice, and to disqualification to hold and enjoy any office of honor, profit or trust under this State; but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law.

"6. No Justice shall continue in office after he has attained the age of seventy years. Subject to law, the Chief Justice may assign any such judicial officer who has attained the age of seventy years before his term of office has expired to temporary service in the Supreme Court or in the General Court, as need appears.

"7. The Chief Justice, the Associate Justices of the Supreme Court and the Justices of the General Court shall, at stated intervals, receive for their services such salaries as may be provided by law which shall not be diminished during the term of their appointment. They shall hold no other office, or position, of profit under the Government of this State or of the United States or of any instrumentality or political subdivision of either of them. Any Justice who shall become a candidate for an elective public office shall thereby forfeit his judicial office. The Justices shall not, while in office, engage in the practice of law or other gainful occupation.

"8. Judges of municipal courts may be removed from office without impeachment and in such manner as may be provided by law.

"Section VI

"1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts in this State and shall supervise their work. He shall appoint an executive director of the courts to serve at his pleasure.

"2. The executive director shall:

"(1) Assist the Chief Justice in all matters related to the administration, finance and personnel of the courts;

"(2) Publish a statistical record of the judicial services of all the courts, justices and judges in the State, and of the cost thereof, at such times as shall be required by law;

" (3) Prescribe records, reports and audits;

"(4) Have such other duties as may be delegated by the Chief Justice.

"3. The Supreme Court shall appoint a Court Reporter, a Clerk of the Supreme Court and a State Clerk of the General Court, each of whom shall hold office at the pleasure of the Supreme Court. The appointment of the Clerk of the Supreme Court and of the State Clerk of the General Court shall be made with the approval of the Governor. The Supreme Court shall by rule subject to law prescribe the qualifications and provide for the designation or appointment and the suspension or removal of persons authorized to act as county and district clerks of the General Court.

"4. The State Clerk of the General Court shall act as clerk of the appellate divisions, and he and the persons authorized to act as county and district clerks of the General Court shall perform such duties as may be prescribed by rules of the Supreme Court, subject to law.

"5. Judgments may be docketed and notices of pendency of action and other papers or documents may be filed or recorded in such offices, with such effect, and in such manner, as may be prescribed by law or by rules of the Supreme Court not inconsistent with law. As many offices shall be established in each county as may be necessary for the convenience of the public. Such offices shall be in charge of the persons authorized to act as county and district clerks of the General Court,, who shall subject to law and rules of the Supreme Court issue and receive papers and admit to bail on criminal charges.

"6. The Chief Justice shall, subject to law and rules of the Supreme Court, provide for sittings of any section, part, or other subdivision of the General Court in as many localities in each county as the needs of justice and the convenience of parties may require. The Chief Justice, subject to the provisions of this constitution and the rules of the Supreme Court, shall annually assign the Justices of the General Court to and within the counties and among the sections and other subdivisions of the General Court, and may from time to time transfer Justices from one assignment to another, and make temporary assignments to the appellate divisions, as need appears.

"7. Prior to each legislative session the Chief Justice shall file with the Governor and the Legislature a report of the work of the courts as provided by law.