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

(Executive)

E.

SPEAKERS - MORNING SESSION

February 1, 1944

Members of the Subcommittee present:

Senator Haydn Proctor, Chairman
Senator Frank S. Farley
Senator I. Grant Scott
Senator John G. Sholl
Senator Samuel L. Bodine
Senator Edward J. O'Mara
Assemblyman J. Stanley Herbert
Assemblyman Jacob S. Glickenhaus
Assemblyman Peter P. Artaserse

Alfred C. Clapp, Counsel to the Subcommittee

Speakers (Morning Session:

Winston Paul, Chairman New Jersey Committee for Constitutional Revision
Dr. Leon S. Milmed
Mrs. Norris B. Brisco, Summit League of Women Voters
Mrs. Richard Miller, N. J. League of Women Voters
Mrs. Richard Zwemer, Consumers League of New Jersey
Mrs. Charles Hadcock
Miss Evelyn Dubrow, New Jersey State Industrial Union Council, C. I. O.
Louis C. Saunders, appearing for Rev. Elias S. Hardge, State President,
National Association for the Advancement of Colored People
Mrs. Ruth Rappaport, New Jersey League of Women Shoppers
William J. Connor, State Bar Association of New Jersey
Mrs. Louis S. Rappaport, State President, National Council of Jewish Women

COMMISSIONER PROCTOR: The hearing will please come to order.

The hearings of the three subcommittees of the Joint Committee on Constitutional Revision are being held to afford all the people of our State, who so desire, an opportunity to be heard on the draft of the proposed Revised Constitution pending before the Joint Committee so that the Legislature will have the benefit of all suggestions and criticisms.

In order that these hearings may be conducted in an orderly and business-like manner, the Committee has adopted the following rules of procedure:

1. The hearings will begin at 10:00 A.M. (I am sorry you came down at 10 o'clock, because we changed that to 10:30; I didn't learn about the change until yesterday), continue until 1:00 P.M., resume at 2:00 P.M., and continue until 4:00 P.M. On the day of each hearing all persons desiring to be heard are requested to register their names, the organizations represented, if any, and the classification under which they wish to speak, namely: whether opponents, modificationists, or proponents. Such registration shall be made with the official stenographer before the beginning of the morning or afternoon session.

2. The order of speaking, so far as practicable, shall be, first, the opponents, second, those for modification or addition, and third, the proponents.

3. At the beginning of each day of the hearings a spokesman for each subcommittee will give a brief summary of the particular Article under consideration and will also inform the audience when other Articles are to be considered.

4. Each speaker, before being heard, is requested to submit a written statement to the Chairman of the subcommittee, before the hearing, if possible, outlining his position and covering the points he intends to speak upon. If a speaker appears without a written statement, it is requested that he forward such a statement to the Chairman of the Joint Committee as soon as possible thereafter. If any speaker attending the hearings wishes to supple-

ment any remarks made at the hearing, he may do so by filing a written statement with the Chairman of the Joint Committee.

5. Each speaker shall be limited to fifteen 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.

6. All suggestions for modification and addition shall be submitted in writing and shall contain specific language to accomplish the suggested result.

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

The article to be considered today by this sub-committee is the Executive and Administrative Departments. We will continue to hear criticism on that article tomorrow and Thursday. There will be a day allotted next week to go over the article on the amending process, but I am not prepared to say right now what day that will be.

I will now read a brief synopsis of the Executive and Administrative Article, as is required by the rules:

The Governor's term is extended from three to four years beginning and ending on the second Tuesday in January at twelve noon. The Governor may not immediately succeed himself except when elected for an unexpired term. Governor Edge's three year term will not be extended by the new Constitution.

In case of vacancy a Governor will be elected for the unexpired term and in the meantime the President of the Senate and the Speaker of the House of Assembly will administer the Government as under the present Constitution.

The Senate shall confirm, reject or return nominations within forty-five days or the nominations take effect without confirmation. Return of a nomination is equivalent to a withdrawal thereof from the consideration of the Senate.

Special sessions of the Senate are provided for to act onnominations.

A three-fifths vote of the whole membership of the Senate and Assembly is required to override a veto.

Pocket vetoes are abolished. The Governor is given ten days to sign a bill while the Legislature is in session and thirty-five days after sine die adjournment. If the Governor does not sign the bill and the Legislature adjourns during the ten days to reconvene, he must return it when the Legislature reconvenes; otherwise the bill becomes law. If the Legislature adjourns sine die during the ten days, he must call a special session to reconsider the bill within the thirty-five days; otherwise the bill becomes law. Three days must elapse after the return of a bill before it is reconsidered by the Legislature.

The Governor may investigate conduct in office of State Officers and may remove such officers on a finding of misfeasance or malfeasance in office after notice, service of charges and public hearing; does not apply to members of the Legislature, officers appointed by the Legislature or judicial officers.

A Commission on Parole, consisting of the Governor and four members appointed by him with the advice and consent of the Senate for four year terms, succeeds to the powers of the Court of Pardons. It may commute sentences and grant pardons with the concurrence of the Governor andmay remit fines and forfeitures and grant paroles and supervise parolees with or without the Governor's participation, but the Governor alone may grant reprieves.

The Governor may appoint a Cabinet of such number as he desires from among the various State officers.

The Governor shall allocate, by executive order, all executive and administrative offices, departments and instrumentalities among not more than twenty Principal Departments, according to major purposes. The Principal Departments will be under the Governor's supervision and control and each shall be headed by a single executive unless the law provides otherwise. The single executive will be nominated by the Governor with the advice and consent of the Senate and will hold office while the

Governor holds office. The members of any board, commission or other body, which is the head of a Principal Department, shall be appointed by the Governor with the advice and consent of the Senate and if the body appoints an administrator, he shall be appointed with the Governor's approval.

Offices, departments and instrumentalities may be reorganized, consolidated and divided and their functions may be allocated and reallocated among each other and among the Principal Departments by the Governor by executive order and by like order he may transfer, etc., personnel, appropriation balances, property, etc., all in such manner as to promote efficiency and economy in the operation of the State Government, subject to civil service provisions. Such executive orders shall take effect on the twenty-eighth day after their transmittal to the Legislature unless prior thereto both houses of the Legislature disapprove the same.

In civil service of the State and all civil divisions, officers and positions are to be classified according to duties and responsibilities, salary ranges are to be established for the various classes and appointments and promotions to be made according to merit and fitness to be ascertained, so far as practicable, by examinations to be competitive, where practicable. Strikes by public employees are declared to be against public policy.

No State officer or employee may receive compensation for services in addition to annual salary unless it be allowed or appropriated by the Legislature.

The State Comptroller, State Treasurer and State Auditor will be appointed by the Legislature in joint meeting for four year terms.

Prosecutors of the Pleas are to be appointed by the Governor with the advice and consent of the Senate for five year terms.

County clerks and surrogates shall hold office for terms of five years and sheriffs and coroners for terms of three years and in case of vacancy in any of these offices, the vacancy is to be filled as provided by law. Sheriffs may succeed themselves.

Is there anyone in the room who wishes to speak in opposition to the Executive Article?

(No response)

If not, we will proceed with the modificationists.

MR.PAUL: Mr. Chairman, for the record, I would like to state that I represent the New Jersey Committee for Constitutional Revision, of which I am the chairman. We are very much pleased with the draft that your committee has worked out. We think, with very few exceptions, it is a most excellent draft. We have some suggestions for improvements that we would like to make, but we don't want to be listed as opposed. We are definitely in favor of the article as presented, but we think in certain particulars it can be somewhat improved. If you are planning to take it up section by section, I think it might be better--

SENATOR PROCTOR: I don't believe it is a good idea to take it up section by section. That would lead to some confusion because some people would be talking morethan fifteen minutes, if they came back for each particular section.

I assume, from what you say, that you are a modificationist. You have some alterations to suggest. In view of that fact, we shall be glad to hear you, Mr. Paul.

MR. PAUL: Mr. Chairman and members of the committee: I have a written memorandum, setting forth the one change we would like to present, which I will give you. We have not had the time to prepare a brief, but we would like to propose a change in the wording of one particular section.

At the outset, Mr. Chairman, I would like to state that the New Jersey Committee for Constitutional Revision, and I am asked, also, to speak this morning on that particular point

for the New Jersey Taxpayers Association, would like such postponement or adjournment that would give us greater opportunity to prepare our drafts. I understand that will be granted by the Committee.

SENATOR PROCTOR: Under the rules, you may submit a draft later.

MR. PAUL: Going over the Executive section, the first thing that we would call attention to is the matter of the election of Governor Edge for only three years, which would mean that hereafter, under the new constitution, the Governors would be elected in even years. Our committee and its affiliated organizations recommend very strongly a change in the proposed constitution to provide for the election of the Governor in odd years and not in even years. I appreciate that the reason for that is Governor Edge's very proper and very understandable reluctance to serve for a longer period than that for which he was elected. But I want to strongly urge on this committee, and state our hope that it will be passed on to Governor Edge, that we hope he will overcome his reluctance in that particular so that we may be able in the future, under this new constitution, to elect our Governors in the odd and not the even years, thereby completely divorcing our gubernatorial issues from a consideration of national issues at that time.

That is point number one of the modification that we suggest. Number two is the matter of the successor to the Governor. The provision in the proposed new constitution is the same as in the old constitution and I can state the position of our committee in no better language than that stated by Russell Watson, a very prominent lawyer and good friend of mine, who is a man of outstanding reputation for clear thinking, at the hearings before the committees a year ago last summer. I will quote just three or four sentences as to his position, which is the position of this committee, that we endorse. We think the reasoning given very briefly by him at that time is sound reasoning. I quote: "There is a provision," - he is speaking now of the Hendrickson Commission Report - "There is a provision that in the case of the

absence of the Governor, temporary or permanent, he shall be succeeded by the Director of the State Department of Taxation and Finance instead of by the President of the Senate and by the Speaker, as at present. It seems to us that that is sound and it tends to separate the Executive Department from the Legislative Department. A vacancy in the Executive Department would be succeeded to by another official in the Executive Department rather than by an official in the Legislative Department."

That is Mr. Watson's first point. The second point Mr. Watson made, which we endorse, is this: "The choice of the Director of the Department of Taxation and Finance has merit because the director of that department, by reason of the scope of his duties, would have a more comprehensive knowledge of the other departments in State Government generally than any other department head." Whether it happens to be the head of the Department of Taxation and Finance is not material. The main point is that we believe there should be, in the event of the absence or disability of the Governor, a successor from the executive rather than from the legislative branch. We have, accordingly, prepared this memorandum on that point, which we would respectfully submit to the committee for your consideration.

That is the main thing that we want to point out to your committee in reference to the executive section. As we go through further, we find in Paragraph 12 it is provided that the veto shall be by a certain number: thirteen members of the Senate and thirty-six members of the Assembly. We would suggest, for further consideration by your committee, that that be increased to fourteen and forty. We are, however, possibly more concerned about the wording in the fourth line of Paragraph 12; namely, "the third day following said return". We think that that should be changed to a minimum of five days to allow a little more time for the Governor's veto to be reconsidered by members of the Legislature.

With the few minor changes mentioned and the two major changes, one, the successor to the Governor, which we believe to be substantially important and very worth while, and, two,the desire to have the Governor, under the new constitution, elected by the people of this State in odd years and not in even years so that State questions and issues may be completely divorced from national issues, we are very pleased with the article and urgently request the consideration by your committee of those changes. We will later give you a brief. I have to speak rather extemporaneously today because of lack of time, but those are the main ways we think this could be improved.

SENATOR PROCTOR: Thank you very much.

DR. MILMED: I have a brief analysis and recommendations that I would like to submit at this time.

SENATOR PROCTOR: Doctor, whom do you represent, Do you represent any organization?

DR. MILMED: No, not at this hearing. I speak as a citizen of the State.

SENATOR PROCTOR: Where is your home?

DR. MILMED: Newark, New Jersey.

First of all, in analyzing the administrative provisions of Article IV, we find in Section III that an upper limit of twenty is placed on the number of principal departments which may be created by the Governor by executive order. That section also provides for the allocation of all executive and administrative offices, etc., by the Governor by executive order among and within these departments. The Governor is then given the power by executive order to reorganize, merge, consolidate and divide these administrative offices and principal departments and to allocate functions and powers and duties of any of them among and within these principal departments. All of these powers are subject to legislative veto. Paragraph 5 of this section authorizes the Legislature to assign new functions, powers and duties to, and to increase and diminish the functions, powers and duties of any of the

administrative offices or departments. In other words, the reorganization of the State's administrative agencies can be checked by either, first, the legislative veto, or, secondly, by direct legislative action. In order to make the Governor of this State an independent and responsible executive, it is respectfully submitted to this committee that there be included in the constitution a provision similar to Section III of the proposed annexed Article IV which I have submitted. That reads as follows, "There shall be the following administrative departments in the State Government: First, Executive; second, State; third, Law; fourth, Taxation and Finance; fifth, Highways and Public Works; sixth, Education; seventh, Labor; eighth, Civil Service; ninth, Argiculture; tenth, Conservation; eleventh, Social Welfare and Correction; twelfth, Banking and Insurance; thirteenth, Health; and fourteenth, Public Service; and such other departments, not exceeding six, as may be created by law. Any department created by law under and by virtue of this section may be changed, modified or abolished by law".

SENATOR PROCTOR: How many does that make in all?

DR. MILMED: Not exceeding twenty. By the way, the reason for including these departments by name in the constitution is that they control basic functions of the State administration which probably won't be changed for a good many generations to come, and I can see no reason why any individual should be given the right to abolish any one of these departments as he sees fit.

Paragraph 2 of that proposed section, which should be read in conjunction with Paragraph 1, reads: "Subject to the limitations contained in this constitution, the Legislature may from time to time assign by law new powers and functions to departments, officers, boards or commissions, and increase, modify or diminish their powers and functions. No new departments, in excess of those prescribed in Paragraph 1 hereof, shall be created hereafter, but this shall not prevent the Legislature from creating temporary commissions for special purposes or non-salaried advisory

agencies" We know the benefits of non-salaried advisory agencies and we should not limit the Legislature in the creation of these non-salaried advisory agencies. There are many talented men in the State who would not serve for a salary on an advisory agency but who would consent to serve on a non-salaried basis, and we need their talents in advising the State administrative agencies from time to time.

In analyzing Section III of the proposed revision, we find, first, as to appointments, that under the proposed revision, administrative officers other than the principal heads of departments may be appointed by an individual or agency other than the Governor or Legislature as may be prescribed by law. Section VI, Paragraph 1, of Article III prohibits the Legislature from appointing any executive or administrative officer except the three officers prescribed in that section. Section III, paragraphs 6 and 7, of Article IV provide for the appointment of heads of principal departments. All other heads of administrative commissions, bureaus, etc., under the provisions of Section III of Article IV, are intended to be allocated to the principal departments, may, pursuant to the last sentence contained in Paragraph 10 of Section I of Article IV, be appointed by any individual or agency designated by law other than the Governor, the Legislature or either house thereof. I respectfully submit that the provisions of Section III, Paragraph 3, of the annexed Article IV be included in the constitution so that besides the heads of all departments, the members of all boards and commissions, except as otherwise provided in the constitution (which would be the officer appointed or elected by the Legislature, or if there be more than one after final draft is submitted, then the two or three that are intended to be appointed by the Legislature) and also excepting temporary commissions for special purposes -- aside from these two exceptions, all of the others shall be appointed by the Governor with the consent of the Senate.

The proposed provision -- that is, Section III, Paragraph 3, of the proposed Article IV reads, "The head of the Executive Department shall be the Governor. Except as otherwise provided in this constitution, the heads of all departments and the members of all boards and commissions, excepting temporary commissions for special purposes, shall be appointed by the Governor with the consent of the Senate, and may be removed by the Governor for cause, upon notice and public hearing. In case of such a removal the Governor shall report such removal and the cause thereof to the Legislature at its next session. The Legislature shall prescribe qualifications for the heads of the administrative departments, relating to the functions of their respective offices."

I would like to refer back to the present constitution in relation to this argument. In the present constitution we find a provision similar to the provision contained in Paragraph 10, Section I of Article IV. That provision, in the present constitution is in Article VII, Section II, Paragraph 8, which provides that, "All other officers, whose appointments are not otherwise provided for by law, shall be nominated by the Governor, and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law." In analyzing what this provision, this Paragraph 8 of Article VII, Section II, has given rise to, we find the following: One hundred two independent State agencies over and above the seven mentioned in the constitution, and we also find that the method of appointment to these administrative agencies has been as follows: The heads of 20.6% of those agencies, to which appointments are made, are appointed by the Governor alone; the heads of 58.8% are appointed by the Governor with the advice, consent or approval of, or confirmation by, the Senate; the heads of 10.3% are appointed by the Legislature in joint meeting; and the heads of the remaining 10.3% are appointed from lists of designees submitted to the Governor by certain designated societies or organizations. What I think is intended by the

proposed Article IV is a complete severance of the legislative and executive powers. Should the provision contained in Paragraph 10, Section I, of Article IV remain unchanged, then that will give rise to a similar condition as is operative today. By that I mean the Legislature will be enabled to create boards, bureaus and commissions and designate in what manner the administrative heads of these boards, bureaus and commissions may be appointed, other than by the Governor or by the Legislature or by either house of the Legislature.

The next point I would like to deal with is the question of terms of office of administrative officers. Under the present constitution, no one Governor makes the number of appointments indicated by the percentages that I referred to. Every Governor inherits a vast majority of the total number of appointments made during the terms of office of preceding Governors. Actually, the terms of office of over sixty percent of the appointed administrative heads are longer than the three-year term of theGovernor. And even the appointed heads who serve for three-year terms are not all appointed by one Governor at the beginning of his term, because the Governor will have the right to appoint a certain number of these three-year appointees during the first year of his term, a certain other number during the second year, and the remainder during his third year. This condition of overlapping of terms of office is permitted and sanctioned by the same provision that I referred to a little while ago, Paragraph 8, Section II, of Article VII, the last clause of which says that these administrative agents, etc., shall hold their offices for the time prescribed by law, so that the Legislature is not restricted in giving to these administrative officers a tenure in excess of the Governor's term of office. Under the proposed revised constitution, the same condition might arise, since the same provision that we have in Paragraph 8, Section II, of Article VII is carried over into the proposed revised draft in Paragraph 10, Section I, of Article IV.

The next point that I would like to deal with is the removal from office of administrative agents. Under the proposed draft, administrative officers may be removed after investigation for misfeasance or malfeasance. I would recommend that the provisions contained in Paragraph 11 of Section III of the proposed annexed Article IV be included in the constitution and that reads, "The Governor may, and upon complaint submitted to him by at least twenty citizens of the State shall, cause an investigation to be made of the conduct in office of any State officer, except a member of the Legislature, or an officer appointed by the Legislature, or a judicial officer. After notice, service of charges, and an opportunity to be heard at a public hearing, all as shall be provided for by law, the Governor may remove any such officer when in his opinion the hearing discloses non-feasance, misfeasance, or malfeasance in office."

The next provision I would like to deal with is the action by the Senate on nominations to administrative offices. The proposal contained in Paragraph 11, Section, I, of Article IV is substantially the same as that contained in the Report of the Commission on Revision submitted last year except that the proposed revision goes a step further and makes provision for the return of a nomination to effect the withdrawal thereof from consideration by the Senate. I submit that such a provision would enable the Senate to forestall approval or rejection and permit the condition that is presently operative in a few cases to recur. The proposal that I have annexed in the draft includes --

SENATOR PROCTOR: Doctor, you have exceeded the time allotted to each speaker. You have everything in writing here in this draft, and we will appreciate it if you will leave it with us. We dislike having to cut you off but there are so many others who wish to be heard, we must do so. Thank you very much for your recommendations. They will be carefully studied.

MRS. BRISCO: Senator Proctor, members of the committee: I represent the Summit League of Women Voters, which wishes to endorse the stand taken by the New Jersey Committee for Constitutional Revision as presented by Mr. Paul today. We endorse his commendation of the work of your committee and the changes in the draft which he proposed.

MRS. MILLER: I represent the New Jersey League of Women Voters, which is also a member of the Constitutional Revision Committee, and we concur in their suggestions and recommendations. I should like to add the small suggestion that if Governor Edge is reluctant to accept a four-year term, it would be well for the next Governor to also be elected for a three-year term, and then succeeding Governors after that would have four-year terms, so that the Governor would never be elected in a presidential year.

Thank you very much.

SENATOR PROCTOR: Thank you, Mrs. Miller.

MRS. ZWEMER: Mr. Chairman and members of the committee: The Consumers League of New Jersey, which I represent, is a member of the New Jersey Committee for Constitutional Revision. Through its representative, it participated in the formulation of that Committee's proposals for changes in the Constitution of New Jersey. We subscribe entirely to those proposals, which were drawn up before the present draft of a Constitution was published, and which have been placed in the hands of the Governor and of the Legislative Committee.

At present the Legislative Committee is concerned with public reaction to a draft of a proposed Constitution. The views of the Consumers League thereon will, we believe, be found to be in harmony with those of the Committee on Constitutional Revision.

We are submitting a statement of our position on each article of the proposed draft to the proper subcommittee of the Legislative Committee.

In general, the Consumers League congratulates the Governor and the Legislature on the document which is being considered here today. We cannot praise too highly the statesmanship which has placed before the people so many excellent and far-reaching changes for them to pass upon. We intend to recommend just ten modifications, of varying importance, in the entire document as it stands. Of these modifications there is one which we consider essential to a good Constitution: namely, an express provision that over all revision, as distinct from, and in addition to, piecemeal amendment, will be possible if the people so desire in the future. Our specific proposal will be presented later, when we discuss Article IX, but we wish to emphasize here that, while the other changes we shall recommend are in our opinion desirable, the Consumers League believes that a provision for possible constitutional revision is of paramount importance.

The Consumers League considers that Article IV contains many improvements over the executive article of the Constitution of 1844. We approve the four-year term for the Governor; the power given to him to appoint most State officers; the requirement that the Senate act on his nominations within 45 days, and that otherwise they will be automatically approved; the provision for a 3/5 vote of the Legislature to override a veto; the power of executive investigation and removal of State Officers; the limitation of the number of State departments to 20, among which the Governor may allocate functions, subject to approval by the Legislature; and the provision that certain departments may be administered by a board instead of a single head, if so determined by law, we being interested in a flexible provision there because we feel that in such types of work as welfare, etc., the board is more efficient and allows for flexibility. The Consumers League is also very interested in the non-salaried commissions that sometimes are necessary, such as the Commission for Student Service, on which the Consumers League is officially represented, and we hope that nothing in the constitution will preclude the appointment

of non-salaried temporary commissions for certain occasions.

Article IV as it stands would give this State a true executive, with the powers and responsibilities which should properly belong to the one State official whom the people at large elect.

The Consumers League proposes two changes which we consider important in order that the executive branch of the government may be more responsive to the will of the people, as is particularly necessary when it is more powerful:

(a) Section I, paragraph 5, final sentence. We recommend deletion of the provision that the Governor may not succeed himself. As he is the one state-wide elective officer, it is only through the vote for Governor that the people can express their general attitude toward state-wide policies. They should have the right to reelect a Governor whose administration they approve, and equally they should have the right to register disapproval.

(b) Section I, paragraphs 6 and 7, providing for a successor to the Governor in case of his temporary or permanent absence from the State or inability to discharge the duties of his office. We believe that it is not in the best interest of the people to make the President of the Senate the vice-governor, because he was not elected by all the people; he may have opposite political principles from the Governor, who therefore will not feel free to leave the State and place his powers at the disposal of one who may sabotage his program; and in addition if a Senator becomes Governor for any length of time, the people of his county are deprived of representation in the Senate. We recommend that the Constitution provide for a Lieutenant Governor to be elected for a term concurrent with that of the Governor.

Article III, Section 7 - Militia: The Consumers League endorses the section on the militia as it stands.

Article II - Powers of Government: The Consumers League endorses Article II as it stands, and recommends no changes.

SENATOR PROCTOR: Thank you, Mrs. Zwemer.

MRS. MADDOCK: I cannot speak for my organization, the State Federation of Women's Clubs, because it was difficult to get in contact with 40,000 women between the time that the draft was published in the press and the hearing today. Our women have worked for many years for revision and I shall take back to them the findings from these hearings and shall get action from them as soon as possible.

As a citizen, may I speak just to this: It seems to me a Lieutenant Governor elected by the people in the same political party as the Governor is a better pattern. This follows the federal pattern. The Lieutenant Governor would be President of the Senate, would function as Governor in the absence of the Governor, would represent the Governor at public functions when so desired, would assure harmony between the Governor and the President of the Senate, and would assure political continuity of policy in case of death of the Governor. This has been found workable in the federal setup; it has been found workable in some of our best governed States. I happen to have been born and brought up in Massachusetts, have watched it work out there, and I hope, gentlemen, this will be given your consideration.

May I present this in proper form to you later?

SENATOR PROCTOR: Yes, you may present that any time next week.

MISS DUBROW: I am speaking in behalf of the New Jersey State Industrial Union Council, C.I.O. We will submit a brief at a later date. I shall speak extemperaneously and shall talk on just the sections in Article IV in which we wish to see a change made.

Section I, Paragraph 5: The New Jersey C.I.O. urges the deletion of the last sentence, which says, "No Governor elected

for a full term shall be capable of holding the office for four years next after the term shall have expired." We feel that in a democratic State, within a democratic country, Mr. Chairman, the right of the people to decide whether a man shall succeed himself should be left within their right to vote him into office or out of office, and to declare within a constitution that he may not succeed himself is to brand the people incompetent of deciding whether he has done a good job. Furthermore, we feel that it would be detrimental to a program which the Governor might be pushing and which would be beneficial to the general public. We sincerely feel that as the only elected officer within the whole State, the people within the whole State should have the right to decide whether or not he shall be allowed to succeed himself.

Our next objection is Article IV, Section III. We object to the provision as it is now framed. We urge that certain principal functions of government be constitutionally allocated to separate departments so that these important functions may at all times receive an adequate administration. We feel that under the present provision, the Governor has too great powers for control over the departments and their reorganization, opening the road to abuse of governmental administration for partisan purposes. Under those circumstances, Mr. Chairman, we think the provisions of the Hendrickson Report are preferable, and I quote from Section III, Page 44, with certain changes. It reads, "There shall be nine principal departments in the State Government designated as Agriculture, Commerce, Education, Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance, and such other principal departments, not to exceed ten in number, as may be created by law, which shall be under the supervision and control of the Governor," and we are suggesting that the words at the end of the paragraph be added in such manner as to group the same according to major purposes and functions. The paragraph which I have just read, as you will note, differs from the provisions of

the Hendrickson Report in that it provides for the possibility of creating by law ten additional departments, thereby allowing twenty departments in all. The second change is that the Civil Service and Education Departments are to be separated, whereas in the Hendrickson Report they are one department.

That, Mr. Chairman, is all that we have to say on Article IV.

SENATOR PROCTOR: Thank you very much. You will submit a draft later?

MISS DUBROW: Yes, we shall.

MR. SAUNDERS: Senator Proctor and members of the committee: I am appearing for Reverend Elias S. Hardge, State President of the National Association for the Advancement of Colored People. Upon examination of the proposed constitution and the additions that we suggest, I note that we are interested primarily Section VII and also--

SENATOR PROCTOR: SectionVII,

MR. SAUNDERS: -- Section VII, which has to do with the militia, and I think Article II, which has to do with the Powers of ... Government. I don't think you are hearing Section VII of Article III today, are you,

SENATOR PROCTOR: We had intended to hear today only Article IV.

MR. SAUNDERS: That is right, sir.

SENATOR PROCTOR: Section VII of Article III is in our section, although I don't know how it got over there. However, we considered that before, and I believe we will have to have a special day for the militia, because I believe other people want to be heard on that. You will be notified of the date that is set.

SENATOR O'MARA: Isn't that under the Legislative Section,

SENATOR PROCTOR: It is now but our committee considered that; it was allocated to us. I think in the Hendrickson Draft it was under Article IV.

SENATOR O'MARA: The only reason I raise the question is that I don't want us to be considering something along with some other subcommittee.

SENATOR PROCTOR: It has been assigned to us but I don't believe we should hear it today.

MR. SAUNDERS: I don't think so either. I see what your procedure is. As counsel, I came into this matter very late; in fact, at nine o'clock last night. May I speak also in behalf of Mr. Martin, who is here representing the New Jersey Herald News, one of the State's largest colored newspapers and also Mr. Tucker, appearing for the Negro Affairs Committee of Essex County. We desire that a hearing be held to take testimony in behalf of the provisions which we propose. We note that in this proposed revised constitution there is nothing covering certain pertinent and vicious practices which we claim exist in the State of New Jersey and should be eliminated. May I call to your attention, Senators and members of the committee, that this morning Justice Porter handed down a decision which will go down in the annals of history as being a very outstanding one, affecting the discriminatory situation that exists in the City of Trenton, in which he decided that Negro boys and girls sent from a distant point could not be sent to a school which is denominated as the Lincoln School. We think, sir, that these practices that exist could be eliminated if proper provisionswere included in our constitution, and it would not be necessary, wherever situations like this arise, to resort to the courts and long extended litigation, taking up the time of the courts which might be used for other purposes. We feel also there would be a tremendous benefit to the people of the State of New Jersey. These practices with which we are concerned are very costly to the State of New Jersey and we think that now, in view of the fact that the State is considering revising its constitution, one thing that might be done, which would benefit the State immensely, is to insert in this constitution proper pertinent provisions which would cover these practices. In order for us to bring this matter defnintely before the Committee, I think we need more than the fifteen minutes which is alloted to people to present it to the members of the committee.

MR. SAUNDERS: This is the Executive group, isn't it?

SENATOR FARLEY: That is right.

MR. SAUNDERS: According to this news item in addition to the Executive Artide, you are also hearing the Powers of Government, which are under Article II.

ASSEMBLYMAN ARTASERSE: That is right.

MR. SAUNDERS: You are also hearing those who wish to speak on Militia.

SENATOR FARLEY: That is right.

MR. SAUNDERS: We are definitely concerned with the Powers of Government. We are also concerned with the Militia, and we would like to have a time fixed when we can present testimony if necessary and have in these various persons who want to be heard on those two points. I am sorry we came in here today, but we didn't know the procedure.

MR. MARTIN: We have twenty-eight branches of the National Association for the Advancement of Colored People in New Jersey. They want to come in from the different counties and be heard. We sent out telegrams after we received one from Senator Eastwood advising us of the hearings. The minute we can come to agreement with the committee as to when they want us to come in to discuss --

SENATOR PROCTOR: There is going to be a meeting of the committee as a whole and we will bring this question up then.

MR. SAUNDERS: Before the committee as a whole?

SENATOR PROCTOR: Yes, and either I or the chairman of the committee as a whole will let you know in good time, so that you can come down here prepared.

MR. SAUNDERS: My interpretation might be wrong but I don't think it is necessary for this committee to discuss with the committee as a whole its procedure in hearing what we have to present on the Powers of Government, Article II, and the Militia, because that has already been assigned to this committee.

SENATOR FARLEY: How much time do you think you need?

MR. SAUNDERS: I should think we need a day to properly present it to this committee, because I know there are many things which you gentlemen, many of you, have no idea exist in the State of New Jersey that we want to present to you, and we would like to have a full consideration of it.

SENATOR FARLEY: I move that we give them a special day for that particular section.

SENATOR O'MARA: Let's set the day.

SENATORY FARLEY: Next week.

SENATOR PROCTOR: We will give you a day but I don't want to name the day right now because this week wewant to hold hearings on the Executive Article. We don't know how many more days that will take, but we will probably fix a day for you the latter part of next week. I wouldn't want to say that for certain. What is your full name and address, so that we can notfy you?

MR. SAUNDERS: My name is Louis E. Saunders, and my address is 28 Concourse East, Journal Square, Jersey City. I would like to get that through tomorrow.

SENATOR PROCTOR: You want to be heard tomorrow?

MR. SAUNDERS: I don't know when you are considering Powers of Government or the Militia. Whenever you are considering those things, we would like to have a day fixed at that time, when you have those particular articles under consideration.

SENATOR PROCTOR: Will you be here after lunch?

MR. SAUNDERS: I will stay here.

SENATOR PROCTOR: All right, we will let you know then.

MR. SAUNDERS: Thank you very much, gentlemen.

MRS. RAPPAPORT: I speak in behalf of the New Jersey League of Women Shoppers. We have just received a copy of the revised draft and we haven't had time to review it in detail, so I would like to submit a prepared statement at the end of the hearing instead.

However, at this time we wish to endorse the proposals of the New Jersey Committee for Constitutional Revision as they apply to the present articles. We also agree with some of the previous speakers, that it is important we have a Lieutenant Governor to preside in the Governor's absence, to assure a continuation of the Governor's policy by someone who is also elected on a statewide basis. We would like to see the question of reelection of the Governor left to the people and not fixed on a one-term basis.

I will submit a prepared statement later.

MR. CONNOR: Mr. Chairman, gentlemen of the committee; I represent the State Bar Association in reference to the Executive Branch of the proposed constitution. First, our committee wishes to commend the committee who prepared the Executive Branch for the very admirable work they performed. Our report deals mostly with a few criticisms of the language used in the constitution. In fact, in reading the constitution as it is now written, I think it ought to be rewritten; it ought to be revised. Some of the language ought to be changed; some of the paragraphs are too long, too much involved. Our committee feels that we, after all, want a simple constitution, a constitution that not only the legal mind may be able to analyze but that the lay mind of the most humble individual can sit down and read and understand just what is meant. The simpler the language, the less litigation we will have. I think all you members of the committee agree with me on that point. The legal profession, you know, sometimes looks for language in the constitution that can be used this way or that way, whichever might suit our purpose.

The first suggestion we have to make is under Article IV, Section I, Paragraph 6, the word "qualified". It says there "when the Governor is qualified into office". We suggest that that word "qualified" be changed to "inducted", "when the Governor is inducted into office" instead of "qualified into office". I note that same term was used in the old constitution and to my

mind, and I think to your minds the word "qualified" means the Governor's fitness, the individual's fitness as to ability, etc., for the office, but when you say "qualified into office" I think, then, in this connection, it means induction into office.

Article IV, Section I, Paragraph 10, the last sentence. The words "or by law" following the word "constitution" should be eliminated, as creating doubt and uncertainty, the meaning of such a sentence.

Under Article IV, Section I, Paragraph 10, the word "State" should follow the word "All" at the beginning of the last sentence.

SENATOR PROCTOR: Where was that, Mr. Connor, that last?

MR.CONNOR: Article IV, Section I, Paragraph 10.

SENATOR O'MARA: I think the obvious purpose of that sentence is to take care of a situation where a particular office is not a constitutional office but might be created by statute. In other words, a good many offices, and there will be a good many of them, will have no constitutional standing but will be statutory offices.

MR. CONNOR: I understand that certain offices will be created by the constitution and others can be created by the Legislature.

SENATOR O'MARA: I know, but the intent of that paragraph is to make the provision apply for gubernatorial appointments in situations where the office is not created by the constitution itself but by some statute. For instance, district courts are not recognized or provided for by the constitution but are purely statutory, so that if we eliminate the words "or by law" after the word "constitution", a great deal of the effect of the provision will be lost.

MR. CONNOR: Well, maybe it should be left as it is, but that was the feeling of the committee after they discussed the matter.

SENATOR O'MARA: I throw that out to you so that if you have some further thoughts on it in view of that situation --

MR. CONNOR: I haven't the article before me; I can't give them at this time.

Under Article IV, Section I, Paragraph 14 - that has been suggested by a former Speaker -- we feel that the word "nonfeasance" should be included, together with "misfeasance or malfeasance in office". Oftentimes we get an officer in a position and he sees fit to do nothing, and in order to get rid of him we recommend that the word "nonfeasance" be included.

Article IV, Section II, Paragraph 1, the words "attorney-at-law" in the last sentence, we suggest be changed to "counsellor-at-law". We also suggest that the appointment of the Parole Commission be staggered, that they be appointed for one, two, three and four years, so that their terms will not all expire with the Governor who appointed them.

MR. CLAPP: Excuse me, Mr. Connor. May I call your attention to the schedule? The schedule provides for staggering the terms, the first four to be appointed for one, two, three and four years, just as you suggest, and thereafter for four years.

MR. CONNOR: Then we overlooked it. I am sorry.

Under Article IV, Section III, we suggest that the word "Principal" pertaining to departments or department be eliminated, and that just the word "Departments" be used.

ASSEMBLYMAN GLICKENHAUS: What was that reasoning, Mr. Connor?

MR. CONNOR: Eliminate the word "Principal" pertaining to departments. This section says the Governor shall appoint, I think it is, not more than twenty Principal Departments. We thought it would be better if the word "Principal" was eliminated and just the word "Departments" used. However, the committee can use its own judgment.

There is only one further criticism. Under Article IV, Section III, Paragraph 1, after the word "all" insert the words "present and future", in the last line on Page 11.

SENATOR PROCTOR: What is the reason for that?

MR. CONNOR: Well, the reason for that would be that it would take care of not only the present condition but also the future.

SENATOR PROCTOR: Doesn't that "all" do it anyway, without those words? You want it to read, "There shall be Departments in the State Government, not more than twenty in number, created by the Governor by executive order; and among and within them shall be allocated by the Governor by executive order all present and future executive and administrative offices....."?

MR. CONNOR: Yes.

SENATOR PROCTOR: Is it necessary to include those words?

MR. CLAPP: I think the construction is somewhat aided if you also look at the schedule, Section III, last paragraph, which provides, "On or before July first, one thousand nine hundred and forty-five, the Governor shall complete the first allocation of the executive and administrative offices, departments and instrumentalities...." The intent, I know, when we drafted this, was to make that futurative and continuing. Of course, if it isn't that --

MR. CONNOR: We thought this would clarify it a little bit. Thank you very much.

SENATOR PROCTOR: Mrs. Louis S. Rappaport, New Jersey State President National Council of Jewish Women --

MRS. RAPPAPORT: I should just like to say that our Sections throughout the State have been interested in this question for many years and have made an extensive study both of the State constitution as it exists and the proposed changes and revisions. We are for the present presentation of the constitution with modifications. I am not prepared to state today just what those modifications are because we have a state executive meeting later this month, and so with your permission I should like to mail you a little bit later a prepared statement with very definite modifications.

SENATOR PROCTOR: All right.

MRS. RAPPAPORT: Thank you.

SENATOR PROCTOR: Is there anyone else who wishes to be heard? If not, we will adjourn until two o'clock.

(Recess for lucnh)

E.

SPEAKERS - AFTERNOON SESSION

February 1, 1944

Mrs. Maxwell Barus, President, League of Women Voters

Manuel Cantor, Communist Party of New Jersey (proponent)

Mrs. Harry Burd, (modification)

Mrs. S. Herbert Anderson (modification)

Mrs. Frederick Holman Wannamassa (modification)

Miss Bertha Atkins (modification)

SENATOR PROCTOR:

Mrs. Holman, do you wish to be heard?

MRS. HOLMAN:

Frankly, we don't know what has been taken up this morning.

SENATOR PROCTOR:

The rules are that we start at 10:30 and continue to 4 o'clock. Any organization is limited in its talk to fifteen minutes on each article. Of course, we are only taking up the Executive Article in this committee and we wanted the opponents to speak first, but there were no opponents. Then we asked for the modificationists to speak and there were a number of modificationists. So far we have only heard modificationists. If you have anything to add to the record, we should be glad to hear you.

MRS. HOLMAN:

We don't know what the record is.

SENATOR PROCTOR:

I realize now you may not have had time to study the Executive Article. What do you think of the setup here?

MRS. HOLMAN:

We would be speaking for the League and I guess you had that pretty well presented thismorning.

SENATOR PROCTOR:

Yes, and the woman who spoke this morning is going to submit a memorandum or a brief later. I might say that she approved of most of the Executive Article. I am not clear but I think she advocated that the Governor should be able to succeed himself.

MRS. HOLMAN:

Two terms at least.

SENATOR PROCTOR:

You all feel that the Governor should succeed himself at least once.

MRS. HOLMAN:

At least once. And another point that was mentioned was that we did hope for a two-thirds' vote in order to pass over the Governor's veto.

SENATOR PROCTOR:

She mentioned that. You feel that it should be two-thirds rather than three-fifths.

MRS. HOLMAN:

We thought so. It makes a little more leeway and gives the Governor a little more power. Three-fifths is so close to the majority in your Assembly, that the 36 and 31 ------

MRS. ANDERSON:

You already have your 31 votes; you only have five extra votes to get hold of.

SENATOR PROCTOR:

We considered that pretty thoroughly. Don't you think on the whole we have given the Governor sufficient power?

MRS. HOLMAN:

Marvelous.

SENATOR PROCTOR:

With those two exceptions - you say the Governor should be entitled to succeed himself or at least present himself to the people to succeed himself and to override his veto it should be two-thirds of each house - you subscribe to the balance of that article?

MRS. HOLMAN:

Very much so. Another thing you are taking into consideration is the vote on amendments; isn't that right?

SENATOR PROCTOR:

We haven't taken it up today, but as long as you are here if you have any suggestions to make, I am sure the Committee will hear you.

MRS. HOLMAN:

We had hoped you would put in some article that would definitely provide for a vote by the people on revision, say every twenty-years in addition to this amendment.

SENATOR PROCTOR:

Somethinglike the NewYork constitution so you wouldn't have to go through this complicated machinery?

MRS. HOLMAN:

So they would have an opportunity to vote in their regular election as to whether they thought it should be revised.

SENATOR FARLEY:

Make it mandatory?

MRS. HOLMAN:

So the people have that opportunity every so often to express their opinion. That was something we thought would help.

SENATOR PROCTOR:

That wasn't mentioned this morning.

MRS. HOLMAN:

That was not mentioned?

SENATOR PROCTOR:

I don't recall it.

SENATOR SCOTT:

It wasn't.

SENATOR PROCTOR:

There were only two suggestions. They were regarding the Governor succeeding himself and the veto power.

SENATOR PROCTOR: (Cont'd.)

Were those the only two modifications that were mentioned? There were others mentioned, but not by the League of Women Voters. Someone mentioned we should have a Lieutenant Governor in the State. I am not sure who mentioned that. There were a number of organizations here this morning and one lady representing, I think, the Consumers' League said she felt there should be a Lieutenant Governor to run on the same ticket comparable to the Vice-President of the United States.

MRS. HOLMAN:

This is Mrs. Maxwell Barus, our State President.

SENATOR PROCTOR:

They agree in substance with Article IV, which is the Executive Article, except that they felt that the Governor should have the right to succeed himself at least once, and also that a two-thirds' vote of each House should be required to override the Governor's veto rather than three-fifths' as we have provided for.

MRS. BARUS:

It is not a very great difference after all.

SENATOR PROCTOR:

Yes,and there is one other thing. We just mentioned the amending process and the League I understand wishes that there should be some mandatory clause ----

MISS ATKINS:

Not mandatory.

SENATOR PROCTOR:

----requiring a referendum every twenty years. It would be mandatory that it be submitted to the people to vote on whether they want to revise the constitution every twenty years.

MISS ATKINS:

They have the right to decide.

SENATOR PROCTOR:

It would be mandatory it be put on the ballot. It would be up to the people to decide whether or not they wanted it revised.

MRS. BARUS:

It wouldn't affect the amending process at all. We are very much interested in that idea. It seems to have been accepted in New York State as a method which very often would not be considered necessary. I don't think we would be particularly insistent on any period of years. It might be twenty or twenty-five or thirty years, but at least, once in every generation they would have an opportunity of deciding whether a revision was necessary.

SENATOR PROCTOR:

You mean that the Legislature would be the body to prepare the new draft of the constitution.

MRS. BARUS:

Of course, we think the ideal way to write a constitution is by a special convention. But failing that, if the Legislature set up some plan, we would be very glad to go along with what they felt was the way to do. Of course, there are certain very great advantages, we feel, in having a convention which has no other business before it but consideration of the constitution, which has no other duties or other calls upon it such as people trying to get jobs or trying to get legislation through, which would be entirely apart from the ordinary business of the State and would have consideration of the constitution only.

SENATOR PROCTOR:

Let me ask you one question, Mrs. Barus: Don't you think on the whole that this draft represents a fairly good statesman-like job; I mean without any selfish interests on the part of the Legislature?

MRS. BARUS:

We do and I think the Legislature is particularly to be commended in that they have voluntarily written away some of their own powers, I think they had the grace to see that it was not for the best interests of the State that the Legislature should be confused with the Executive or appointive power, and I think that is particularly to be congratulated upon, that that has been done.

SENATOR PROCTOR:

By the same token you wouldn't object if the Legislature every twenty years prepare a new draft, rather than have a convention.

MRS. BARUS:

I don't think we would object to it. We would like to see the thing come up from public discussion. We believe for one thing it would interest the people more in their State and the business of the State.

SENATOR FARLEY:

Is it your thought that it be mandatory that every twenty years the people determine whether they are to revise it and also that there be a paragraph in there as to the method - how it should be revised - even in a less period of time than twenty years?

MRS. BARUS:

I don't think so.

SENATOR FARLEY:

I am talking in addition to the amendment, in addition to the mandatory provision in the constitution to submit it to the people by means of referendum. Are you also of the opinion that there should be another provision if they decide to revise the constitution in less than twenty years?

MRS. BARUS:

I think there should be a provision that the Legislature be empowered to do so, and at stated intervals they should be required to put a referendum on the ballot. If it was the judgment of the Legislature that within ten or fifteen years there should be a revision, then I think that should be by referendum at the discretion of the Legislature on the general ballot, and, if, by the end of twenty or twenty-five years, that should not have been done, then there should be provision for a referendum such as the one we have just had and allow the people to express an opinion as to whether they thought the Constitution was satisfactory to meet the needs of the State or whether it needed overhauling again; in other words, it has been a long time now since it has been revised and we feel it should be brought up for consideration, but that the Legislature, itself, should have the power to pass a referendum at any time.

SENATOR FARLEY:

What is your thought as to the convention; what do you think should be the basis of representation?

MRS. BARUS:

I think it should be the same basis of representation as the Legislature, the same number of delegates as there are at present from each county.

SENATOR FARLEY:

Have you any thought as to the mechanism, as to how it should be constituted? Would it be by virtue of election or by appointment by the Legislature? What medium would you have for the purpose of achieving that?

MRS. BARUS:

The proposal that we advocated is that there should be special delegates put on the ballots as the delegates in the regular election, general election - not a special election, because a special election is expensive and does not get the people out,

MRS. BARUS: (Cont'd.)

and does not seem to work very well from experience - and those delegates should be constituted in the same way as representation in the Legislature."

MR. PAUL:

Mr. Chairman, if Mrs. Barus would yield to me a moment ----

MRS. BARUS:

I would be glad to.

MR. PAUL:

If the Senator would like, I will read to him ----

SENATOR FARLEY:

I would like to hear it.

MR. PAUL:

---a draft which we have proposed on behalf of the New Jersey Committee on Constitutional Revision and affiliated organizations:

"The question of authorizing revision shall be submitted to the people at a general election.

1. In any year designated by law, or
2. Automatically twenty years after the last such referendum election."

That is, the Legislature at any time can say that they wish the question to be submitted to the people, or failing to have it submitted for a certain period of years - 20 or 25 years, whatever is decided upon - if the Legislature meanwhile has not had the question submitted, then automatically the question on referendum will be submitted to the people.

MR. PAUL: (Cont'd.)

"If the people authorize revision, a convention composed of as many members as comprise the joint meeting of the two Houses of the Legislature shall be elected in the same manner as members of the Legislature, at the next general election; and such convention shall prepare a Revised Constitution and submit the same in such manner as it may direct at the next succeeding general election; unless the Legislature shall by law have made other provision for the election, desimation or appointment of the body to be authorized to prepare and submit such revision."

SENATOR FARLEY:

May I ask you a question, please? Is it your thought that the convention's conclusions should not be submitted to the Legislature for their approval? Is that your thought?

MR. PAUL:

No. This leaves in the Legislature the power to set up the machinery ----

SENATOR FARLEY:

I appreciate that.

MR. PAUL:

If the Legislature fails to set up the machinery, then automatically the convention is created, which will then report.

SENATOR FARLEY:

That is my point. What happens to the report? Is it submitted to both Houses of the Legislature or to the people, by virtue of the mechanism set up?

MR. PAUL:

We have not put that in because that is not the important factor. The only thing we seek to establish is the principle that every so often the question should be raised as to whether or not the Constitution then in effect is a satisfactory document. It is a detail whether that is then submitted.

SENATOR PROCTOR:

One question, Mr. Paul: As I understand that, that would mean that a convention would be held of approximately eighty-one members.

MR. PAUL:

That's right.

SENATOR PROCTOR: And those eightyone members would come from the various counties, in accordance with their Assemblymen and Senators?

MR. PAUL: That's right.

SENATOR PROCTOR: And of course the majority of those Assemblymen and Senators would come from the heavily populated counties in the northern part of the State.

MR. PAUL: That's right.

SENATOR PROCTOR: And they could easily overrule the southern counties and the smaller counties. When I say "southern", I mean the smaller counties. Monmouth is not necessarily a southern county but it is a smaller county. They could pass, by constitutional amendment, a provision depriving the small counties of representation; isn't that right?

MR. PAUL: Correct.

SENATOR PROCTOR: I don't think the smaller counties would yield to that.

MR. PAUL: There is another alternative, unless the Legislature shall by law make other provision for the election, designation or appointment of the body to be authorized. The Legislature has it in its power before the twenty or twenty-five or thirty year period is up to designate by law the method under which the group -- we won't call it a convention -- that is to frame the new constitution is to be designated.

SENATOR FARLEY: You are merely setting up the mechanism.

MR PAUL: Only if the Legislature fails to do that does the other provision come automatically into effect. Do you get that clear?

SENATOR FARLEY: You leave the matter open to the Legislature as to the method and also as to the report itself.

SENATOR PROCTOR: That would be all right. That would be a safeguard. The smaller counties do have --

MR. PAUL: We appreciate that in a way the cart was before the horse here in providing that a convention should be set up composed of the same number, but the real gist of it is, unless the Legislature shall by law have made other provision for the election, designation or appointment of the body to be authorized to prepare and submit such revision. Now, therefore, if I were in Senator Farley's place, I would see to it that the year before that came into effect a law be passed designating the kind of body to be set up and the details of how to handle it. But if you fail to do so, if the Legislature fails to do so, then automatically there would be some provision which then would be effective; otherwise the law would have no effect.

SENATOR PROCTOR: Of course Mrs. Barus's position would be consistent with that.

MR. PAUL: The League of Women Voters is in agreement with the New Jersey Committee on Constitutional Revision. They are one of our actively affiliated organizations so we are in agreement. This draft that I have read to you has been agreed upon by the affiliated organizations. I didn't intend to bring it up, but as long as Senator Farley raised the question I thought I would make clear that there is nothing in this which in any way interferes with the things you have in mind.

SENATOR FARLEY: I appreciate it and I think the point is well taken and as a matter of fact the Committee left that particular section open as to the method for the purpose of getting the reaction of the people at these hearings. I do feel before the matter is finally disposed of there will be some provision as to the mechanism. The Committee felt that we would like to get an expression of the public on that point. I think your point is well taken personally.

SENATOR FARLEY: Your point is that you feel that first there should be the mechanism set up in the constitution that there should be a revision at least once every twenty or twenty-five years if the Legislature fails to act; if they do act, they should set up by

the means and medium of the convention or in lieu thereof some mecha n- ism of presenting it to the people, and in the event it isn't by convention, the report be submitted to both houses of the Legislatur e for their approval and by the mechanics of the election law presented to the entire electorate.

MR. PAUL: That's up to you to work out. The main principle we all were keen on. I think you gentlemen willagree that automatically the people should vote by referendum as to whether or not they are satisfied with their constitution. If they are not, without disturbing anybody's apple cart, the thing could be set up so that the fundamental questions can be reconsidered.

ASSEMBLYMAN ARTASERSE: Mrs. Barus, you said a few moments ago the constitution in its present form is a commendable job. Would the constitution in its present state, I mean the proposed constitution without any amendment be satisfactory to your League?

MRS. BARUS: It would be very satisfactory to us with one other provisi on.

ASSEMBLYMAN ARTASERSE: If you weren't able to get that provision?

MRS BARUS: It would be a very difficult matter for us to decide upon because we felt all along that this was such an essential thing.

SENATOR PROCTOR: You said the constitution in its pres- ent state. You mean the present constitution.

ASSEMBLYMAN ARTASERSE: I said proposed constitution.

MRS. BARUS: We are absolutely in agreement with what Mr. Paul has said. When the question was raised, did the League favor a convention, I wanted to say we felt the convention the ideal way. Obviously the difficulties which the Legislature encounters in dealing with this, a convention would not have. But we are absolutely in agreement with what Mr. Paul has said. We think it is the single, greatest need to be added.

ASSEMBLYMAN ARTASERSE: Without that provision you as the president of your League are not ready to say whether is is acceptable

or not.

MRS. BARUS: I wouldn't have authority to do that because as we act by democratic method, it would have to go back to our executive board. But I do know and feel strongly that it is the most necessary addition to this present draft.

SENATOR PROCTOR: Mrs. Barus, one question, divorcing ourselves for the moment from the question of revision, are you satisfied with the section on amendments?

MRS. BARUS: If the revision proposal were in, I think the section on amendments is absolutely acceptable. We certainly don't want to swing too far the other way and have amendments flying through. Because we have had a very difficult and rigid amending system, I think most citizens think, for heaven's sake let's get an easier system of amending it. I think you could go too far the other way. If this revision proposal went in, two-thirds' majority would be perfectly acceptable.

SENATOR SCOTT: What is your personal opinion as it concerns the necessity of a Lieutenant Governor?

MRS. BARUS: I don't know whether Mr. Paul would like to speak on that. The League--

MR. PAUL: I presented our memorandum this morning. They have it before them.

MRS. BARUS: We personally have felt that in the absence or disability of the Governor or his death or resignation or what not, there should be a substitute who would have been chosen by the people as a whole, that in choosing a senator from any county who has been elected by a specific representation as you are and who is elected by the small minority of the people of the State, that is not so appropriate a method of succession as it would be to have a Lieutenant Governor who would be chosen by the people as a whole and who presumably would have to have some other functions to perform.

SENATOR SCOTT: I was going to ask you that. What would be his duties?

MRS. BARUS: You wouldn't want him just to take care of the canary bird. I think in some states, several states - I am not such a student of constitutional government as some of our members - I believe it is true he often sits as President of the Senate. In New York he has a job on the Board of Regents and some other Commission - I forget what it is - on which he automatically sits ex officio.

SENATOR SCOTT: Do you think it is a good thing?

MRS. BARUS: We believe it would be, but we are in accord with the committee's recommendation which is sort of a compromise measure.

SENATOR SCOTT: Are you one of those who believes under the present system the Governor has not had sufficient power and that the legislative functions have overlapped into the executive functions, and therefore he has been stripped of power?

MRS. BARUS: Yes.

SENATOR SCOTT: By the same token then, you are willing to permit the Lieutenant-Governor to usurp present legislative powers by making him President of the Senate:

MRS. BARUS: It seems to follow after the present federal constitution model, and he apparently is only the presiding officer.

SENATOR O'MARA: He votes in a tie under the federal set-up.

MRS. BARUS: It doesn't seem to me he has any great legislative powers. However, I think this alternative suggestion is a good one, too. I mean, the one Mr. Paul made before the committee.

SENATOR SCOTT: The one concerning the Director of Finance:

MRS. BARUS: No, that was the Hendrickson report. I think the one we suggested said-- was it the Secretary of State? I have forgotten exactly what we did say-- someone to take the Governor's

place who might be appointed by the Governor, a State Department head designated by the Governor, who shall act in his place upon the occu r-rence of a vacancy or in his temporary absence or inability if he were out of the state on vacation or perhaps attending the Conference of Governors, but that the Legislature might elect qualified persons to replace him if he is permanently separated from his office. That would seem to meet the difficulty of what the Lieutenant Governor would do.

SENATOR SCOTT: Then you are not willing to concede the fact that any one Senator who is elected by the majority, in a sense represents at least that group of the majority that those majority Senators represent when they select their President?

MRS. BARUS: Personally, I think that is not as representative- it is not as truly democratic as would be a method which would permit the people to choose a second or substitute Governor, a man who would be voted for, knowing that he would be eligible to take the place of the Governor in his disability. I don't think many people elect any State Senator with the idea of his possibly succeeding the Governor, do you? At least it is not in my mind when I vote for Senator.

SENATOR SCOTT: Not at the time, but our history has proven where that has happened and those so designated have gone on to be Governor.

Governor Fielder--

MRS. BARUS: As far as I know, this idea of Lieutenant Governor is really like a Vice President.

SENATOR SCOTT: One more question. Do you think that Lieutenant Governors or Vice Presidents are elected because of themselves or because of the head of the ticket they are running with?

MRS. BARUS: Too often undoubtedly, they are nominated for some reason that doesn't have much to do with their fitness but that is the fault of the people. We know no system

of government is ever going to be perfect. There isn't any substitute for citizen vigilance and citizen participation and interest in government, but perhaps the best we can do is devise a system and then adapt ourselves to it as best we can. However, it is not a thing that we feel terribly strongly about.

SENATOR SCOTT: I am happy to hear you say that. At least there is some merit in the past system and there are instances where those who have succeeded to the Governorship as a result of the elected Governor having become a national candidate and elected to office, creating a vacancy, and that individual moved up and it followed that he later became our next elected Governor. We have had a number of such instances and by and large they worked out reasonably well. I am wondering what the job would incur in the minds of you people who are interested in this problem. I mean, not as you say, to take care of the canary, but the actual function the individual would have to do, keeping in mind the fact that one of the things we are here trying to correct is an overlapping of legislative into executive and vice versa. Speaking personally, I am perfectly willing to go along on that argument. They should be separated but by the same token I don't like the idea of a Lieutenant Governor presiding over the legislative group, but I think we can work it out to a degree that would be satisfactory to all concerned if we get these other corrections in there.

MRS. BARUS: I think that is a good point.

SENATOR PROCTOR: Mrs. Barus, I might say that the committee seriously considered this for a number of days and, frankly, we didn't know what to do with the Lieutenant Governor. It reminded me of the play "Of Thee I Sing"--Throttlebottom. We were very much concerned about that.

SENATOR O'MARA: In the event that the Constitution provided for a Lieutenant Governor, would you favor a provision by which he should run bracketed with the candidate for Governor or independently of the candidate for Governor? For instance, the dis-

tinction can be illustrated by the difference between the federal system and the system in New York State. In the federal system, a vote for the candidate for President, or the electors for President, includes a vote for Vice-President; whereas in New York you may vote for Governor and Lieutenant Governor independently. You might vote for a Republican candidate for Governor and a Democratic candidate for Lieutenant Governor, or vice versa. Do you feel that if the Constitution provided for a Lieutenant Governor he should be compelled to run bracketed with the Governor so that you would have to vote for the candidate for Governor and Lieutenant Governor of the same party?

MRS. BARUS: No, I do not. Speaking for a non-partisan organization, I believe in voting for the best man.

SENATOR O'MARA: I understood one of the reasons you advocated a Lieutenant Governor- not your organization perhaps but some organization that was represented here this morning - was that it would eliminate the possibility of a conflict and the cutting in half of the program of the Governor in the event of his resignation or disability; for instance, one of the speakers said that the President of the Senate might be of the opposite political faith and upon his assuming the duties of Acting Governor it would mean a breaking up of the program of his predecessor. Would the same objection be true if we had a Governor of one political faith and a Lieutenant Governor of the opposite political faith.

MRS. BARUS: That might be a real argument but it seems to me it would not be so important. After all, the Governor's jobs are administrative and executive jobs and I, myself, would have more confidence in the calibre and type of the man than in his party. Often the parties' programs have not differed very tremendously, so that it would not be a complete reversal or a switching from conservative to liberal. I don't think that pertains to this State. It might at some future time.

SENATOR O'MARA: Your thought is that the people should be left absolutely free to choose their Governor and Lieutenant Governor and not absolutely be limited to the same political party.

MRS. BARUS: I think so.

SENATOR PROCTOR: I want to thank you ladies, particularly the ladies from Monmouth County. I know all of you have been very much interested in this Constitution Revision for years and you saw it come to a successful conclusion last November and I hope you will be satisfied with it next November. If you have any written memorandum that you want to submit it, we will be glad to receive it.

MRS. BARUS: We will be very glad to do it. We are not prepared at this time as there has not been a great deal of time since the actual draft came out. We will be happy to do so, probably backing up what the committee has said.

SENATOR PROCTOR:

Is there anybody else who desires to be heard?

MR. CANTOR:

My name is Manuel Cantor and I am speaking for the Communist Party of New Jersey.

I think that President Roosevelt in his recent message to Congress gave us some key to the kind of democracy that most Americans look forward to in the post-war period and it is in keeping with the general spirit of the times, - a great democratic upsurge throughout the world, - and in such stirring times it is reasonable to expect that any new state constitution that is proposed to Americans will be fully in the spirit of President Roosevelt's message, that it will represent, because of the particular time it is presented, the highest type of democratic government achieved in this country. Does the constitution proposed by the Joint Legislative Committee under Concurrent Resolution No. 1 measure up to such standards? Unfortunately it must be said most emphatically that it falls far short of the mark.

True, in some respects the new proposal constitutes an improvement over our present ancient charter. Nevertheless there are certain features which, if left as they now are, will result in such a concentration of power that will threaten to restrict rather than extend democracy in our state. It is in the Executive Article that there lurks just such a possibility for thwarting completely the people's desire for a state government much more responsive to their wishes than the government we now have.

The Communist Party is very much in favor of a reorganization in the present terribly confused and disorganized system of administrative departments and agencies. We join in the popular desire for their more effective, efficient and economical operation. But we very frankly are fearful of the great concentration of power it is proposed to place in the hands of the Governor, who is given the widest authority, under the

proposal, to supervise and control a vast organization largely by executive order.

We recognize that centralization of authority and control may be a pre-requisite for efficient administration. We agree that the Governor be given the power to nominate and appoint the heads of the suggested Principal Departments. But we suggest at least the following safeguard, that all persons employed within the Principal Departments except the heads of such departments, shall be employed pursuant to a civil service system established by the Legislature. We are hopeful that others will recognize the danger inherent in the sweeping delegation of executive power and that additional constructive proposals will be brought forward here to establish the necessary curbs on the Governor.

In the present proposals all nominations, appointments and other executive actions would require the "advice and consent" of the Senate. This is, we recognize a long accepted practice. However, we see no important reason for this special difference for a so-called upper chamber. In our discussion elsewhere on the legislative article we renew our proposal for a unicameral legislature, which we think would be a far superior arrangement. But even with the bi-cameral set-up there is no real justification for the superior status of a Senate. A long time ago an upper chamber reflected distinctions in classes or in the ownership of property. Such tests for membership have long been abolished.

We make the recommendation that wherever the "advice and consent" of a legislative chamber is necessary that the Assembly be substituted for the Senate. Certainly the Assembly is much more representative of the majority of the people of the state and most responsive to its will.

Applying the same test of its democratic character we come to the conclusion that the proposal of a four-year term for the Governor renders that office even less responsive to the control and influence of the electorate. We are in favor of a two-year term, with no limit on succession. /The argument that a two-year term does not offer a fair test of an executive's ability is not very tenable. It is only when a

Half the states have the two-year term. More than half do not limit succession.

governor has no program in the people's interest that he needs must have a longer term to entrench himself in other, less praiseworthy ways. Let the people judge the governor every two years. If he is doing a job the people will recognize his effort and re-elect him. Elsewhere we recommend that the term of office for members of the legislature, whether unicameral or bicameral, also be two years. This will give the electorate the opportunity to express its will most effectively. With both Governor and legislature chosen at one time the voters can make a clean sweep when they so desire. There would be much less likelihood of the present spectacles of a Governor and a legislature constantly at loggerheads while the poor public suffers.

There are a number of other suggestions regarding the executive article which we will include in our written brief.

We want to say a word regarding Article III Section VII which deals with the militia. Traditionally the militia is a people's levy. From early colonial days it was an expression, in the military sphere, of typical American democracy. The 1844 Constitution, in Article VII, Section I, Par. 2 provides that "Captains, subalterns and non-commissioned officers shall be elected by the members of their respective companies". Pars. 3 and 4 provide for election of the next higher brackets of officers by their respective regiments, battalions or brigade. We urge the retention of these provisions in the new constituion. Our aim in framing the new document should be to achieve greater democracy in every phase of life in our state. Surely there is no need to abandon a healthy, democratic practice embodied in the 1844 constitution in order to substitute one much less so.

One of the positive things about the new proposed constitution is the liberalizing of the amending process. The difficult of the 1844 document provides an impossible barrier. The new method is an improvement, it stillhas limitations. Firstly, any amendment should require the concurrence of a simple majority of the Legislature instead of the two-thirds majority proposed. Secondly this should not be the

only method provided. One proposal that has the decided merit of providing opportunity for periodically bringing the basic law of the state up to date is for a state constitutional convention every ten years. We would advance this in addition to the initiative and referendum method.

We will submit with your permission a brief which will cover a number of other more specific portions of the document.

SENATOR PROCTOR:

We shall be very glad to receive it. Thank you very much, Mr. Cantor.

Now is there any other organization or any individual that wishes to speak?

MRS. ZWEMER:

Mr. Chairman, are we speaking on the amendments now?

SENATOR PROCTOR:

As long as you are here, if the Committee has no objection, yes, you may.

MRS. ZWEMER:

I am Mrs. Richard Zwemer, President of the Consumers' League of New Jersey.

The Consumers League approves some of the changes which have been made in the amendment article, namely the provision that amendments shall be submitted to the people at general rather than special elections, and the removal of the requirement that an amendment resolution must pass a second session of the Legislature. We recommend two changes in the draft of this article, and the second of these is the one feature above all others which we should like to see changed in the final Constitution which is to be submitted to popular referendum next fall.

(a) Paragraph 5, providing that if the people disapprove an amendment, the same or substantially the same amendment may not be submitted again for five years. We would delete this paragraph. We

believe the discretion of the Legislature would be sufficient safeguard against too frequent submission of amendments. The phrase "or substantially the same" seems to us particularly dangerous as it would admit of various interpretations, according to some of which the actual will of the people might easily be thwarted.

(b) We recommend the addition of a paragraph or section providing for revision of the entire Constitution, as distinct from amendment, substantially as follows:- The question of authorizing revision of the Constitution shall be submitted to the people at a general election, in any year designated by law, and automatically, 20 years after the last such referendum election. If the people authorize revision, a convention composed of as many members as comprise the joint meeting of the two houses of the Legislature shall be elected in the same manner as members of the Legislature, at the next general election; and such convention shall prepare a revised constitution and submit the same in such manner as it may direct at the next succeeding general election; unless the Legislature shall by law have made other provision for the election, designation or appointment of the body to be authorized to prepare and submit such revision.

As we have stated before, we place great importance on the inclusion of some such provision for thorough-going revision of the Constitution, if the people desire it, at regular intervals in the future.

SENATOR PROCTOR:

Is there anyone else who wishes to be heard?

MR. JOHN BEBOUT:

Mr. Chairman, there is something I would like to suggest as an individual. It refers to Section II, the Executive Article, on the Commission on Parole. I have felt that this section would perpetuate what seems to a good many people to be an unfortunate confusion which has existed in New Jersey Law between pardon and parole for sometime. As I understand it from the National Probation Association and others who have made a special study of the best parole procedures, they make quite a distinction between the old function of executive clemency which is to be exercised either in the case of a palpable miscarriage of justice or on the grounds of high policy, and the function of parole, which is essentially a phase of the treatment of somebody who has been convicted of crime. Now, in New Jersey, we have had parole administered under a very good parole law in close connection with the administration of the correctional institutions. The confusion in our law results from the fact that it has been held that the constitutional power of the Court of Pardons comprehends the lesser power of parole, but heretofore the parole function has been exercised only by the Court of Pardons on discretion. Now, as I understand it, this would freeze the two functions of parole and pardon in a single body and make it impossible for the Legislature to continue either the present system or some other system of parole closely connected with institutional management. I know there are other people and organizations in the State who feel rather strongly on this and I am surprised that they have not appeared, and so that it would not be completely overlooked on the record I wanted to take this opportunity to present it.

SENATOR PROCTOR:

There is a lot of merit in what you say. You mean, you would divorce parole or the supervision of parolees from the Parole Board, or the Parole Commission, as it is called in this Constitution? As I understand it, the Department of Institutions and Agencies has charge of the parolees today. Under this revision, apparently they would be wiped out.

MR. GLICKENHAUS:

Not necessarily.

SENATOR PROCTOR:

As I understand it, it says they shall supervise parolees under the Constitution.

MR. GLICKENHAUS:

Would that integrate the Parole Division of the Department of Institutions and Agencies with this Parole Commission?

MR. ARTASERSE:

I think, Mr. Glickenhaus, this is a limitation. I agree with Professor Bebout.

SENATOR PROCTOR:

In other words, you feel that the supervision of parolees should stay with the Department of Institutions and Agencies, and the Parole Board should only have to do with the remission of fines, forfeitures, commutation of sentences, and the granting of pardons?

MR. BEBOUT:

Yes.

SENATOR PROCTOR:

There is a great deal of merit in that. I don't think that was gone over sufficiently by the committee. I wish you would submit something in writing to that effect.

MR. BEBOUT:

I would be glad to do that.

MR. GLICKENHAUS:

Would the practical effect of this section be that the Parole Board - the Parole Commission here - would have charge of the granting of paroles but that the mechanical investigation and supervision now conducted by the Department of Institutions and Agencies would be supervised by this Parole Commission? That is all it means, isn't that so?

MR. BEBOUT:

It could be worked out that way but it seems to me this gives the Parole Commission the constitutional right if they wish it, to assume the whole job.

MR. GLICKENHAUS:

They could set up entirely different agencies other than the Department of Institutions and Agencies in doing it but it would also give them the election of pursuing the same course of using the Institutions and Agencies parole setup as it is set up.

MR. BEBOUT:

They could do that.

MR. ARTASERSE:

I think under the present system, with the number of inmates we have in the penal and criminal institutions, this Parole Board would be only investigating under the supervision of Institutions and Agencies concerning parole. I think what we should do, in agreement with Professor Bebout, is place it in the hands of those persons who are most familiar with that branch of our correctional institutions, and that is the Department of Institutions and Agencies.

SENATOR PROCTOR:

I think there is a great deal of merit in what you say - particularly that word "supervise" parolees. Constitutionally that means exactly what it says - that they are to supervise parolees. I don't think that was the intention.

MR. BEBOUT:

I wonder whether that was the intent or not. I don't think it was.

SENATOR PROCTOR:

I am glad you brought it to our attention. You are going to submit a memorandum on that?

MR. BEBOUT:

Yes.

SENATOR PROCTOR:

Is there anyone else who wishes to be heard today; that is, on the Militia, the Amending Process, and Article IV, the Executive? If not, we will stand adjourned until 10:30 tomorrow morning.

ADJOURNED

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

(Executive)

SPEAKER - MORNING SESSION

Wednesday, February 2, 1944

MRS. RICHARD L. MILLER - New Jersey League of Women Voters (modification)

SENATOR PROCTOR:

The meeting will come to order. Mrs. Miller, do you wish to speak?

MRS. RICHARD I. MILLER:

Yes. I will take up only about two minutes.

I am Mrs. Richard L. Miller, of the NewJersey League of Women Voters. The only thing I have to bring to your attention was brought out yesterday but we want to emphasize that the League of Women Voters stands for that point, too - Section II, page 11 - about the Commission on Parole. We believe that the Commission on Parole should not supervise parolees. The people in the Department of Institutions and Agencies have been able to follow parolees better in this State, we think, than in most States. That is a system which has worked very well. So we believe, then, that the supervision of parolees should be under the Department of Institutions and Agencies rather than under the Commission on Parole.

SENATOR PROCTOR:

You mean, the way it is now?

MRS. MILLER:

Yes, the way it is in the 1844 Constitution.

SENATOR PROCTOR:

In other words, you subscribe to what Professor Bebout said yesterday?

MRS. MILLER:

Yes.

SENATOR PROCTOR:

Thank you very much. Commissioner Miller, do you wish to be heard?

MR. SPENCER MILLER, JR.:

I want to be heard at the close of the session. I am going to give a little summary on behalf of the Foundation, but I am not going to be heard as an advocate at this particular stage.

SENATOR PROCTOR:

Thank you very much. If it is agreeable to the members of the Committee, I will announce that next Wednesday we will hear the article on the Militia and the Amendment.

MR. CLAPP:

And anything else.

SENATOR PROCTOR:

But we will particularize those so that people who are interested may come down, and they will be heard first next Wednesday at ten-thirty.

SENATOR PROCTOR: Mr. Charles O. Fry - -

MR. FRY: I haven't brought any brief.

SENATOR PROCTOR: You can submit one later if you care to.

MR. FRY: Yes. I would like to more or less commend what has been done. I think you have done a very splendid job. Here and there I think there can be improvements, but I would like to commend what has been done so far generally. On this Executive Section, Article IV, Section I -- That isn't the right one.

SENATOR PROCTOR: Article IV is Executive.

MR. FRY: I am on the wrong page. I wanted over here, "The Governor by executive order --" That is on page 12.

SENATOR PROCTOR: That is Section III, paragraph 2.

MR. FRY: I had the wrong page. I think that is excellent. In other words, the Governor by executive order from time to time may reorganize, merge, consolidate and divide offices, departments, instrumentalities and the Principal Departments, and may allocate and reallocate them, in whole or in part, etc. I think one of the greatest deficiencies of democracy today is overlapping commissions, bureaucracies and everything right down on through. Some may say, well, that is too much power, but there must be some way of reaching a quick adjustment of all this and getting it on what I would consider a business basis. Now by giving it leeway there and then throwing the thing more or less into the hands of the Governor and the Legislature, you have set up a flexible thing whereby you can do almost what you do in business -- adjust the departments to the needs of the occasion. I think it is far better than if you were to try to say, now here is a department that has got to stay there for the next hundred years.

Along that line, I would say this: I saw that around thirty years ago. I made a study in 1914 on how government might be consolidated in a way so you can accomplish these things: first, that you have a proper setup of your executive; secondly, that those departments ought to be correlated with the de-

partments of the Legislature. In other words, if you have distinct departments -- for instance, we will take finance -- now in all finance, no matter whether it is State, national or what not, there are certain basic things, and if every state throughout the country had more or less the same, then you could check from state to state on how those things are being operated and also you could coordinate with your national government. In other words as I look at it we have reached the time when we need coordinators, not merely cabinet officers. I am going to mention this because it applies to the State, but I am mentioning it in a national sense, then I will apply it to the State. Say you had six major coordinators in the national government - five in the State. One is finance and there are four major fields of that finance problem. If your president appointed a coordinator of finance, then your coordinator of finance would name cabinet officers in that. In other words, you take tarriff and taxation. That is a division of finance. You take treasury and accounting; there is currency and banking and so on. If you wanted to, you can divide that into four major cabinet positions. So I think when we come to think of the State, we should think in the same terms of setting up a system where you would classify the five or six major divisions of society. Now, I will just mention them hurriedly. One, as I say, is finance. Another is transportation. In transportation you have four great big fields or more. You can classify them in four.

SENATOR PROCTOR: You mean in the State?

MR. FRY: Yes.

SENATOR PROCTOR: You would have a Department of Transportation in the State?

MR. FRY: There should be. I will refer to a little slip and then I can show you. Now, in general finance, we will say, in national affairs -- and you can relate them to the State -- there is banking and credit. There is tariff and taxation. There is

government cost and accounting. There is purchase and stores. Those are all finance problems and they are almost all identical with State affairs. In other words, they wouldn't have to be just those. I mean under the general idea of finance there is where you could coordinate and if you allow that to mix it up and scatter them all around, then you get your hundred departments.

ASSEMBLYMAN FELLER: In other words, the Department of Banking and Insurance in your opinion should be merged with the Department of Taxation?

MR. FRY: The Governor may from time to time appoint such State officers as he may select, to serve at his pleasure as the members of his cabinet. Now, my idea is that the time will come when the Governor will say, "I am going to have a cabinet officer for finance," and he will cordinate all the departments that relate to finance.

ASSEMBLYMAN GLICKENHAUS: I think I get your point. In other words your idea of setting up these departments provided by the constitution is that they be allocated under a general scheme according to major purposes.

MR. FRY: That is right.

ASSEMBLYMAN GLICKENHAUS: That is in the constitution.

MR. FRY: That is why I am commending it. I want to bring in commendation rather than criticism of it. I saw it criticized in the newspapers yesterday and I would like to go on record in commending very highly what you have set up there. In other words, it is flexible.

SENATOR PROCTOR: We give the Governor the power to do that, at least this draft does.

MR. FRY: My other thoughtis this: If that were done, you could set up committees in your Legislature corresponding to that. What I am interested in is citizenship. The citizen needs an organization whereby there is a group that can keep in touch with the various phases of government. Today democracy is going to pieces

because I have a responsibility for everything going on in all levels in government and I and everybody else neglects it. We have to set up a system of citizenship whereby one group can be in touch with certain things, another group with another, and then you have a coordinated society. You have your executive, your legislature and your people. Now, that is what I am driving at and that is why I am tremendously interested in maintaining what you have got. There are other things I might criticize, but I don't want to take up your time now. Sometime later I would like to --

SENATOR PROCTOR: You subscribe to Article IV, one hundred percent?

MR. FRY: One hundred percent.

SENATOR PROCTOR: The rules are supposed to be that we hear the opponents, the modificationists and then the proponents. I take it you are a proponent.

MR. FRY: That is right - very much so of those two things.

SENATOR PROCTOR: Thank you very much.

MR. FRY: There are some other things I might say.

SENATOR PROCTOR: If you care to submit a brief, you may.

MR. FRY: Along this line?

ASSEMBLYMAN FELLER: Or in opposition or modification.

MR. FRY: Another thing I wanted to say - I don't know whether it is in your line or not -- but I certainly believe that the Attorney General should run concurrently with your Governor.

SENATOR PROCTOR: That is in our section. The Attorney General goes in and out with the Governor. The prosecutors in the counties have five year terms.

MR. FRY: Isn't this set up here so your Attorney General --

SENATOR PROCTOR: The Attorney General is not mentioned as a constitutional officer.

MR. FRY: That is all right then.

ASSEMBLYMAN GLICKENHAUS: He goes in and out with the Governor.

MR. FRY: You can put that down as another endorsement.

ASSEMBLYMAN GLICKENHAUS: We are glad to receive that kind of word once in a while.

MR. FRY: I think it is just as necessary as the other. I may come back again, but there are others here to be heard.

SENATOR PROCTOR: Is there anyone else who wishes to be heard?

MR. BEBOUT: I would like to speak in my private capacity, although the first two suggestions I am going to emphasize are two which I presume Mr. Paul passed on to you yesterday in behalf of the Committee for Constitutional Revision, but I thought they were worth emphasizing. We suggest that the Governor be given two new specific powers. One, which you find in most of the state constitutions, is to require information in writing or otherwise from department heads. Of course in effect he would be able to do that.

SENATOR PROCTOR: He has control --

ASSEMBLYMAN GLICKENHAUS: Supervise and control.

SENATOR PROCTOR: I think that covers that.

MR. BEBOUT: But the Committee felt it would be a good thing to put that additional provision in the constitution. But the thing that I particularly wanted to emphasize was the other novel proposal that the Committee made, which was that the Governor be given the power to seek appropriate court action, mandamus, injunction or what not, to require compliance by any State or local public officer or body with any constitutional or legal provision. We thought of that partly in place of the kind of power which the Governor of New York has by law with respect to local officers, which goes as far of course as to investigate and remove them. I myself have always questioned the desirability of giving the Governor that much power over local officers in government. But on the other hand if the duty which the constitution imposes on the Governor, to see

that the laws are faithfully executed, is to be made meaningful, he ought to have some device or procedure by which he could initiate an action to require any public body, State or local, to live up to the law. It certainly isn't dangerous from the point of view of unduly enhancing executive power. All he could do would be initiate a court action and it would produce no concrete effect unless the court decided that it was --

ASSEMBLYMAN GLICKENHAUS: Give me an example; will you?

MR. BEBOUT: Well, suppose some local agency is --

SENATOR PROCTOR: You mean municipal?

MR. BEBOUT: -- municipal or county, is neglecting to perform some duty imposed on it by law.

ASSEMBLYMAN GLICKENHAUS: Whose function would that be? You would vest the power in the Governor --

MR. BEBOUT: -- to initiate a court action.

SENATOR PROCTOR: A citizen can do that.

MR. BEBOUT: Frequently they neglect to do it.

ASSEMBLYMAN GLICKENHAUS: The Governor is charged with the duty of carrying out the law. It is so specifically provided in this proposed draft. So therefore it becomes his duty to carry out the provisions of the law. Now, as part of the executive department you would have the Attorney General, right?

MR. BEBOUT: Yes.

ASSEMBLYMAN GLICKENHAUS: It has always been within the power of the Attorney General as I understand it to see to it on behalf of the Governor as an executive officer that the laws were carried out and even to the extent, as cases have held as I understand it, if he believes a law is unconstitutional as it affects anybody, he might intervene in proceedings. Hasn't the executive department always had that power?

MR. BEBOUT: I think you might deduce that. The fact is however --

ASSEMBLYMAN GLICKENHAUS: If you charge him with the duty, it would carry the implication that he shall execute that duty to see that the laws are enforced.

MR. BEBOUT: I have consulted the books, however, and the books all agree that the language that you find in all state constitutions, that the Governor shall see that the laws shall be faithfully executed, is in itself substantially meaningless; that it is meaningless in effect; that it becomes meaningful only if the Governor has some specific power like the power to appoint or remove or to investigate or something else, by virtue of which he can make good on it.

ASSEMBLYMAN GLICKENHAUS: If a citizen can do it, and a citizen of course of a particular community where the law is being flouted could bring an appropriate action; is that right?

MR. BEBOUT: Yes.

ASSEMBLYMAN GLICKENHAUS: If a citizen could do it, if the Governor wanted to do it, he certainly could get a citizen to test the malfeasance of a particular body.

MR. BEBOUT: The fact of the matter is that governors don't do that sort of thing.

ASSEMBLYMAN GLICKENHAUS: I am giving you the roundabout suggestion, not what I think is the direct solution of the problem. The Attorney General, for instance, is like a general supervisor over prosecutors; isn't he?

MR. BEBOUT: Yes.

ASSEMBLYMAN GLICKENHAUS: He certainly can direct the prosecutors' attention to the flouting of any particular law.

SENATOR PROCTOR: Is this in any other constitution?

MR. BEBOUT: No, it isn't.

ASSEMBLYMAN GLICKENHAUS: Inferentially and basically, it has always been there.

MR. BEBOUT: The authorities agree that if it is there, it has never been discovered.

ASSEMBLYMAN GLICKENHAUS: I think you will find a case where the courts have held the Attorney General --

MR. BEBOUT: By virtue of civil information.

ASSEMBLYMAN GLICKENHAUS: By virtue of his office.

MR. BEBOUT: The instrument he uses is civil information.

ASSEMBLYMAN FELLER: Has it ever happened in New Jersey where the Attorney General has taken that action against a local official?

MR. BEBOUT: He has against a state board. I am not sure about a local official. I don't know of any case where he has against a local official or body.

ASSEMBLYMAN GLICKENHAUS: I am not adverse to your suggestion. I merely want to point out I believe it is there without being expressly defined.

ASSEMBLYMAN FELLER: I think the difference of opinion is that it is an implied power and you would like to see it an expressed power in the constitution.

MR. BEBOUT: Yes, and of course I am not sure how narrowly it might be defined.

ASSEMBLYMAN GLICKENHAUS: If you put it in expressly, it might be narrowly defined.

MR. BEBOUT: I don't think so. I think wordings will be found that will be very broad and quite adequate. This implied power might in the light of the very scanty precedent be pretty strictly defined, I think, by the courts. If you are going to mention the Attorney General in the constitution, I would probably word this that the Governor may require or order the Attorney General to bring an action, which would undoubtedly be the way in which it would be done. Since you are not mentioning the Attorney General in the constitution, I would give this to the Governor.

ASSEMBLYMAN GLICKENHAUS: Could we provide for that by statute?

MR. BEBOUT: I should think you probably could.

MR. CLAPP: Surely you could.

MR. BEBOUT: But I think it is important to make that duty of the Governor, to see the laws be faithfully executed, meaningful by putting that clause in the constitution.

ASSEMBLYMAN GLICKENHAUS: I don't know where you get the authority for saying it is meaningless. If I were charged with the administration of a trust, I wouldn't say it was meaningless.

MR. BEBOUT: I have a brief, unfortunately I didn't bring it here today, prepared for me by a New York lawyer and professor of Government. He happens to be now working for the National Probation Association and he made a pretty careful check of the text and that was his conclusion and it checked with my own general conclusion. I didn't do any specific research on it.

SENATOR PROCTOR: Professor, there has been no agitation for this. Countless taxpayers' suits have been brought against municipal officials. I have never heard at any time where it was necessary for the Governor to step in with a court suit against any official.

MR. BEBOUT: There has been no agitation for it. That is perfectly true. I am suggesting it merely because we are rewriting the constitution. We have an opportunity to make refinements, even innovation which have never been thought of before.

ASSEMBLYMAN ARTASERSE: May I say one thing here, Professor? What about the power of indictment for nonfeasance, misfeasance or malfeasance in office? If you read the cases you will find out where a public official has failed to perform his duty the county prosecutor, who actually represents the people, has the duty and the burden of indicting any public official.

MR. BEBOUT: I am not talking necessarily about derelictions which go that far.

ASSEMBLYMAN ARTASERSE: I know that. If I might just interpolate here for a minute, if a public official either by refusal or neglect or in other way has failed to perform a public duty -- there are numerous cases in this state which hold he is subject to punishment by indictment. He certainly is going to perform his duty because he doesn't want to be indicted, and, secondly, if it becomes a question of doubtful duty, then I think we have had many examples in this state, and I think Senator Proctor and Mr. Glickenhaus have

told you that citizens have instituted mandamus actions and in many cases even quo warranto, where questions of title of office were concerned. I think it would certainly give the Governor too much power. It would be an inquisition into every public official's act in the State of New Jersey and I think it is not for the best interest of any government, whether it be the State or the municipalities or the counties. Getting back to the specific suggestion that you have made, I think there is ample authority and there is ample legal remedies to take care of any of the things that you or your association are worried about along those lines.

(Discussion off the record.)

ASSEMBLYMAN GLICKENHAUS: Section III of Article VI says: "The Legislature or either House thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust." There you have a very broad power that is vested in the Legislature. If the attention of the Legislature was directed to an abuse of public office, they can investigate it.

MR. BEBOUT: I think Section III of Article VI is a very good section. I thoroughly approve of it, but I don't think this proposed power of the Governor is quite as unfriendly as has been suggested. In fact, I am suggesting it as something which may frequently make unnecessary indictments, which are definitely unfriendly. This might be used where there was some question as to the precise nature or extent of a public duty and this would be a way of resolving it in a perfectly objective fashion, and it is not a power, let me emphasize, given to the Governor to do anything on his own. All it amounts to is to give the Governor the specific power which as you suggest substantially every citizen is supposed to have, to go and get the court to read the duties of an officer to him.

ASSEMBLYMAN ARTASERSE:

I would like to ask you one question, Professor: Is there anything in this Article IV or any part of the constitution - you are very familiar with it, more so than I am - which prevents the Attorney General from instituting civil information?

MR. BEBOUT:

I haven't thought of it, but I don't think --

ASSEMBLYMAN GLICKENHAUS:

You have the remedy by the Attorney General and the remedy by the Legislature.

SENATOR PROCTOR:

You have a taxpayer's suit and the power of indictment. You have four things.

MR. BEBOUT:

After all the Governor is the chief executive. If the power of civil information is as good as it has sometimes been interpreted, then perhaps with an Attorney General who is appointed by the Governor and subject to removal by him, you would have the same thing. But I am not satisfied that the power of the Attorney General under civil information is that broad.

ASSEMBLYMAN ARTASERSE:

Professor, isn't it so that an individual hasn't the power of civil information; an individual cannot institute----

MR. BEBOUT:

You are talking about taxpayers' suits.

ASSEMBLYMAN ARTASERSE:

He can never attack any legislation unless he is personally involved and therefore the Attorney General is the only one who has the right to institute by civil information.

SENATOR PROCTOR:

If you want to submit a brief on that, we would be glad to accept it.

MR. BEBOUT:

I will be glad to do that. I have this brief which was prepared for me and I will submit extracts of that.

SENATOR PROCTOR:

The way I feel about a constitution is not that we should theorize because we are drawing a new constitution. I think we have to practically use everything in here based on past experience and I think every word used in this draft is based upon some past experience, some defect in government. Should we theorize and set up a Utopian model constitution, or should we take what the people have found in the past hundred years is wanting and correct it?

MR. BEBOUT:

This is based upon experience here and elsewhere, which is to the effect that the so-called executive power of the Governor is meaningless unless it is implemented and this is a method of doing that, which I say is much less drastic and unfriendly in its implication than the power which was given the Governor in New York.

SENATOR PROCTOR:

You can't cite one instance where it would be necessary in the past.

MR. BEBOUT:

I think we can think of cases almost any year in which it might be useful. It might have made an investigation which subsequently was found necessary unnecessary because you have had a resolution of any question about official duties by the courts who would be in a position to issue an order which would be effective; and as far as indictment is concerned, we all recognize the fact, even if

he wanted to, the prosecutor can't go around seeking indictments against every public or private citizen who breaks some law. He would be too busy.

SENATOR PROCTOR:

I should think this would make the Governor awfully busy. He would be twenty-one times busier.

MR. BEBOUT:

He would have to be selective about it.

ASSEMBLYMAN ARTASERSE:

You can't be selective about those things.

MR. BEBOUT:

I think so.

ASSEMBLYMAN ARTASERSE:

It is all fish or all foul, whatever they say.

ASSEMBLYMAN FELLER:

This Article VI, Section III, says the Legislature or either House thereof may by resolution constitute and empower a committee thereof of any public officer or agency to investigate any and all phases of State and local government. Now, it would seem to me under that the Legislature could authorize the Governor to investigate or the Attorney General. It says any public officer.

MR. BEBOUT:

I think they can authorize an investigation. What I am trying to do is to get away from the necessity of an investigation, which is locking the stable door after the horse is stolen.

SENATOR PROCTOR:

You mean a mandamus ----

MR. BEBOUT:

---- or an injunction as the case may be.

ASSEMBLYMAN FELLER:

Don't you think an investigation is necessary first?

MR. BEBOUT:

I think you have an investigation in the court action itself.

ASSEMBLYMAN GLICKENHAUS:

I think that might well be covered by statute rather than by constitution.

MR. BEBOUT:

I think it could be covered by statute.

SENATOR PROCTOR:

It easily could, as implementing that section of the executive power being vested in the Governor.

MR. BEBOUT:

Are you through with that question?

ASSEMBLYMAN GLICKENHAUS:

Yes.

MR. BEBOUT:

There are three or four questions that I would like to get cleared up in my mind, and I know they are in the minds of a good many people. They have been raised in the meetings of the Committee for Constitutional Revision. Down in our office we have been trying to comb this thing textually. For example, in Article IV, Section I, paragraph 11, on page 10, we have been a little puzzled about the meaning of the sentence: "The return of a nomination shall effect the withdrawal thereof from the consideration of the Senate." My first impression, when I read that, was that it was designed to make it possible for the Governor to recall a nomination and insist upon that recall being effective. Then upon second reading, I wasn't sure that that was the meaning or whether that would be the effect of it.

MR. CLAPP:

I probably can answer that better than anybody else, having written it. The Governor suggested inserting the word "return" in the first sentence. That is a new word in constitutional language and just what it meant was something we thought should be somehow defined so we added that sentence which reads, "The return of a nomination shall effect the withdrawal thereof from the consideration of the Senate." If you were thinking of a withdrawal by the Governor alone, there is some question as a matter of law whether such a withdrawal would have any effect unless there also is the concurrence of the Senate, so we aimed to avoid it by just stating generally, "shall effect the withdrawal thereof" without saying by whom the withdrawal was effected. Do I make myself clear?

MR. BEBOUT:

Yes, but let me ask you this: By putting the word "return" and using this language and that extra sentence, isn't it possible that a loophole has been provided whereby the Senate can avoid voting a nominee up or down in 45 days?

MR. CLAPP:

That is the exact purpose of it so that the Senate can return the nomination and thereby the nomination is withdrawn from the Senate's consideration and there is no stigma cast also on the man. Of course, if no action is taken until after the forty-five days, he is automatically confirmed.

MR. BEBOUT:

Now by what kind of action by the Senate do you suppose a return would be effected? Would there have to be a vote by the Senate as a body to direct the return of such and such a nomination?

MR. CLAPP:

Yes.

ASSEMBLYMAN FELLER:

Where is the provision in there? That is a good point.

ASSEMBLYMAN GLICKENHAUS:

If they didn't do anything about the return, at the end of 45 days, a man is confirmed. They have to vote either to return, to confirm or to reject.

MR. CLAPP:

Yes.

ASSEMBLYMAN FELLER:

But it would be possible for the Senate to return three or four successive nominations.

SENATOR PROCTOR:

That is true. It can't lie indefinitely. It has to be acted upon one way or the other. The slate has to be cleared within 45 days.

MR. BEBOUT:

Are you satisfied that it wouldn't be possible for the Senate to adopt a rule to the effect that if no vote is taken on a nomination within 45 days, the President of the Senate shall forthwith return the nomination to the Governor, thus avoiding an actual vote by the Senate to return?

ASSEMBLYMAN GLICKENHAUS:

No, I don't think so. They would have to take some positive action in order to return it.

MR. BEBOUT:

The positive action might I am suggesting be by a rule adopted in advance, which would simply cover those cases.

ASSEMBLYMAN ARTASERSE:

No. Where a confirmation hasn't been acted upon within 45 days ----

MR. BEBOUT: ---- the President of the Senate shall automatically return.

ASSEMBLYMAN FELLER: I guess the Senate can't act without a vote.

SENATOR PROCTOR: Let's assume that is true. At least the slate is cleared. There is no pending nominations before the Senate.

MR. BEBOUT: The slate is cleared, but as I recall the discussion of the original proposal of the Hendrickson Commission, which didn't include the word "return", it was pointed out that the Senate certainly wouldn't go on record by vote as rejecting one after another of the nominees who were qualified persons. Now, I think there is something to be said for that sort of rejection, but I think it ought to be clear that a return must be based upon a record vote by the Senate as a body.

ASSEMBLYMAN FELLER: I don't think the Senate can act without a record vote. "The Senate shall either confirm, reject or return." Now, I believe that you have a vote for the Senate to act.

MR. BEBOUT: You are sure that they couldn't provide for that by rule in advance.

SENATOR PROCTOR: I am not sure, I think you are right. I think it is possible that they could provide by rule in advance. I don't think they would.

MR. CLAPP: They could always provide by rule some foolish provision that would be a rejection if they didn't do it.

SENATOR PROCTOR:

The point is to clear the slate.

ASSEMBLYMAN GLICKENHAUS:

Isn't the entire purpose to stop the freezing of these things?

MR. BEBOUT:

Yes, and I think also to make sure that the function of confirmation or rejection be confined to what as I understand it was the original purpose in the United States Constitution; that is, a check on the qualifications of the person nominated by the Governor, not to bring the Senate into the appointing power as an equal partner, so to speak. It is a check on bad nominations by the Governor.

MR. CLAPP:

You threw out the word "advice", in other words.

MR. BEBOUT:

When this constitution was written - when the 1844 constitution was written, the word "advice" by construction or by practice in the Federal Government certainly had become practically meaningless;

ASSEMBLYMAN GLICKENHAUS:

Hadn't it become meaningless because they examined into the qualifications of the man?

MR. BEBOUT:

It had become meaningless in the sense that it had not been interpreted like it might have been.

ASSEMBLYMAN GLICKENHAUS:

The strict interpretation of the word "advice" would mean that the Governor would have to listen to the advice and suggestions and to a lot of other things coming from the Senate. I heard one Governor thought the Senate was an equal partner in

the nomination because of the advice and consent proposition.

MR. BEBOUT:

That was not the way the phrase was interpreted and applied as I say under the Federal constitution in the first years of the Republic.

SENATOR PROCTOR:

How was it?

MR. BEBOUT:

The President definitely made the nominations and the Senate merely acted after the fact.

SENATOR PROCTOR:

There was no necessity for the word "advice."

MR. BEBOUT:

Actually, there is none.

SENATOR PROCTOR:

There must have been something. They wouldn't put a meaningless word in there. It presupposed at least some consultation with, we will say, the senator from the state or the senators from the state where the appointment was made.

MR. BEBOUT:

It certainly didn't mean that. If it meant consultation to the men who wrote the constitution - I am talking about the constitution of the United States - it would have meant consultation with the Senate as a body. And, as a matter of fact, Washington, as I recall it, made some efforts in the direction of consulting with the Senate not only on nominations, but also on treaties, but the Senate took the position that it was an independent establishment and it wouldn't have anything to do with the nomination until the president had made it.

SENATOR PROCTOR:

I understood the Senate didn't want to hear from the cabinet officers, such as Alexander Hamilton. I never heard that about nominations.

MR. BEBOUT:

But of course it would be largely through cabinet officers.

SENATOR PROCTOR:

What was your interpretation of the word "advice"?

MR. BEBOUT:

My interpretation is that if it has any meaning, any proper meaning, it would take place after the nomination had been made and it might conceivably be made to mean something in connection with this word "return". In effect when the Senate rejects or returns a nomination, it is advising the Governor that that nomination is not a satisfactory one.

SENATOR FARLEY:

May I ask a question? Mr. Bebout, I interpret from your recommendation here that you would like to eliminate the word "advice"; is that right?

MR. BEBOUT:

I think it would be a good thing, although I hadn't suggested that.

SENATOR FARLEY:

You also say that the advice under its present interpretation from your viewpoint in the study of the history of the United States constitution and the State constitution really doesn't mean advice by the Senate to the Governor; does it?

MR. BEBOUT:

It doesn't mean advice prior to making the nomination.

SENATOR FARLEY:

From your interpretation you feel that the advice is surplusage and really has no place in there?

MR. BEBOUT:

Yes.

SENATOR FARLEY:

If it has been interpreted by you in that fashion and means only advice after nomination is sent in, why do you want to have it eliminated?

MR. BEBOUT: I don't feel strongly about it. You asked me.

SENATOR FARLEY: I want to get the benefit of your opinion.

MR. BEBOUT: I would eliminate it because you don't need it there. If the Senate returns, it is in effect advising the Governor it is not satisfactory.

ASSEMBLYMAN GLICKENHAUS: Professor, you say that the workd "advice" with respect to nominations by the president might just as well have been eliminat ed. That is your stand. Take the same phrase "advice and consent" in the making of treaties and you will find the Senate certainly did give in the past a lot of advice before it gave its consent in the making of treaties with foreign countries and yet there is the same phrase which you would interpret in one case as being ineffective and in the other case being most effective.

MR. BEBOUT: I will have to disagree with you about treaties. The president actually goes and make a treaty; he takes it to the Senate. G enerally speaking the Senate has not given the president adv ice prior to the presentation of the treaty to the Senate.

ASSEMBLYMAN ARTISERSE: Have they ever rejected the president's treaty?

MR. BEBOUT: A great many times.

ASSEMBLYMAN GLICKENHAUS: There is your advice.

MR. BEBOUT: B ut that is not really advice; that is merely rejection.

ASSEMBLYMAN GLICKENHAUS: They advise him it is no good.

MR. BEBOUT: That is the way I say this should be interpreted. They advise him anomination isno good - they will have none of it.

ASSEMBLYMAN GLICKENHAUS? I can see the reason for return. If you advise the Governor a nomination is no good, it might leave a stigma, might it not, especially in view of the fact it would be

just a blanket statement?

MR. BEBOUT: The difficulty that I am raising would be met as far as I am concerned by specifying that the Senate shall by published vote confirm, reject or return.

ASSEMBLYMAN ZEHNER: You mean that on each individual nomination--

MR. BEBOUT: Yes.

SENATOR BODINE: Why do you think he should have the consent of the Senate?

MR. BEBOUT: Well, I am not sure that he should.

SENATOR PROCTOR: The spokesman for the Communist Party feels that the Assembly should be the one.

MR. BEBOUT: Do you have time for a couple of more of these questions that have been bothering us? On page 12, Section III, both Paragraph 6 and Paragraph 7 have the words "by and with the advice and consent of the Senate", the meaning or purpose of which I don't understand.. I don't know why they were put in the constitution.

ASSEMBLYMAN FELLER: I think that is the language of the old constitution.

MR. CLAPP: It is a stereotyped phrase. In drafting this we intended to indicate in no way we wished to change the procedure.

MR. BEBOUT: The real question I wanted to raise about paragraph 6 was the last clause concerning the removal of the heads of the Principal Departments that are single executives, "but they may be removed as provided by law".

MR. CLAPP: The purpose of that was this: It was taken over from the New York constitution and the idea was to permit the Legislature to provide for broader powers of removal than are here conferred by the constitution on the Governor; for example, they may remove for nonfeasance. But we leave that entirely up to the Legislature to make these provisions.

MR. BEBOUT: I assumed that was it. That would also give the Legislature the power, if it wanted to, to remove the head of a Principal Department itself.

SENATOR PROCTOR: Oh, no. The rule would have to be general.

MR. BEBOUT They might provide by law a department head may be removed by resolution or by concurrent resolution.

SENATOR PROCTOR: Doesn't it say, The Governor?

MR. BEBOUT: No.

SENATOR FARLEY: You will find there is a clause in there providing if a man is charged, he shall have an opportunity to be heard and when he is heard, it shall be a public hearing to meet the charges, and the Governor must make these charges publicly and then there be an opportunity for examination and cross-examination. I think you will find that in another portion of the constitution.

MR. BEBOUT: That is Section I, Paragraph 14. I understood from Mr. Clapp, and he confirmed what I thought was the purpose of this provision --

MR. CLAPP: I think you have something of a point, but the language is taken verbatim from the New York constitution, which also has a much broader power in the Governor to make removals. So I think perhaps it could be changed, but it nevertheless carries over the interpretation put upon it under the New York constitution.

MR. BEBOUT: It would be safer I should think to say, be removed by the Governor as shall be provided by law.

MR. CLAPP: No, no. This is not to give the Governor necessarily the power to remove. The power is to be left broadly to the Legislature to make such provision as to removal as they may wish.

ASSEMBLYMAN FELLER: Wasn't the reason for it that the Governor might be reluctant to remove his own appointees and this was a further check on that?

MR. CLAPP: Your point as I understand it is that you thought there should be a general law instead of a particular law removing some particular person; is that it?

MR. BEBOUT: No, my point is this: The Legislature of course can at any time impeach any such officer if he is grossly violating his trust, but it seems to me that particularly in the case of single department heads, who I presume would be the principal members of the Governor's cabinet, it is most important that they be men in whom he has confidence and that he be able to keep men as long as they are not susceptible to impeachment who do have his confidence, and I think it is dangerous to give the Legislature or any other possible body the power, except by the method of impeachment, to take away a Governor's department head.

MR. CLAPP: I can meet part of your objection by changing the last two words there to say, roughly speaking, by general laws instead of authorizing the Legislature to remove a particular person by a special act.

MR. BEBOUT: That would certainly help a lot.

SENATOR PROCTOR: I think that is a good point that you have raised there. My interpretation of it was that it was to be a general law to set up the machinery for removal, not to pass a law to say John Jones is removed from office as State Banking Commissioner or whatever it might be. I didn't think that was our intent.

MR. BEBOUT: I didn't think it was. I thought there might be a loophole there. I have just one other question and that was about Paragraph 9 on the same page providing: "No such executive order shall divest the State Treasurer, the State Comptroller or the State Auditor of any of the functions, powers and duties, conferred and imposed by law upon them, which relate to the receipt and disbursement of public moneys and to accounting, auditing and control." In view of the fact that the Legislature would have a check on such executive orders anyway, I was wondering why the Governor might not be given the right to initiate, let's say, an order to transfer, let's say, the Accounting Department from the

Comptroller's Office to an executive Department of Finance where in my opinion the Accounting Department belongs. If the Legislature didn't like that, the Legislature would have the same redress that it has in any other case and could simply negative it.

SENATOR PROCTOR: This isn't exactly true. These three positions are a genesis of the Legislature. We will take a hypothetical case. A Governor of one political party and one house of another political party can always keep an executive order in existence; that is true, isn't it? In other words, you can't override an executive order unless you have both houses of the Legislature.

Mr. B EBOUT: I would be prepared to suggest myself that an executive order could be made negative by one house once you have a good set up. I am assuming you are going to get a good set-up this year. I believe thoroughly in giving the Governor the initiative in making of what amounts to laws affecting administrative offices. I think we ought to be rather conservative about changing it.

SENATOR PROCTOR: They have been very conservative. One house and the Governor can keep an executive order in existence even though the other house may want to change it.

MR. BEBOUT: No, but one house and the Governor can in effect make a new executive order; can't they?

MR. GLICKENHAUS: No.

MR. BEB OUT: Why not?

ASSEMBLYMAN ARTHERSE: The Governor alone can do it.

SENATOR FARLEY: The Governor can do it on the inactivity on the part of the Legislature, which makes it effective.

SENATOR PROCTOR: The Governor and one house can make a new executive order. That is true. So these positions are creatures of the entire Legislature and they are solely responsible to both houses. Now I don't think that anybody else should step in. They are constitutional offices and they are servants we will say of the Legislature. I don't think that the Governor's executive order

should in any way change that without the full consent of the Legislature.

ASSEMBLYMAN GLICKENHAUS: Don't we get back to the old system of checks and balances. They are offices of the Legislature; they report the condition of the State's finances to the Legislature; they report the condition of audits. Now, if a Governor wanted to preclude the Legislature from having information with regard to the State's financial condition and he had the power to divest these people of their functions and powers, the Legislature would be getting no information other than through the Governor's source. The purpose of this as I understand it is to preserve the information that the Legislature is to have as a system of checks and balances on the executive branch and it says you shall not deprive our officers from performing their powers, duties and functions. That is all it is.

MR. BEBOUT: On the other hand the accounting system is the most important tool of executive and administrative management. I think I am right in saying that by far the majority opinion of the students of fiscal administration is to the effect that the accounting system out to be managed by an agency of the ex-executive branch of the government.

SENATOR PROCTOR They would be accounting their own AGENCIES.

MR. BEBOUT: That is right. But you have a post-auditor for the Legislature whose duty it would be to make the continuous check up on the fiscal operation s of the executive branch.

ASSEMBLYMAN GLICKENHAUS; Lets see what happens in business. You operate the John Jones Corporation. You are in business, Y ou Have your ddepartments and your managers and everything like that. But when it comes to an audit, you have an independent audit.

SENATOR PROCTOR: We have to adjourn promptly at one O'clock. We have to be back promptly at two.

(Recess for lunch.)

DR, MILMED: The first recommendation I would like to make is that there be included in the constitution in Article IV a provision that the Legislature shall prescribe qualifications for all administrative offices. That is not in the present constitution.

ASSEMBLYMAN FELLER: That the Legislature shall prescribe what?

DR. MILMED: Qualifications for all administration offices. The phraseology of it is in the proposed draft I submitted.

MR. CLAPP: At what page?

DR. MILMED: It goes to this effect: "The Legislature shall prescribe qualifications for the heads of the administrative departments, relating to the functions of their respective offices." That is not in the 1844 constitution.

SENATOR PROCTOR: I understand.

DR. MILMED: What the Legislature has done since 1844, in the creation of these boards and commissions, has been to prescribe qualifications for only one third of the administrative offices so that there aren't by law any provisions or any specific qualifications set for the other two-thirds.

ASSEMBLYMAN GLICKENHAUS: In the absence of that the Legislature could still prescribe what the qualifications for that office could be.

DR. MILMED: That is correct.

SENATOR PROCTOR: It is not necessary that it be in the constitution.

DR. MILMED: Well, with the exception that if we are phrasing a constitution to take into consideration all the defects in the old constitution that can be, and I think should be, committed to writing in the present constitution; that is, in this new constitution--

SENATOR FARLEY: Isn't it hazardous to enunciate qualifications in the constitution? Why not have a general statement?

DR. MILMED: That is what I said; I didn't say anything at all about specific qualifications. I said "The Legislature shall prescribe qualifications for the heads of the administrative departments, relating to the functions of their respective offices."

SENATOR FARLEY: I see.

SENATOR PROCTOR: All right.

DR. MILMED: If I may, I would like to ask just one question of the committee. I am in doubt as to what this provision contained in Article IV, on page 10, Paragraph 10, means: "All officers whose election or appointment shall not otherwise be provided for by this constitution or by law..."

MR. CLAPP: I noticed you referred to that yesterday. That is taken over, incidentally, from the present constitution and it is just a catch-all to cover this very unlikely situation, for example: where the Legislature by law provides for some office and doesn't say who should appoint that officer, then the Governor shall make the appointment with the advice and consent of the Senate.

DR. MILMED: But under this provision, are you permitting the Legislature to create administrative boards and commissions?

MR. CLAPP: No, it covers a far-fetched situation. All officers whose election shall not be otherwise provided for by this constitution or law -- if there election or appointment isn't otherwise provided for, then they shall be nominated by the Governor and appointed by him, with the advice and consent of the Senate, and shall hold their offices for the time prescribed by law. That covers a narrow situation.

ASSEMBLYMAN GLICKENHAUS: Doesn't that cover relinquishment by the Legislature of the election of officers and provides that outside of those officers constitutionally appointed, all appoint-

ments are to be by the Governor except as provided by law?

DR. MILMED: It doesn't say that in this paragraph. What this paragraph will lead to is this situation: We have no more than twenty principal departments. The Legislature may, pursuant to the provisions of Article IV as is contained in this proposed draft, set up as many commissions and boards as it sees fit and provide that the appointing agent, the one to do the appointing, shall be either an individual or an agency other than the Governor and other than the Legislature or either House of the Legislature.

MR. CLAPP: That is conceivable, and there is nothing in this constitution to stop that.

DR. MILMED: That is right.

MR. CLAPP: That answers your question.

DR. MILMED: So that the Legislature may, in its power to diminish the functions and duties of any of the principal departments, take away practically all of the powers and duties of any principal department as it sees fit and give those powers and duties to any administrative commission or board or bureau that it may set up; provided, of course, that this board, bureau or commission is allocated to a principal department. But the Legislature may also designate an agency who will appoint the head of that bureau.

MR. CLAPP; All you say is true and right, within the language of the draft, subject, of course, to the Governor's veto and subject to the fact that you have to go back to the Legislature and get a three-fifths vote in order to override the Governor's veto.

SENATOR FARLEY: What is your fear? What is it you are concerned about particularly?

DR. MILMED: Merely that the situation as we find it today is that you have over 100 administrative agencies created by the Legislature, with various miscellaneous means of appoint-

ing the heads of these administrative departments. If we are going to have a responsible chief executive and an independent chief executive, we ought to allow the Legislature only the power to diminish the functions and duties of the principal departments and not allow the Legislature to have any say in the appointment or removal of administrative heads, so that the Governor can execute faithfully the laws of the State and the Legislature will only have a check on his execution of the laws.

SENATOR FARLEY: It might interest you to know that this committee spent considerable time on this particular subject, and every medium and means was used for the purpose of giving all appointive powers to the Governor. We tried to provide for everything we could possibly anticipate, and as a medium of last resort, in case we had not covered everything we used "as prescribed by law". It is much easier to say "two of each animal" than "two cats", "two dogs", etc., because you are bound to leave something out. If you study this document, you will see that this committee, in fact, the entire legislature, has bent over backward to give every power to the Governor. If you make a comparison, you will find that the New Jersey Governor has more power than any other Governor in the other 47 States. I think that your fear of the Legislature trying to absorb either judicial power or executive power is groundless, in view of the attitude of this committee and the entire Legislature. Am I right?

MR. CLAPP: Absolutely.

DR. MILMED: I don't say that it is your intent not to make the Governor a chief executive in fact, but I say this draft does not accomplish the desired result.

ASSEMBLYMAN FELLER: Section VI, Page 6, Article III, says, "Neither the Legislature nor either House thereof shall elect or appoint any executive, administrative or judicial officers, except the State Treasurer, the State Comptroller and the State Auditor."

DR. MILMED: But that does not forbid or prohibit the Legislature from designating an individual other than themselves or other than either House, or designating an agency other than themselves or either House, who can make the appointment.

ASSEMBLYMAN GLICKENHAUS: Do I get you correctly, Doctor? You fear this "by law" situation. Those are the words you fear?

DR. MILMED: That is correct and that is the only provision.

ASSEMBLYMAN GLICKENHAUS: Wait a minute. The committee struggled with this thing, you know. "By law" you might have a certain agency, and I think I am following your argument, that would designate the executive head of that particular agency for the purpose of doing all the administrative work.

DR. MILMED: That is right.

ASSEMBLYMAN GLICKENHAUS: We have tied that up, too, because in another section of the constitution, if I am correct -- I look for confirmation from my associates --

MR. CLAPP: That is right.

ASSEMBLYMAN GLICKENHAUS: We have tied that point down. The appointment of the administrative agent of that commission, board, or whatever it is, is subject to the approval of the Governor.

MR. CLAPP: That isn't altogether true.

DR. MILMED: Can you tell me where that is in the constitution?

MR. CLAPP: He has reference to Paragraph 7 on Page 12, and that has only reference to the situation where there is a board, commission or other body which is the head of a principal department. The Doctor is referring to a situation where some extraneous agency might be created with appointing power, and there is nothing in the constitution to prevent such a creation.

ASSEMBLYMAN GLICKENHAUS: If that extraneous agency had the appointive power, would it be the appointive power over an administrative head?

DR. MILMED: That is correct.

ASSEMBLYMAN GLICKENHAUS: Then we are amply covered. The appointment of that administrative head would have to receive the approval of the Governor.

DR. MILMED: May I see where that is?

MR. CLAPP: Paragraph 7, Page 12 is --

ASSEMBLYMAN GLICKENHAUS: "Whenever a board, commission or other body shall be the head of a Principal Department, the members thereof shall be appointed by the Governor by and with the advice and consent of the Senate and if said board, commission or other body shall have power to appoint an administrator, director or other chief executive, such appointment shall be made with the approval of the Governor."

DR. MILMED: That is correct.

ASSEMBLYMAN GLICKENHAUS: Does that answer your question?

DR. MILMED: No, because that only refers to principal departments; it does not refer to any subsidiary board, commission or bureau to which the Legislature has been given the right to allocate any of the functions and powers and duties that it takes away from a principal department.

ASSEMBLYMAN GLICKENHAUS: Haven't you got the cross section of checks and balances all throughout this? Let us analyze your situation. We will assume that you are correct -- I don't

think you are Doctor, -- I think it is more a fear than an actual reality. We will assume the Legislature is going to arbitrarily give someone other than the Governor the appointive power over some position. That act would be subject to veto by the Governor.

DR. MILMED: It is not so mentioned in the constitution.

ASSEMBLYMAN GLICKENHAUS: All acts are subject to veto, every act of the Legislature is subject to veto. It must receive the approval or disapproval of the Governor.

DR. MILMED: You mean the law creating the commission would be subject to the Governor's veto?

ASSEMBLYMAN GLICKENHAUS: Right. Now, then, we have increased the amount of votes required to override a veto. In other words, we have added to that check or balance, is that correct?

DR. MILMED: Yes.

ASSEMBLYMAN GLICKENHAUS: That is one situation where we hope to have cured what might have been an ill.

DR. MILMED: You are correct in that analysis, but the Legislature may override the Governor's veto by a three-fifths' vote and if it has three-fifths of the vote in the Legislature it can do exactly as I said.

ASSEMBLYMAN GLICKENHAUS: Correct, sir, and the Legislature may also take away, through the system of checks and balances, the effect of an executive order.

DR. MILMED: That is correct; so that the Governor is left without any true administrative powers.

ASSEMBLYMAN GLICKENHAUS: That might be, yes; you are absolutely correct, but the Governor has these powers, has his powers greatly increased, as a reading of this section would indicate, because of the extreme difficulties in defeating an executive order.

DR. MILMED: But in the past these commissions and boards that have been set up with an appointing agent other than the Governor. These acts were not vetoed by the Governor. If they were vetoed, the vetos were certainly overridden by the Legislature and by more than a three-fifths vote.

ASSEMBLYMAN GLICKENHAUS: All it did require was a majority vote.

DR. MILMED: But --

ASSEMBLYMAN GLICKENHAUS: I don't know what the votes on that were but this is my own individual viewpoint. You have increased the powers of the Governor. The intent and purpose of this thing is to leave the appointive powers in the Governor.

DR. MILMED:

This is so by Paragraph 2 of Section ---

ASSEMBLYMAN GLICKENHAUS:

But my philosophy of it is that throughout this entire structure there has to be a check and balance system. I think you will agree with that philosophy.

DR. MILMED:

That is correct.

ASSEMBLYMAN GLICKENHAUS:

I think we tried as near to perfection to attain that and yours, I think, is a fear --

DR. MILMED:

A fear based upon what has happened in the past --

ASSEMBLYMAN GLICKENHAUS:

That is right.

DR. MILMED: (continuing)

--with the creation of all these administrative agencies, and that same condition can recur.

ASSEMBLYMAN GLICKENHAUS:

That is right. It is like reading a contract between two lawyers. After the contract is signed, one says to his client, "This contract says thus and so, but I think we may find a way out." so your constitution is only as good as the intentions behind it, and the intentions behind it, I think, have been well expressed by Senator Farley.

SENATOR FARLEY:

Governor Edge has at the present time a committee of one Senator, one Assemblyman, two department heads, and a citizen, for the purpose of reorganizing State departments, which will necessitate legislation. In that legislation, don't you think, there will be ample power to give him sufficient latitude to do everything he wants to do rather than attempt to set up specifically by organic law what may be practical now but may be impractical fifty years from now?

Shouldn't there be flexible legislation by virtue of the fact that the Governor, after being elected for four years, will have the heads of departments going in and out, to give him opportunity to adjust himself as of that time rather than by organic law?

DR. MILMED:

Surely, and I say that a means of checking the Governor's appointments and powers over administrative appointment can be given to the Legislature in this manner, instead of allowing the Legislature to create boards and directly appoint head of those boards.

SENATOR FARLEY:

There may be some merit to one of your points but when a new Governor comes in isn't it better that it be within his power to reorganize, as provided by this constitution, and through the medium of legislation adjust it at that particular time?

DR. MILMED:

With the exception that the Legislature may at any time diminish powers of these departments, so it may take away any and all powers of any principal department.

SENATOR FARLEY:

The people of New Jersey may diminish the legislative or Governor's powers. You are trying to cover all situations by making sure the Legislature may not possibly have anything to say with reference to appointive powers. I can't understand the logic of your argument because when you analyze this document, you will find these committees have bent over backwards to augment the Governor's power, to make sure the document created would give all power possible to the Governor. Then you raise the point as to some infinitesimal possibility, and I don't think your point is well taken. I appreciate that if you want to say the Governor shall have inherent appointive powers in all instances, then likewise you might run into difficulty because your system of checks and balances would not be properly taken care of. I feel that, after analyzing and comparing what

has been done by this committee and other committees, this document should not be disturbed. That is my present viewpoint. You are entitled to your viewpoint, but I am trying to give you the history of what we have done here. If we had the minutes of our meetings here, I think you would agree that every member of the committee has done everything possible to augment the power of the Governor.

DR. MILMED:

May I ask whether or not it is the intention of the Legislature, by this document, to permit the creation of additional boards and agencies, administrative agencies, and have the appointments to these administrative agencies other than by the Governor?

SENATOR FARLEY:

No, sir.

SENATOR PROCTOR:

No.

DR. MILMED:

That is particularly what I am interested in.

MR. CLAPP:

There is a double question there. To the first half of the question, the answer is "yes", that it is intended, at least by the draftsmen, that the Legislature shall have the power to create additional boards, bodies, commissions and agencies. So far as the appointing power is concerned the other gentlemen have answered that last half of your question.

DR. MILMED:

Then, the fear, as you say, that is in my mind at the present time can be remedied by prohibiting the Legislature from designating any agency or individual who will make the appointment.

MR. CLAPP:

That would cover the whole situation,

if you wanted to make an amendment to that provision in the Legislative section which authorizes the Legislature to make no appointments and provide further that they shan't designate any agency or individual who should make appointments other than the Governor.

DR. MILMED:

Or that could be done right in this Paragraph 10 itself.

ASSEMBLYMAN ARTASERSE:

That wouldn't be Executive.

ASSEMBLYMAN FELLER:

Did you submit a draft?

DR. MILMED:

Yes, I did.

MR. GLICKENHAUS:

We will study that.

MR. CLAPP:

What is your language in that brief?

May I get that precise reference you have in mind?

SENATOR FARLEY:

You have covered all these features in your brief?

DR. MILMED:

Yes, I did. Paragraph 3, Section III, "The head of the executive department shall be the Governor. Except as otherwise provided in this constitution, the heads of all departments and the members of all boards and commissions, excepting temporary commissions for special purposes, shall be appointed by the Governor with the consent of the Senate, and may be removed by the Governor for cause, upon notice and public hearing...." Then I continue on.

ASSEMBLYMAN FELLER:

Should you leave out the word "advice"?

DR. MILMED:

From what I have heard this morning, it is immaterial whether "advice" goes in or--

SENATOR FARLEY:

I have analyzed your presentation and discussion here. It is a question of interpretation of the language to make sure it covers the entire subject, that the administrative power be the Governor's. It is a question of interpretation and phraseology.

DR. MILMED:

That is correct.

SENATOR FARLEY:

Do you have anything else?

DR. MILMED:

That is all, except possibly this one provision which Professor Bebout covered this morning on this inconsistency that seems to be present in Paragraph 6, relating to the removal of the single executives.

ASSEMBLYMAN FELLER:

Where is that?

DR. MILMED:

Page 12.

MR. CLAPP:

I think that should be changed, "as shall be provided by general law". If that doesn't cover your idea completely --

DR. MILMED:

The Governor given the power --

MR. CLAPP:

Also, that the removal shall be by the Governor.

DR. MILMED:

That is correct.

ASSEMBLYMAN FELLER:

What was that?

MR. CLAPP:

Referring to Paragraph 6, on Page 12, the last words.

ASSEMBLYMAN FELLER:

"They may be removed"--

MR. CLAPP:

He wants to add "They may be removed by the Governor".

DR. MILMED:

Using the same phraseology we find in the New York Constitution "May be removed by the Governor in a manner that may be prescribed by law".

ASSEMBLYMAN FELLER:

What paragraph?

DR. MILMED:

Paragraph 6 on Page 12, the last clause there.

ASSEMBLYMAN ARTASERSE:

Why can't the law provide that?

DR. MILMED:

The law can provide that, but the law can also provide that the removal be made by someone other than the Governor.

SENATOR FARLEY:

I suggest, Mr. Clapp, you make notation of that.

MR. CLAPP:

I have made a note of that.

ASSEMBLYMAN FELLER:

Yes, that is important.

E-3

SENATOR FARLEY:

Anything else, Doctor?

DR. MILMED:

That is all.

SENATOR FARLEY:

I think the committee should next call on the Colored group that has come here today.

REVEREND HARDGE:

Mr. Chairman and gentlemen: As you know, I am here representing the National Association for the Advancement of Colored People; that is, the State branches of New Jersey, and the other groups named. We are interested in Article IV, Section I.

ASSEMBLYMAN FELLER:

Any particular paragraph?

REVEREND HARDGE:

We want a modification, we want to add a paragraph.

SENATOR FARLEY:

What page?

REVEREND HARDGE:

That is on page nine. We are interested in wiping out the segregation that now exists in the State Militia as it is set up today.

MR. CLAPP:

What paragraph? Do you mean Page 8, Section VII, Article III?

REVEREND HARDGE:

Article IV, isn't it?

SENATOR PROCTOR:

Section VII, Article III.

REVEREND HARDGE:

Yes, that is right.

E-3

SENATOR PROCTOR:

"The Legislature shall provide by law respecting the enrolling, organizing and arming of the militia, the appointment, terms of service, qualifications and removal of its officers other than its commander-in-chief and all other matters relating to the militia."

REVEREND HARDGE:

Yes, and we went a modification of that article to read as follows: "In carrying out the provisions of the foregoing article, military organizations shall not be formed or organized solely on a basis of race, color or creed, but membership in any military organization, together with the enoluments therefrom, shall be open to any citizen of this State otherwise

eligible, regardless of race, color or creed." That is our interest here today. As you know, there is segregation in the militia now and we feel that that is the basis of the segregation that is now in the army. I think that that is one thing that weakened the President's Executive Order, in that he is ordering industry all over the country to eliminate segregation and discrimination and still it is practiced in the army. We feel that the basis of a segregated army is a segregated State Militia and we would like to recommend that this paragraph be added to the constitution.

ASSEMBLYMAN FELLER:

Do you have that typed up?

REVEREND HARDGE:

Yes.

SENATOR PROCTOR:

I think the stenographer has it.

ASSEMBLYMAN FELLER:

Is there anything else?

REVEREND HARDGE:

No, that is all.

ASSEMBLYMAN ARTASERSE:

Do you have anything on Article IV?

REVEREND HARDGE:

That is Article III, Section VII.

ASSEMBLYMAN ARTASERSE:

Nothing on Article IV at all?

REVEREND HARDGE:

No.

SENATOR PROCTOR:

You are speaking for the National Association for the Advancement of Colored People of the State of New Jersey?

REVEREND HARDGE:

Yes, that is right, the State branches.

SENATOR PROCTOR:

Are you also speaking for Negro Affairs, Inc.?

REVEREND HARDGE:

Yes.

SENATOR PROCTOR:

And the Union Baptists of Essex County?

REVEREND HARDGE:

That is right.

SENATOR PROCTOR:

And the New Jersey Herald News of Newark?

REVEREND HARDGE:

Yes.

SENATOR PROCTOR:

And the Ministerial Alliance?

REVEREND HARDGE:

Yes.

SENATOR PROCTOR:

And the Methodist Churches of A.M.E. Zion?

REVEREND HARDGE:

That is right.

SENATOR PROCTOR:

I just want to get it on the record that they subscribe to your thoughts.

REVEREND HARDGE:

That is right.

SENATOR FARLEY:

Apparently the federal government is undetermined as to what it will do after the war with reference

to the State Guard, and so as not to complicate the picture, so far as the federal government is concerned, the Committee left this matter open. You appreciate the fact that if there are federal funds tied in with it they adopt the rules and regulations as to a State Guard.

REVEREND HARDGE:

The federal government?

SENATOR FARLEY:

So far as the contribution of money is concerned. I think that one of your suggestions, in your discussion with me, was that in the event it is left open to determine the federal policy in the future, you would want a legislative program accompanying this constitution to carry out your ideas?

REVEREND HARDGE:

Yes, as presented here.

SENATOR FARLEY:

In other words, if the Legislature decides to leave this paragraph as it is so that it will not confliot with the federal contemplated plan, you would want accompanying legislation for the purpose of carrying out your recommendation for the elimination of segregation.

ASSEMBLYMAN FELLER:

What you just gave us you don't want in the constitution?

ASSEMBLYMAN ARTASERSE:

He would like to have it in the constitution.

REVEREND HARDGE:

That is our first request, that we have it in the constitution.

SENATOR FARLEY:

But if it cannot be changed because of the undetermined future plans of the federal government, then he would like to have a legislative program to carry out his recommendation made before this committee.

REVEREND HARDGE:

That is right, because the thing we are interested in is wiping out segregation in the State Militia.

SENATOR PROCTOR:

Appropos of that, as you will notice, that is rather loosely drawn. It is broad in scope and we have done that deliberately, because we don't know what the future will demand of the militia in this State and we didn't want to hamstring any militia, as it is now under the present constitution. We wanted to make it very elastic.

REVEREND HARDGE:

We realize you can't supersede the government.

SENATOR PROCTOR:

Not only that, but there has been some talk about national conscription after the war for perhaps a period of a year, all over the county. It is possible they won't need any militia then, or a full State Militia.

SENATOR FARLEY:

In other words, the policy is undetermined from the federal aspect, and we have left this clause sufficiently flexible to try to meet the situation. I think your point will be well taken if your request could be carried out with a legislative program in cooperation with the adoption of this constitution. Do you follow my meaning?

REVEREND HARDGE:

Yes, I think I do.

SENATOR FARLEY:

I want to compliment you and the rest of your group that appeared here and before the Judicial Committee on the intelligent way you presented your views, your systematic presentation. We want to let you know we appreciate your cooperation, and if there is any way possible we could carry out the program, I know the legislators will give every bit of consideration to your thought.

REVEREND HARDGE:

We appreciate that.

SENATOR PROCTOR:

Mr. Saunders called me last night on the telephone at my house, and I told him your group would be afforded every opportunity to appear; I could only speak for this subcommittee, of course.

REVEREND HARDGE:

Saunders of Jersey City?

SENATOR PROCTOR:

Yes, he called me last night. I told him either today or next week would be all right? Do you want to come back next week, if you have any further thoughts, next Wednesday?

REVEREND HARDGE:

That is what he wanted, possibly, to come back next Wednesday to tell you what we want. It won't be necessary for us to come back.

SENATOR PROCTOR:

I think you have stated your case very clearly.

SENATOR FARLEY:

We are glad to have you and your group any time, and if Mr. Saunders wants to come back, we will be

glad to hear him, but I think you have covered the point very well.

REVEREND HARDGE:

If he wants to come next Wednesday, he can?

SENATOR FARLEY:

Yes.

SENATOR PROCTOR:

Thank you very much, gentlemen. Is there anyone else who wishes to be heard?

MR. FRYE:

I was very much interested in the discussion you had on this setup when I came in this morning. As you will recall, I made some remarks. The points brought out I think are very important-- that you do accomplish the things that I commended, that there can be no upset of that, and the way you discussed it here, I believe you have really cured the situation with the Doctor.

SENATOR PROCTOR:

Dr. Milmed?

MR. FRYE:

Yes, but in my opinion, unless that number two in Section III is a reality, you really haven't accomplished what I was commending.

SENATOR PROCTOR:

Section III, Paragraph 2?

MR. FRYE:

Yes.

ASSEMBLYMAN ARTASERSE:

Page 12.

SENATOR PROCTOR:

You mean by the executive order of the Governor?

MR. FRYE:

Yes. In other words, if the Legislature could come along and create other agencies and elect and designate other officers to run bureaus and what-not almost without limitation, you would nullify that, so I merely mention this: You watch carefully to see that there isn't such a loophole left there. I notice what you said, how carefully you worked on it, but still there may be some slip, because you know how easy it is when you find an opening - once the camel gets his nose in the door, the whole camel gets in the place. You should watch that carefully. In other words, that number two ought to be a real statement, without any "ifs" or "ands" to upset it. This might be called a joker, if that really accomplishes the upset.

ASSEMBLYMAN FELLER:

We are limited to twenty principal departments. Suppose a situation should arise whereby another department is necessary; for example, a veterans bureau, we will say. That department has to be created. Of course, it would have to be allocated within the twenty. How would that be created if the Legislature didn't create it?

MR. FRYE:

You must have power to create, but as was brought out here, in creating it you may also take it out of the Governor's hands to name who is going to run it.

ASSEMBLYMAN FELLER:

That isn't the intention. The Legislature must have the right--

MR. FRYE:

--to create departments, surely.

That is all right, so long as it meets this provision, but if there is some joker whereby you can set up something different from that, then you have really nullified that. That is what I am driving at.

SENATOR PROCTOR:

It was the intent to have the Governor appoint all heads of department. That is what your intent is?

MR. FRYE:

Yes.

SENATOR PROCTOR:

That is what our intent is. The problem is to get the words to follow out that intent.

MR. FRYE:

That is what I am talking about.

Now, as to the other, I see a defect in the Treasury and all these finance offices being set up by the Legislature. If you follow the United States Government, they are set up by it under the Department of Treasury. It is an executive office, and in most municipalities where they set them up right, your council, or whatever you call it, should only have an auditing control over a real city manager, etc. In other words, your administrative end ought to administer all phases of government, and the legislative end should have absolute check on how that administration is going on.

SENATOR PROCTOR: Isn't that one of the absolute checks, by having all the fiscal officers selected as we have provided? The Governor can appoint a Finance Commissioner. The Treasurer, of course --

MR. FRYE: That is an administrative function.

SENATOR PROCTOR: I know, but he has charge of the State funds. The State Auditor is under the Legislature.

MR. FRYE: But you are putting the Treasurer under the Legislature instead of under the Governor.

SENATOR PROCTOR: Yes.

MR. FRYE: That is what I am driving at. The Secretary of the Treasury is under your President. In other words, if he has an administrative cabinet, he administers everything of government. While I am not saying you should change that, I believe that to set the thing up perfectly, you pretty nearly have to follow the federal system.

MR. CLAPP: They have a Comptroller General elected by Congress.

MR. FRYE: There is your check, the Comptroller General is the man who checks. The Legislature should have a check on the Governor.

ASSEMBLYMAN ARTASERSE: But the office of Treasurer in this State is purely a ministerial office. He simply collects funds.

MR. FRYE: Even in that there is efficiency and everything else, I am speaking only from the standpoint of a perfect setup.

ASSEMBLYMAN FELLER: Our reason for doing this was that the Legislature not only must pass any revenue raising laws but must also appropriate the money. Consequently, these men who handle this money should be accountable primarily to the Legislature.

MR. FRYE: No, the United States Government does the same thing. Congress sets it up but --

ASSEMBLYMAN FELLER: We think this is an improvement over that.

MR. FRYE: I don't. I think it is an unscientific system. The only way you can correct it, in my opinion, would be to require your Treasurer to make a stated report to your Governor, not only once in a while.

SENATOR PROCTOR: Why not to the Legislature?

MR. FRYE: If the Legislature appoints him, the only thing would be --

MR. CLAPP: May I point out, in that connection, that in Article VI, Section II, Paragraph 1, the Treasurer is required to make reports to the Governor whenever in his opinion it would be in the public interest. He can require it at any moment.

MR. FRYE: If it is carried out that way. The thing will go along laxly, unless you put in there that they are to make stated reports. In other words, your Treasurer should make a stated report just the same as the Treasurer of a corporation makes a stated report to the general manager, instead of just haphazardly, maybe once a year. Your Governor would have to require it every month almost, unless he issues some kind of general order.

ASSEMBLYMAN FELLER: What advantage is there in having these officers appointed by the Legislature primarily accountable to the Governor, rather than to the Legislature, which body appropriates the money for these men to handle and spend?

MR. FRYE: If it wasn't for the fact that the Governor can demand a report, I would say it was extremely defective and shouldn't be allowed.

ASSEMBLYMAN FELLER: Why?

MR. FRYE: Because your Governor is supposed to know what is going on in government, and your Treasurer and these accounting officers are the only ones who actually know what is going on.

SENATOR FARLEY: How about your Finance Commissioner?

MR. FRYE: You don't need that duplication. In other words, you are setting up offices that don't exist.

SENATOR FARLEY: You appreciate what a Finance Commissioner does. You must have his approval before moneys appropriated can be released. He checks balances, and unused appropriations amounting to several hundred thousand dollars a year have been lapsed into the State Treasury with this type of control.

MR. FRYE: Then there may be something in there I hand't studied through. But if you have a Comptroller, a Finance Commissioner, and a Treasurer, and a whole lot of unnecessary things, then I would say you haven't really reached efficiency.

SENATOR PROCTOR: You think one man should have all those jobs?

ASSEMBLYMAN ARTASERSE: He thinks you shouldn't have a Finance Commissioner and a Treasurer and a Comptroller because of the duplication of work.

MR. FRYE: If you have a Treasurer, an Auditor, and a Comptroller, they can perform the three functions that are really necessary. You can exact from your Treasurer or your Auditor, whichever way you want it, all the information you need. In other words, this whole lot of criss-cross bookeeping is not necessary.

SENATOR FARLEY: That may appear on the surface, but as a member of the Interstate Cooperation Commission several years ago I attended several conferences in Washington, and they thought the New Jersey system was pretty sound. I am no expert on finance or fiscal affairs but all I can say is that the purpose of this is to make sure there is a check and balance.

MR. FRYE: I agree with that one hundred percent.

SENATOR FARLEY: With your fiscal affairs and finance controlled by the Legislature, eighty-one men -- May I say the appointments of the joint session have always proved very successful. They have always been very high type of men. On the other hand, you have the check of the Appropriations Committee, not only by veto but by the Finance Commissioner, so you have a double check.

MR. FRYE: Sometimes you can get too many checks, too much red tape.

SENATOR PROCTOR: There is something in what you say, but we have to consider that there are also a Purchasing Agent, and a Budget Commissioner. Your argument would probably go to the fact that those three offices should be combined.

MR. FRYE: Here are the main functions of finance: There is the banking system, and the insurance system, now considered finance, in a sense --

SENATOR PROCTOR: That is entirely different.

MR. FRYE: I am speaking of general finance. Then there is taxation; your taxing system is a finance problem. Then your government cost and accouting is a finance problem; your purchase and stores is another finance problem, and under those department heads you can set up everything you need.

SENATOR FARLEY: We would be glad to have your recommendations for a system that will eliminate any of those positions and be an improvement on the present system. If you have a solution and a system that would improve the present system, this committee would be in accord with it, but I think it would be up to you to prove the system you recommend would be better than the present one. Regardless of who has the power of appointment, when a financial structure is involved and you don't lodge responsibility where it belongs, and public money is involved you have to be very careful that the funds be earmarked and checked not only once but many times, because there are an awful lot of taxes paid

in this state. Under the present system, I don't think anybody could get away with a dollar bill. I am not a financial expert but apparently the system has been pretty sound so far. If you feel the appointment should be by the Governor, that is one point. Do you have any recommendation as to changing the present system?

MR. FRYE: No more than that. I would say the Governor should have a coordinator of finance who ought to have his fingers on everything of a financial type, for the Governor's information, all the time.

SENATOR PROCTOR: That is true; he does, but I think that is a matter of legislation more than it is constitution. Is it your recommendation that the State Treasurer should be appointed by the Governor rather than elected by the Legislature?

MR. FRYE: Yes, if you set up another officer that gives the Legislature, the same as Congress has, all the powers it needs to know what is going on.

ASSEMBLYMAN FELLER: Isn't that duplication?

MR. FRYE: There has got to be duplication; every auditor is a duplication.

ASSEMBLYMAN FELLER: Here is the setup: The Constitutional Revision Commission of 1942 made the provision, after months of study, that the State Treasurer and the State Comptroller should be elected by joint session of the Legislature because, as I said before, the Legislature must raise the money and appropriate the money and these fiscal officers should be accountable and be responsible primarily to the Legislature. This committee here considered all the angles on it and got the same thing.

MR. FRYE: I am merely bringing it out so that you will, in your further consideration of the thing, cut out any fifth wheel that may be in there, which is not necessary, and give powers where they belong.

ASSEMBLYMAN ARTASERSE: I think he has a good suggestion. Do you know the functions of our State Treasurer? He collects money and sends checks.

ASSEMBLYMAN FELLER: And the Auditor checks books.

MR. ARTASERSE: That's right, I think he has something there.

MR. FRYE: In other words, I have had accounting systems; I have studied these things and in reference to this particular chart, the head of the Political Science Department of the University of Pittsburgh and myself went over that for about three months.

SENATOR FARLEY: Can you give us specific recommendations, Mr. Frye?

MR. FRYE: I will try.

SENATOR FARLEY: We would be glad tohave them.

MR. FRYE: I will be glad to.

SENATOR PROCTOR: I think they should be limited to the constitutional question and not to any statutory, because that is outside our jurisdiction.

MR. ARTASERSE: The primary principle I think that he wants to bring before the committee is the fact that one of those officers of finance, whether it is the Comptroller or the Treasurer, is not necessary.

MR. FRYE: I want a clean-cut function so that you have that fellow responsible and have a dead check on him. There are no "ifs" and "ands". You know what is going on. I came from Pennsylvania and a good many years ago we had a scandal there where they set up the State Capital wrong, and a friend of mine was made Comptroller afterward. He hadn't anything to do with these functions but he had an abolute check on everything that was going on. Mr. Tenor was also a personal friend of mine. In fact, he had a lot to do with the election of the Governor. This fellow was a buddy of mine, and the Governor had absolute confidence in this Comptroller. There was no more crookedness; that is, the Governor had control of the fiscal functions of Government.

MR. ARTASERSE: He has today, with the Finance Commissioner.

MR. FRYE: I would say not.

MR. ARTASERSE: By statute, he has.

MR. FRYE: That is another thing I consider a fifth wheel; in other words, if you set up your real functions right, I don't think you have to have that extra one.

SENATOR FARLEY: May we have your recommendations at an early date?

MR. FRYE: Yes, I will be glad to submit them.

SENATOR FARLEY: Senator Proctor is Chairman of this committee and we will be glad to give them consideration.

MR. FRYE: What I am trying to do is get down to brass tacks so that everybody knows what is going on.

SENATOR PROCTOR: Next is Mr. H. W. Voorhees, President of the New Jersey Farm Bureau. You said you would speak, Mr. Voorhees, if we wanted you to, and we certainly do; that is, if you care to.

MR. VOORHEES: I would like to, but it will be brief. I represent the New Jersey Farm Bureau as its President, and I am submitting to your committee a proposed amendment to the Revision. This pertains to Paragraph 7, Section III, of Article IV.

SENATOR PROCTOR: Let's read that: (Reading) "Whenever a board, commission or other body shall be the head of a Principal Department, the members thereof shall be appointed by the Governor by and with the advice and consent of the Senate and if said board, commission or other body shall have power to appoint an administrator, director or other chief executive, such appointment shall be made with the approval of the Governor."

MR. VOORHEES: The purpose of suggesting the inclusion of the words immediately following the words "and if said," -- Members of the State Board of Agriculture shall be elected as provided by law and their names submitted to the Governor for approval. Whenever a", in Paragraph 7, Section III, Article IV of the proposed constitution is to safeguard the delegates' convention method of electing members to the State Board of Agriculture as now provided by law, and at the same time to meet the views of the Governor and Legislative Committee revising the constitution.

The State Board of Agriculture was organized in 1872 by law. Governor Parker, then Governor of New Jersey, was its first president. The board has been functioning for 72 years. It has always had the respect and confidence of the farm people of this state. Records show that its policies and programs were always approved by the farm people.

In 1916 the law was amended limiting the size of the board to eight persons and establishing a convention to meet in Trenton once a year to elect two members to the board for a term of four years. The law names the various county boards of agriculture, granges and state farm organizations that shall have delegates at the convention. The convention, in its deliberations and election, always keeps in mind the importance of area and commodity.

The farmers of this state, through their organizations, have indicated through resolutions and other methods their desire to see the convention and state board, with its tradition and democratic procedure, continued. In the interest of agriculture, the selection of board members must be kept non-political.

There is no political group, organization or body of citizens in this state who are interested in seeing the present State Board of Agriculture or the delegates' convention method supplanted.

Most Governors and Senates would appreciate this method of appointment of persons to the State Board of Agriculture as it assures best representation. The positions on the board do not carry any salary or per diem.

SENATOR PROCTOR: In other words, it boils down to this: You would elect but the Governor would have the power of vetoing your selection.

MR. VOORHEES: That's it, exactly.

SENATOR FARLEY: Is it your intention to mention the State Board of Agriculture specifically in this paragraph?

MR. VOORHEES: We would like to.

SENATOR PROCTOR: It is the only one of that nature today. Today, as I understand it, you elect and the names are submitted to the Governor.

MR. VOORHEES: The only change which would be effected would be: The appointment of the presiding officer, or the Secretary, as it is today, is not confirmed by the Governor. In accordance with this, it would be confirmed or vetoed.

SENATOR PROCTOR: You are willing to go along on that?

MR. VOORHEES: We are willing to go along on it. We want to retain our convention or democratic institution.

SENATOR PROCTOR: This is not taking any power away from the Governor. He still has his power of veto?

MR. VOORHEES: Yes.

SENATOR PROCTOR: It is not very revolutionary.

MR. VOORHEES: Not at all.

SENATOR PROCTOR: Today, you have the delegates and you elect and you send those names to the Governor, don't you?

MR. VOORHEES: No. We send them but he doesn't have the power, today, to appoint them.

SENATOR PROCTOR: In other words, you elect now, and that is final.

MR. VOORHEES: That's right.

SENATOR PROCTOR: There is a great deal of merit in your contention.

MR. VOORHEES: We think so. The Department of Agriculture in its present set up today in New Jersey outranks any other in the country and it is considered with a great deal of respect by other departments around the country. We would like to retain that. New Jersey holds a very high place in Agriculture in the United States

and we would like to keep it there. A sound agricultural setup means substantially more to the metropolitan people than to agriculture.

SENATOR PROCTOR:

I am not sure that the language you mention covers the subject. It says to submit to the Governor for approval. I think what you mean is, if the Governor disapproves, you will have to select someone else and submit to the Governor.

SENATOR FARLEY:

Following the language of the section here.

SENATOR PROCTOR:

I think if you followed the language of some other section --

MR. ARTASERSE:

Assuming the Governor did veto the appointment, then what happens?

MR. VOORHEES:

They would certainly have to suggest another name, wouldn't they?

MR. ARTASERSE:

Would you have to call back your delegates again for another election or do like the State Pharmaceutical Board, submit three or four names to the Governor?

MR. VOORHEES:

The administrator, the secretary as is now the case, is elected by our State Board; in other words, it would be the State Board, consisting of eight members, who would reconsider another name, not the whole body.

MR. ARTASERSE:

That is how it takes place now?

MR. VOORHEES:

The Secretary is elected indirectly through the convention of delegates, which elects a Board of eight, two each year, and the eight elects the officers.

SENATOR PROCTOR:

How about the two new ones? Is the Board of Agriculture made up of eight members?

MR. VOORHEES:

That's right.

SENATOR PROCTOR:

I suppose two members expire every year?

MR. VOORHEES:

That's right.

SENATOR PROCTOR:

How are they elected?

MR. VOORHEES:

They are elected in convention by delegates.

SENATOR PROCTOR:

Suppose the Governor vetoed one of those men, what would heppen? Would you have another convention?

MR. ARTASERSE:

No, they would call the eight back for the purpose of electing another one.

SENATOR PROCTOR:

I thought the convention elected the eight.

MR. VOORHEES: That is true. We are referring to the Secretary. We are not referring to the Board Members in this. We want to continue our present set up of the Board.

SENATOR PROCTOR: I misunderstood.

SENATOR FARLEY: The system you presently have now, you want to carry on?

MR. VOORHEES: They have control of the administrative officer.

SENATOR PROCTOR: You say, "the members of the State Board of Agriculture". That is the eight, isn't it?

MR. VOORHEES: That's right.

SENATOR PROCTOR: ---"shall be elected as provided by law". That is this convention system. That is what you would like "by law"?

MR. VOORHEES: Yes.

SENATOR PROCTOR: "And their names submitted to the Governor for approval". What would happen if the Governor disapproves those names?

MR. VOORHEES: Then we would have to submit other names.

SENATOR PROCTOR: By whom?

MR. VOORHEES: By the same process.

SENATOR PROCTOR: By recalling the convention, is that right?

SENATOR FARLEY: I think the process of election would be the same and the name of the man who would be Secretary would be submitted to the Governor for his approval or veto. Is that what you want?

MR. VOORHEES: I wasn't following you.

SENATOR FARLEY: You want your system the same as it is today but the name of the man who is the motivating force behind the operation, which is the Secretary, who is really the chief of the agricultural staff, shall be submitted to the Governor for approval or disapproval.

MR. VOORHEES: That is what we should like to say.

SENATOR PROCTOR: But you don't say that.

SENATOR FARLEY: Mr. Voorhees says one thing and the document, I think, says something else.

SENATOR PROCTOR: It says something in addition to that. As I understand you, the Governor will have power to disapprove the Secretary. As this is written, the Governor has the power to approve or veto the eight members of the Board of Agriculture and Director. Now, about the eight members - I suppose you have gone over that very thoroughly?

MR. VOORHEES: Apparently not.

SENATOR FARLEY: If you had the Governor approve the eight members, it would interfere with your process of election. Mr. Voorhees said we had a fine agricultural set-up and to take away the election of the Board from that group of farmers would not be a good thing. That should not be interfered with. I think the name of the person who is the motivating force behind the operation, the Secretary, should be submitted to the Governor for approval or disapproval.

SENATOR PROCTOR: I understand that about the Secretary. So far as the Secretary is concerned, I don't think there is any question, but there is a question that comes up about the members of the Board of Agriculture.

As I understand your argument, Mr. Voorhees, you want to carry out your convention system but you would be willing to go along with the Governor, giving him the right to veto any man you selected?

MR. VOORHEES: Allow me to call on the Secretary, Mr. Allen.

MR. WILLARD H. ALLEN, Secretary, Department of Agriculture: Senator, these are just honorary positions, you see. Our farmers recognize that. They feel quite proud to have the opportunity to serve. The convention consists of about seventy men. They decide and they usually always take into

consideration the section of the State that is to be considered and also the commodity. They always like to see the whole State represented - from Sussex to Cape May.

SENATOR PROCTOR: And Monmouth?

MR. ALLEN: Monmouth today is on there, with Mr. Roscoe Clayton. Every Commodity is also represented. Now, they usually try to pick out an outstanding leader in the commodity field from a particular section of the State - so do all states. Those names would be sent to the Governor. In my judgment--

SENATOR PROCTOR: Eight?

MR. ALLEN: Eight - two a year. Now, we are assuming that we give these two names to the Governor. He will recognize the deliberations of seventy men and send them to the Senator for approval. If he doesn't approve them but does take some other name that is his desire, he can do it, and then the Senate will either accept or reject.

SENATOR PROCTOR: That isn't what you say there.

MR. ALLEN: No.

SENATOR PROCTOR: You want that?

SENATOR BODINE: You want to pick your own eight men, don't you?

MR. ALLEN: We would love to do it but we are carrying out in this paragraph what the Governor presented at the convention last Tuesday.

SENATOR PROCTOR: You are going further than I think he meant. You are giving the Governor more power than he asked for. You are saying if the Governor doesn't like the two men your convention selects, he can pick two new men. You didn't mean that, did you?

MR. ALLEN: Yes. I thought that was as far as we dare go.

SENATOR PROCTOR: He has the power of veto but hasn't the power of appointment.

MR. ALLEN: We can put a "must" in there.

SENATOR FARLEY: Maybe I can make it clear. The Governor feels that having certain commissions and boards in the State over which he has no control is not a sound system. His thought is that the Governor should have the right to approve or disapprove the appointment of the members of any commission created by law, or the chief officer of that commission. I am of the opinion that the Governor's only concern about Agriculture would be whoever is chief of the eight members, such as yourself as Secretary. I think you are the one he would want to approve or disapprove, and not the members elected. I don't think it is the object of Governor Edge to interfere with your democratic system, but I think he wants the privilege of saying who shall be the chief - who shall be the managing or operating force behind the set-up.

SENATOR PROCTOR: Under the present draft here that I hold in my hand, your convention system, so far as appointing these eight men is concerned, is out of the window. There is no question about that.

MR. ALLEN: That is why we want that in.

SENATOR PROCTOR: My only point is this: You want to be able to pick those two men.

MR. ALLEN: We would like to.

SENATOR PROCTOR: You are willing to have the Governor approve or disapprove those two men?

MR. ALLEN: Yes.

SENATOR PROCTOR: But do you mean, if he does disapprove them, he can pick two men out of the air and foist them on you? It doesn't say so there.

SENATOR BODINE: They don't mean that.

SENATOR PROCTOR: You mean, you will recall your convention:

MR. ALLEN: We would rather not. We would not like to recall the convention.

SENATOR BODINE: They don't want it that way.

SENATOR PROCTOR: I understand it - then there is no difficulty. That is the draft and that is proper.

SENATOR FARLEY: May I make a suggestion that you as Chairman and Mr. Allen consult with Governor Edge to find out how he feels about this situation? I think it will clarify the subject.

SENATOR PROCTOR: The understanding was that there would be no motions at these hearings, but I will entertain that motion.

SENATOR BODINE: I will second the motion.

SENATOR PROCTOR: All in favor signify by saying aye. (Motion carried.) All right, then, we will report back next week. I think we should include Mr. Voorhees in that. He is the President of the Board.

MR. VOORHEES: Thank you very much. I appreciate your constructive criticism.

SENATOR PROCTOR: Is there anyone else who wishes to be heard? If there is no one else, we will adjourn until tommorrow morning at 10:30.

ADJOURNED.

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

(Executive)

SPEAKERS - MORNING SESSION

Thursday, February 3, 1944

DR. WILLIAM G. HANRAHAN of Springfield, N. J.

MRS. RICHARD ZWEMER, N.J. Committee on Constitutional Revision

MRS. DOROTHY ISSERMAN of Maplewood, N. J.

MR. WILLIAM BECKER, Socialist Party

SENATOR PROCTOR:

The hearing will come to order. I haven't a copy of the rules, but the rules say that witnesses are limited to fifteen minutes.

DR. HANRAHAN:

That is plenty for me.

SENATOR PROCTOR:

With enunciating that, I think we can start.

What is your name?

DR. HANRAHAN:

Dr. William G. Hanrahan, Springfield, New Jersey.

SENATOR PROCTOR:

Are you appearing for yourself or for an organization, Doctor?

DR. HANRAHAN:

Well, both. I am a member of the Republican Club of Springfield. While they have not endorsed to be honest with you people anything that I will say here, I talked the matter over with the president and with certain members. Commissioner Wright of the town is one of my personal friends, and I expect to report back.

What I intended to speak about, getting right down to brass tacks, was representation in the Senate. You may say that is a legislative matter, but I feel and other people feel it is an executive matter inasmuch as the President of the Senate may become the executive of the State and consequently there is a direct connection there between the representation in the Senate and the executive. I wanted to speak on it from that angle. I have been in touch with the Governor and I have been in touch with Lieutenant Governor Hanley of New York State and I feel that the executive should be succeeded by a man that is

elected by the vote of all the people of the State. In consequence I believe that Lieutenant Governor should be included in our constitution to stand in position to be elected by all the people of the State in case at any time he become the executive of the State to succeed the Governor in case of incapacity or death or some other cause. For that reason I have been told that some of the Committee wanted the duties defined of the Lieutenant Governor. Well, the Lieutenant Governor is somewhat of an ornament I admit, but duties can be assigned to him to relieve the duties of the Governor and one of the principal things is in case of a tie in the Senate he should be given a vote. This is the only time. I believe in New York State the Lieutenant Governor does not have even that privilege, but Lieutenant Governors preside in great states like Michigan and New York and I do not see why we should still be back in the ox-cart period of time and have the same principles they had in the old constitution that is a hundred years old next year. Consequently I would like to see the provision included - some people spoke on it yesterday and other people would like to see the same thing - to have a Lieutenant Governor elected by the people of the State in a general election when the Governor is elected.

SENATOR PROCTOR:

How would you have him elected, bracketed with the gubernatorial candidate?

DR. HANRAHAN:

That would be a question for the Committee. They are fighting that out in New York State now. They want to bracket the Lieutenant Governor with the Governor. I think it would be a wise provision because that is the way the Vice-President of the United States is elected. When they say there are no particular functions for a Lieutenant Governor, they might say the same thing as to the Vice-President of the United States, but he does have a vote in case of a tie and once in a while it is his prerogative to use it.

I think duties could be defined for the Liqutenant Governor. I am sorry I didn't ask him just what his duties were.

SENATOR PROCTOR:

He is the head of the Board of Regents I think or he is a member of it in New York.

DR. HANRAHAN:

Duties could be defined. To show you that I have been in communication with him -- (Dr. Hanrahan hands the chairman a letter.) He took a short cut in answering my questions; he used my own letter in answering a number of pertinent questions I asked, but I did not ask him to define his duties. He has separate and distinct duties and he is elected by all of the people of the State. I think that is one of the pertinent questions that the Committee should consider because if he is to succeed the Governor, I think he should be elected by the people of the State, and the going states of the Union have Lieutenant Governors as I said like New York and Michigan.

Another thing - representation of the senators. I have looked into the matter quite carefully. One of the members of the Senate I believe spoke yesterday against a lieutenant governorship, and the strange coincidence of that is the gentleman represents the smallest county in the State, having a population of only 28,000. The people voting in thatcounty have thirty times more power than a voter in Essex County that has over 800,000 population. In my own county of Union - that has 300,000 population - they have twelve times as much power in voting. That is one of the things that I think is inadequate, of putting a senator in the executive's chair in case of incapacity or death. Bergen County has 400,000 and a little bit more and a citizen of Cape May or Sussex or Ocean would have fifteen times as much voting power in case the Chairman of the Senate became the executive. Ocean has 37,000 population. You take those three counties and put them together and there is less than 100,000, yet they have a balance of power to the extent of one-seventh of the Senate of our State and I don't think that is fair. The representation ought to be by population. In New York State it is by population and not by counties. That is a very important matter. It could be grouped on the senatorial districts, but I don't went to deprive the Senate of a representation of any less than it has.

SENATOR PROCTOR: Doctor, that would be academic now because under the mandate of the people, under the Feller bill, it is expressly set forth that the representation in both the House and the Senate will remain as is.

DR. HANRAHAN: Well, that is tentative, isn't it?

SENATOR PROCTOR: No, it is not tentative. We would be going outside of our power in drafting this Constitution if we attempted to change the present representation.

DR. HANRAHAN: Well, the whole Constitution is changed, isn't it, Mr. Chairman?

SENATOR PROCTOR: No. We are not going to take any of the Bill of Rights away. We haven't any right to.

DR. HANRAHAN: That would be increasing the Bill of Rights to give direct representation to all the people and equal vote for all the people on all questions.

SENATOR PROCTOR: When you voted last fall, it said on the ballot: "Shall the 1944 Legislature be constituted an agency to draft a Constitution to submit to the people to be accepted or rejected as a whole in the November Election of 1944," with the understanding - an express understanding that the Bill of Rights should not in any way be interfered with or that the present representation in the Senate and Assembly shall not be in any way interfered with. That is what the people voted for and we are held to that mandate.

DR. HANRAHAN: Why was that included in it? I think that was an unfair proposition to put to the people, to tie the hands of the people so they could not have representation according to their own desires at any time.

SENATOR PROCTOR: You must remember that the people in the small counties feel they should have representation as well as the large counties.

DR. HANRAHAN: Why should they be represented thirty to one - the difference between Cape May and Essex?

SENATOR PROCTOR: Do you think there is fair representation in the United States with two Senators coming from every State?

DR. HANRAHAN: I would say that cannot be changed. The small States of the Union like Nevada, having a handful of people, have as much power as the great empire state or Michigan or Pennsylvania or other great States. It was included in the start when we were in the ox cart period of our history and it is the hardest thing to break away from.

SENATOR PROCTOR: Would you advocate a change in the Federal constitution?

DR. HANRAHAN: Yes, I would, by representation, that everybody voting for a national official should be given the same privilege of voting on the same proposition and the same population. We divide this State into fourteen representative districts for our Congress, and the Senatorship should be divided on the very self-same proposition. I don't believe Nevada - the only thing it is famous for is its divorce courts there - should be given the same prerogative as the Senators of our own State, or New York or any of the other great States. I know there are people who won't agree with that, those people in office, but it is an absolute, concrete fact that there is no fair representation in the United States Senate. Just compare the great State of New York with the State of Nevada, as an instance -- going from one extreme to the other.

There is another matter I wish to speak on and that is the period of service for the Executive. Mr. Edge, I believe, has been quoted as saying that under no circumstances would he take the fourth year of a term to be extended to meet a constitutional condition. I feel the Governor should be elected for four years, in the odd year, so it will not conflict in any way with the Presidential

election -- the Congressional election - and if it was within the four years, Mr. Edge's period of service should be extended, I think, and that question of course submitted to the people for an additional year. We could start then from 1947 on the odd years and there would be no clash of interests or carrying over weak-kneed candidates by national candidates to help them into office. A man would have to stand on his own feet more often than he does now in a national election and I think for that reason the Governor's term should be extended for another year to have it expire in 1947.

MR. ARTASERSE: How would that be under this present system - the first Governor having three years and thereafter four years?

DR. HANRAHAN: Well, it would come into a congressional year.

MR. ARTASERSE: It wouldn't, for this reason --

MR. BECKER: On the other hand, we are thinking, are we not, of a set up in which the recognition of political alliances is going to be on the basis of the more populous counti s but on the other side of the room we have the members from the less populous counties. Politics being what it is, there are going to have to be political considerations to the representatives of the voters in the other parts of the State. Isn't that so?

SENATOR BODINE: With a unicameral syste , I doubt it.

SENATOR PROCTOR: I can understand Union, Bergen, Essex and Hudson getting together on appropriations, however far apart on other things they may be.

MR. BECKER: Well, perhaps. You see what I am afraid of is that what you are doing is using the argument of appropriations which is a small segment of government, but an important one, to knock down what I think is the basic principle of government, that of direct representation in proportion to people and I would rather see the problem of appropriations dealt with by some financial formulas, by other kinds of checks and balances than to disturb the basic principle.

SENATOR O'MARA: There are other problems besides finance. There is the problem of agriculture, for instance, and things of that sort. By the very nature of things agricultural counties are far less populous than the industrial counties, nevertheless in a well-rounded economy the interest of the agricultural counties or states, if you talk about the Federal government, are entitled to powerful representation because they have a very definite place in the economic structure. It would seem to me under the system that you advocate, that it might be very easy to neglect the economic interests of other parts of the state, except the interest of the more populous countis. I am not saying that I don't agree with your main premise, but there has to be a great deal of thought given to not only the question of the amount of population, but also the divers interests of the various sections of the State.

MR. BECKER: Well, what you raise then is the problem, which is not answered really by the election of people on the basis of area, - you are raising your problem on the representation on the basis of function.

SENATOR O'MARA: Don't you see there must be some compromise between the two theories. There is a strict division of representation on the basis of population and on the basis of function. One extreme of the problem would be that all counties would be entitled to equal representation in both Houses of the Legislature. The other extreme would be that representation in both Houses would be on the basis of population solely, that is, in both Houses. Now, hasn't it worked out pretty well generally speaking to have a compromise between those two extremes and have a representation in one branch of the Legislature on the basis of population and in the other branch of the Legislature on the basis of equal representation on the basis of geographical subdivisions. I mean from a practical standpoint hasn't that worked out pretty well both in our form of government and in the Federal?

MR. BECKER: Well, it has been, as you put it, the most practical compromise on the issue involved. However, it doesn't get beyond the basic fear which I have.

SENATOR O'MARA: You have a theory, and it is a theory of government that is held by a great many people, that the will of the majority after all is what should govern, and that the only way to effectuate the will of the majority is to have a representation in direct proportion to the population in all branches of the legislative field especially, is that right?

MR. BECKER: Yes.

ASSEMBLYMAN ARTASERSE: Have you a brief or anything to leave with us, Mr. Becker?

MR. BECKER: I have something here but I have a few corrections to make.

SENATOR PROCTOR: You can send it to us later. Send it to

me, Senator Proctor.

SENATOR SHOLL: Mr. Chairman, for the record, I would like on behalf of the small counties to call to the attention of this gentleman and the others that the idea of constitutional revision was conceived in the small county of Gloucester by former Senator Hendrickson.

MR. BECKER: I am glad he conceived it but I wouldn't want him to take sole credit.

ASSEMBLYMAN GLICKENHAUS: The Senator may be right, it was conceived there, but the initial performance I think came from Essex.

SENATOR PROCTOR: And it was born in Union.

MR. BECKER: I can see we have a lot of would-be parents. We should be proud--

SENATOR PROCTOR: Is there anyone else who wishes to be heard? We are going to meet at two o'clock. It is almost one now. We will adjourn until two o'clock.

(Recess for lunch)

Due to the fact that no one appeared to speak at the afternoon session, the hearing was adjourned at 2:20 P.M. to resume at 10:30 A.M., Wednesday, February 9, 1944.

ADJOURNED

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

(Executive)

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REGISTERED SPEAKERS - MORNING SESSION

Wednesday, February 9, 1944

Mr. Winston Paul	Chairman, N. J. Committee for Constitutional Revision
Mr. A. Matlack Stackhouse	Vice-Chairman, N.J. Committee for Constitutional Revision) Art. IX
Mr. H. Alexander Smith	Article IX, Amendment
Mr. Arthur J. Edwards	Personally - Article IV, Sec. 2 (Commission on Parole)
Mr. Walter J. Bilder	Member of N.J. Committee on Constitutional Revision. Member of Lawyers' Non-Partisan Committee for Constitutional Revision. (Speaking personally as a modificationist. Will also speak before Judiciary Committee, and may not be present when called upon to speak. Please call him later.)
Mrs. Charles Maddock, Jr.	President, N. J. Women's State Federation of Women's Clubs (Modification)
Mrs. Sydney B. Ingram.	Vice-President, N. J. League of Women Voters (Modification of Article IX)
Also from same organization:	
Mrs. L. H. Robbins, Past President	
Mrs. Frederick Holman, Asbury Park	
Mrs. H. K. Halligan, Montclair	
Mrs. A. C. Gillette, Morris County	
Mrs. Louis Taylor, Newark	
Mrs. George V. LaMarte, Somerset County	
Mrs. E. W. Anderson, Passaic	
Mrs. F. W. Hopkins, New Brunswick	
Mrs. H. T. Wilder, Nutley	
Mrs. Floyd Lyle, Fairlawn	
Mrs. R. L. Barbehenn, Plainfield	
Mr. Roger Hinds, South Orange	Speaking personally - Article IX
Mrs. Louis Rappaport	N. J. State President of National Council of Jewish Women - Article IX
Mrs. G. M. Uptegrove	League of Women Voters, Maplewood - (Proponent of Article IX)
Miss Ida Lillian Page, representing: Mrs. Mary D. Deboise	State President of Women's Christian Temperance Union

SENATOR PROCTOR:

The Committee will come to order.

As you know, ladies and gentlemen, the speakers representing themselves or organizations are limited to fifteen minutes. Of course, you may talk on anything under the Executive Article and also under the amending article that you wish. Now, on the schedule of speakers that I have here, the first is Mr. Winston Paul, Chairman of the New Jersey Committee for Constitutional Revision. Mr. Paul.

MR. WINSTON PAUL: Mr. Chairman and Members of the Committee: I have come here today to propose an addition to Article IX, which is called the Revision or Amendment Article. I propose the addition of the words to Article IX "Revision and Amendments," and I propose a further addition to it, which I will read, as follows:

> "Without limiting the inherent right of the people at all times to revise their constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, the legislature shall submit to the people at any general election when, in the opinion of the legislature the public good requires it; the question: 'Shall a revision of the state constitution be submitted for adoption or rejection by the voters at the next general election?' and if the legislature does not submit such question at any time during a period of 20 years, the state officer whose duty it is to certify state-wide public questions for inclusion on the ballot is hereby directed to certify said revision question, to be voted on at the first general election held more than 20 years after the last vote by the people on the question of authorizing constitutional revision. If a majority of the people voting on such question authorize revision, a convention composed of as many members as the joint meeting of the two houses of the legislature shall be elected, in accordance with the provisions of law applicable to the election of members of the legislature, at the next general election; and such convention shall prepare a revised constitution and submit the same in such manner as it may direct at the next succeeding general election; unless the legislature shall by law have made other provision for the election, designation, or appointment of the body to be authorized to prepare and submit such revision."

I will now explain the purpose and meaning, or the implication of that, Mr. Chairman: In suggesting the addition of a specific provision for future revision of the Constitution, it is important to clearly understand the difference between Amendment

and Revision. This has been well stated by Mr. Russell Watson, a recognized leader of the New Jersey Bar in the following words: "Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme or structure of the old. A revision is a new instrument, in form a complete document to be submitted as a whole and standing or falling as a whole. Amendment, on the other hand, implies continuance of the general plan and purport of the original, with corrections to better accommodate its purposes. Amendments relate to particular sections and are submitted as such to be voted upon separately. Basically, revision suggests fundamental and thorough-going change, while amendment is a correction of a specific provision or a series of specific provisions. This fundamental distinction between revision and amendment is recognized in all the judicial precedents and by all authoritative writers on the subject."

Now I come to our second fundamental principle of law ".....the fundamental legal principle that the right to alter the Constitution is not a legislative power. It is essentially the people's power and may be authorized and exercised only by them. They reserved this right in the broadest possible language by Article I, Paragraph 2."

The right of the people at all times to revise their Constitution is recognized and affirmed in Section II of Article I, which states: "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it."

However a method of revision is not stated in the proposed new State Constitution. The proposed document is silent on this point. Without impairing or limiting the right of the people in this particular, which would be contrary to the Bill of Rights, some method or machinery for future revision should be provided.

Without implying that this would be the sole or an exclusive method of future revision, the Constitution should provide at least one effective method or piece of machinery for implementing Section II of Article I.

The failure of the Constitution to include a provision for revision will not prevent such revision in the future - such omission will only give a weapon to future demogagues to claim that the Constitution of 1944 was lacking in a democratic approach. The proposed new Constitution should not be silent on this point.

As Chairman of the New Jersey Committee for Constitutional Revision, which organization sponsored and actively conducted the campaign last fall for a favorable vote at the referendum election, we endorsed and advocated the method of revision which is now being undertaken. We were met with widespread skepticism and doubt that this method, namely, the legislature sitting as a constitutional convention, would submit a satisfactory and forward-looking document. Our Committee believes that the document now under discussion is so satisfactory that it is almost a complete answer to these critics and skeptics. In our opinion it lacks one essential feature; namely, a workable method for future revisio , which we are today proposing.

There is a w idespread desire in this State that the revision clause should provide for a constitutional convention, the delegates to which should be elected by popular vote. There is also substantial opposition to a popularly elected constitutional convention. After checking many different viewpoints, our Committee and many of its affiliated organizations, have unanimously agreed to recommend to your Committee that a revision clause should be inserted which would provide:

1) That the question of authorizing revision shall be submitted to the people at any general election, in any year, which in the judgment of the legislature, and presumably in response to public demand, the legislature should deem in the public interest, and

2) For a periodic vote on the question of revision to the effect that at least once every twenty years the legislature must subject to the people at a general election the question as to whether or not the people desire a complete revision of the constitution.

Your Committee may be interested in the fact that of the sister states in the Union, 33 have provisions in their constitution for the calling of a constitutional convention. Most of these provide for a referendum vote by the people after a vote by the legislature. There are 8 states which have provision for a periodic or automatic referendum for the calling of a convention anywhere from 7 to 20 years. The states of New York, Ohio, Missouri, Maryland and Oklahoma provide for this periodic review every 20 years. Michigan, every 16 years, Iowa every 10 years and New Hampshire every 7 years. At least one-half of our states give the people an opportunity, fairly often, to vote on the question of substantial changes in their basic law.

It is our opinion that the procedure we propose for a periodic vote on revision, is the best procedure in a state constitution for the following reasons:

1) It fully recognizes and protects the inherent and democratic right of the people to revise their constitution at any time, and in any way they see fit.

2) It is also self-executing as it provides convenient and workable machinery for revision if the legislature should fail to set up some other machinery or method for future revision.

3) It does not freeze this or any particular method of revision into the constitution, because it makes it possible for the legislature, in the light of experience and the requirements of the future, to provide what may then seem to be the best method of procedure.

It is very important that the new constitution presented to the people this November should not be open to the charge, however unjust, that its makers intend to freeze their will and judgment into the fundamental law for the next 100 years, as the men of 1844 inadvertently did a centure ago.

The difficulty of getting timely revision of our present constitution has made provision for a workable method of future revision the most important single objective of the civic groups working for a new constitution. We do not claim to have all political wisdom today - as we know our forefathers did not. Nothing would do more to pave the way for a general popular approval of the new constitution than a revision procedure that will make for confidence that whenever experience may indicate the need for it, a convenient method of revision will be readily available.

In conclusion, we can do no better than recall the words of George Washington:

"The basis of our political systems is the right of the people to make and to alter their constitutions of government."

SENATOR FARLEY: Mr. Paul, may I say to you that the Committee in considering the proposed draft purposely left this question open. It was not a matter of lack of foresight on the part of this Committee, but we were anxious to get the reaction of the entire public, and your recommendations are very timely and very interesting.

MR. PAUL: Thank you, sir.

SENATOR PROCTOR: Thank you, Mr. Paul.

The next speaker is Mr. A. Matlack Stackhouse, Vice-Chairman of the New Jersey Committee for Constitutional Revision. I might say that Mr. Stackhouse is a former Assemblyman from Burlington County.

MR. A. MATLACK STACKHOUSE: Honorable Chairman and Honorable Members of the Committee: I haven't a written statement. I am appearing here as an officer of the New Jersey Committee for Constitutional Revision to cover specifically the addition to the proposed Constitution which Mr. Paul has just read to you. It has been the experience in political history ever since the industrial revolution of about a hundred years ago that the basic political ideas change about every twenty years and indeed with increasing acceleration, especially with the growth of

science and spread of ideas, thus we might say that the basic political ideas - and by that I mean the economic ideas, intellectual ideas and political ideas - probably change, so that our whole structure of society changes in a shorter period than twenty years. It is for that reason that thirty-three of the states in this country have this provision in their present Constitution or one similar to this provision, requiring revision of their State Constitutions at least within a period of two decades. Just to give you an example of how the basic social ideas have changed, constitutionally I mean, within the last twenty years, I can take three prominent cases. Twenty years ago Labor's rights, constitutionally, were considerably smaller than they are now and it took actual changes by the judicial method in the present constitutional concepts to increase those rights of Labor. In the second place, the present milk control act of New Jersey hangs on the flimsy theory that an emergency exists; in other words, if the emergency did not exist, it would be unconstitutional for the Legislature of New Jersey to legislate on the control of the entire milk industry. In the third place, let me take the case of the loan of public funds or public credit to private organizations or private individuals. That provision, the restriction rather on the legislature in that respect, appears in the 1844 Constitution, and it appears in this present draft. What are we going to do after the war if it is necessary to loan the public funds of this state to private organizations in order to increase employment. The Federal Government, of course, has taken this field because there is no such restriction in the Federal Constitution. Those three examples alone, show the basic changes which are necessary in our Constitution in order that our structure of Government may meet the needs of society.

Now, the Federal Government can change the basic concepts of our Government through the method of, if you will. judicial legislation. It has long since been held that the United States Supreme Court can specifically reverse itself on any constitutional

question; in other words, what the lawyers call the documentary device of "stare decisis" does not apply to the Federal Constitution, so far as the Constitution is concerned; consequently, it is possible for that small group of men in Washington to actually amend the United States Constitution from time to time to suit the needs of society. But it has also been held a number of times that a State court of final resort cannot judicially change a State Constitution and, in fact, it has been held where state courts have reversed themselves with reference to vested constitutional property rights that such decisions of the court infringe upon the due process clause of the Federal Constitution and hence are invalid. I am pointing that out to you simply to show you the basic difference between the State Constitution and the Federal Constitution in this respect. Furthermore, gentlemen, we certainly do not want to repeat the effort which we have had over the past few years in securing a revision of our present Constitution. We recognize that the sovereignty is in the people but we do not give any form of expression for that sovereign power, and the purpose of this provision is simply to prevent our own generation from putting a straightjacket on the next generation and to give the sovereignty of the next generation a form of expression. Thank you.

SENATOR PROCTOR: Thank you very much, Mr. Stackhouse. Mr. H. Alexander Smith will speak on Article IX, the Amending Article.

MR. SMITH: Mr. Chairman and Members of the Committee: I have had the privilege of meeting with Mr. Paul and with this Committee in discussing this matter and of hearing a wide divergency of opinion with regard to the amending process of our Constitution, and I have come to support Mr. Paul in the suggestion he has made here, or the recommendation he has made, in regard to this general revision clause. I have had experience in my life, having lived in Colorado for a while, and have seen the dangers of a too-easily amended Constitution, where we have had initiative and referendum. We used to have a ballot nearly

as long as this table, where we had proposed amendments every few years, so probably I am on the conservative side where the ease of amendment is concerned. I feel, therefore, very much in accord with the draft that has been proposed by your Committee in regard to actual individual amendments, but I do feel on the other hand that unless we adopt some such proposal as Mr. Paul has presented here, for periodic complete revision, we are going to get frozen, you might

(Continued - next page.)

say, in the same situation that we have been in with the present difficulty of amendment of the existing Constitution of 1844. There we required, as we all know, the action of two consecutive legislatures, and that was difficult to get, and any substantial revision which the people seemed to feel was needed seemed impossible of accomplishment until this year by special legislative action we had this referendum and now we have this thing before us.

The proposal to have this general revision brought up every twenty years appeared to me as sound when it was suggested in Mr. Paul's Committee and I took the occasion to contact friends of mine in New York State where a similar provision, as you know, is in effect, and I didn't get a single dissenting opinion from lawyers or others among those I contacted to that method of periodic revision. In fact, it seemed to be taken for granted among people in New York that every twenty years the revision question will come up and in some form a constitutional convention will be called, and therefore it seemed to me we were justified in seriously considering the incorporation of that principle in this revised draft. I was glad to hear Senator Farley say a moment ago that you had not decided against it, that you were simply trying to get the reflection of popular opinion. From what inquiry I have made, popular opinion appears to me to be very much in favor of something of this sort, in order to enable us to have periodic revision.

Now, as to the language of this amendment proposed by Mr. Paul, it seems to me it covers very well what we need. It doesn't say definitely that there shall be a convention every twenty years; it says that the question shall be submitted to the people as to whether or not they would like to have a convention to revise, or the legislature has the power to devise some other method than the method proposed there for setting up a constitutional convention. All the safeguards of conservatism are there; that is, the safeguards against any hasty, ill-advised, sudden emotional action, yet the right of the people for revision is insured by this automatic

method of bringing it up.

I appear, Mr. Chairman, for the purpose of supporting Mr. Paul's proposal and to express to you my own conviction and my own personal belief, and also from contacts I have made, that there is a general desire for something of this kind, and the experience of our sister state of New York has apparently been favorable.

SENATOR FARLEY: Do you have any idea or opinion as to the advisability of supplementing this recommendation of Mr. Paul so that if the people wanted to revise the constitution in less than twenty years--

MR. SMITH: Wasn't that involved in your resolution, Mr. Paul?

SENATOR FARLEY: Without limiting the inherent right of the people?

MR. PAUL: That is covered - more than that. That is provided for here, Senator, with the statement that,"... the legislature shall submit to the people at any general election when, in the opinion of the legislature the public good requires it; the question; 'Shall a revision of the state constitution be submitted for adoption or rejection by the voters at the next general election?'... ..." Any time the legislature, when they deem the public good requires it, may submit the question for referendum vote but in any event, at least once in every twenty years, it is mandatory to submit the ques - tion.

MR. SMITH: I would think the legislature would probably be governed there by popular appeal, so if there was popular demand for it it would be submitted.

SENATOR PROCTOR: Mr. Smith, Mr. Paul and Mr. Stackhouse I take it, with the exception of this periodic revision that you are satisfied with the amending article as printed here?

MR. SMITH: Personally, I felt that was a sound approach for specific amendment.

SENATOR PROCTOR: Do you agree with that, Mr. Paul?

MR. PAUL: In answer to your question, I would say that a great many affiliated organizations of our group think that the amending clause should require only a one-half vote and a great many think it should be three-fifths. I should say the cross section of opinion is that possibly it should not be as easy as one-half vote for amendment, or as difficult as two-thirds. It may be that a compromise of three-fifths might meet generally the wishes of the groups.

SENATOR PROCTOR: Mr. Stackhouse, how do you feel about the Amending Article?

MR. STACKHOUSE: Senator, personally, I feel that the Amending Article should be by a majority of each house only, but, as Mr. Paul says, divergent views were held by the various constituent organizations of our committee.

SENATOR PROCTOR: Mr. Arthur J. Edwards (No. appearance)

Mr. Walter J. Bilder, New Jersey Committee for Constitutional Revision and the Lawyers' Non-Partisan Committee for Constitutional Revision. He is also appearing before the Judiciary Committee.

MR. SPENCER MILLER: He is appearing before the Judiciary Committee.

SENATOR PROCTOR: Mrs. Frederick Holman, of the Asbury Park League of Women Voters.

MRS. HOLMAN: I am speaking for the League of Women Voters, and I believe our Chairman wants to have all the speakers under one group, as we have only fifteen minutes allotted. So I will speak after our chairman, Mrs. Ingram, has spoken.

SENATOR PROCTOR: You will speak after she has spoken?

MRS. HOLMAN: Yes.

SENATOR PROCTOR: Mrs. Charles Haddock, Jr., President, New Jersey State Federation of Women's Clubs.

MRS. MADDOCK: Mr. Chairman and Members of the Committee: The members of our executive board who are here this morning have wished to go on record as being strongly in favor of a method for revision being included in the Revised Constitution. We are members of Mr. Paul's committee; we have followed along very closely with that. I would very much like to have the right later on, which I am sure we have as citizens, to present a statement from my board of trustees which does not meet until the end of this week. We have gone into this thing carefully, not as carefully perhaps as the League of Women Voters, because it is not our main object, but I am sure our women's studies will bring an intelligent opinion.

SENATOR PROCTOR: Thank you. You may send that brief to me. It it pertains to the Executive or Amending Article, send it to me.

MRS. MADDOCK: There are several things. I thought possibly they might all be incorporated in one statement. Would you rather have it broken up?

SENATOR PROCTOR: I think it should be broken down because these committees are going to meet separately before they meet as a committee of the whole and submit recommendations to the committee of the whole, and we would be very glad to have you submit your brief or draft.

MRS. MADDOCK: Thank you.

SENATOR PROCTOR: Mrs. Sydney B. Ingram, Vice-President of the New Jersey League of Women Voters.

MRS. INGRAM: Mr. Chairman and Members of the Committee: In the absence of Mrs. Barus, our State Chairman, I am going to read the statement for the League of Women Voters and following my statement Mrs. Robbins, our Past President, is going to supplement it with a few remarks. Then, we would like to have a roll call of some of our people who are present today who just want to rise, if they may, in their places and affirm.

SENATOR PROCTOR: And subscribe to what you say?

MRS. INGRAM: (reading) Mr. Chairman:

The New Jersey League of Women Voters, whose entire program for the more than twenty years of its existence in this state has dealt only with the study of and participation in government, has long been aware that a thorough revision of the State Constitution was necessary for the efficient and economical functioning of our state government. It has recognized that the difficulties inherent in the amending process provided by the 1844 Constitution tended more to prevent revision than to promote it, in the past. It believes, therefore, that the proposed draft now under consideration here should not only provide a simpler amending process, but should also provide a method by which the Constitution will be periodically subject to review. Although it has been our belief that constitutional revision would most democratically be obtained by the convention method, we readily agree that the presently proposed draft prepared and submitted by your Legislative Committee for consideration at these public hearings is an excellent one. We commend you for your fine work.

We appreciate this opportunity of appearing before you to submit the following suggestions regarding Article IX on Amendments, Paragraph 1:

The New Jersey League of Women Voters believes the amending process in the proposed draft is not flexible enough to meet changing needs, since a small minority could block passage of any amendment. We would, therefore, propose as a substitute that an amendment may be submitted to the people at any general election by a majority of both houses of one Legislature, provided,

1. It has been printed, on the desks of the members, at least 30 calendar days, and

2. At least one properly advertised public hearing has been held, and

3. The Governor signs it, or, if the Governor fails to do so,

the Legislature repasses it by a 2/3 vote.

Furthermore, we believe it is of the utmost importance to provide in the Constitution for future changes to be made by revision. We propose that the question of authorizing revision shall be submitted to the people at a general election, in any year designated by law, or failing such legislative action, automatically, 20 years after the last such referendum election. If the people authorize revision, a convention composed of as many members as com prise the joint meeting of the two houses of the Legislature, shall be elected in the same manner as members of the Legislature, at the next general election; and such convention shall prepare a revised constitution and submit the same in such manner as it may direct at the next succeeding general election; unless the Legislatures shall by law have made other provisions for the election, designation or appointment of the body to be authorized to prepare and submit such revision.

In making the above suggestions we are in agreement with the New Jersey Committee for Constitutional Revision, whose position we support and whose actual wording we have largely used.

The presence here today of League members from all parts of the state is an indication of the great importance we attach to this revision question. We cannot, therefore, too strongly urge you to include a provision for regular referenda on general revision of the State Constitution.

Now, Mrs. Barus has already submitted a complete draft to you or to the Chairman of the Joint Committee and that is substantially what I have said, so do you want this in addition?

SENATOR PROCTOR: Yes, I would like to have it if you don't mind leaving it here.

MRS. INGRAM: May Mrs. Robbins supplement my remarks now?

SENATOR PROCTOR: She may.

MRS. L.H. ROBBINS, Past President, New Jersey League of Women Voters.

Mr. Chairman and Members of the Committee: I am here to just add importance to Mrs. Ingram's speech. I think she said, and it has already been said by the other speakers, pretty well what we believe. We are here today to impress upon your minds if you need it the fact that the women of the State, not one organization but all the big groups of women in the State, have devoted the last three years in their legislative study departments in to this particular problem in New Jersey because, the years of being aware of some lack of government in our cities and in our counties and in our State, too often do we find that the dead-end is the 1844 Constitution under which we are trying to operate; and so, three years ago, when both of the major party's gubernatorial candidates made pronouncements for revision of the Constitution, the League of Women Voters was ready for it. We had the background to say, "Here is something to be done", and so you perhaps recall that there was a State Committee formed of this wide committee of which Mr. Paul is now functioning as our Chairman, the other groups have followed through, and there is no subject to my knowledge that the whole State has rallied to as the subject of this revision. It seems to me, however, that today this hearing is the No. 1 item on the whole revision. Shall we do a good job on this Article IX, so that never again shall we have to devote three years to an educational campaign to make the State aware of the fact that the document is faulty? I believe quite seriously, and I think you will agree with me--we can hardly help from agreeing--that we cannot go to the people when we present this document in November, and I am taking it for granted it is going to pass too, with a poor document. We want it so good that we can get out and work for it in October and it certainly will not be good enough to work for if this amending clause is not perfectly fine and far-reaching and liberal, with all the qualifications that have

already been pointed out by Mr. Paul and Mr. Smith, so may I add as a person in the State and as one very closely identified with nearly all the organizations of women, because I am quite a joiner, that the women of the State certainly shall continue the battle, whatever it may be, until the amending clause, Article IX in our Constitution, is modernized to meet present-day needs.

SENATOR PROCTOR: Thank you, Mrs. Robbins. As Senator Farley stated, the committee deliberately left this question open to find out what the opinion of the public was on periodic referendum.

MRS. ROBBINS: I am glad that I have a minute to say that we were more than disappointed when the Commission appointed by the Legislature two years ago made no reference to amendment, so after all, you folks are on the spot more than ever.

SENATOR PROCTOR: I don't think we are on the spot. I can't speak for the rest of the committee but, personally, I feel it should be in there and I think from talking with the rest of the committee, without quoting them, that they feel the same way.

MRS. ROBBINS: We are here to back you up and are also here to do something else if we don't find it.

SENATOR PROCTOR: The question is, what will you do if we do what you want us to?

MRS. FREDERICK HOLMAN, of the Asbury Park League of Women Voters:

MRS. HOLMAN: Mr. Chairman, the Monmouth County delegation came over this morning just to urge you to include this provision for periodical referendum providing that the people can vote at least every twenty odd years whether they want a new constitution. We feel that that is very important and we know how long it took last time with ninety-nine years before we were able to express our opinion even though the Constitution at that time was hopelessly outmoded and inadequate. There is a little quotation from Jefferson which I think fits in very nicely; he said, "The Constitution should be revised every nineteen years because each new generation has a

right to choose its own form of government. The living should not be compelled to obey the laws of the dead." One more thing we would like to add and that is, if we have this provision included, we hope tha t the next group that will revise the Constitution will be as successful as you have been.

SENATOR PROCTOR: Thank you very much. You are willing to go Jefferson one year better, as I understand it.

MRS. HOLMAN: Yes, extend it one more year.

SENATOR PROCTOR: Mrs. H.K. Halligan, of the Montclair League ow Women Voters.

Mrs. Halligan: Mr. Chairman and Members of the Committee: I am here simply to give the backing of the League of Women Voters of Montclair to what Mrs. Ingram and Mrs. Robbins have said.

SENATOR PROCTOR: Thank you. Mrs. L.C. Gillette, of the Morris County League of Women Voters.

MRS. GILLETTE: I just want to say that the Morris County League of Women Voters endorses the statement of Mrs. Ingram and Mrs. Robbins.

SENATOR PROCTOR: Thank you. Mrs. Louis Taylor, of the Midtown League of Women Voters, Newark.

MRS. TAYLOR: My statement is the same. We are backing Mr. Paul and Mr. Smith in the matter of revision.

SENATOR PROCTOR: You subscribe to what Mr. Paul, Mrs. Ingram and Mrs. Robbins have said?

MRS. TAYLOR: Yes.

SENATOR PROCTOR: Thank you. Mrs. George V. LaMarte, Somerset County League of Women Voters.

MRS. LAMARTE: I am here representing the Somerset County League of Women Voters and to endorse the statement of Mrs. Ingram and Mrs. Robbins.

SENATOR PROCTOR: Thank you. Mrs. E.W. Anderson, of the Passaic County League of Women Voters.

MRS. ANDERSON: Mr. Chairman and Members of the Committee: We approve of the periodic revision, as stated by Mrs. Ingram and Mrs. Robinns.

SENATOR PROCTOR: Mrs. F.H. Hopkins, of the New Brunswick League of Women Voters.

MRS. HOPKINS: Mr. Chairman, I wish to say the same thing for the New Brunswick League of Women Voters.

SENATOR PROCTOR: Mrs. H.T. Wilder, of the Nutley League of Women Voters.

MRS. WILDER: The Nutley League of Women Voters supports the principles as set forth by Mrs. Ingram and Mrs. Robbins for periodic revision.

SENATOR PROCTOR: Mrs. Floyd Lyle, of the Fairlawn League of Women Voters.

MRS. LYLE: I would like to speak for the Fairlawn League of Women Voters and we support the principle of periodic revision as stated by Mrs. Ingram and Mrs. Robbins.

SENATOR PROCTOR: Mrs. R.L. Barbehenn, Plainfield League of Women Voters.

MRS. BARBEHENN: I represent the League of Women Voters of Plainfield and we are in support of what our State officers have given.

MR. GLICKENHAUS: Mr. Chairman, did I miss the endorsement from Hudson?

SENATOR FARLEY: Mr. Chairman I would like to ask Mr. Paul a question. Mr. Paul, Mrs. Holman brought up the point about the new generation having the right to select their own form of government and I agree with her, but don't you think there should be some safety valve or limitation, when there is a proposed revision or another new draft of the constitution, so as to make sure that the Bill of Rights is contained therein?

MR. PAUL: That can be done by legislative act, the same as is done here in setting up this method to preserve the Bill of Rights.

SENATOR FARLEY: We are in world conflict today to preserve democracy, and I am merely one of the committee, but don't you think in view of the world conflict and to insure democracy for the future, we should in some way tie in with this, the clause "provided however that the Bill of Rights is contained in the proposed new draft."

MR. PAUL: No, I think that can be covered by a future legislative enabling or authorizing act, the same as we have done in this case.

SENATOR FARLEY: One legislature cannot bind another Legislature. You are for a basic or organic law which sets up means and ways of devising a new consitituion. My thought was it might be foresight to include in there a clause to insure perpetuation of the precepts and doctrines of the Constitution of our great United States.

MR. PAUL: I think that those precepts are sound, Senator Farley, as they have proven to be sound in the Bill of Rights for the past hundred years, and the probability is you will find them sound for another hundred years or more. We cannot unduly bind future generations and I do not think we should attempt to unduly bind future generations. I think the Bill of Rights today is unchallenged because it is found to be of essential value. I hope it will be continued in the future but I do notthink you or I should say that it should continue for another hundred years. The people a hundred years from now might have some divergent views on some particular point.

SENATOR FARLEY: Thank you, Mr. Paul.

MR. EDWARDS: Mr. Chairman, I wasn't on the list, but might I have a word? I am Mr. Arthur Edwards of Montclair.

SENATOR PROCTOR: Oh, yes.

Mr. Edwards: On this specific point we are discussing now I wanted to say that if any such provision as that is included, I think it should also have a clause which would permit

the introduction of new rights in the Bill of Rights, which apparently the Legislative Committee believes now should not be done under the direction of the Feller Bill. But I think a way should be left open for the introduction of new rights, which are not in conflict with those already stated, because a right only belongs in the constitution when it has become the accepted common law of the State, but in the next fifty or a hundred years there may be things which are today experimental legislative items which will become so well established that when they do come along, they will be put in as a matter of course. I think I have introduced one letter which came to this Committee with regard to the Bill of Rights - that these rights shall not be excluded on account of race, color or creed, now that the Supreme Court of New Jersey says is the law so far as color is concerned. In a recent case three or four years back three of the members of the Court said that it is now a law in New Jersey that the civil rights shall not be denied anybody on account of color. If it can't go in this time, I think the next time they have a revision a way should be open for its inclusion in the Bill of Rights.

SENATOR FARLEY: Mr. Edwards, I don't mean to disagree with you, but I think in the Feller Bill you will find that the only limitation is to make sure that the contents of the present Bill of Rights shall be incorporated in this draft. There is no limitation contemplated as to any additional new rights and any new clauses to that Bill of Rights.

MR. EDWARDS: I think you are correct. That is the attitude I took in one of the letters to this Committee, but it has met apparently a stone wall on somebody's part and we just stick to the old text.

SENATOR PROCTOR: That is true. There is an opposing school of thought that it means to exclude any other rights.

MR. EDWARDS: I believe, just as you say, that it means that everything that is in there now is to be retained, but

leaves the way open for anything not in conflict.

SENATOR FARLEY: That is the interpretation of this Committee.

MR. EDWARDS: There seems to have been a stone wall toward the consideration of the recommendation of changes.

SENATOR FARLEY: Thank you, Mr. Edwards.

SENATOR PROCTOR: Mr. Roger Hinds of South Orange--

MR. HINDS: Mr. Chairman and members of the Committee, ladies and gentlemen: I come here representing officially only my immediate family and household of six voters, two of whom are in the service, but unofficially I think I can say that what I shall have to say represents the views of practically everybody with whom I have discussed the matter in the Oranges and Newark. I might say that there is a very wide interest in the new constitution, that generally speaking the people are very gratified that we are to have a new constitution, and that they approve generally of what has been proposed. They think a very fine piece of work has been done. I would like to emphatically endorse what Mrs. Robbins said, namely, that this amending or revising feature is by far the most vital single thing. If it were not for that, rather than have nothing new, I should settle for what has been proposed exactly as it has been proposed. But I think that if there were to be no provision for amendment except the simple one that has been proposed, I should almost rather have the old constitution. I came here, therefore, to object to so rigid a limitation on the amending clause as to require two-thirds of all the members of each House so that the people might even be permitted to vote on whether or not they wanted to alter the constitution, because "the people" is the sovereign and the members of the Legislature are merely the agents or servants of the people. The purpose of a written constitution as I understand it is to, first, furnish a framework or skeleton for government, and secondly, that the people may restrain themselves from their own

impulsive actions in changing the fundamental law, not that the servants of the people should put any restrain on the people, but the people themselves should restrain themselves. I, therefore, was going to urge, as has been urged here by many, that a bare majority of each House of the Legislature be requisite for submitting to the people whether or not they want to amend their own Constitution. After hearing Mr. Paul, however, and reading what he has suggested, which is in line with the New York constitution, I must say that I am not so emphatic in my criticism of this two-thirds requirement. If we were to have in addition the provision which Mr. Paul and others have submitted here, which I have carefully read--if we were to have it exactly in the wording in which it has been suggested by Mr. Paul, I should as one citizen be perfectly satisfied to leave the amending clause as it is. However, there must, it seems to be, be some means by which the people can be permitted to alter their own constitution. Conceivably if there were eight members of the Senate at some future date whose purposes were not concurrent with that of the enormous majority of the people or the majority of the Legislature and of a public-spirited Governor, those eight might block the will of all of the others that I have mentioned and they wouldn't even, as now proposed, be required to come forth and announce publicly and be counted. They might have colds or headaches which would keep them at home and yet their votes would be effectively counted to block any amendment or alteration. However, with the provision that Mr. Paul has submitted, the people would be protected not only against their own impulses, but against having their overwhelming views blocked by a small and possibly unrepresentative minority.

SENATOR PROCTOR: Mr. Hinds, do you believe that the present method of amending the Federal Constitution is proper?

MR. HINDS: I do not think it is ideal.

SENATOR PROCTOR: You would rather see a majority of each House of Congress than two-thirds?

MR. HINDS: That brings us into some considerations that do not enter here. In the first place I think that the Legislature of the national government is more truly representative than conceivably the Legislature as it is presently organized in the New Jersey Constitution is.

SENATOR PROCTOR: Why do you say that?

MR. HINDS: I think that there is a difference to be drawn between a possible eight members of the New Jersey Senate who by our hypothesis would have views not concurrent with those of the vast majority of the people or possibly not even of their own constituents on the one hand and a mere one-third of the ninety-six members of the United State s Senate, each state having not one but two representatives and having a much wider base of representation than a conceivable blocking eight in the New Jersey Senate. Therefore, I do not think that we can draw an exact parallel. However, I would not back away from the parallel even if there were. I still believe that it would be very inadvisable to put in the power of eight conceivably willful men -- to put into their hands the power to block a hypothetical vast majority of the people, a majority of the Legislature and a public-spirited Governor.

SENATOR PROCTOR: Now, conceivably, there could be as many proportional willful United States Senators as these eight Senators.

MR. HINDS: That is conceivable, but it is improbable that twenty-five men could be found whose views would be as contrary to the popular majority or overwhelming majority as it is conceivable that merely eight men could who are selected for that purpose in the State of New Jersey. I don't think it would be possible to find a similar lack of representative quality.

SENATOR PROCTOR: It is only a question of proportion. It is exactly the same fraction.

MR. HINDS: It would not be the same fraction of

population as it would be in the United States. Furthermore, we are not arguing on whether or not the amending provisions of the United States Constitution are ideal. The United States Government is a Federal government wherein we combine forty-eighty sovereign states. New Jersey is a far simpler section of the people. There is only one sovereign in New Jersey and that is the people. In the United States we have two sovereigns; we have the sovereign Federal nation and the forty-eight sovereign states. Historically it would be almost impossible - it certainly would be politically impracticable and not feasible - to attempt to amend the United States Constitution so as to make easier the amending process. Furthermore, history shows that it has been practicable under the present Federal Constitution to amend very often. I think we have had twenty-one amendments. History shows that it has been almost impossible during the last hundred yearsto amend under the provisions that were provided by the Constitution of 1844. This is the time, I think, to unblock the Pass of Thermopylae, which I think should be held, if at all, by the people and not by any small number of servants of the people. Thank you.

SENATOR FARLEY: Mr. Hinds, what this Committee wants to find out is as to one substantial element, whether or not it should be easy to revise it, or rather it should be not difficult, but probably require additional votes, such as two-thirds. We are conversant with the fact that New York by their amending process has amended their Constitution, I believe, over a hundred times in the last 45 years, and this Committee having knowledge of that fact and having knowledge of the famous words as recorded in the minutes of the 1844 Convention that minorities of today may be majorities of tomorrow, wants to get the benefit of the public reaction as to the process of amendment. What we would like to know from you is whether or not you feel after you have heard the expressions of Mr. Paul and Mr. Smith and Mr. Stackhouse and the several women.

here today -- whether you are of the opinion it should be a majority or two-thirds or three-fifths.

MR. HINDS: My personal opinion is that if there were to be no general revising clause as Mr. Paul has suggested, it would require a mere majority of each of the Houses of the Legislature to su bmit a proposed amendment to the people for their vote. However, if we are to have Mr. Paul's revising clause, which thoroughly protects the people; not only does it require proper deliberation of their own impulsive action in changing the fundamental law, but also protects them against being blocked by some political recalcitrants in the Legislature. Then, I think that the question as to whether or not it be two-thirds or three-fifths or a bare majority in the Legislature becomes relatively academic because the Pass of Thermopylae has then been unblocked and the people can get through the Pass. That is what I am interested in. I am very much interested as a citizen that we do not further live under the conditions that we have lived under during the past one hundred years where it requires, as one of the speakers has said, three years of intensive educational campaign even to have the opportunity to pass on a new constitution. Now it is conceded that one of the purposes of a constitution is to restrain the people against their own impulsive actions. The restraint should be a restraint which the people place upon themselves, not a restraint that servants of the people place upon their own masters. If there were to be some other additional restraints than a mere bare majority in the Legislature, I would say it should take the form of something larger than a majority vote of the people, that is, if we were to have only this amending clause as is now proposed. But it seems to me that the clause proposed by Mr. Paul ideally meets all of these considerations. It provides conservatism so that there can be no impulsive action, but at the same time it provides flexibility and freedom.

SENATOR PROCTOR: Thank you Mr. Hinds. Mr. Hinds, I take it that in the event we should include this periodic revision, you would be satisfied with the two-thirds?

MR. HINDS: That is exactly right.

SENATOR PROCTOR: Mrs. Louis Rappaport, New Jersey State President of the National Council of Jewish Women --

MRS. RAPPAPORT: Mr. Chairman and members of the Committee: As a member organization of the Committee for Constitutional Revision, our Conference wishes to support the points made by Mr. Paul this morning. I should like to say also that we agree thoroughly with Mrs. Robbins when she says that we are most anxious that this document when it is submitted to the people be something that we can wholeheartedly support, and that we therefore urge this Committee and the others to take as much time as possible in the preparation of the document and in ascertaining the will of the people so that we can go to work and see that this document is passed as a whole at the election. We are interested in a guarantee that future generationswill not be impeded as we have been in the past in securing changes in our basic Charter. The greatest difficulty with our present Constitution has been the inability of the voting public to secure changes which changing social and economic circumstances demand. An omission of such a guarantee in the new Constitution would be a fatal mistake. We are pleased, therefore, with the amending process which the proposed Constitution contains with one exception: In Article IX, paragraph 1, we would substitute the three-fifths vote for the two-thirds vote. However, no method is provided for the modification of the Constitution by popular demand. We, therefore, are urging upon your Committee the fundamental necessity of a provision for constitutional conventions at least every twenty years. It is essential that there be provided some method for the periodic modernization of our Constitution.

The one hundred years that have elapsed since the last overhauling of our Charter is ample proof that definite plans should be laid now to avoid a repetition of this experience. Recurrent conventions will give us definite assurance that no such long period will pass before a complete new re-examination of the Constitution and that the public will have the right from time to time to assert its opinions in this respect. Since so much has already been said on this subject, we wish merely to add our voice to those who have already urged these modifications of the proposed Constitution. We trust that the Committee will give this suggestion its favorable consideration and I should like to say that we expect to send you a much more definite and complete brief than this if we have that privilege.

SENATOR PROCTOR: Mrs. G.M. Uptegrove of the League of Women Voters, Maplewood --

MRS. UPTEGROVE: We simply wish to endorse the statements that have been made at the beginning of the meeting.

SENATOR PROCTOR: Thank you.

ASSEMBLYMAN GLICKENHAUS: Mr. Chairman, is Mr. Paul here?

SENATOR PROCTOR: Yes.

ASSEMBLYMAN GLICKENHAUS: Mr. Paul, a thought just entered my mind and I wanted your opinion on it. Under the statutory enactments as they exist now, do we not provide a method by which the people can pose a public question to the electorate at large which would effect the revision of the Constitution at any time that they comply with the statute? You see my viewpoint is that if you are going to restrict it to ten or twenty years, would you therefore preclude the question of putting a public question on the ballot involving the revision of the Constitution pursuant to statute?

MR. PAUL: I don't think you happened to be here when I read my statement and I think that is covered. For your information I proposed an addition to Article IX on the revision

clause, specifically providing in the first place that the Legislature shall submit to the people at any general election: "Shall a revision of the State Constitution be submitted for adoption or rejection by the voters at the next general election?" Then, in addition to that, we go on and propose that if the Legislature does not for a period of twenty years put that question for popular referendum, then automatically the question shall go on the ballot, "Shall or shall not a revision be adopted under such and such terms?" with a further proviso that the specifications for machinery be given here, "unless the Legislature shall by law have made other provision for the election, designation, or appointment of the body to be authorized to prepare and submit such revision." The purpose of this, Sir, is that if a hundred years from now some other method than what is suggested here should be deemed by the Legislature to be more efficient - it might be by radio or television - goodness knows what - it might be possible for the Legislature to adopt it.

ASSEMBLYMAN GLICKENHAUS: Your viewpoint, therefore, is that the Legislature, shall have the power to submit it to the people; and in the event it is not so submitted by the Legislature, there shall be an automatic provision for the submission to the people of the question of a revision.

MR. PAUL: That is right.

ASSEMBLYMAN GLICKENHAUS: My point is a little different that your viewpoint. It is my opinion - I don't know whether you have exhausted this, but I rub shoulders with the law a little bit down here - there is a statute covering public questions which provides, if I recall correctly, that such a public question could be submitted by referendum on the ballot at any time that you comply with the statute. Now would you eliminate that portion?

MR. PAUL That is not eliminated. That is reaffirmed.

ASSEMBLYMAN GLICKENHAUS: My point is that if that statute stands,

the power is always inherent in the people.

MR. PAUL: I am not a lawyer but I would say that is reaffirmed by the Constitution.

ASSEMBLYMAN GLICKENHAUS: I see your point. Thank you.

MR. PAUL: I possibly might make it clearer to you by stating in the very beginning of this - I didn't read the full thing to you - I read it to the Committee before you came in - I read this: Without limiting the inherent right of the people at all times to revise their constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, etc... In other words all we are doing here is to provide a specific piece of machinery.

ASSEMBLYMAN GLICKENHAUS: I see. Thank you. I am sorry I was late and that is perhaps why --

MR. EDWARDS: Might I add just another word?

SENATOR PROCTOR: Mr. Edwards--

MR. EDWARDS: I think that under the public question statute referred to you could not submit a question which would in effect be contrary to the existing Constitution, so I don't think the proposed procedure would have anything to do with the exercise of the right you mentioned.

ASSEMBLYMAN GLICKENHAUS: My point there was that the inherent power is always in the people regardless of what the Constitution provides. The Constitution provides that the inherent political power is in the people so that would not necessarily be contrary to the form of the Constitution.

MR. EDWARDS: I doubt very much whether the Legislature could submit a question which would in effect make a new rule which was contrary to the existing rule of the Constitution.

ASSEMBLYMAN GLICKENHAUS: I see what you mean.

SENATOR FARLEY: Mr. Paul--

MR. PAUL: Yes.

SENATOR FARLEY: If this proposed paragraph is included in the new draft, I take it that your further recommendation would be that the clause involving not submitting to the people more than once every five years an amendment on the same subject matter should be in there to make sure there would be no conflict, so that the majority or the two-thirds, or whatever it may be, in some two or three successive years, would not be stopped from proceeding notwithstanding the clause that the subject matter to be voted on should not be submitted more than once in every five years. Is that your thought?

MR. PAUL: Yes, on the time-lock. I didn't speak on that, Mr. Chairman, because we wanted to concentrate on the thing we thought was of vital importance. We have somewhat of a preference for three in place of five. I think some time-lock is necessary to prevent recurring and constant agitation on the same question, but we would suggest for your consideration the possibility of changing the time-lock --reducing it from five to three years. As long as the question has come up, I would like to have that on the record.

SENATOR PROCTOR: Miss Ida Lillian Page, representing Mrs. Mary D. DuBois, State President of the Woman's Christian Temperance Union--

MISS PAGE: I am very sorry that our State President cannot be here today. There is illness in her home which prevented her coming. She asked me to represent her because I have charge for our State W.C.T.U. of the Christian Citizenship Department, and ever since the Committee of which Mr. Paul is the Chairman has been working, I have represented our organization on that Committee for Mrs. DuBois. She has written to Senator Eastwood and I have a copy in my own handwriting of what she wrote to him and I would like to read it at this time. The gentleman to my left asked a few minutes ago if there was anyone here from Hudson County. I am from Hudson County, from Union City. Years ago when I first came

down here to Trenton Mrs. Robbins -- I was serving as a club woman on the Legislative Department -- introduced me to this coming to Trenton and I have been coming ever since. She introduced me as a dry woman from Hudson County and that is what I have been standing for all these years, Mr. Chairman. Now I am going to read to you Mrs. duBois' letter, which was directed to Senator Eastwood:

"As Chairman of the Committee on Revision of the State Constitution, will you please convey the following message to your Committee?

"As President and Legislative Chairman of the New Jersey Woman's Christian Temperance Union, I speak for this organization in stating that we are pleased that a revised Constitution is to be submitted to the public for approval or disapproval at the next general election. Furthermor, being advised that no provision has yet been made for reconsideration of this Constitution periodically, we respectfully urge that some provision be made whereby the public may reconsider and vote upon the adopted Constitution at stated intervals, - perhaps every twenty years.

"With all good wishes for the writing of a better constitution for the State of New Jersey, I am,

"Respectfully yours,
(Signed) Mary DuBois."

That is our stand at the present time. Our women have been studying the Constitution in our local communities during these past few years and are interested. I am sure that they are going to watch the action of this Committee in this revision that you will submit to us. We are very much interested. A lot of people think that because we are the Woman's Christian Temperance Union that the only thing we are interested in is the liquor traffic. We are very much interested in the public welfare of the people and conditions in the homes, very much indeed. It has been a privilege to speak for Mrs. DuBois.

SENATOR PROCTOR: Is Mr. Walter J. Bilder in the room?

MR. MILLER: He hasn't returned yet.

SENATOR PROCTOR: We seemed to have exhausted the list.

MRS. MIDDOCK: Mr. Chairman, is it permissible for me to speak as a citizen in reply to something Mr. Edwards said?

SENATOR PROCTOR: Yes.

MRS. HADDOCK: I think it is pertinent. May I ask if the word "all" in the Bill of Rights means all citizens? If it does mean all citizens, why break the thing down into race, color and creed? It seems to me it is time for us to recognize that the citizenship of New Jersey like the citizenship of the United States is made up of people with different nationalities and origins, people of differing color and people of differing religions, and as soon as we begin to break down the terminology "all" into race and color and religion, we immediately focus the attention on the differences and it is time to focus the attention on the unifying of these differences.

(Applause)

SENATOR PROCTOR: Thank you, Mrs. Haddock.

(Continued on next page)

MR. EDWARDS: Mr. Chairman, that being addressed to me, might I submit this remark, that you will note that reads, "All men are of a nature free and independent and have certain natural and inalienable rights." Now, most of the rights that people are calling for now are not natural and inalienable rights; they are legislative privileges. The right to vote, for instance, is a legislative privilege. It isn't an inalienable right. There are lots of others in there. So, just by way of mentioning it, I don't think that applies quite to what I said and while I am on my feet let me say that the right that I spoke of is number four and I would end that up, "and no person shall be denied the enjoyment of any civil right merely on account of religious principles, race or color." You see that talks about civil rights there as opposed to at the top - certain natural and inalienable rights, which is what you will find discussed by Paine and Jefferson and various other gentlemen of that era.

SENATOR PROCTOR: The article on the Bill of Rights is before the Judiciary Committee and is outside the scope or the work of this Committee so it is practically academic here because whatever we did, we wouldn't want to override them.

MRS. MADDOCK: I just felt if you acknowledged the question for Mr. Edwards, that I was privileged to come back. Thank you.

SENATOR PROCTOR: You got a good hand. Mr. A. R. Everson--

MR. EVERSON: The New Jersey Taxpayers' Association has been a part of the Committee which Mr. Paul represents, and for the record I would like to say that we are in complete accord with the statement that he made.

SENATOR PROCTOR: Thank you, Mr. Everson.

MRS. HOPKINS: I sent up a supplementary list of members or representatives of various Leagues of Women Voters who are here.

SENATOR PROCTOR: I would like to get them on the record. Mrs. R. L. Miller of the Summit League of Women Voters --

MRS. MILLER: Mr. Chairman and members of the Committee: I wish to concur with the statements made by the State League of Women Voters and the Constitutional Revision Committee in favor of a provision for a revision every twenty years. Thank you.

SENATOR PROCTOR: Thank you, Mrs. Miller. Mrs. Eugenia Slowinski of the Polish League of Women Voters --

MRS. SLOWINSKI: I would just like to endorse what Mrs. Ingram and Mrs. Robbins said.

SENATOR PROCTOR: Thank you very much. Miss Florence A. Mapes of the Paterson League of Women Voters --

MISS MAPES: Mr. Chairman and members of the Committee: Representing the Paterson League of Women Voters, I wish to say that I most heartily subscribe to the position of the New Jersey League of Women Voters on Article IX presented by Mrs. Ingram and Mrs. Robbins. Thank you.

SENATOR PROCTOR: Mrs. R. B. Currier --

MRS. MINTZ: Mrs. Currier is out of the room. May I speak for her.

SENATOR PROCTOR: What is your name?

MRS. MINTZ: Mrs. George Mintz. The Westfield League supports the statements made by Mrs. Ingram and Mrs. Robbins.

SENATOR PROCTOR: Thank you, Mrs. Mintz. Mrs. George Machelt --

MRS. MACHELT: I am speaking for the Elizabeth League of Women Voters. We also support wholeheartedly the statements made by Mrs. Ingram and Mrs. Robbins.

SENATOR PROCTOR: Mrs. F. W. Hopkins, representing the Consumers' League of New Jersey --

MRS. HOPKINS: I am speaking not as a member of the League of Women Voters. We have already submitted a brief and Mrs. Zwemer spoke before. We also are members of the New Jersey Committee for Constitutional Revision and endorse their position.

SENATOR PROCTOR: You are speaking out of your role as a member of the League of Women Voters and as a Consumer now.

MRS. HOPKINS: I am speaking for Mrs. Zwemer. That is right.

SENATOR PROCTOR: Is there anyone else?

MRS. WOLF: I am Mrs. Hugh C. Wolf from the Tenafly League of Women Voters and I want to endorse what Mrs. Robbins and Mrs. Ingram have said.

MRS. RAPPAPORT: There are several representatives of the various sections of the Council of Jewish Women. One is Mrs. Robert Forer, who was here and left the room and who is the Legislative Chairman who represents the Trenton Section of the National Council; another is Mrs. Thomas Parsonnet who represents the Newark Section of the National Council; and another is Mrs. Harvey Rothberg, who represents the Plainfield Section of the Council.

SENATOR PROCTOR: I take it they all subscribe to what you have said?

MRS. RAPPAPORT: Yes.

MISS PAGE: If I may have the same privilege, there are women in the room from our organization. I would like to present Mrs. Fred Voll from Lyndhurst; Mrs. Elizabeth Banta from Hackensack; Mrs. Clarence B. Mount, who is the President of the Mercer County W.C.T.U.; and Mrs. Elsie H. Randall, who is one of the Directors of our organization the same as myself. We are very glad to have this group with us today.

SENATOR PROCTOR: So are we.

MRS. RAPPAPORT: My name is Mrs. Ruth Rappaport, and I represent the New Jersey League of Women Shoppers. I have a very short statement on revision. We believe that an important and responsible privilege has been granted to your Committee and we feel that that privilege should also be granted to each succeeding generation. As the revised draft now stands, no provision has been made for revising the Constitution either by constitutional convention or referendum within

a specified period of time and we feel that twenty years would be within a specified period of time, and we feel that we should not have succeeding generations say that we were shortsighted in 1944. Thank you.

SENATOR PROCTOR: Commissioner Miller --

COMMISSIONER SPENCER MILLER, JR.: Mr. Chairman and Members of the Committee: I should like to appear at this moment in my individual citizen capacity to say that in my judgment the proposed Revised Constitution which has been prepared by your Joint Legislative Committee is the most important State paper which has been issued by a legislative body in my lifetime. I think in its broad outlines it measures up to the hopes and expectations of the citizens of this State who invested the incoming Legislature with the responsibility of being at once a legislative body and an assembly charged with the task of proposing to the people of the State a new Constitution. Because I believe it is so significant in its broad outlines, I think those of us who have been interested in this problem of constitutional revision in this State are not only concerned about the inadequacies of Article IX but are hopeful that it will be the consensus not only of your own committee but of the entire Revision Committee to submit to the people of this State in the fall a proposed document which will more adequately provide for the amending process of the new Constitution.

Perhaps the most important part of any constitution is that which provides for future changes. Constitution makers who have due regard for the sovereignty of the people are under obligation to be very careful to avoid the mistake of putting arbitrary or insuperable hurdles in the way of the exercise by future generations of the very right which they themselves are exercising. The men of 1844 did not intend to make it impossible for the people, for a century, to revise the constitution by a method analogous to that which they were employing. They recognized that the people at any time would have the <u>right</u> to follow their example, but by failing to provide a convenient and automatic method for ascertaining the will of the people concerning revision they

unintentionally defeated repeated attempts in later years to correct demonstrated and serious deficiencies in their handiwork.

Those of us who are familiar with the provisions of Article V of our Federal Constitution are aware that the alternative method of a constitutional convention is provided for in that section. It seems to us and it seems to me as a private citizen and one who has had an opportunity over the past three years to have been rather closely associated with this movement for constitutional revision that there should appear in this new document when it is submitted to the people in November a provision for giving to the people of this State an alternative method, if you will, for constitutional revision.

One of the things, therefore, upon which most of the civic groups which have worked for revision during the past few years are agreed is that we should not tie the hands of future generations by being guilty of a similar omission. It seems to me that the proposal for an automatic vote on revision at <u>least</u> every 20 years, in the form suggested by the New Jersey Committee for Constitutional Revision, is an almost ideal solution of the problem. It sets up a constitutional convention as the standard procedure, but leaves the legislature entirely free to prescribe a different procedure if time and experience make it seem wise to do so.

I very much hope, however, that you will go one step further in making the constitution to be voted on this November adaptable to changing needs. It would be unfortunate if the only way to get minor adjustments or a few changes in specific provisions were to have a general revision. Yet this may prove to be the case if the proposed requirements of a 2/3 vote in each house of the legislature on specific amendments is retained. I realize that the reason for that requirement is the quite proper feeling that amendment should not be too easy. I think, however, that everyone will agree that when we say that amendment should not be too easy we do not mean that the process of amendment should be subject to the control of an excessively small minority of the people. We mean rather that the people should be protected against

being imposed upon by the submission of ill-considered amendments too hastily conceived. If that is so, the remedy is to be found in safeguards calculated to guarantee real deliberation, rather than safeguards which put it in the power of small minority or sectional interests indefinitely to balk the majority. Here again I think the New Jersey Committee for Constitutional Revision has proposed a happy solution. First, they would require that proposed amendments be given a hearing and be before the legislature and the public for at least 30 days prior to passage; second, they propose that unless an amendment is submitted with the approval of all three of the participants in the ordinary legislative process, -- that is, by the senate, the assembly and the governor, -- it must get a 2/3 vote in each house of the legislature. The system of equal representation of the counties in the senate coupled with the distribution of population among the counties, makes it certain that the requirement of ordinary majorities on amendments is quite adequate to defeat constitutional amendments that might be harmful either to the rural counties or to the urban counties.

I should like merely to add to that statement, Mr. Chairman and gentlemen of the committee, that I think there is no question on which there is a greater unanimity among the friends and supporters of constitutional revision in the State at this time than on the imperative necessity for a more adequate provision for the revision of the constitution and in associating myself, as a citizen, with the proposal that has been made by the New Jersey Committee for Constitutional Revision I think I can say to you out of not a little contact with the citizens of the State that it would not only meet with their broad and general acceptance, but I think without such provision we would have grave doubts of securing the united support of the people of this State when it comes before the people in November of this year. It is for that reason I think you are charged with one of the most important tasks of any of the three committees in making provision in the amending section of this proposed constitution for its periodic review by the people of this State through

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the proposal that has been suggested by the New Jersey Committee.

SENATOR PROCTOR: Thank you very much, Commissioner.

Now is there anyone else?

MR. CHARLES R. ERDMAN, Princeton, New Jersey:

Mr. Chairman and Members of the Committee: I wanted to appear in support of the present draft of Article IX with the addition of the provision that once every twenty years the people of the State would automatically have the right to do as they did last fall, either accept or reject the proposed revision, and making provision so that the Legislature, either through convention or as the legislature might direct, as they did last year, may set up a method whereby, if the people voted that they wanted revision again, they could get it again much as we are getting or hope we are getting it this year. That is my thought and I would like to submit my written statement:

I desire to express my approval and support of the suggestion that Article IX should make provision for a periodic reference to the people of the subject of constitutional revision. It is in keeping with the democratic principles upon which our government is founded to allow the people to express their opinion of their fundamental law at periodic intervals without the necessity of having this question submitted to them by the Legislature.

The history of the movement for constitutional revision during the present century is proof positive of the necessity for this salutary provision; namely, an automatic referendum once every 20 years.

SENATOR PROCTOR: Thank you very much, Mr. Erdman. Is there anyone else?

MR. WOLF: Mr. Chairman: My name is Hugh Wolf, of Tenafly, and I just wanted to speak as a citizen interested in revision. I very heartily endorse the ideas presented here today on the subject of the necessity for popular referendum so that the will

of the people can determine what shall be done in our State. I wanted to ask a couple of specific questions about it so that I can understand whether the thing has been drawn up in such fashion as to accomplish what is desired in this matter. One of the things I understood Mr. Paul to read in his proposal had to do with the possibility that the legislature could direct the matter in various ways that I did not quite understand. I believe that in the present revision of the Constitution there were specific limitations set by the Legislature in the act which was drawn up; namely, that no revision of the method of representation could be included in the Constitution.

SENATOR PROCTOR: That is true.

MR. WOLF: I wondered whether or not in the phrases that were used in Mr. Paul's document there was similar provision that in submitting the question to the people for referendum, the Legislature could restrict the people so they would not be able to make such a change if they wanted to.

SENATOR PROCTOR: I take it from that that it could. Is that right, Mr. Paul?

MR. PAUL: "Unless the legislature shall by law have made other provision for the election, designation, or appointment of the body to be authorized to prepare and submit such revision."

SENATOR FARLEY: It makes it mandatory at least once every twenty years.

MR. WOLF: My question that I am not sure about is whether or not the legislature under this provision can restrict the convention as to what changes it shall be able to consider.

SENATOR FARLEY: I would say, no.

MR. WOLF: That was done in the present law and I wanted to make sure the constitution did not say the legislature could do it again.

SENATOR FARLEY: In my humble judgment, I would say this particular clause is for the sole purpose of permitting the people by convention, as set forth here, to determine whether the people want a new draft and what the content of the proposed new draft is. Is that true, Mr. Paul?

MR. PAUL: Yes. The purpose of this is to provide an automatic way and manner in which, if the Legislature fails to act, the question every twenty years will be proposed and then a constitutional convention will be set up to be composed of as many members of the joint meeting of the two houses of the legislature and elected in the same manner, provided however the legislature does not make other arrangements for the election, designation, or appointment of the body to be authorized to prepare and submit such revision. Conceivably the Legislature might say, "We will have a commission of ten people, five of them shall be from so and so, and five from somewhere else." The Legislature may determine the election, designation or appointment of the body to be authorized.

SENATOR PROCTOR: Mr. Paul, the question is, would that preclude the Legislature from setting a restriction saying, as in the Feller bill, that the present representation from the counties will remain as it is now or as it is twenty years from now?

MR. PAUL: That would provide no such restriction because the Legislature presumably, if it wanted such restriction, would provide for the election, designation or appointment of the constitutional drafting body in accordance with that.

SENATOR PROCTOR: Would that prohibit the Legislature--

MR. PAUL: No, in my opinion it would not prohibit the Legislature. I am not a lawyer.

SENATOR FARLEY: Mr. Paul, I think the further question was whether that proposed section would permit the legislature to restrict or confine the content of the New draft. Is that right?

MR. WOLF: That is what I am worried about.

MR. PAUL: I think the legislature which acted under that, in my opinion-I am not a lawyer-would have the same powers as the legislature utilized this time in its enabling act.

MR. PROCTOR: I am not so sure. You pose a very practical question because there are two philosophies in this State. Governor Edison said once that Government should be run by the people and not by acres. There are a lot of people in those acres who feel otherwise and I don't think that the smaller counties in the State would ever want to see a convention where they possibly could be obliterated-the county line-and that would be possible under a convention where you had, we will say, eighty-one members chosen according to population. You know that by far the vast majority of the population is in three or four counties in the northern part of the State. Well, the people in the southern part of the State, in Atlantic County and in Monmouth County, for instance, feel they have some rights, too. They want some rights I think, or at least their legislators do, and want to keep the representation as it is now.

MR. FARLEY: Mr. Wolf, do I interpret your question correctly, that your particular concern is whether the legislature by the mechanics as set forth in this provision can restrict the content of the new proposed draft? Is that right?

MR. WOLF: That is it, exactly.

SENATOR FARLEY: The purpose of this section is for the devising of a method for the revising of the constitution. In my humble opinion I would say that the mechanics as set forth here gives the legislature the right to call a convention. Once it is called, then I would think it is up to the convention to determine what should be in the proposed draft. The only thing left out of that question which probably may concern you is as to the determination of the content of the new constitution, we will say, fifty or a hundred years

from now. Then your particular concern is whether the legislature hereafter will have a right to approve or disapprove the content of the recommended draft.

MR. GLICKENHAUS: No.

MR. WOLF: I would be interested in that question also, as my understanding was that the intent of this thing was that the people can call a constitutional convention by referendum vote and the product of that constitutional convention shall then be submitted to the people without the intervening action of the legislature.

MR. GLICKENHAUS: Mr. Wolf, I don't know whether I understood you correctly, but, from what I got from your statement, you would be for the unrestricted right of the people, unrestricted by legislative enactments, in its convention to cover the whole field of constitutional revision without any legislative restrictions?

MR. WOLF: That is correct.

MR. GLICKENHAUS: Now, disregarding for the moment the thought about acres versus people, would you be in favor of the restricting provision if, say twenty years from now, we had many subversive influences; would you be against the legislature's restricting the impairment of the Bill of Rights in the consideration of the convention?

MR. WOLF: I should say that if the majority of the people had these opinions which you refer to as subversive, then we would be in a position where you would have to redefine what you mean by subversive.

MR. GLICKENHAUS: I say, suppose there were subversive influences; in other words, we have recognized the Bill of Rights for many years as being the fundamental of good government.

MR. WOLF: Yes.

MR. GLICKENHAUS: Now, would you be against the Legislature's holding intact the Bill of Rights and thus restricting the action of the convention?

MR. WOLF: I would be of the opinion that the decision as to what is right and good must be vested in the people --

MR. GLICKENHAUS: That's right.

MR. WOLF: -- and I would make no restriction on the constitutional convention as to what it shall submit to the people.

MR. GLICKENHAUS: In other words, the right shall be unrestricted to the people?

MR. WOLF: That's right.

MR. HINDS: Mr. Chairman, may I attempt to throw a little light on this question, entirely apart from this philosophy involved in what this gentleman has been discussing, as to whether the people shall rule or whether their rule shall be limited by their own servants or agents? The question is whether this particular proposal made by Mr. Paul on behalf of all these organizations has the effect of permitting the legislature to limit the content of any proposed revised constitution. As I read this, the answer is that the legislature will have that power or limitation, not by its direct voice in any new proposed constitution but because it selects and determines the method of selecting the convention; "...a convention composed of as many members as the joint meeting of the two houses of the legislature shall be elected, in accordance with the provisions of law applicable to the election of members of the Legislature," so that the convention contains the same representative constitutency as the present legislature. It goes on to say, "...such convention shall prepare a revised constitution and submit the same in such manner as it may direct at the next succeeding general election." It seems to me that indirectly the Legislature retains through the means by which this convention shall be organized the power to place that particular limitation.

SENATOR FARLEY: Mr. Wolf, you stated that if twenty, thirty or fifty years from now that there might be subversive

influences, as outlined by Assemblyman Glickenhaus, and you say that interpretation of the word "subversive" at that time would be a matter of conjecture. If twenty or thirty years from now the people of New Jersey or a majority of the people wanted to throw out of the present Constitution the Bill of Rights, what then would be the position of the people of the State of New Jersey with relation to the forty-seven other states in the Federal Constitution.

MR. WOLF: I am sorry I am so ignorant of constitutional law. I should suggest, I am fairly certain, that the State of New Jersey could not abridge the rights of citizens as guaranteed by the federal constitution, no matter what they said in their own constitution.

SENATOR PROCTOR: Yes, they could.

SENATOR FARLEY: That pertains to the rights involved in the Constitution in relation to the citizens and the fact that they may move from one State to another. The Federal Constitution has no part or play until there is a conflict. If you compare section 14 and 5 you will find the distinction.

MR. WOLF: I am very much interested in being instructed because I don't know.

SENATOR FARLEY: I am not an authority on it. I suggest there be a safety clause in that proposed draft to insure the continuation of a democracy because the only method by which that could ever be successfully changed would be by a determination of a majority of the people of the entire country, and it could be accomplished by the process of an amendment to the Federal Constitution. Anything that the people of New Jersey might do would be contrary to the Federal Constitution, it being a sovereign itself, and would be in conflict with the principles and doctrines thereof, and we would probably become rebels. So, looking into the future, to insure the perpetuation of democracy and to make sure that New Jersey is not going to be a rebel, my humble opinion would be that the Bill of Rights

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should be incorporated in our Constitution and should not be limited, as suggested by Mr. Paul, in order to give the people of 20 or 50 or 75 years from now the benefit of what we have attained through 168 years, and to assure that it is not going asunder by virtue of a demogogue or of mass psychology. We are here as a committee to call upon you and to try to guide you and reduce to writing a proposed Constitution which will perpetuate the doctrines in which we firmly believe, and we want the benefit of the judgment of the entire people. We do not pretend to be infallible. We are merely human beings and we are trying to do a conscientious job. You raise a very important, very vital and well-directed point and it has been a matter of controversy in the committee itself. As we stated at the outset, we thought it of sufficient importance to leave open rather than prepare the clause itself, so that we might obtain the entire public's reaction and that we might do what the people want us to do. But it is a matter of serious concern that something should be put in that constitution to make sure that we will have a continuation of democratic principles, particularly as we have now seen what has happened throughout the entire world and since we are the champions to preserve and maintain the rights of human beings.

MR. WOLF: I agree with you on this and am almost in complete agreement with everything you say about it. If any provision is to be made on this restriction, for instance, such as providing that our constitution must include at least the present Bill of Rights with any possible additions, I should rather see this written into this document than leave it as part of the general provision that the Legislature may determine what changes are to be allowed by constitutional convention representing the people.

SENATOR PROCTOR: You have said that and I agree with you and I think everyone would agree with that. I don't think there would be any quarrel about that. Now, the question comes down to this:

As proposed in the Feller Bill, would you subscribe to the present representation of counties being included if some 20 years from now it is submitted to the people again, with the restriction that the legislature has set up at this time. That is the practical part. The rest, we all agree on.

MR. WOLF: I will say this definitely, that while there may be no doubt in any of our minds about the fact that the Bill of Rights must be in the Constitution as it is now, I don't believe that the method of representation is sacred and inviolate and should not be subject to change at the will of the people. Definitely, I don't believe that and I don't believe we should tie down the constitution or give the Legislature the power in defiance of the will of the people to tie themselves down so that the method of representation is permanently frozen.

SENATOR PROCTOR: That sounds very well. I think at first blush that would be the reaction of anyone. At the same time, you say the will of the people - the will of the people, we take it, is the majority of the people, and the majority of the people, as I say, live in one section of the State. They could easily override the other section of the State, which has by far the greater area, and that is the one practical problem, as I say, in this question of revision every twenty years. I am heartily in favor of revision every twenty years, but someone has said that a mere majority in the Legislature should be able to vote for an amendment. I can envision that next year or in 1946, we will say, that the majority would vote to change the entire representation to, say, a unicameral legislature. Well, of course, the vast majority of the representatives would then come from the northern part of the State, to the injury of the lower part of the State, and I don't think as long as you have legislators from the lower part of the State, as you do now, they will stand for that.

MR. WOLF: I am concerned a little bit about your proposition that the majority of the people of the State, acting through their legislators, should be expected to take action inimical to the interests of a very definite minority of the people of the State. I don't feel from my own contact with and observation of the democratic processes that we can ever set up a democratic system on the assumption that a majority should be expected regularly to take action against the interests of the minority.

MR. ARTASERSE: You haven't followed legislation very closely during the last couple of years, have you?

MR. WOLF: I do think this, that in the State of New Jersey we have some very definite political machines in various parts of the State without exception, and that they are interested in maintaining their own political position not always wholly to the benefit of the people of the State of New Jersey and for that reason I should like to see the power to revise the constitution vested in the people of the State rather than in the political machines.

SENATOR PROCTOR: I think everyone will agree with you publicly on that.

MR. HINDS: Isn't it a fact, no matter what limitation should be put in this Constitution, it in no way diminishes the power of the people to adopt a new Constitution at any time they want it? What we are deciding are questions of convenience in addition to the inherent right, and I think that answers this gentleman's question that what we are doing here is something in addition to the right that we already have. Whether the legislature attempts to withhold from us a right which we could not even deprive ourselves of or not, by unanimous vote people can always go ahead at any time and adopt a new constitution, abolishing the Legislature, having one house or five houses of the Legislature. They can rearrange the representation of the counties and the Senate and Assembly any

way they want. What we do here or do not do does not affect that in the slightest degree. If the people should now adopt a constitution forbidding any new constitution to be substituted for it, except under certain conditions, that would not be worth anything except for such moral value as it might have or acting as a self-imposed restraint. It seems to me what we are now doing is setting up a convenient method among other methods by which the constitution may be revised without a revolution, without going to Washington and asking the Federal Government to exercise the power which the United States Constitution confers; namely, to guarantee to each state a Republican form of government. Now, in addition to those means, political revolution, action of the people, spontaneous action by the federal government in exercising its power to guarantee to each state a Republican form of government, we are now considering a convenient alternative; namely, the alternative which Mr. Paul's draft I think almost ideally provides.

MR. GLICKENHAUS: We are exercising that inherent power right now, aren't we, Mr. Hinds?

MR. HINDS: Certainly.

MR. WOLF: I don't want to take much more of your time on this. I have pretty well expressed my point of view. I have just wondered whether the idea which is sought and in which I concur I think, with Mr. Paul and his Committee, might not be better sought by eliminating that last part of his proposal about the setting up of alternative methods of carrying on the constitutional revision and providing in the Constitution that it be done by a constitutional convention elected by the people in the same fashion that the Legislature is elected and that we leave it to the process of amendment of the Constitution if we wish to change that and set up some alternative procedure. In view of the various things that have been said here in the discussion about it, it seemed to me it might meet the requirements better to eliminate that alternative proposition at the end of his document and leave it that if you want to change it,

you should do it by constitutional amendment. While I am here may I ask about a point?

SENATOR FARLEY: Go ahead.

MR. WOLF: In the section or whatever it is, number five under Article IX, which has to do with the question of resubmitting an amendment, again I am in complete sympathy with the idea that we shouldn't be having the same issue on the ballot year after year, but I wonder about one point in connection with this thing. We had an experience recently in Bergen County where I reside with the proposition of the Board of Freeholders being urged by large groups of people throughout the county to set up some sort of system of vocational training, and after much prodding, they finally submitted for referendum vote by the people a proposition with regard to such a vocational educational system. The proposition was so worded that even those who were strongly in favor of a system of vocational education felt it incumbent upon them to vote against it. If such a thing were true here - if the Legislature submitted to the people an amendment purportedly to accomplish a certain result, but so worded that even supporters of that idea would have to vote against it, then under the provision of number five here the people would be prohibited from reconsidering that issue for five years. I just wonder whether that sort of thing had been thought of in writing this down?

SENATOR PROCTOR: Of course I don't know what would be the alternative to that.

MR. WOLF: I hadn't figured that out. I was just bringing up a point.

SENATOR FARLEY: Are you concerned with the repetition in the bringing up of the same subject matter at elections year after year?

MR. WOLF: Reconsideration of amendments.

SENATOR FARLEY: There is a provision in there that limits the question involving the same subject matter to an election once every five years.

SENATOR PROCTOR: Substantially the same subject matter.

SENATOR FARLEY: Certainly that should cover that particular point.

SENATOR PROCTOR: His point goes further than that; if it were so worded, the people even though they wanted to vote on it couldn't under the verbiage, and they would be precluded for another five years from doing so. But there is no alternative.

MR. WOLF: Except that the constitution of the legislative body changes oftener than once every five years. This refers now to the Senate and the House of Assembly. The membership of the House under this Constitution changes every two years.

SENATOR PROCTOR: Yes.

MR. WOLF: It would seem as though a three-year period might be better than the five-year period here.

SENATOR PROCTOR: There is a lot of merit in that.

MR. WOLF: In view of the possibility of just the sort of thing that did happen in Bergen County and might happen in the State Legislature --

ASSEMBLYMAN GLICKENHAUS: They adopted that in Bergen County, didn't they?

MR. WOLF: I think ultimately that the referendum vote was carried by the people and I doubt if anything has been done about it. I think it was carried.

MR. STACKHOUSE: Senator, if I may inject just a little thought in this political philosophy - when the Federal Constitutional Convention met in 1787 -- that convention was an offspring of the old Continental Congress -- the Federal Constitutional Convention in that year drafted a constitution which took a tremendous amount of sovereign

power, if you will, from each one of the states. The convention was not regularly elected by the people of the states, yet when the Constitution was adopted, no one ever questioned that the sovereignty was not constitutionally taken away from each state. It was conceived at that time that sovereignty was in the states as well as in the people and the Federal Constitution so states. Therefore, we have a parallel question. Once the Federal Constitution was adopted by the people of the states or by the states representing the people, then that became the constitutional law. Consequently in this case, once the constitutional convention meets, it doesn't matter what the restrictions are on the powers of that convention, even if it goes beyond those restrictions and submits a constitution to the people, if a majority of the people adopt that constitution, it then becomes the sovereign will of the people because their sovereign will obviously overrule the powers of the members of the convention. Now that is a pretty well-established principle of political philosophy.

SENATOR PROCTOR: Supposing we decided to change the representation in the counties and submit it to the people.

MR. STACKHOUSE: You could do it. The reason that the Feller Bill provides that the proposed constitution shall pass each House of the Legislature separately was simply to prevent you from doing it.

SENATOR PROCTOR: I mean, would you say we have the right to do it?

MR. STACKHOUSE: Yes, you would have the right to not incorporate the Bill of Rights.

SENATOR PROCTOR: We have the right to do that?

MR. STACKHOUSE: It is no constitution until the majority of the people vote for it.

SENATOR PROCTOR: The majority of the people have mandated us not to do that.

MR. STACKHOUSE: Your mandate means nothing once the people approve what you have done.

ASSEMBLYMAN GLICKENHAUS: I think he is correct in that.

SENATOR PROCTOR: I think you are correct.

MR. STACKHOUSE: In the words of the great poet Goethe, "The method is sound and smoke, obscuring heaven's clear glow."

SENATOR FARLEY: Mr. Stackhouse, isn't it true that the Articles of Confederation of the states and the process of their procedure of convention and adoption was disregarded by the convention for the purpose of adopting the constitution?

MR. STACKHOUSE: It was disregarded. There were over sixty members of the constitutional convention to begin with and only 39 signed the Federal Constitution.

SENATOR PROCTOR: Fifty-five attended the convention.

MR. EDWARDS: Mr. Chairman --

SENATOR PROCTOR: Yes, Mr. Edwards.

MR. EDWARDS: I would like to participate in this, the debate having been general. I haven't had occasion before to examine Mr. Paul's suggestion critically. I do want to add two or three things because this is a rigid framework provided here. First of all, the Legislature may submit at any general election the question, "Shall a revision of the State Constitution be submitted for adoption or rejection by the voters at the next general election?" If this becomes a part of the Constitution, I would doubt very much the right of the Legislature at that moment to alter the question to be submitted to the people by submitting reserve sections in it. Now, likewise, if the submission becomes automatic at the end of twenty years, that same question must be submitted and there is nobody under the sun at that moment who has the power to alter the question. Now you come down to the proviso at the end and notice the only things in which the Legislature can legislate - "unless

the Legislature shall by law have made other provision for the election, the designation or the appointment of the body to be authorized." That gives no authority to put any limitations on what kind of a document they will propose after they have met and I think that meets squarely the question as it relates to this particular reading.

SENATOR PROCTOR: Thank you.

MRS. GILLMAN: I would like to have one question clearly answered.

SENATOR PROCTOR: Will you give your name please.

MRS. GILLMAN: Mrs. George Gillman from Irvington. I am appearing as a citizen, an interested citizen. This question that Mr. Wolf brought up to my unlegalistic mind has not yet been answered. I do not understand whether the Legislature would have the right to dispose of certain amendments proposed by a new constitutional convention; that is, whether the Legislature would have a restrictive right. I am asking that question because I feel that it has not been answered clearly.

ASSEMBLYMAN GLICKENHAUS: Mr. Chairman, Mr. Stackhouse's theory is that no matter what restrictions you put on the convention, they could disregard it and if the draft were adopted by the people, it would become part of the constitution.

MRS. GILLMAN: According to the draft of this new constitution?

ASSEMBLYMAN GLICKENHAUS: Despite any limitation. Let me put it this way: Mr. Stackhouse's finding is, no matter what restrictions the Legislature were to put on the powers of the convention, restricting them in any way whatsoever, if the convention disregarded those restrictions and the people approved of the draft as found by the convention, it would become a revision of the constitution and binding on everybody.

SENATOR PROCTOR: I think that answers it; doesn't it?

MRS. GILLMAN: I don't know. I am not clear on that.

ASSEMBLYMAN GLICKENHAUS: Let's clear it up.

MRS. GILLMAN: What I mean is: Does this draft of the new constitution include a restriction which in Mr. Stackhouse's opinion could be superseded by the people?

SENATOR PROCTOR: Yes. The constitution itself could be superseded.

ASSEMBLYMAN GLICKENHAUS: Then you get back to Mr. Hind's answer, that the inherent power is in the people at all times. If that inherent power were not being exercised now, I don't know of any other exercise we could make of that.

MR. HINDS: This provides one among numerous methods, this being provided for convenience, and may I say this would in all probability be the method that would be religiously followed simply because of political feasibility and convenience. Theorectically it is only one method by which the people at any time can amend a constitution. They can amend it in any way they please by any method they please.

SENATOR PROCTOR: I think that answers your question; doesn't it?

MRS. GILLMAN: Yes.

SENATOR PROCTOR: I think we have had a most interesting session this morning and I feel I can say that everybody has spoken and everybody who recorded their names were in favor of having something in this article calling for a periodic revision. Of course the Legislature is supposed to bend, but not necessarily bow to public opinion. I think you have made a very persuasive argument, all of you.

We will resume the hearing at two o'clock.

(Recess for lunch.)

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REGISTERED SPEAKERS - AFTERNOON SESSION

Wednesday, February 9, 1944

Mr. Charles O. Frye	Chairman, Executive Committee, American Citizenship Foundation
Mrs. Herbert Dobbs	American Association of Social Workers, New Jersey Chapter Speaking on: Principles of Public Welfare Organization Board of Pardons
Mr. Charles L. Chute	Executive Director, National Probation Association, New York - Parole & Pardons
Mrs. W. W. Pangburn	N. J. League of Women Voters - Parole (Modification)

SENATOR FARLEY:

The hearing will come to order. In the absence of Senator Proctor I have been assigned the responsibility of acting temporarily as Chairman.

MR. CHARLES O. FRYE:

I am back just one week after I was here before.

SENATOR FARLEY:

Go right ahead, Mr. Frye.

MR. FRYE:

Senator Proctor suggested that I submit something on what I talked about before.

SENATOR FARLEY:

We asked you to prepare written recommendations and we shall be glad to listen to them.

MR. FRYE:

I have a letter. It is not in the form that you could introduce in the Constitution. It is merely an explanation of what I was driving at before. I am speaking now for the American Citizenship Foundation today. Last week I just spoke as a citizen.

(Reading) "Honorable Sir and Committee Members:

"After consultationwith members of the Plan Committee of this Foundation, I am pleased to take advantage of your request that I indicate, in writing, some of the points which I discussed with your committee last Wednesday; particularly as to how the Legislature's ability may be maintained in full strength as a co-equal function of government without its controlling the office of the State Treasurer.

"As to the Governor's powers, I would suggest that he place all financial governmental affairs and the state control of banking under a single member of his cabinet to be termed the "Secretary of Finance"; and that the State Librarian, as indicated below, be furnished monthly and annual reports for the information of the Legislature and the public. I am throwing the State Librarian in instead of the Treasurer.'

To insure the unhampered ability of the State Auditor and the State Librarian, and to make them the chief administrative officers serving the needs of the Legislature. I would suggest that the State Legislature, in joint session, be given power to make rules governing the election, term of office, salary, and the duties and powers of the State Auditor and the State Librarian; and to stabilize the conduct of these offices, I would provide that it would require 45 votes in the State Senate and thirty-six votes in the General Assembly to change the rules governing these offices. Each of these two important officers should be given specific, simplified, and appropriate responsibility to serve every legitimate legislative INFORMATION need. Among the powers to be given the State Librarian would be that of requiring from the Governor monthly financial reports, condensed according to major purposes, concerning

the operations and needs of all executive and administrative offices, departments and instrumentalities of the State Government. In addition thereto, the Governor should render annual reports covering the functions which he may assign to the supervision or especial attention of his various cabinet members; giving only one such report in the same month; and not exceeding six such reports in the same year.

"Finally, to give to our state the best informed state Government in the nation; and to buttress the foundations of democracy by making possible the maintenance of a constantly well-informed civic citizenship in the future, I urge that the State Legislature, in joint session, be given power to make rules governing the election, term of office, salary, and duties and powers of a Library Board to consist of members corresponding in number and function to the members of the Governor's cabinet; thus tending to bring about the proper coordination in the functions of the administrative and legislative branches, and making possible standing committees in the Legislature correlating therewith.

"To insure the proper governmental relationship with the people, in whom reside the supreme powers of government, there should be minority representation on the Library Board given to the people, themselves, through a carefully designed system of non-partisan CITIZENSHIP REPRESENT TION--which may be worked out along practical lines similar to the proposals developed several years ago by a U. S. Senate Committee in its attempts to improve the information ability of Congress.

"Trusting that these suggestions may prove to be helpful in the careful deliberations of your very important committee, I am"

Senator Bulkley of Ohio had charge of that and invited me to come down there several years ago when he was in, and the committee in charge spent $75,000 in three years working on how that could be set up, how a non-partisan relationship could be developed with the citizenship of the country and keep the Research, Analysis and Planning Board free from any dominion by any source. I will leave this with you as what the committee that worked on that printed. It is a very valuable document on what the committee worked out. It shows that a non-partisan element can be put in the legislative branch of government that is continuous and scientific.

MR. GLICKHAUS: Here is something that I might just mark. Thank you very much.

MR. FRYE: I worked that out with the Political Science Department of the University of Pittsburgh something like 20 years ago.

SENATOR FARLEY: Will you mark that section you want to call to our attention and we will be very glad to examine it.

MR. FRYE: The divisions on this chart here that I spoke of would furnish six reports a year, and if reports were brought out along this line, you would find a proper coordination of government and citizen interest; that is, if your government would make six annual reports, it is virtually a survey of

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government and the citizens could be tuned in with the state government and also the Legislature.

SENATOR FARLEY: Is there anything else, Mr. Frye?

MR. FRYE: No.

SENATOR FARLEY: Thank you very much.

Mrs. Herbert Dobbs

MRS. DOBBS: I have two documents here for submission. I represent the New Jersey Chapte of the American Association of Social Workers. We are interested in two aspects of revision, having first to do with the Commission on Pardons.

(Reading)

"The New Jersey Chapter of the American Association of Social Workers wholeheartedly favors the movement for modernization of the Constitution of the State of New Jersey.

"For this reason, a special committee has been appointed by the Chapter to study the Proposed Constitution(1944).

"The Chapter, composed of members professionally engaged in all fields of public and private welfare service, offers its assistance to the officials charged with responsibility for analyzing the implications of the PROPOSED CONSTITUTION (1944) as they relate to or affect the administration of the public welfare functions of state and local government

"Parole

It is important that under the PROPOSED CONSTITUTION (1944) the existing parole system be continued and strenghtened. Parole is granted by the Boards of Managers of the several institutions and parolees are supervised in the community by the Division of Parole of the Department of Institutions and Agencies representing all institutions.

"Under the present correctional system all offenders are under the control of one authority assuring continuity of rehabilitative treatment from the moment they enter an institution until their final release from parole supervision in the community.

"After thorough study of the parole work of the Department of Institutions and Agencies, the National Commission on Law Observance and Enforcement stated that: "New Jersey has one of the most carefully planned procedures in the United States, and has built up a parole philosophy which in view of its close relation to life within the institution, is practical without parallel in the United States".

"We therefore, recommend that consideration be given to the following modification of Article IV, Section II:

"1. There shall be a (Commission on parole) board of pardons in the executive branch of the government, which shall consist of the Governor or person administering the government and of four members who shall be nominated and appointed by the Governor by and with the advice and consent of the Senate for terms of four years and until their successors are qualified into office and who shall receive such annual salaries for their services as may be provided by Law. At least one of said four members shall be an attorney-at-law of this State.

"2. The (commission on parole) board of pardons by a majority of them of whom the Governor, or person administering the government, shall be one, may commute sentences and grant pardons, after conviction, in all cases except impeachment, and the commission by a majority of them, with or without the participation of the Governor, or person administering the government, may remit fines and forfeitures and suspend collection of the same (grant paroles and supervise parolees)."

Here it takes away completely the function of granting paroles and parolee supervision from a group that has not been specifically trained to study the person who has been within the prison and therefore having no continuous plan for his adjustment in society; still, it leaves this Board of Pardons the power, if they so wish it, to grant pardons in exceptional cases, but the large job supervising parolees and the granting of paroles would be by recommendation of the persons whohave been working with them.

"3. The Governor, or person administering the government shall have power to grant reprieves except in cases of impeachment.

"4. The board of pardons may grant no conditional pardon, or license to be at large unless authorized so to do by general law, and then only on recommendation of the department charged by law with the responsibility for the custody of the person to be released."

SENATOR FARLEY: Mrs. Dobbs, what is your opinion as to the capital punishment cases?

MRS. DOBBS: Well, I think if they are within the institution the persons who are observing them in the institution are certainly the persons who are equipped to make the recommendations to this Board of Pardons.

MR. GLICKENHAUS: Of which the Governor shall be one?

MRS. DOBBS: Yes.

SENATOR FARLEY: In your recommendation here, you except impeachment?

MRS. DOBBS: Yes except in cases of impeachment.

SENATOR FARLEY: You are excepting impeachment from the Governor's reprieve power?

MRS. DOBBS: Yes.

SENATOR FARLEY: Do you have any thought in regard to capital punishment cases where the Governor must approve or disapprove, as a supplement to your recommendations here?

MR. CLAPP: Yes, she followed along our recommendations verbatim except those two or three changes she mentioned specifically.

SENATOR FARLEY: Do you have any personal thoughts on that?

MRS. DOBBS: No, I don't think I am personally equipped.

MR. GLICKENHAUS: This will be very helpful because it has caused the committee some concern.

MRS. DOBBS: Our main concern is in having the functions of the job remain with a group of trained persons who are more concerned with the adjustment of the individual back into society rather than having a small group accept such a tremendous responsibility.

SENATOR BODINE: You think the Department of Institutions and Agencies---

MRS. DOBBS: No I am unemployed. I just happened to be a social worker.

SENATOR BODINE: No, you misunderstood me. You think that matter should be left to the Department of Institutions and Agencies, Division of Parole?

MRS. DOBBS: I think that is very difficult to answer since none of us know what willhappen in the reorganization of the state departments but if that did remain one of their functions, then I would say wherever the parole system remains that should be the group to make the recommendations concerning paroles.

MR. CLAPP: Your thought is that the board appointed by the Governor would be a political board somewhat, and therefore should not be charged with these functions. Here you would have appointed specialists, they would have certain jobs to do, and they would be paid jobs as to pardons. Could they not also take on the additional job of supervising parole and parolees?

MRS. DOBBS: I think the danger would be if you had a paid group of men whose job it was to grant pardons they would feel they owed something to their salaries and would go about granting pardons, but if you had

recommendations made by the Board of Managers of your institution it is safer procedure. As I have read the present provision, it doesn't say that these recommendations must come from the Board of Managers of the institution, it says the Commission shall have the power to grant paroles and supervise paroles. That is a big order.

MR. CLIFF: But by assumption, they would have a force to assist them in arriving at their judgment.

MRS. DOBBS: But that is then just an assumption.

MR. CLIFF: There are a lot of assumptions that are to be filled in by legislative enactment, you see.

MR. GLICKENHAUS: Your purpose is to keep it purely as a social problem?

MRS. DOBBS: Exactly.

MR. ARTLSERSE: You don't think on the question of parole that the Governor or this Commission should have any interest in it whatsoever, or do you make that recommendation in your suggestion?

MRS. DOBBS: In relation to parole?

MR. ARTLSERSE: I am speaking of parole. Where a man has served the minimum term of his sentence and has been paroled, who is going to grant that parole under your recommendation or suggestion?

MRS. DOBBS:

The Board of Managers of the institution will make the recommendations to the Board of Parole which will be set up.

MR. ARTLSERSE: You say the Board of Parole, or Board of Pardons or Court of Pardons?

MRS. DOBBS: No, we are suggesting that this Commission on Pardons. I think you call it ----. You call it "Commission on Parole" and we suggest it just be "Commission on Pardons", and that it have no function in regard to parole. I believe present practice has it that any inmate of an institution would have the right to appeal to this special group.

MR. ARTLSERSE: To the Court of Pardons if he so wants.

MRS. DOBBS: If he so desires, so you would have that protection.

MR. ARTASERSE: But you feel that the present system of handling paroles is satisfactory and ought to be continued and probably enlarged?

MRS. DOBBS: And improved.

MR. ARTASERSE: But not restricted in any way?

MRS. DOBBS: Yes.

MR. ARTASERSE: And by including this clause in the constitution you feel, as you said a few minutes ago, that a Commission of men not qualified to treat this subject might be appointed----

MRS. DOBBS: That is possible.

MR. ARTASERSE: ---and might be inimical to the best interests of the prisoner or parolee and the State as well.

SENATOR FARLEY: Do you have anything else Mrs. Dobbs?

MRS. DOBBS: I have another statement in regard to principles of public welfare organization.

SENATOR FARLEY: Go right ahead.

MRS. DOBBS:

This is again the American Association of Social Workers. New Jersey Chapter.

(Reads)

"It is the conviction of the Chapter that the administration of public welfare services should be non-political within the framework of democratic government; that the administration of public welfare services to be effective requires continuity of planning and integration of administration.

"It is a well-established principle and long demonstrated in New Jersey that these objectives of public welfare administration have the greatest prospects of fulfilment when there is an integrated department uniting many types of welfare service, headed by a rotating board of unsalaried citizens with authority to appoint on the basis of technical competence the executive officer. Each member should be appointed for a four-year term. No member shall serve more than two terms consecutively."

MR. GLICKENHAUS: You believe public welfare organization should be administered by boards?

MRS. DOBBS: Yes.

MR. GLICKENHAUS: We made that exception in the constitution where we have provided that the head of a principal department may consist of a board and that was in contemplation of the committee in formulating that provision of the proposed constitution.

MRS. DOBBS: Yes. This statement I think was intended by the group not only to endorse the principle as proposed in the constitution that the boards maintained their power to appoint the executive head, but also it gave approval to your inclusion of the fact that the Governor should have the power to approve that appointment.

MR. GLICKENHAUS: Fine.

MRS. DOBBS: The only thing we feel very definitely should be given some consideration here is the fact that the members of the board, as it states in the constitution somewhere, will serve long, overlapping terms, and that is something private and professional social workers feel should not be, but that it should be a rotating board with a limited membership so that you will have more of your citizens who are acquainted with the work of welfare agencies and who can give you the benefits of some new points of view and progressive ideas in administration, rather than having the same people go on for the rest of their lives being board members.

MR. CLAPP: May I ask you--I don't know whether it is a fair question or not--what provision you had in mind that authorized "long, overlapping terms", as you put it?

MRS. DOBBS: That is the way the present setup of the Department of Institutions and Agencies reads now.

MR. CLAPP: We intended to leave the matter of terms entirely up to the legislature. Is there anything contrary to that in our Constitution? This doesn't criticize anything we have set up?

MRS. DOBBS: No.

MR. GLICKENHAUS: May I suggest as a practical proposition that you send a copy of that recommendation to the Committee on Reorganization of State Departments?

MRS. DOBBS: We were considering that.

MR. GLICKENHAUS: I think that it would be very helpful in determining the reorganization feature.

SENATOR FARLEY: I have one question, please. In the now existing Constitution, the Governor is allowed to give a ninety-day reprieve in capital punishment cases. Under the proposed draft we have given him the

power of granting an unlimited reprieve. Do you have any suggestions to make on that point?

MRS. DOBBS: I am afraid that I am not well enough qualified in that branch of welfare service to have any opinion to express and I would not feel free to express any for my chapter, since this was merely what we discussed in our executive section.

SENATOR FARLEY: What is the address of your chapter?

MRS. DOBBS: Do you want the President's address?

SENATOR FARLEY: No. You can give me your address.

MRS. DOBBS: 716 Valley Road, Upper Montclair.

MR. ARTASERSE: Mrs. Dobbs, have you in your chapter probation officers of the State of New Jersey?

MRS. DOBBS: I think there have been some in the past. Just what the present membership list is now and whether we have some on the list or not, I don't know.

MR. ARTASERSE: I was wondering if the thought you have expressed here today on these two suggestions was in collaboration with the probation officers who are treating with prisoners, defendants and criminals all the time, or does it simply represent a private thought.

MRS. DOBBS: No, I don't think it would be fair to say that this is simply a private thought. Most of your private social workers have at one time or another worked in the public field and therefore have had broad experience in expressing their views. Another thing is that we have consulted with every possible source that we could as to what they considered best in the light of past practice, and we did consult the National Probation Association for some suggestions.

MR. ARTASERSE: The thing that impresses me is that you say most of the people who work in private social agencies eventually get into public work. It is just the other way around from my experience, and I was wondering whether you had the benefit of the experience of these public workers.

MRS. DOBBS: We did consult with the National Probation Association as to their recommendations.

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[illegible] W[illegible]

[illegible]

SENATOR FARLEY: Have you anything else, Mrs. Dobbs?

MRS. DOBBS: No.

SENATOR FARLEY: Thank you.

Mr. Edwards?

MR. ARTHUR J. EDWARDS: A week ago Mr. John Bebout testified as an individual here on Article IV, Section II, on the proposed Commission on Parole and at the conclusion of his testimony the Chairman asked whether he would submit a written brief on the subject. Mr. Bebout asked the New Jersey Constitution Foundation to prepare such a brief and the Foundation drafted me for the purpose.

The Constitution Foundation is an educational and research organization which expresses no opinion on debated points of public policy and therefore they have allowed me to use this brief and adopt so much of it as I want as my personal expression of opinion inasmuch as they have passed no judgment on the conclusions and as a matter of fact their executive committee has had no opportunity to review it. So this draft which I will leave with you, the main text of it with recommendations, is offered jointly on behalf of Mr. John Bebout and myself as citizens of New Jersey. The brief is addressed to the recommendation at the end of paragraph 2 that the Commission on Parole be given the right to grant paroles and supervise paroles in addition to its job of supervising pardons. That takes in a lot more territory than I suspect was believed at the time it was reduced to writing and this discussion of the subject reviews a little bit of how we got in the present situation as a background for what to do in the future. The present Constitution in Article V, paragraph 10, places the pardon power in the hands of the Governor and the Court of Pardons and substantially those powers are continued in Paragraph 1 of the section we have under consideration, with a differently constituted commission and a different name. The power to grant paroles is nowhere present in the constitution but is exercised in four different ways which in past five years have resulted in the granting of 10,770 paroles in the State of New Jersey not counting paroles issued by county board of chosen freeholders and county courts, so that the dumping of paroles and the supervision of paroles on a board which has heretofore been more a judicial board than anything else is something which

we think is not in the public interest. Of these four types of paroles two types are granted by the Board of Managers or granted under the directon of the Board of Control:

A. Paroles, as such, granted by the Board of Managers of the State Prison are only to prisoners serving maximum-minimum sentences, to which they are eligible after their minimum sentence has been served.

B. Paroles granted by boards of other state correctional and penal institutions, under direction of the Board of Control, which permit them to release upon parole inmates and persons admitted.

Then we have the so-called paroles granted by the Court of Pardons which the Court of Pardons itself never calls "parole" but calls it "a license to be at large." It is in effect, though, a parole without carrying that name. It is stated by Fred C. Stickel, Jr., that the Court of Pardons "is the most powerful court in our criminal procedure, for in fact its conclusions may result in the setting aside of the action of any trial court or judge, or in the modification of a sentence---Since this powerful court reviews the factual, legal and sentencing conclusions of every other court in the state or may do so--"

I am reciting that as an introduction to the essential difference between pardon and parole because pardon is a survival of the clemency and mercy of the king which he can exercise in his discretion when he feels that a miscarriage of justice has occurred through sentencing the wrong man or giving him too long a sentence or other reasons. Essentially, parole is merely a feature of prison regulation whereby a man, after he has served the minimum sentence inside the prison walls, is permitted, if the prison board or prison manager deems him fit or worthy, to be at large until his conduct prompts them to put him back again. You see, the keeper of the prison is one of the few constitutional officers in the 1844 constitution, and I have been told and it seems to be the fact that out of that word "keeper of the prison" has grown the legal procedure that the keeper of the prison means also keeper of the prisoners and as keeper of the prisoners he must have at least technical control over every person until their sentence has been absolutely completed and they have completed their debt to society by serving a sentence and they are then at large under freedom from any sentence.

I quote in here several judicial decisions from courts in New Jersey that emphasize that difference between the granting of pardon and parole and it seems to me that in practice that has been completely forgotten in our procedure because I cannot conceive that out of 2700 people released from the State Prison in the last five years, June 30, 1939 up to June 30, 1943, there have been 1787 miscarriages of justice so as to justify the Court of Pardons stepping in instead of waiting until the Board of Managers of the prison can operate under State law which gives them that power to parole a man when he has served his minimum sentence. In those five years the Court of Pardons granted 1787 of these licenses to be at large while the Board of Managers only released 860 from the State Prison. From all institutions under the direction of the Board of Control the Court of Pardons has released 1867. While the Board of Managers has release 8903. There are two theories, and I won't go into them to any great extent as to whether a parole shall be a continuous process; in other words, one theory is that when a man comes in an institution he should come under the examination and attention of the prison institution, they should make up their minds whether he can be safely put out at large and whether he shall be granted a parole, and at what time and under what conditions. The other theory is the arbitrary right of the Board of Pardons to step in and grant these licenses to be at large, although the present procedure called for by the Board of Pardons does require that the institution make the report on the man.

I want to introduce here a statement in a current report on crime and delinquency in the post-war period, which is being issued by the Council of State Governments and which has not appeared in Trenton yet; so far as I can find out, the Council of State Government does register an objection to the disassociation of parole grant and parole supervision from the institution to which the prisoner has been committed. I put that in because somebody might want to follow it up later on.

MR. ARTLSERSE:

Are you making concrete suggestions, Mr. Edwards?

MR. EDWARDS:

Yes, in just a minute I will come to that,- very concrete. The reason for inclusion of those particular words, "to grant paroles and supervise parolees," is following the general line of decisions in the State that the specification of one particular method cuts out all the other methods--exclusio--ly Latin is pretty rough.

MR. ARTHERSE:

If you speak English we will understand you better.

MR. EDWARDS:

The inclusion of one method cuts out all the other methods. That is the English. And here, the right to grant paroles given to this Commission on Parole in the Executive Department or the Governor would cut out all power of the Board of Control, and all power of the county courts, and all power of the Boards of Chosen Freeholders--would cut out all their power to grant paroles, and cut out their power to supervise parolees, and would cut out the whole job of supervising these 10,000 parolees who were granted paroles in the past five year, of which I understand about 5,000 are still under supervision, and would throw this supervision under this new court. The court as organized in the past is a court set up more with the idea of reviewing decisions of judges and courts than with the idea of providing the technical care and supervision of a man while he is out on liberty.

I am going to put into the record a letter which I received yesterday from Dr. Emil Frankel, Director of the Division of Statistics and Research of the Department of Institutions and Agencies. This is strictly a factual letter which answered some of my inquiries about how things are managed by the Prison Board, and expresses no opinions whatsoever. Attached to that is the number of those paroled during the fiscal year ending June 30, 1943, which I have been unable to find printed anywhere, and I think it will be a valuable contribution to the public knowledge on this subject if it is put in here. I added to Dr. Frankel's original table a summary for the five years which gives the total for each different institution.

Now, after this study which I made of this, I decided to make the following recommendations, and John Bebout, through whose hands this passed, joins me in most of them, but reserves the right in certain instances to differ with me if he wants to.

I would alter Section II by making it in the first place a "Commission on Pardons" because I think that is what the duties which will be put on it are essentially, more pardons than paroles. I would leave the power of parole in the hands of the Board of Managers that let out those 8903 paroleés in the past five years.

I would put in paragraph 1 a provision for the rotation of the expiration of terms of commissioners in successive years, unless you decide it is covered elsewhere in there.

MR. CLAPP:

It is covered in the schedule. The first four appointees are appointed for 1, 2 and 3 years, successively, and thereafter they serve for 4 years.

MR. EDWARDS:

All right, I will draw my pencil through that, then, since it is being taken care of.

I would put into that paragraph "This Commission shall not be allocated within a principal department as provided in Section III of this Article." I put in that provision for this reason, that historically this Commission on Pardons will be the successor of the Court of Pardons which has been much more a court than a department, and I think its decisions ought to be completely free from departmental influences and control. And so I recommend that the Commission shall not be allocated.

In paragraph 2, I would make the first line read "The Commission on Pardons, by a majority of them, of whom the Governor, etc."; insert the word "and" before the words "suspend collection"; and strike out the words "grant paroles and supervise parolees". Strike out those words.

I would renumber paragraph 3, which relates to granting reprieves, etc.

I would make the present paragraph 3, paragraph 4, and would insert a new paragraph 3, as follows: "3. The Legislature may authorize the Commission on Pardons to grant paroles and licenses to be at large to inmates of state penal institutions, and may authorize appropriate instrumentalities to grant paroles and to supervise the parolees and licenses provided for in this section". To a considerable extent, I think the granting of paroles and the supervision ought to be in the hands of the same department and due to the uncertainty of what is going to happen under this rearrangement of the departments one has to be necessarily vague, so I put in "may authorize appropriate instrumentalities to grant paroles and to supervise the parolees". Under this, the present status quo can be preserved absolutely, provided the Legislature wants to play ball and reenact enough of the existing laws so as to leave the powers where they are now.

Some such arrangement as is proposed in the suggested amendments is deemed necessary to avoid allotment of all parole and parole supervisory authority to the commission on parole under the wording of the proposed revision. Chancellor Walker in re Court of Pardons, 97 New Jersey Equity, 555 (1925) stated: "Of course, the parole law (of 1911) cannot affect the constitutional power of the court of pardons...". In other words, the Court of Pardons is given the power to pardon and nobody can share it with them.. Then he went on a little later in the same mode and stated: "...the question being whether or not by its terms the act delegated to a body other than the Court of Pardons... some part of the pardoning power vested therein by the Constitution."

ASSEMBLYMAN GLICKENHAUS:

Mr. Edwards, I have been asked to remind you that you have exceeded your fifteen-minute limitation. I have no doubt but that you have reduced that to writing and you may have no doubt but that it will be given careful consideration.

SENATOR BODINE:

May I ask a question?

MR. EDWARDS: Might I add just a word of comment on this other proposal. This other proposal that was made by Mrs. Dobbs does not place parole in any spot and presumably it would leave it up to the Legislature to do so, as it does now. On the other hand, this paragraph 4 as written greatly limits the historical power of the Governor to grant those forms of amelioration of sentence which are in the nature of leniency and not strictly according to law.

ASSEMBLYMAN GLICKENHAUS: We are very pleased to have this together with Mrs. Dobbs' suggestion. You have covered something that has caused the Committee considerable concern. We have been looking forward to getting this and I am sure this will be most helpful. Do you want to ask a question, Senator?

SENATOR BODINE: He agrees with Mrs. Dobbs' premise that the Department of Institution and Agencies is taking care of paroles satisfactorily

MR. EDWARDS: They are taking care of one-third of the parolees from the State Prison, only one-third. What they have had to do is satisfactory and my impression is later on the law ought to be amended so they will be given a greater part of it. I feel from a statistical basis that the Court of Pardons has been crowding in on the things which the general understanding was it wasn't to take care of . It had the right to go in, but it exercised its discretion much more than people expected it to, as show n by the figures.

ASSEMBLYMAN ARTASERSE: Do you intend by your suggestion that the county probation system be continued?

MR. EDWARDS: Yes. I don't know much about it. I said at the end there that the Legislature may authorize the Commission on Pardons to grant paroles and licenses to be at large to inmates of State penal institutions and may authorize appropriate instrumentalities to grant paroles and supervise the parolees and licensees provided for in this section.

ASSEMBLYMAN GLICKENHAUS: You have taken out completely the supervision clause from this?

SENATOR BODINE: As proposed in this Constitution.

MR. EDWARDS: In my talk with members of the Board of Control -- as a matter of fact in Mr. Frankel's letter -- I could answer it better there because that is what I got it from -- The Court of Pardons has no parole officers under its direct control and the parole officers of the prison do supervise and assist in the rehabilitation of offenders who are released on parole from the State Prison through both types of release procedure.

ASSEMBLYMAN GLICKENHAUS: Thank you very much.

MR. CLAPP: I have a couple of questions I would like to ask.

ASSEMBLYMAN GLICKENHAUS: Yes.

MR. CLAPP: You say that the Board or the Commission on Pardons should not be included among the departments to be allocated among the Principal Departments and your assumption is that, it being a quasi-judicial body, it therefore shouldn't be included. We have a number of quasi-judical bodies throughout the State such as the Public Utility Board and the A.B.C. Commission and other agencies. Isn't it your assumption that quasi-judical bodies should not be included among these twenty Principal Departments?

MR. EDWARDS: I don't want to carry that too far because I haven't it very clear. If, for instance, it should be put in the Attorney General's Office as it is very largely under Federal procedure-- the Attorney General's Office controls the recommendation on parole anyway -- that would be all right.

MR. CLAPP: I see. It is just getting it in the right department.

MR. EDWARDS: How to do it, I don't know. We thought there was a probability it would be put somewhere else, which I would object to.

MR. CLAPP: Since you have gone into this fairly carefully, let me ask you as to language. You distinguish between paroles and licenses to be at large. Do you think it necessary in drawing the Constitution and drawing a constitutional phrase that this Committee would have to add to "paroles","licenses to be at large"? Don't you think paroles covers it?

MR. EDWARDS: Well, no, because of your history of legislative procedure. You see the limitation is, the "licenses to be at large" under the court decisions is a variation of the pardon power. They decide that a man doesn't need to be in prison any longer, but we must let him out under supervision, and since the Board of Pardons couldn't grant paroles, they just invented that language, I think, to describe a type of conditional pardon - pardon limited as to time and territory perhaps.

MR. CLAPP: That is all. Thank you.

ASSEMBLYMAN GLICKENHAUS: Thank you very much.

The following letter was submitted by Mr. Edwards.

"February 7,1944.

Mr. Arthur J. Edwards,
New Jersey Constitution Foundation,
Kinney Building,
Newark 2, New Jersey.

Dear Mr. Edwards:

This will answer your letter of February 3rd. The attached tabulation indicates the number of paroles granted by the Court of Pardons and by the Boards of Managers of the several penal and correctional institutions during the last five fiscal years.

I am also enclosing a copy of the Rules of the Court of Pardons which may be helpful to you in studying the operation of this Court. To answer briefly the specific questions which you raised:

3. The parole officers of the Prison do supervise and assist the rehabilitation of offenders released on parole from that institution through both types of release procedure.

4. The Court of Pardons, according to Rule V, requires the Board of Managers to submit a full case history of each offender, together with the Board's recommendation in each case. At the Prison, the practice is for the classification committee to re-examine every offender who applies to the Court of Pardons. The results of this 're-classification' are sent to the Board of Managers and are

reviewed by the Board, before being sent to the Court of Pardons.

5. The Court of Pardons has no parole officers under its direct control.

The procedure in parole by the Boards of Managers is basically similar, the only step in which the procedure is different is that the decision by the Board of Managers itself authorizes the offender's conditional release. You are familiar with the statutory limitations on the authority of the Boards of Managers in cases with minimum-maximum sentences.

Parolees from all institutions except the State Prison are supervised by the Central Division of Parole. The supervision of parolees released from the State Prison is in the hands of parole officers directly employed by the Prison, for constitutional reasons. Coordination is achieved, however, in that reports are filed with the central office of the Department by the Prison parole officers, and also by reason of the fact that the clasification system in all institutions, including the Prison, operates in accordance with standards and procedures supervised by the Central Office Division of Classification and Education.

Very truly yours
DEPARTMENT INSTITUTIONS AND AGENCIES

(signed) Emil Frankel, Director
Division of Statistics and Research

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State of New Jersey
Department Institutions and Agencies
Trenton

NUMBER PAROLED DURING FISCAL YEAR ENDING JUNE 30TH

Summary

	1943		1942		1941		1940		1939		Five years	1939-1943
	Court of Pardons	Board of Managers	Court of Pardons	Board of Managers	Court of Pardons	Board of Managers	Court of Pardons	Board of Managers	Court of Pardons	Board of Managers	Court of Pardons	Board of Managers
State Prison	431	130	371	183	341	199	330	187	314	161	1,787	860
Rahway Reformatory	22	344	12	308	13	327	13	364	16	408	76	1,749
Annandale Reformatory		496		435		441		570		504	- -	2,496
Clinton Reformatory for Women		198	2	187	2	149		171		164	4	869
State Home for Boys		554		409		350		352		367		2,032
State Home for Girls		178		147		175		176		221		897
Total	453	1,900	385	1,717	356	1,641	343	1,820	330	1,825	1,867	8,903

Note: "Summary" columns and "total" line added by A. J. Edwards

Division of Statistics and Research

February 7, 1944.

SENATOR FARLEY: Mr. Charles L. Chute speaking on behalf of the National Probation Association of New York, and as I understand, parole and pardons is your topic, sir.

MR. CHUTE: Yes. Mr. Chairman, I have been very interested in seeing how the New Jersey Constitutional Convention operated, having voted for the Constitution over in Morris County last fall. This is my first visit over here. My home is in Mountain Lakes, New Jersey, but my work is in New York and I am with the National Probation Association. We are also interested very much in this question of parole extension and improvement of parole, and I have been familiar with the New Jersey system for a good many years and I want to reiterate the fact that on the whole it has been a successful system. You have excellent institutions in New Jersey and the parole supervision division as set up in a unified central parole division under the Department of Institutions and Agencies is considered more or less of a model. I speak from a national point of view, being familiar with this work in many states, particularly with New York State, if you are interested to know how we handle the parole question over there. I am only going to take a very few minutes, Mr. Chairman, because you have spent a lot of time on this question already and it has been pretty fully covered. What I want to do chiefly is register my support and approval of the amendment that Mrs. Dobbs presented here. I worked this morning with her very able committee and helped to prepare this amendment and I wanted to endorse that amendment, the principal purpose of which is to unscramble the work of a Court of Pardons, which, as Mr. Edwards says, is a more or less judicial and governmental function from the work of parole, which is a social work proposition. It is a matter of investigation and selection and supervision - selection of the right people to release conditionally under treatment. This so-called license to be at large is just a clemency act of letting offenders out and turning them loose. We are very much concerned that parole should be a real treatment and that nobody be paroled unless they are put under supervision and

guidance. May I answer the question you raised twice, Mr. Senator about probation? The only relation between probation and parole, at least in the State of New Jersey, is that the purposes and treatment are the same, but they are carried out by different officers entirely and their cases come from different sources. Probation is a court proposition. Men are release on probation by the judges and placed under the county probation officers for supervision. Many persons are released on parole by the institution or by the State Board and are placed under a group of officers that are employed by the State under the State Department of Public Welfare or State Department of Institutions and Agencies. I could answer your question by saying - while I can't speak for the New Jersey Probation Officers Association, and there is such an organization - I think they would approve and do approve of the New Jersey system of parole as well as the New Jersey system of probation and would like to see it continued.

Now, as has been pointed out by both the previous speakers, we think there are some things in this proposed printed Section II that haven't been fully considered by your Committee and I think, from what you gentlemen have said, will probably be changed or considered for change. In other words, there is some confusion in the present system introduced for giving such a wide-open power of granting parole and supervising parolees to the Board or formerly called Court of Pardons, which has exercised very little of that in the past. It has, as Mr. Edwards said, probably gone beyond the intention or the best practice as far as the prison cases here are concerned in releasing men on what are really conditional pardons or they call them licenses to be at large. But more and more as I understand it here in this State that has been done by the Board of Pardons on the recommendation of the Department of Institutions and the Prison Board after their investigation of the cases. Now I think it would be well not to go back to that mixup that occurred before of having one group handle both pardons and paroles, but to completely separate them. That is why I would endorse this proposed amendment

presented by Mrs. Dobbs; that is, to call this, as it should be and as it has been called, the Board of Pardons and not a Commission on Parole, and to eliminate from this the statement that this Board, which is not now in the present Constitution and I don't think it ought to be put in now, should grant paroles and supervise parolees. That is not probably what you want. The majority of paroles are now granted by the treatment agency, by the institution boards, under the direction of the State Board of Institutions and Agencies, and even those that have been granted by the Board of Pardons have been granted after they have been reviewed and recommended by the institutional board. Now it seems to me it would be better to separate those entirely. Give the Board of Pardons the full power to grant pardons -- reprieves would be in the hands of the Governor only -- but commute sentences and grant pardons, in all cases except impeachment, which is done by the Legislature, and remit fines and forfeitures, suspend collection of the same, and omit the words "grant paroles and supervise parolees", and go a step further in the direction we have been going, not only in this State, but in most other states, and provide that this board, of which the Governor is a member and a determining factor and which is more or less a court to review sentences and grant pardons, does not have any power to grant paroles, but that that all be placed under the department which directs the institutions and which now has the supervision of all these paroled persons, unifying it in that way and separating those two. I might say that is the situation in a large majority of the states. You are probably familiar with New York State where the Board of Parole has exclusive power to grant paroles and the Governor only has the power to grant pardons and he exercises that very little and only with the recommendation of the parolling authority. The two authories are separated to that extent and the thing is, as I see this, that the board or agency that grants paroles should have a trained staff to investigate and report to it on these paroles and have the follow-up supervision of them, and that work should be very closely tied up with the institutions. In other words, the institutions who handled these men

for a period of time generally know more about their character and their acceptability and the safety and desirability of releasing them on parole and their recommendations should always prominently figure.

ASSEMBLYMAN ARTASERSE: I would like to ask one question. You believe that the probation system of our State should be integrated with the parole system.

MR. CHUTE: Ideally I think it would be well to integrate it further. I don't think this is a constitutional question particularly. My recommendation is that legislation might very well be passed to create a board or division either under the judiciary or under the Welfare Department, which would assist in the supervision and develop probation in all counties. I would be inclined to recommend that the employment of probation officers be left as now to the counties. I think the State ought to do more to assist because the fact is, we do not have a state-wide effective probation system in the State of New Jersey. We have good probation departments in our large counties, but some of our smaller counties are very inadequately staffed.

MR. CLAPP: Did I understand you to say there was a centralized parole agency in the State of New York?

MR. CHUTE: Yes, there is.

MR. CLAPP: You don't believe that is a good system?

MR. CHUTE: I think it is a good system in the State of New York. I think New Jersey has something that is better for New Jersey.

MR. CLAPP: Will you explain that.

MR. CHUTE: New York State doesn't go in for boards of directors of institutions to the same extent as New Jersey has done. There is no board governing our prisons except the State Department of Correction. For instance, Sing Sing Prison has no citizens' board, which, if it had, might very well grant the paroles. It has a centralized board, the State Board of Parole, that grants paroles for all prisoners. New Jersey only has one prison and it has its own board.

MR. CLAPP: You think it would be better, there being only one prison, to have it connected with the prison; whereas in New York, where they have more than one prison, you think they should have a centralized board. We might have more than one prison in New Jersey in the course of time.

MR. CHUTE: Well, I think this proposed constitutional amendment leaves that question open for the Legislature to set up such a kind of Board of Parole as will fit the situation. But at the present time, the present system seems to be working well - to have the board of managers of the institutions, which boards of managers are under a State department which watches over them pretty closely. I think that system is working well, therefore, I wouldn't change it. In many other states where they don't have these well-organized boards and state departments, I would favor the centralized State Board of Parole, but the main point I have been trying to make is that I think that the Governor's pardoning power should be separated from the parole system.

ASSEMBLYMAN GLICKENHAUS: In other words, you feel greater individual attention can be given by these boards of specific institutions to the social problem as to whether or not it would be to the public benefit to release on parole a particular individual who has been under their observation.

MR. CHUTE: Yes, I think that they are close to their institutions and there is a better tie-up there than if it were a separate and distinct board that had nothing to do with the institution.

ASSEMBLYMAN GLICKENHAUS: Then, under your statement, you would have the pardon board; and the supervision and the parole authority would be vested in these various boards which would have close contact with the persons that were applying for parole.

MR. CHUTE: Yes.

ASSEMBLYMAN GLICKENHAUS: You feel that system has worked out well and should be continued.

MR. CHUTE: Yes, all under a central department.

ASSEMBLYMAN GLICKENHAUS: Under the Department of Correction as we have in New Jersey now.

MR. CHUTE: Yes.

ASSEMBLYMAN GLICKENHAUS: I see what you mean. Thank you very much.

SENATOR FARLEY: Mr. Chute, I didn't hear all of your recommendations, but is it your thought it should be part of the Constitution or be taken care of by legislation?

MR. CHUTE: I endorsed this amendment as proposed by Mrs. Dobbs. I think it should be in the Constitution as to the pardoning power. This provision on pardon is in there now and I think it should be, but I think that parole should be left to the Legislature.

SENATOR FARLEY: Thank you, Mr. Chute.

Mrs. Pangburn --

MRS. PANGBURN: My full name is Mrs. W.W. Pangburn and I reside at 14 Mountainside Park Terrace, Upper Montclair. I am representing the New Jersey League of Women Voters. We have already turned in a brief on the executive part of the Constitution and I am simply here to endorse the stand which the League has made on the separation of pardon and parole. We believe that parole is the scientific treatment which should be administered by thoroughly-trained people to determine the fitness of the individual to return to society and to supervise his return to society as long as it is necessary -- it should not be confused with the function of pardons -- and that there should be a continuous treatment through detention and parole.

ASSEMBLYMAN GLICKENHAUS: In other words you are in accord with what has been expressed by Mrs. Dobbs and Mr. Chute.

MRS. PANGBURN: Yes. We think that could be accomplished simply by changing the words "Commission on Parole" to "Commission on Pardons" and by eliminating the phrase "to grant paroles and supervise parolees" and that the function should be left to the Legislature to determine.

SENATOR FARLEY: Do you have anything further?

MRS. PINGBURN: No, we think that the best thought on it may change from time to time and therefore it should not be frozen.

SENATOR FARLEY: Mr. Bilder -- Will you give us your full name and address.

MR. BILDER: Walter J. Bilder, 60 Park Place, Newark, New Jersey.

SENATOR FARLEY: Whom do you represent? Are you here as a citizen or representing a group?

MR. BILDER: I would like to say that I am a member of the New Jersey Committee on Constitutional Revision and a member of the Lawyers' Non-Partisan Committee on Constitutional Revision, but I don't speak representatively; I speak personally.

SENATOR FARLEY: Go right ahead, Mr. Bilder.

MR. BILDER: The provision which I would like to respectfully suggest a revision of is Article IV, Executive, Section I, paragraph 14: "The Governor may cause an investigation to be made of the conduct in office of any State officer except a member of the Legislature or an officer appointed by the Legislature or a judicial officer." I respectfully submit that there is need for giving the Governor the tools and implements, if I may put it that way, of conducting an investigation, namely, empowering him to subpoena any and all citizens and to compel their testimony.

(continue - next page)

The power to investigate or cause an investigation to be made in itself might only be held by the courts, for example, to extend so far as listening to those who are willing to speak upon the subject, or, if you please, directing the attendance of public officials or public employees, but surely the power to investigate which this Constitution very solemnly intends to vest in the Governor should not be left without the aid of the indispensable tool, namely, the power to subpoena and the power to subpoena any and all citizens.

ASSEMBLYMAN ARTASERSE: Wouldn't that be by legislation, Mr. Bilder?

MR. BILDER: It might be, and I considered that very thing, but suppose the Legislature doesn't see fit to give him that power?

ASSEMBLYMAN ARTASERSE: Just a moment. Have you seen the right of subpoena incorporated in any other constitution?

MR. BILDER: No, nor have I made any examination into that matter, but I dare say that the power of the Governor to investigate may be unique. I don't know. I don't know whether, sir, you are following the example of other constitutions or not. I don't happen to know the background of your provision.

SENATOR FARLEY: May I say this to you, and probably I can clarify it: In addition to the proposed draft, certain points involving organic law will be determined by the respective committees in a joint committee. This draft is to be supplemented with a legislative program. I think the right referred to here is inherent and substantive. The procedure should be determined by the Legislature, and so far as giving a man organically the right to do something and preventing him from doing it by legislative enactment, that certainly would in itself be inconsistent and would not give the legislative program the effectiveness it should possessto carry out what may be lacking in this Constitution. We appreciate you may place

in this Constitution probably volumes and volumes of language that have no effect. You will find repeatedly in this Constitution "as provided for by law." When we say that, inherently he has the right. If there is any doubt as to his right to subpoena, I may state to you here publicly that there will be a legislative program to correct and support anything that may be lacking. If we put it in, it would clog up the draft as it now stands.

MR. BILDER: Yes. I think we disagree on our premise. Your premise is it is a procedural matter; my premise is it is the very essence of the power to be proposed to be given by the organic law. The power to subpoena is substantive, so much so, and let me call this to your attention, that I think you will find in every case in this State where the Legislature has vested in a committee an investigatory power, they have coupled it very carefully and explicitly with the power to subpoena witnesses and compel attendance with punishment for failure to appear and answer. I think you would probably find Congress when it vests a power in any committee to conduct an investigation, when it sets up those quasi-judicial bodies, the Interstate Commerce Commission, etc., gives them express power to subpoena. Why do they? They know full well one of two things--

ASSEMBLYMAN ARTASENSE: That is why Congress does do that, but the Constitution doesn't say that.

MR. BILDER: That is true. And there is a point of argument. If the people of this State want to give in their constitution - not leave it to the Legislature - if the people of the State want to secure to their Governor the power to investigate conduct in public office, surely they would want to make that a power that is capable of being exercised because otherwise, why put it in the Constitution? In other words, we start out with the proposition that the people--and you gentlemen have considered this so fundamental, so

vital to the welfare of the people and the State, as to wish to incorporate in the Constitution an implicit power which the Legislature might on its own account exercise and bring into being by setting up a commission to investigate -- want the Governor to have by the very organic law this power. The moment you bring yourself to the point that that is needful, that is fundamental to the welfare of the people, you must follow it --

ASSEMBLYMAN ARTASERSE: May I just interrupt you a moment. You probably don't understand the purpose of this particular clause. You see under our Constitution as proposed the Governor with the advice and consent of the Senate is going to appoint all his department heads; he is to supervise and manage these respective departments through the specific department heads. This particular paragraph of which you speak refers only to those particular persons. It doesn't give him generally investigatory power.

MR. BILDER: It gives him power to cause an investigation to be made of the conduct in office of any State officer.

ASSEMBLYMAN ARTASERSE: True. We know that. Read on.

MR. BILDER: "...except a member of the Legislature-"

ASSEMBLYMAN ARTASERSE: "--or an officer appointed by the Legislature or a judicial officer."

MR. BILDER: Yes.

ASSEMBLYMAN ARTASERSE: Ostensibly this only gives him the right to investigate those persons who directly come under his supervision and control.

MR. BILDER: Yes, but suppose it is needful in order for him to know--for instance, let's take a very crude case of an officer having accepted a bribe, let's say, to give somebody a contract. It may be absolutely essential for the establishment of that fact or even to ascertain the innocence of the official as to whom there may be a lot of gossip and loose talk--the establishment of his innocence may

require undisputedly that third persons not in the public employ be brought in. The man who was alleged to have taken the bribe or given it, or what not, may be brought before the Governor or someone delegated by him to conduct the hearing. How are you going to get them in? You can't. The very salutory character of this provision is frustrated and nullified by failing to give the Governor the power coupled with it. It is like looking at a body that seems to be whole and yet is paralyzed.

ASSEMBLYMAN ARTASERSE: Are you particularly interested in giving the Governor this power or giving the accused the right?

MR. BILDER: Giving the Governor the power.

ASSEMBLYMAN ARTASERSE: Don't you think it ought to work both ways?

MR. BILDER: The only thing that we are dealing with here is a power sought to be given to the Governor, purported to be given to the Governor, to investigate. That is his power.

ASSEMBLYMAN ARTASERSE: You have to give each party the right to subpoena if you are going to do that?

MR. BILDER: Of course it goes without saying that a public officer charged by the Governor with an offense is entitled, you see, to a public hearing, to an opportunity to be heard. But the public is not worried about such a man, the public is worried about the conduct of the government and being worried about the conduct of the government, and in writing at the end of a hundred years a constitution, intended among other things to secure the proper conduct of government, they give the Governor the power to investigate, a tremendous power. But I say you will render it utterly useless and ridiculous. It is the same as saying our Governor is the head of the Executive Department, as we now say in the Constitution, but he has no real power; he is a head with a paralyzed body.

ASSEMBLYMAN ARTASERSE: You are talking about a Constitution. No constitution is self-executory. It needs, as Senator Farley has

said, legislation to put many of the provisions into effect, and if you are going to clutter up the Constitution with all minute details, you can readily see you will not have 25 or 30 pages as we have here, but you will have reams and reams that nobody will probably understand or be able to cope with. By your very reasoning, if we give this Governor the power to investigate, certainly the Legislature must give him the power of subpoena.

MR. BILDER: Suppose they don't.

SENATOR FARLEY: He has had it already. There was an act passed a year and a half ago as a result of Governor Edison's inquiry of the Highway Department giving him unlimited power similar to the Moreland Act.

MR. BILDER: To conduct an investigation of any public officer?

SENATOR FARLEY: Any kind of an investigation.

MR. BILDER: Suppose they repeal the act?

SENATOR FARLEY: Repeal it.

MR. BILDER: The Legislature that can create can destroy. Here is my point and unless I make it I am wasting your time: The people of this State say they want to put into this organic law a power of their Governor to investigate the conduct of their government. I say if they want to do that, it seems to me that you must give the Governor the power to do what the people want him to do, namely, conduct an investigation, and as a lawyer you know you can't conduct an investigation unless you have subject to your power the subpoena of any and all persons who may have knowledge of the fact.

ASSEMBLYMAN GLICKENHAUS: Mr. Bilder, I think that should be a matter of consideration of this Committee, particularly in view of the fact that on page 18 of this proposed draft the Legislature in providing for investigatory powers makes a provision for the power of subpoena.

MR. BILDER: I was going to say that.

ASSEMBLYMAN GLICKENHAUS: I don't see why we should argue back and forth. I think it is a worthwhile matter for the Committee's consideration in view of the express language used on page 18.

MR. BILDER: Yes, Assemblyman Glickenhaus, and let me add right along that line, I venture to say--this is a bold assertion; I haven't examined into this---that in every statute of this State in which investigatory powers are vested in a body, you will find coupled with it a power to subpoena. There is no use my wasting my time with that.

ASSEMBLYMAN GLICKENHAUS: I think it is very worthy of consideration.

MR. BILDER: Thank you.

SENATOR FARLEY: Thank you very much, Mr. Bilder.

ASSEMBLYMAN GLICKENHAUS: Mr. Bilder, was there anything else you desired to cover?

MR. BILDER: That is all. I have been holding forth downstairs before the Judiciary Committee.

(continued next page)

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MR. BASIL M. STEVENS 16 Prospect Avenue, Montclair, New Jersey.

Mr. Chairman:

SENATOR FARLEY: Do you represent any group?

MR. STEVENS: No, sir, just a plain ordinary individual.

SENATOR FARLEY: Go right ahead.

MR. STEVENS: Mr. Chairman and Members of the Committee:

In Paragraph 4 of Article X on page 21 of the proposed constitution, it is provided in part as follows:

"All grants and commissions shall be ---

countersigned by the Secretary of State."

but there is no provision for the appointment or election of such an officer in this proposed draft.

MR. CLAPP: Paragraph 4, Article X?

MR. STEVENS: Yes, paragraph 4, Article X, page 21.

MR. ARTHERSE: What was your comment?

MR. STEVENS: It provides that all grants and commissions shall be countersigned by the Secretary of State but there is no provision in the draft for the appointment or the election of a Secretary of State.

MR. CLAPP: It doesn't belong to our committee incidentally, but it is a good point to bring out.

MR. STEVENS: Incidentally, in all forty-eight states today a Secretary of State is a constitutional officer. His appointment or election is provided for in the constitution. You might be interested to know that in thirty-six states he is elected by the people, in six he is appointed by the Governor, by and with the approval of the Senate, and in one, which is Virginia, he is appointed by the Governor subject to the approval of both houses of that state assembly, and in three states he is elected by the Legislature.

Now, it seems to me and incidentally may I remark, for the sake of brevity and to take up no more time than is necessary, that I have written out my remarks and recommendations and I was just thinking the stenographer might take a rest and just copy from what I have written here.

Paragraph 4 of Article X (p. 21), provides in part as follows:

"All grants and commissions shall be---

countersigned by the Secretary of State",

but there is no provision for the appointment or election of such an officer in the proposed constitution.

It would seem that a Department of State, headed by a Secretary of State, and, I might add, a Department of Justice (or of Law) to be headed by an Attorney General, and a Department of Finance, headed by a Commissioner of Finance,--should be specifically mentioned as Principal Departments of the State Government.

Therefore, I would suggest that Paragraphs 1 and 6 of Section III, Article IV, (pp. 11 and 12), be amended to read as follows:

"1. There shall be a Department of State, a Department of Justice (or of Law), a Department of Finance, and such other Principal Departments, not more than seventeen in number, as shall be created by the Governor by executive order. These Departments shall be under the supervision and control of the Governor who shall by executive order allocate the executive and administrative offices, departments and instrumentalities of the State Government among and within them in such manner as to group the same according to major purposes".

"6. The Secretary of State shall be the head of the Department of State, the Attorney General shall be the head of the Department of Justice (or of Law), and the Finance Commissioner shall be the head of the Department of Finance. The head of each of the other Principal Departments shall be a single executive unless otherwise provided by law". (Note: I would prefer having the clause "unless otherwise provided by Law" omitted). "All such single executives, the Secretary of State, the Attorney General and the Commissioner of Finance shall be nominated and appointed by the Governor by and with the advice and consent of the Senate and shall hold their offices until a new Governor shall be elected and qualified and until their successors shall be appointed and qualified, but they may be removed by the Governor as shall be provided by law."

I have inserted the words "by the Governor" so as to give him the power to remove these single executives, because, considering this proposed constitution as a whole, I believe that that is what the framers of the document intended.

While the terms of these single executives, at the head of the Principal Departments, are fixed by this constitution, there is apparently no such specific or general provision as to the terms of the members of any board commission or other body constituting the head of a Principal Department. The last sentence of Paragraph 10, Section I of Article IV, (p. 10), providing that "All officers whose election or appointment shall not otherwise be provided for by this Constitution or by law, ... shall hold their offices for the time prescribed by law", does not seem to apply to the members of these

boards, commissions or other bodies, since their appointment is provided for by Paragraph 7, Section III of Article IV (p. 12).

If the general opinion with regard to the life tenure of the Adjutant General and the Quartermaster General, whose terms of office are not fixed by the present Constitution, is correct, then the same rule might apply with respect to the terms of the members of these boards, etc. at the head of Principal Departments. An action at law might be necessary to "clear up" this apparent uncertainty.

To avoid any such possible action, I would suggest that Paragraph 7, Section III, of Article IV, be amended by adding the following sentence:

"The members of any such board, commission or other body shall hold office until a new Governor shall be elected and qualified and until their successors shall be appointed and qualified, but they may be removed by the Governor as shall be provided by law."

or by inserting after the word "Senate", in the third line, the clause "for such time as may be prescribed by law".

If the last paragraph of Section III, Article IV, (p 12), which, by the number now given it, seems to have been what might be called "an afterthought", is retained more or less in its present form, with or without amendment, should it not follow paragraph 5 and be number 6, instead of 9?

I think that this paragraph should be amended by substituting the words "any executive or administrative officer appointed by the Senate and General Assembly in joint meeting", for the words "the State Treasurer, the State Comptroller or the State Auditor", so as to avoid its interlocking character with Paragraph 1, Section II of Article VI, and Paragraph 1, Section VI of Article III.

For your convenience I am attaching a carbon copy of a memorandum, upon the interlocking features of these paragraphs, which I will file with the other Subcommittees on the Provisions of the proposed Constitution, rather than take more of your time by an oral discussion of the same.

Memorandum:

The interlocking character of many of its paragraphs, which makes it difficult to revise the document by a series of amendments, is one of the principal complaints against our present Constitution.

The Committees that prepared this proposed constitution are deserving of high praise for the scarcity of such interlocking provisions in their draft. There is, however, one such feature to which I desire to direct the attention of this and the other two Subcommittees. That is the specific references to the State Comptroller, the State Treasurer and the State Auditor in three widely separated paragraphs, namely, Paragraph 1, Section II of Article VI, (p. 17), Paragraph 1, Section VI, Article III, (Page 60), and Paragraph 9, Section III, of Article IV, (p. 12).

Before any Constitutional change involving those officers could be made, it might be necessary, because of their interlocking features, to amend all three of these paragraphs. This would require the submission of one very complicated question, or, if such amendment is to be voted upon separately and distinctly, of three separate and distinct proposals to the people. The confusion, or constitutional chaos, which might ensue if two of such proposed amendments were ratified and the third rejected could, in my opinion, be avoided by omitting the specific mention of these officers and referring to them by general terms in two of the three paragraphs.

Paragraph 1, Section II, Article VI, (p.17), provides, in part, as follows:

"The State Comptroller, the State Treasurer, and the State Auditor shall be appointed by the Senate and General Assembly in joint meeting"

I would, therefore, recommend that Paragraph 1, Section VI, of Article III, (P. 6), be amended to read:

"Neither the Legislature nor either House thereof shall elect or appoint any executive, administrative or judicial officer, except as herein provided."

and would suggest amending Paragraph 1, Section III, of Article IV, (p. 12), to read as follows:

"No such executive order shall divest any executive or administrative officer appointed by the Senate and General Assembly in joint meeting of any of the functions, powers, and duties, conferred and imposed by law upon them, which relate to the receipt and disbursement of public moneys and to accounting, auditing and control".

If this latter paragraph, which, by the number now given it, seems to have been what might be called an "afterthought", is retained more or less in its present form, with or without amendment, should it not follow paragraph 5 and be numbered 6, instead of 9?

SENATOR FARLEY: Thank you Mr. Stevens. The next speaker is Reverend Harold A. Lett.

MR. LETT: Mr. Chairman and Members of the Committee:

SENATOR FARLEY: What is your address, Mr. Lett?

MR. LETT: 58 West Market Street, Newark.

SENATOR FARLEY: Do you represent any group?

MR. LETT: I am representing officially, the Citizens' Committee on Interracial Unity of Newark, and the New Jersey Urban League; and Reverend Minchon is also representing the same group.

SENATOR FARLEY: Go right ahead.

MR. LETT: A part of our delegation is discussing in the Judicial Section some features that are identified with the points that I want to raise here in the executive group. The whole question of group relationships, of minority tensions, is something that has come to the surface in our nation and in our state since the enactment of the Constitution of 1844. During these one hundred years, legislative attempts, feeble attempts, have been made to meet somewhat the problems that are inherent in the growing pains of a democracy such as ours. Our organic law did not take that into account and I fear that in the revised structure it has not been taken into account to this point-that the civil liberties, the civil rights, of minority groups in a democratic society must be protected by organic law because any other means to secure those rights are an evasion and are ineffectual. We have evidence of that in our New Jersey law at the present time. There are those who would suggest that legislative procedures are all that are necessary to relieve the many groups of the tensions that exist in our state today and we have seen that that does not occur, because the denial of civil rights is the symbol of weakness in a democratic society and is its greatest hazard, and I think we have current history to point to in that regard. There no doubt will have been brought before your committee many suggestions of how the civil rights of minority elements-racial, national and religious--might be protected to a greater degree than they have been in the past. We have one simple suggestion which we would like to present for your consideration.

SENATOR FARLEY: We will be very glad to have it, Mr. Lett.

MR. LETT: That the revised constitution should include through which:

1. a. The Executive Department should be charged by the Constitution with the specific duty of enforcing civil rights.

b. A civil liberties unit should be set up by law in the Attorney General's Office to assist in carrying out the duty of the Executive Department to enforce civil rights.

2. The state Constitution should assert the broad power of the legislature to legislate for the general welfare. Such power should specifically include the right to provide for borrowing money for a state-financed housing program without restriction by the bond clause of 1844 Constitution.

3. The Constitution should provide that there shall be no racial or religious discrimination or segregation in public housing projects.

4. The Constitution shall provide against discrimination or distinction based on race, creed or color, in private housing, including discrimination through restrictive covenants. (Covenants make for ghettoes).

5. Enactment of a law prohibiting discrimination in National Guard Troop units, thereby repealing laws of 1895, 1930, 1934, and 1935.

6. The Civil Rights Statute should be amended as follows:
(Note: This does not refer to the Bill of Rights)

a. To prohibit discrimination, on account of race, creed or color, in public employment, or in the examination of applicants, or in the acceptance of applications.

b. To prohibit discrimination against physicians, internes, and nurses, in training by public or private hospitals, on account of race, color or creed.

c. To prohibit discrimination on account of race, color or creed, by institutions, charitable or educational, enjoying tax exemption or public appropriations.

d. To prohibit discrimination on account of race, color or creed, by insurance companies and public utitlties.

e. To prohibit discrimination on account of race, color or creed, by all retail establishments, and to prohibit exclusion of persons from elevators of buildings occupied by two or more tenants, on account of race, color or creed.

7. There should be a thorough implementation of the principles of the Fair Employment Practices Committee, and there should be established a permanent F. E. P. C. in New Jersey.

8. Paragraph IV, Article I, of the present Constitution shall have added at the end thereof "race and color", so that the entire phrase shall read: "and no person shall be denied the enjoyment of any civil right on account of religious principles, race or color".

DIGEST OF PROPOSALS TO THE COMMITTEE ON CONSTITUTIONAL REVISION

1. The Bill of Rights should be amended preferably in paragraph 4 by adding the words "race", "color", "or sex", so that such paragraph 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.

It is argued that such addition cannot be made to the Bill of Rights.

(a) because of the mandate of the people who voted upon revision on the understanding that the Bill of Rights would remain "intact";

(b) that to include such proposals as are made herewith would place the revised Constitution in a more vulnerable position in the event of subsequent challenge or test in the courts.

2. The revised Constitution should include provisions through which the Executive Department of the State should be charged by the Constitution with the specific duty of enforcing civil rights and that a Civil Liberties unit should be established in the Office of the Attorney General to assist in the duty of the Executive Department in enforcing civil rights.

Existing statutes covering these civil rights of New Jersey citizens are numerous but ineffective. Indifference of public prosecutors and absence of direct responsibility on the part of the Attorney General of deprived citizens of the natural channels through which legal test of their constitutional rights may be made with facility and confidence. To remedy this condition the proposed Civil Liberties unit of the Attorney' General's Department would have authority to measure the effectiveness of prosecutors and to repair evidences of negligence on their part.

3. The State Constitution should assert the broad power of the Legislature to legislate for the general welfare. Such powers should specifically include the right to provide for issuing bonds for a state finance housing program without the existing restrictions by the bond clause of the 1844 Constitution.

The evils of poor housing are manifest at every term. To the same degree that public health and public education were necessary to provide all citizens with basic protection as a means toward developing good citizenship, it is equally imperative that the State be placed in position to attack the evil of slums. The Federal Government has pointed the way. It now is a State responsibility.

I think that with such preparation or such backing in the organic law, through statutory provisions that may be necessary from time to time, minority group elements in the various areas of their activities in community life can better be protected and the situation remedied, but we have been shown quite conclusively in the past years of New Jersey history that statutes will not remedy until the organic law recognizes this to be a basic responsibility of government and a specific part of government, to insure that these tensions are not a part of normal living in this day and age and that the strengthening of democracy depends upon our strengthening the rights of those who have not the power of wealth or of numbers to protect themselves.

SENATOR F. RILEY: Thank you very much, Mr. Lott.

Reverend Gerald R. Minchon speaking for the Episcopal Dioceses of New Jersey.

What is your address, Mr. Minchon?

MR. MINCHON: 230 South Logan Avenue, Trenton.

Mr. Chairmen and Members of the Committee: I want to voice my endorsement of what Mr. Lott has said and to say that our church as a whole, through its various resolutions of general conventions, diocesan conventions, and other legislative bodies of the church, feels that this Article and the recommendations made here today should be included in the Constitution.

SENATOR FURLEY: Incorporated in the draft?

MR. MINCHON: Incorporated in the draft, yes, sir.

SENATOR FURLEY: Do you have any further suggestions or recommendations, Reverend?

MR. MINCHON: No, I have not. I think that covers it very amply.

SENATOR FURLEY: We are very glad to have you and appreciate your recommendations.

(continued next page)

SENATOR FARLEY: We will hear from Mr. Abramson of the C.I.O. now. Will you give your full name and address.

MR. ABRAMSON: Irving Abramson, 17 William Street, Newark.

SENATOR FARLEY: Go ahead, Mr. Abramson.

MR. ABRAMSON: We would like to direct the attention of this Committee with respect to Article IV to what appears to be the very broad and sweeping powers contained in that article giving to the Governor very increased powers. While we recognize in the need of administrative efficiency that the power of the Governor should be increased so he can reorganize and reshuffle departments in the interest of administrative expediency, we ask this Committee to look into that dividing line beyond which comes the chances of abuses of power. For example, under the present proposal, as I understand it, the Governor has no limitation on the transfer of one department to another. The Governor in his inaugural address stated he was considering making the New Jersey State Board of Mediation a part of the Department of Labor. This proposed Section III of Article IV would permit him to do this. If this is done, it would be abolished as an independent creature of the Legislature. Our organization would very strongly object to the inclusion of that Board in any department, the heads of which are subject to political appointment. The New Jersey State Board of Mediation can function only if both labor and industry have sufficient confidence in the Board to voluntarily submit to it any of their labor disputes.

We have previously, Mr. Chairman, submitted our contention with respect to this section, giving the Governor this very broad power. We suggest that certain constitutional departments be recognized beyond which the Governor can use his discretion in reorganizing according to the needs and expediencies of his administration but we are hopeful that the Committees can see the danger of not limiting the power of the Governor, who, even in his own ability and wisdom must recognize the precautions that must be taken against some succeeding

Governors who do not have the same ability and wisdom that the present Governor has. That is the only thing our organization would like to place before you.

ASSEMBLYMAN ARTASERSE: What specifically is your recommendation?

MR. ABRAMSON: Our recommendation is that there be set up certain specific constitutional departments beyond which the Governor shall have the right to reorganize, but below which he will not be permitted to tamper with the constitutional departments as set forth. I merely took this New Jersey State Board of Mediation as an example of what the Governor might do.

ASSEMBLYMAN ARTASERSE: Are you in favor of the way the New Jersey Mediation Board is operated under the present setup?

MR. ABRAMSON: Unquestionably.

ASSEMBLYMAN ARTASERSE: Under this proposed Constitution, what will happen to that Board?

MR. ABRAMSON: It is not only what can happen; we are very apprehensive of what the Governor said in his inaugural address.

ASSEMBLYMAN ARTASERSE: You don't want it integrated with the Department of Labor.

MR. ABRAMSON: That is correct.

ASSEMBLYMAN ARTASERSE: You want it set up as an independent bureau under the executive branch of the government.

MR. ABRAMSON: It is set up as you recall ----

ASSEMBLYMAN ARTASERSE: I know how it is set up. What I want to know is what you are fearful of.

MR. ABRAMSON: Let me make this point, if I haven't made it clear: More than any other department that I know of, the New Jersey State Board of Mediation must for its very existence and function depend on the goodwill of those people who must submit to its jurisdiction. If either labor or industry in their own minds feel that the New Jersey State Board of Mediation has fallen into disrepute, they simply wouldn't submit to its jurisdiction and it might as well fold up. Right now in

its appointments and the way it is functioning, it is of a non-partisan character. If you throw it into the Department of Labor, I am very much apprehensive about the elimination of its non-partisan character and about its becoming much more of a political nature and thereby destroying its whole function.

ASSEMBLYMAN GLICKENHAUS: Isn't it your thought, therefore, that you have no objection to twenty Principal Departments, providing one of the Principal Departments shall be the Mediation Board?

MR. ABRAMSON: No, that is not exactly my point. The Mediation Board is not a department which can be constitutionally spoken of. If I were to be asked what departments are constitutionally necessary, I would be hopeful you would give me sufficient time to look into that. But the principle is nevertheless there that certain constitutional departments be not interfered with. If you ask me which they are, in 24 hours I will be glad to submit that.

ASSEMBLYMAN GLICKENHAUS: I can see that your premise is based on fear, on fear that the Mediation Board would be dissolved or so integrated as to lose its effectiveness.

MR. ABRAMSON: That is only one example. The same thing may be done with the whole Department of Labor.

ASSEMBLYMAN GLICKENHAUS: They can put that under the Department of Labor ----

MR. ABRAMSON: ---- and make it part of the Department of Finance.

ASSEMBLYMAN GLICKENHAUS: Could they? The Constitution says, "according to major purposes."

MR. ABRAMSON: That is a matter of interpretation.

ASSEMBLYMAN GLICKENHAUS: I think it is a fear situation; I am trying to allay any possible fear. First, we take according to major purposes that the coordination of departments must be established; secondly, we take the system of checks and balances as prescribed by the Constitution

in acting upon the executive order, which would merge or allocate or transfer any of these departments, so you have a system of checks and balances with respect to the Governor's attempt to do something wrong. As you say, we may have a Governor in the future who may not be inclined towards certain things; but you have protected the people against the Governor's action by a system of checks and balances. The check is in the Legislature. They may disapprove of the entire system proposed by the Governor of reorganization. Should a Governor take this department and put it in Education, it would be disapproved of, first, because it is not according to major purposes; secondly, because the Legislature disapproved of it, so then that executive order would fall. Now, then, in looking into the words "major purposes", an efficient handling to my mind of a situation like that is: Suppose it were integrated with the Department of Labor - I don't know whether it will be done; we are just theorizing - suppose in the Department of Labor there were a Division of Mediation consisting of the Mediation Board, that would not to my mind affect either the confidence or the integrity and esteem that the Board is held in by the people at large; would it?

ASSEMBLYMAN ARTASERSE: Assemblyman Glickenhaus, may I just interrupt for a moment. I have to disagree with you on that. I can understand these fellows' problem. They don't want the members of this Mediation Board to be submissive to any department head. They want this Board to be responsible only to labor and industry in New Jersey and to be not subject to the whims or the wills or to the supervision of anybody, but to be only answerable to the Legislature and to the Governor, and I can see their fear if it is put into the Department of Labor because the Commissioner of Labor will have then general supervision over this particular group. What they want is an independent tribunal, whether you call it a quasi-judicial one or whether you call it by any other name. They want the five men or whatever the Commission is composed of appointed as they are today, by the Governor with the advice and consent of the Senate and answerable only to labor and industry and not to any other person

in State government except those who created the office - that would be the Legislature and the Governor.

MR. ABRAMSON: That is right.

MR. ABRAMSON: May I respond to another point which I believe is important, that Assemblyman Glickenhaus brought up relative to the division into certain major departments.

MR. GLICKENHAUS: Major purposes.

MR. ABRAMSON: I think one of the greatest weaknesses of any constitution, whether it be the New Jersey State Constitution or any other constitution--as a matter of fact we might learn from our experiences under the United States Constitution that where we deal with a subject matter that is not clearly defined and that is left to judicial interpretation, the result is either the elimination of its objects or purposes or the strangling of them. Now, I am sure if left to your very committee here or a discussion of what the major purposes may be you will find there may be different ideas. Right now our constitution is being revised. There is no reason why in its very revision we cannot take advantage of our experience and say we are not going to leave it to a judge later on to debate this argument but we are now going to define what we mean by major enterprises. I am not willing as a citizen, and I am also speaking for our organization, to speculate as to just what is meant by that because any particular department may be subject to the whims and caprices of any Governor or Executive as to what he thinks is a major enterprise and he may reshuffle these departments and defeat the purpose of the Legislature.

MR. GLICKENHAUS: That reasoning would apply to many other departments in state government as well.

MR. ABRAMSON: Exactly.

MR. GLICKENHAUS: You are not in favor of giving to the Governor the power to reorganize and reallocate the various state departments?

MR. ABRAMSON: I qualified that. I hope I made that clear earlier. That is beyond the definition of certain vital and essential departments that New Jersey must have in order to function and I hope the

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New Jersey Department of Labor is one of them. In defining them then the Governor may in his wisdom reorganize and reshuffle according to the needs of the State certain agencies in the State but there must be certain guarantees for minimum requirements for the functioning of the State; they must be well defined and not left to that general phrase "major department".

MR. GLICKENHAUS: You would be in favor of the expression of the various departments in the constitution itself?

MR. ABRAMSON: Yes, that is my point, exactly.

SENATOR BODINE: You believe that the departments should all be named in the Constitution?

MR. ABRAMSON: Those departments which are considered necessary for governmental functioning. There are some which can be considered as such: The Attorney General's Office, the Department of Labor, the Department of Finance, and I suppose you who are better versed in the needs of government than I, can suggest others.

MR. CLAPP: Another department that you would have named in the constitution, as Mr. Isserman has suggested, is the Department of Mediation. I don't see how else you can take care of it.

MR. ABRAMSON: If it were left this way, I would say that.

MR. GLICKENHAUS: Let me ask you this as a matter of information: The question suggests itself to me that in the Federal Government they have a Department of Mediation, haven't they?

MR. ABRAMSON: Yes. Its functions completely differ. For example, in the Federal Government, the United States Board of Mediation is part of the Wage and Hour Department under the Secretary of Labor. There you have a situation where industry is not represented; there you have a situation where labor is not called before a board and heard but merely field men are sent out to investigate. But in New Jersey you have an actual functioning board where both labor and industry are represented and the public is represented and, incidentally, if you are talking about the federal government, the nearest analogy to that is the War Labor Board, where industry is represented and the public is represented and the government is represented.

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MR. GLICKENHAUS: Is that part of any other department?

MR. ABRAMSON: That is not part of the governmental setup. It is a creature of the Legislature recognizing that industry and labor must be---

MR. GLICKENHAUS: Have you addressed these remarks to the Committee on Reorganization?

MR. ABRAMSON: No, I have not.

MR. GLICKENHAUS: May I suggest that you do that?

MR. ISSERMAN: That is Carl Erdman's Committee?

MR. GLICKENHAUS: Yes.

MR. ISSERMAN: We have asked to be permitted to file a brief and we will do so.

MR. GLICKENHAUS: Are there any other persons who desire to be heard?

MR. FRYD: I would like to make a remark if I am not out of order along the line you have been discussing.

MR. GLICKENHAUS: Suppose you do that.

MR. FRYD: I fear this, that if the wish of everyone who wants a major department is taken into consideration you are going to overrun the need of your twenty, and I am afraid that the thing I commended in the first place may be upset.

MR. GLICKENHAUS: I was going to suggest that a copy of your memorandum be also sent to Mr. Erdman, who is head of the Committee on Reorganization.

MR. FRYD: I intend to do that.

You will get yourself in trouble if you commence to say this one is necessary and that one is necessary.

SENATOR BODINE: You believe the departments should not be named in the Constitution?

MR. FRYD: Yes.

SENATOR BODINE: So there we have both views.

MR. FRYD: Unless it is something like the Secretary of State where there is some other function necessary for him to perform;

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in other words, straighten up your old constitution.

SENATOR FARLEY: If there are no other persons desiring to be heard, the hearing is now adjourned. Any further hearings will be duly announced through the medium of the newspapers, and the time and place.

STATEMENT OF MRS. RICHARD L. MILLER REPRESENTING THE NEW JERSEY LEAGUE OF WOMEN VOTERS

EXECUTIVE COMMITTEE February 2, 1944

Mr. Chairman, and Members of the Executive Committee:

The New Jersey League of Women Voters is a member of the Committee for Constitutional Revision, and as such we also wish to congratulate the legislators of New Jersey who have drafted the constitution which we are considering today. We concur with the modifications of which Mr. Paul has spoken. In respect to the four year term of the governor, the League of Women Voters would like to urge that Governor Edge serve for four years instead of the three for which he was elected. We can appreciate his reluctance, but feel that the election of the governor should come in uneven years so that the influence of Congressional and Presidential elections are removed. If Governor Edge cannot be persuaded to serve for four years then we believe that the next governor should be elected for three years also; then every four years from then on. Thank you very much.

STATEMENT OF MRS. RICHARD L. MILLER REPRESENTING THE NEW JERSEY LEAGUE OF WOMEN VOTERS

Executive Committee February 3, 1944.

Mr. Chairman, and Members of the Committee:

The New Jersey League of Women Voters wishes to speak to Article IV, Section II, Paragraph 2. We notice that the Commission on Parole "supervises parolees" among its other duties. We believe that the parole system as constituted at present is superior to that of the proposed constitution. The members of the Department of Institutions and Agencies who work with parolees are better able to follow the rehabilitation of the individuals than the parole commission. In this we agree with Mr. John Bebout who spoke yesterday on this point. Thank you.

CONSUMERS LEAGUE OF NEW JERSEY
9 Clinton St., Newark, 2, N. J.

Mrs. R. A. Zwemer, President February 1, 1944

Statement to the Joint Legislative Committee to formulate a draft of a new Constitution for the State of New Jersey, constituted under S. C. R. 1, 1944

The Consumers League of New Jersey is a member of the New Jersey Committee for Constitutional Revision. Through its representative it participated in the formulation of that Committee's proposals for changes in the Constitution of New Jersey. We subscribe entirely with these proposals, which have been placed in the hands of the Governor and of the Legislative Committee.

At present the Legislative Committee is concerned with public reaction to a draft of a proposed Constitution. The views of the Consumers League thereon will be found to be in harmony with those expressed by the Committee on Constitutional Revision.

In general, the Consumers League congratulates the Governor and the Legislature on the document which is now being considered. We cannot praise too highly the statesmanship which has placed before the people so many excellent and far-reaching changes for them to pass upon. We would like to recommend just 10 modifications, of varying importance, in the entire document as it stands. Of these modifications there is one which we consider absolutely essential to a good Constitution, namely an express provision that overall revision, as distinct from, and in addition to, piecemeal amendment, will be possible if the people so desire in the future. Our specific proposal for a revision section or paragraph will be presented under Article IX, but we wish to emphasize here that while the other changes we shall recommend are in our opinion desirable, the Consumers League considers that a provision for constitutional revision is of paramount importance.

(The Consumers League is a national and a state organization of consumers interested in improving labor standards).

ARTICLE IV - EXECUTIVE

The Consumers League considers that Article IV contains many improvements over the executive article of the Constitution of 1844. We approve the four-year term for the Governor; the power given to him to appoint most State officers; the requirement that the Senate act on his nominations within 45 days, and that otherwise they will be automatically approved; the provision for a 3/5 vote of the Legislature to override a veto; the power of executive investigation and removal of State officers; the limitation of the number of State departments to 20, among which the Governor may allocate functions, subject to approval by the Legislature; and the provision that certain departments may be administered by a Board instead of a single head, if so determined by law.

Article IV as it stands would give the State a true executive, with the powers and responsibilities which should properly belong to the one State official whom the people at large elect.

The Consumers League proposes two changes which we consider important in order that the executive branch of the government may be more responsive to the will of the people, as is particularly necessary when it is more powerful.

(a) Section I, Paragraph 5, final sentence. We recommend deletion of the provision that the Governor may not succeed himself. As he is the one state-wide elective officer it is only through the vote for governor that the people can express their general attitude toward state-wide policies. They should have the right to reelect a governor whose administration they approve, and equally they should have the right to register disapproval.

(b). Section I, paragraphs 6 & 7, providing for a successor to the governor in case of his temporary or permanent absence from the State or inability to discharge the duties of his office. We believe that it is not in the best interest of the people to make the President of the Senate the vice-governor, because he was not elected by all the people, he may have opposite political principles from the governor, who therefore will not feel free to leave the State and place his powers at the disposal of one who may sabotage his program, and in addition if a Senator becomes governor for any length of time the people of his county are deprived of representation in the Senate. We recommend that the Constitution provide for a Lieutenant Governor to be elected for a term concurrent with that of the Governor.

ARTICLE III, Section 7, Militia

The Consumers League endorses the section on the militia as it stands.

ARTICLE II- Powers of Government

The Consumers League endorses Article II as it stands, and recommends no changes.

ARTICLE IX - Amendment

The Consumers League approves some of the changes which have been made in the amendment article, namely the provision that amendments shall be submitted to the people at general rather than special elections, and the removal of the requirement that an amendment resolution must pass a second session of the Legislature. We recommend two changes in the draft of this article, and the second of these is the one feature above all others which we would like to see changed in the final Constitution which is to be submitted to popular referendum next fall.

(a) Paragraph 5, providing that if the people disapprove an amendment, the same or substantially the same amendment may not be submitted again for five years. We would delete this paragraph. We believe the discretion of the Legislature would be sufficient safeguard against too frequent submission of amendments. The phrase "or substantially the same" seems to us particularly dangerous as it would admit of various interpretations, according to some of which the actual will of the people might easily be thwarted.

(b) We recommend the addition of a paragraph or section providing for revision of the entire Constitution, as distinct from amendment, substantially as follows:- The question of authorizing revision of the Constitution shall be submitted to the people at a general election, in any year designated by Law, and automatically 20 years after the last such referendum election. If the people authorize revision, a convention composed of as many members as comprise the joint meeting of the two houses of the Legislature shall be elected in the same manner as members of the Legislature, at the next general election; and such convention shall prepare a revised constitution and submit the same in such manner as it may direct at the next succeeding general election; unless the Legislature shall by law have made other provision for the election, designation or appointment of the body to be authorized to prepare and submit such revision.

As we have stated before, we place great importance on the inclusion of some such provision for thorough-going revision of the Constitution, if the people desire it at regular intervals in the future.

Adjourned.

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

(Executive)

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REGISTERED SPEAKERS - MORNING SESSION

February 15, 1944

(EXECUTIVE)

Mr. Winston Paul	- representing the Committee for Constitutional Revision
Mr. Arthur J. Edwards	- of Montclair, N.J. (as a citizen)
Miss Grace M. Freeman	- of East Orange, N.J., representing the New Jersey State Federation of Women's Clubs
Dr. Eugene Greider	- of the Good Government Council of New Jersey
Mr. J.H. Thayer Martin	- as counsel for the Newark Chamber of Commerce
Hon. Frank Durand	- State Auditor

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Members of the Committee Present:

Hon. Haydn Proctor, Chairman
Hon. Frank S. Farley
Hon. Samuel L. Bodine
Hon. Milton A. Feller
Hon. Robert G. Howell
Hon. J. Stanley Herbert
Hon. Jacob S. Glickenhaus
Hon. Peter P. Artaserse

SENATOR FARLEY: The hearing will come to order. Mr. Winston Paul--

MR. PAUL: Mr. Chairman I just want to present for the record a slight amendment in the draft we proposed a week ago. Over the weekend some of the attorneys thought it might be clarified in one or two matters particularly, making clear that the Legislature has the right to designate the appointment of the body to be authorized. It is just a rephrasing of words here. There is no change in the spirit of what was presented before. I would like to give the members of the Committee a copy of this because that is the revised one. The earlier one we sent out was not revised. I wanted to have this in the record.

SENATOR FARLEY: Have you placed it in the record?

MR. PAUL: Yes. I have given this letter in for inclusion in the record, which is a copy of what you have there.

SENATOR FARLEY: Thank you very much.

MR. PAUL: I want to take this opportunity-- I have written to Mr. Proctor, Chairman of your Committee, to express the appreciation of ourselves and the citizens generally for the courtesy and the interest which your Committee has shown at these hearings. It has been a very pleasant experience to be here, I am sure. There has been a very commendable spirit and there will be a very commendable result to the State. I also want to put in the record, speaking in behalf of a great many citizens who are not quite as familiar as I am with this, the appreciation of the tremendous amount of time that the members of your Committee, not only of this Committee but of all the Committees, have given to this problem. I think I am in a better position than many people in the State to know the vast amount of time you have given to it. It has been a splendid public service, which will redound to the great benefit of the State.

Mr. Paul submitted the following letter for inclusion in the record:

"Hon. Haydn Proctor, Chairman Sub-Committee on Executive Provisions
State House,
Trenton New Jersey

Dear Sir:

We respectfully submit that the title of Article IX be changed to read "Revision and Amendments," and that the following section be added to said Art. IX:

(As revised, Feb. 14, 1944)

"Without limiting the inherent right of the people at all times to revise their constitution in a manner of their own choosing, but in order to provide a convenient method for the exercise of that right, the legislature shall submit to the people at any general election when, in the opinion of the legislature the public good requires it, the question: 'Shall a revision of the state constitution be prepared and submitted for adoption or rejection by the voters?' and if the legislature does not submit such question at any time during a period of 20 years the state officer whose duty it is to certify statewide public questions for inclusion on the ballot is hereby directed to certify said revision question, to be voted on at the first general election held more than 20 years after the last vote by the people on the question of authorizing constitutional revision. If a majority of the people voting on such question authorize revision, a convention composed of as many members as the joint meeting of the two houses of the legislature shall be elected, in accordance with the provisions of law applicable to the election of members of the legislature, at the next general election; unless the legislature shall by law enacted at least six months prior to the vote authorizing revision have made other provision for the designation, election or appointment of the body to be authorized to prepare and submit the revision; and the convention or other authorized body shall prepare a revised constitution and submit the same in such manner as it may direct, at the first or second general election following the vote to authorize revision."

Respectfully submitted

(signed) Winston Paul

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SENATOR FARLEY: Thank you. May I say on behalf of the Committee we are appreciative of your material contribution to the new draft and I know that all the members of the Legislature and all the members of the Committee feel the same way in regard to your fine spirit of cooperation.

Mr. Arthur Edwards--

MR. EDWARDS: Last Wednesday when I spoke about the Commission on Parole and suggested that we rechristen it the Commission on Pardons, I suggested that that be allocated outside of the Principal Departments. We withdraw that suggestion because it can be very appropriately allocated in the Executive Department, which is now headed by the Governor. One point was that the Governor is to be on the Parole or the Pardon Commission and he ought not to be under any other department in my opinion. There is one copy of that for

Mr. Clapp. Mr. Clapp made that suggestion and we are very grateful.

SENATOR FARLEY: Have you any objection if we mark your letter in the record so we have a complete notation of the same?

MR. EDWARDS: Surely. That is for the Chairman.

Mr. Edwards submitted the following letter for inclusion in the record:

163 Park Street, Montclair,N.J.
February 14, 1944.

"Hon. Haydn Proctor Chairman,
Subcommittee on Executive Provisions,
State House
Trenton New Jersey

Dear Mr. Chairman: Re: Article lV, Sec. 11.

Last Wednesday in discussing this Section, I made the recommendation that the Commission on Parole, or as we preferred to see it named the Commission on Pardons, be made not subject to allocation in a Principal Department under Section lll of this same Article.

Your Counsel Mr. Alfred C. Clapp, questioned whether this was necessary or advisable.

Upon further consideration we have decided that there will be at least one of the Principal Departments where the Commission could be appropriately allocated, and we therefore ask that you consider this recommendation withdrawn.

The fact that one member of this Commission is the Governor, who under Section lll, Par. 6 of this same Article lV has "supervision and control" over all Principal Divisions, makes it undesirable that he should be placed under any Department head. However there seem to be several offices etc. which should be appropriately placed directly under the Governor, and the Commission we are considering could appropriately be allocated in this Executive Dept.

There is in the present organization of the State Government an Executive Department of which the Governor is the official head. This is probably the proper place to allocate the Commission, in view of the Governor's membership.

Very truly yours

(signed) Arthur J. Edwards
Copy to Alfred C. Clapp, Esq.

Mr. John Bebout and I recommend that there be added at the end of Par. 6 of Art lV, Sec. lll the sentence:

"The head of each Principal Department having a single head shall have the power to designate with the approval of the Governor an administrative officer in the Department who in case of a vacancy occuring in the head of the Department,shall be the acting head of the Department until the vacancy has been filled."

There is no provision for interim administration of the Principal Departments during a possible vacancy in the headship. We believe that some such provision as the above decided upon before the vacancy

occurs, will be advisable.

The next has to do with the legislative approval of the Governor's executive orders switching departments.

Mr. John Bebout and I recommend the addition in line 4 of the above paragraph after the words "Legislature shall approve or" of the words " one house shall" make the paragraph read:

"Every such executive order----- shall become effective on the 28th day after its transmission unless prior to that day both Houses of the Legislature shall approve or one house shall disapprove the same by resolution."

If one house only of the Legislature either disapproves or fails by its silence to act then under the present wording the executive order becomes effective 28 days after transmission.

Our recommendation is based upon the political probablility that before the new Constitution becomes effective on January 9th, 1945, the consolidation of executive and administrative departments offices and instrumentalities will have all or practically all have been completed, and that further changes based on after thought or experience can proceed in a more deliberate manner.

We think it better policy, and so recommend, that an expressed disapproval by one house should be effective to veto the executive order rather than that identical action or silence should result in approving it at the end of 28 days under present wording. Having once agreed upon the set-up of these Principal Departments we believe that thereafter it should require the equivalent of a law (that is affirmative action by the Governor and both houses of the legislature) to further shuffle them; or else if the Governor disapproves by veto any legislative shuffle pursant to Par. 5 of this Section, the three-fifths vote necessary to override the veto will be required.

The Legislature has shown its willingness, through action of its many members on the Joint Committee on Revision, to give up many long asserted legislative powers. This appears to be a case where we can even up matters by asking that the Legislature retain a veto power to be expressed in a resolution, in a matter of policy which certainly lies within the sphere of legislative powers.

This has to do with the words "Supervision and control," which the Governor is given in Article IV, Section III.

Mr. Bebout and I, in our individual capacities, recommend that in the first line the words "and control", be struck out; or that alternatively the entire first sentence be struck out and there be inserted in lieu thereof the sentence.

"The Governor shall exercise jurisdiction over the Principal Departments,"

whichever phrase the Committee and its Counsel deem most appropriate.

The reason for this recommendation is that the words "under the supervision and control" give such complete and absolute authority to the Governor as to weaken the authority of the several heads of Principal Departments under him, and unless the powers of some of the existing Boards and Commissions, such as the Board of Control of the Department of Institutions and Agencies, are cut down by law, there will be produced the classic clash of an irresistible force and an immovable body, as I will demonstrate.

The first of these suggested changes would put the Governor's authority on a parity with that of the Chief Justice, who under Art. V, Sec. Vl, Par. 1, "shall be the administrative head of all the courts in the State and shall supervise their work."

The phrase "shall exercise jurisdiction over" would appear adequate to implement the general definition that "the Executive power shall be vested in the Governor," without going into too many possibly conflicting details. The dictionary defines "jurisdiction" as "the lawful right to exercise official authority." This appears to be about all that is intended in this section for the Governor.

In the Massachusetts case of Fluet v. McCabe, 12 N.E. 2nd 89 at p. 93 the Court declared:

> "The words' supervise and control" comprehend an exercise of restraint or direction, of authority over, of domination and command. To supervise is to oversee, to have oversight of, to superintend the execution of or the performance of a thing, or the movement or work of a person; to inspect with authority to inspect and direct the work of others."

Power in the Governor to supervise appears adequate, without giving him the further power to control, to dominate and command.

More illuminating revelation of the complete meaning of "supervise and control" as used in the words of New Jersey officialdom is gained by a study of their actual use in these two instances: The book "New Jersey State Government- 1941-1942, Its Functions, Organization, etc." issued as a supplement to the Governor's Budget Message, 1942, at page 290 states:

> "General supervision over the Department (of Institutions and Agencies) is exercised by the State Board of Control of Institutions and Agencies." R. S. 30:1-1 to 30-1-18.

The real extent of this supervision, under control of the Board, is defined by law as follows:

> "30:1-7. Within the limitations imposed by general legislation applicable to all agencies of the State, the State Board (of Control) is hereby granted complete and exclusive jurisdiction, supreme and final authority, and the requisite power to accomplish its aims and purposes in and upon the institutions, boards commissions, and other agencies, hereinafter in this section named . . . Any particular grant of power in this title contained shall be in specification but not in limitation of this general power."

The 1918 draftsman of this section was an artist in the use of superlatives. Can anyone be more supreme than the Board having supreme and final authority? I think that to give the Governor general supervision or jurisdiction over this Department would be adequate, trusting him to exercise it without a clash. But to give him "supervision and control" seems to go further than the situation calls for, and be subject to criticism.

SENATOR FARLEY: Mr. Edwards, may I ask a question while you are on that point? Originally you presented your views to the Committee as to the Legislature giving up their power, which you have stated that they have graciously done and after a restudy of the draft, you feel that a trifle too much control has been given by the Legislature to the Governor.

MR. EDWARDS: Right at that point, yes. I don't want to appraise the whole document, but at that point I think that the Legislature should at least have the right to speak up, and that its decision shouldn't be gained by silence.

SENATOR FARLEY: In other words, you feel there should be some positive action; where the Governor issues an executive order either House should vote on it to say whether they approve or disapprove. Is that your conclusion of the matter?

MR. EDWARDS: Yes, that is it because if one House fails to take action, then there is no approval. Right on the point you mentioned, I will read a paragraph which I was going to submit to the Committee on Judicial Provisions:

> "It seems particularly appropriate in this presence I should repeat what I recently said in a radio broadcast to the State: 'I think the Legislative Committee is to be congratulated for 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, override the Governor's veto by a simple majority vote and create offices with terms not matching that of the appointing Governor.'"

I offer this to even that up a little bit.

SENATOR FARLEY: Do you feel that the Legislature should by a program of legislation determine how far the Governor should go concerning the supervision and control?

MR. EDWARDS: Well, I think that they should have a part in it. I don't think that is completely an executive function. It ought to be worked out as a harmonious team.

SENATOR FARLEY: I see. Thank you, Mr. Edwards.

SENATOR BODINE: May I ask a question?

SENATOR FARLEY: Senator Bodine--

SENATOR BODINE: Do you think the Legislature is more responsible to the people than the Executive?

MR. EDWARDS: No, I don't think so. No, I don't think so at all. I think the Executive is the servant of the people in the

Executive Department just as the legislators are in the Legislative Department. I think they are on a parity in that. I would't draw any distinction.

This relates to the status of the State Comptroller, the State Treasurer and the State Auditor and I think is perhaps the most important recommendation I make.

Mr. John Bebout and I believe that the status of these three state officers should be critically reexamined from the standpoint of their relationship to the Legislature which is to appoint them in joint session (Art. Vl, Sec. ll, Par, l) and to the Governor, who under Art. lV, Sec. lll, Par. l is to allocate all the executive and administrative offices, departments and instrumentalities of the State Government.

To point up the discussion, we recommend that in the first sentence of Par. l of Art. lV, Sec. lll there be inserted after the words "Instrumentalities of the State Government" the words " not including the office of the State Auditor."

We further recommend that there be added to Art. lll(or to Art. Vll-Finance if deemed more appropriate) a new section, properly numbered:

"The office of the State Auditor shall be allocated in the Legislative Department of the State Government. It shall be the duty of the State Auditor to conduct a continuous post-audit of all transactions and all accounts kept by and for all departments, offices and instrumentalities of the State Government, and to certify to the accuracy of all financial statements issued by accounting offices of the State and to report thereon quarterly to the Speaker of the Assembly, and to the Assembly and to the Governor at the end of each fiscal year. He shall also make such additional reports to the Legislature, and conduct such investigation of the financial affairs of the State, or of any department or office thereof, as the Legislature shall require."

The existence of the offices of the State Comptroller, State Treasurer and State Auditor is confirmed in Articel Vl, Sec. ll, Par.l in the words "relating to the conduct of their respective offices."

The distinctive functions of these three fiscal officers, as described in "New Jersey State Government, 1941-1942, its Functions, Organizations, etc." issued as a supplement ot the Governor's Budget Message, at pages 123, 127, and 128 respectively, are that the State Comptroller handles Pre-Audits, the Auditor handles Post-Audits and the Treasurer acts as banker and cashier.

The fact that these three officers are appointed by joint session of the Legislature gives them an aloof position from the Governor who has no part in their selection and appointment and who under Art. Vl, Sec. 11, Par. 2 apparently needs constitutional authority in order to call on them for reports. This aloofness is further emphasized by the fact that their four year terms will not expire contemporaneously with that of the Governor as do the terms of other single heads of Principal Departments under Art. Vl, Sec. 111 Par. 6, thus lessening the influence which the Governor might again by participating in their appointment, and by the fact that executive orders under Par. 9, same section, cannot divest them of certain enumerated functions.

But despite these considerations, the present text of the Revision certainly classifies their offices, as does the Governor's Budget Message cited supra, as among the executive and administrative offices, departments and instrumentalities of the State. Certainly they are not judicial and present wording does not tie their responsibility to the Legislature, which merely appoints them, in such a manner as to make them legislative offices.

And being the heads of executive and administrative offices they will under Art. lV , Sec. 11, Par. 1, have to be allocated into the 20 Principal Departments. But under Par. 6 of this Section they "shall be under the supervision and control of the Governor", who however is represented as needing a stated constitutional power to "require from them written statements under oath of information on any matter relating to the conduct of their respective offices." If they are intended to be under the Governor's "supervision and control", why under that all inclusive power, can he not require of them reports

as a routine element in his control: I will not press this particular point however because the original inspiration for this clause probably was in the Federal Constitution, Art. 11,Sec. 2 stating the President" may require the opinion in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices."

The normal functions of Comptroller and Auditor-pre-audit and post-audit respectively are so very similar, differing only in the element of time before or after- that it seems policy to create some real distinction between them. This can be done by making the State Auditor a legislative office, independent of the Governor, since it is the accounts of the Governor's other Departments and department heads that he is responsible for checking and auditing. A double check with responsibility to the same common over-lord is not good administrative planning or practice. An opportunity is here afforded to make the State Auditor and independent officer corresponding generally to the Comptroller General in the Federal Government, responsible to and reporting to the Legislature, or to the Assembly which originates money bills, to assure them that the expenditures which they have authorized to be paid, have been made by the executive departments in accordance with legislative authorization.

I just want to interpolate there a single paragraph from an article on Finance by Mr. A. E. Buck of the Institute of Public Administration:

> "The function of post-auditing, involving a complete review of the financial transactions and accounts of the state government, belongs to the legislature. It is implied in the powers of the legislature to appropriate money to the executive and to the administrative departments and agencies to carry on the work of the state government. It is the method of enforcing financial accountability upon the governor and his departmental heads, which is a highly important but sadly neglected duty of the legislature under the centralized form of state government. Power and authority commensurate with full responsibility for all administrative operations may be accorded the governor as long as the legislature utilizes post-auditing to bring him to complete accountability for his acts."

The rest of this is interesting, but I won't take your time.

These recommendations appear to be in line with the most recent authorities on government administration, as:

Report of the President's Committee on Administrative Management of the Government of the United States pp. 21-24.

"The President- Office and Powers- History and Analysis of Records and Opinion" by Edward S. Corwin, 1940 at pp. 107-109, discussing the functions of the Comptroller General and the Report of the President's Committee.

"American State Government and Administration" by Austine F. Macdonald, 1941 at p. 220, The Auditor; and Sec. 28 at p. 592.

"Model State Constitution", National Municipal League, 1941, Sec. 707, or Sec. 28 in preceding edition; also article, "Post-auditing-an instrumentality of the Legislature", at p. 46 in "Model State Constitution".

(continued next page)

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SENATOR FARLEY: Why do you confine the report to the Speaker of the House?

MR. EDWARDS: I just had to put it some place. In a model state constitution they provide a special committee to consider it. The House originates money bills and that was one reason why I put it there. I wouldn't object to it being placed anywhere else in the legislative halls.

SENATOR FARLEY: Why single out one particular legislative branch; why not give the Legislature as a whole the responsibility of accepting the report?

MR. EDWARDS: That is equally satisfactory to us, that or the Finance Committees of either House or some special committee. There is no question of policy involved in that choice. I just had to say something and I said Speaker for the single reason that the House originates money bills and I picked out the Speaker as one of those gentlemen who gets an extra salary for attending to those things so let him consider it and pass it on as he pleases. There is no policy involved in the selection of that particular officer. But I do urge that now is a first-rate chance to put into practice the most approved methods of accounting. The Comptroller General has practically the same function in the Federal government and it is recommended by many, many authorities, among them E. S. Crowin of Princeton, in his book "The President - Office and Powers - History and Analysis of Records and Opinion."

ASSEMBLYMAN GLICKENHAUS: That policy which you advocate could be done by legislation; could it not?

MR. EDWARDS: Well, no, once you let loose of the Auditor, he goes into the Executive Department.

ASSEMBLYMAN GLICKENHAUS: Isn't it your understanding that the Auditor and the Comptroller and the Treasurer are three creatures of the Legislature and as such are responsible to the Legislature alone?

MR. EDWARDS: Not under this item. They have offices and they are administrative and executive offices in my opinion and they go into the Governor's twenty.

ASSEMBLYMAN GLICKENHAUS: It was my thought in creating these three offices, over which the Legislature retains control by reason of the election, that we were creating a Comptroller and Treasurer and an Auditor for the Legislature to preserve the system of checks and balances between the Executive Department and the Legislative Department.

MR. EDWARDS: No, I don't think so because I think the paying out of money is strictly an administrative duty and that rests anyway between the Comptroller and the Treasurer.

ASSEMBLYMAN GLICKENHAUS: We retained the old 1844 provision with respect to the Comptroller and the Treasurer.

MR. EDWARDS: Yes. All you say is "they shall be elected by the Legislature" and that is where the thing gets kind of cross-eyed in my opinion.

ASSEMBLYMAN GLICKENHAUS: The recognized philosophy of the 1844 Constitution was that they were the methods by which the Legislature checked expenditures and receipts as and for the Legislature itself. I think you will find that that is so. We have merely added to that the Auditor who will be an additional officer of the Legislature, being elected by them to perform the checking on the Executive Department.

MR. EDWARDS: Well, the Treasurer is unquestionably an executive and administrative officer in my opinion. You take the United States setup; the Department of the Treasury is in the Executive Department.

ASSEMBLYMAN GLICKENHAUS: Then you do not believe by our providing for these gentlemen's election we retain control over them.

MR. EDWARDS: That doesn't tie them to the Legislature as against the fact that they are administrative or executive offices which are to be consolidated into the twenty.

ASSEMBLYMAN GLICKENHAUS: Haven't we provided some place in here -- I think my memory dictates an affirmative answer -- that the merger shall not include the Treasurer, Comptroller and the Auditor?

MR. CLAPP: No, but I think there is a point there. We perhaps should clarify that to indicate that they are not included. What we did provide was that no executive order shall divest the State Treasurer or the State Comptroller or the State Auditor of any of the functions, powers and duties conferred and imposed by law.

MR. EDWARDS: That almost ties them in the Executive Department except as to that divesting of power.

ASSEMBLYMAN GLICKENHAUS: In other words the statutory enactments with respect to the State Treasurer, Comptroller and Auditor, making them creatures and officers practically of the Legislature, cannot be affected by an executive order which would seek to merge them with the twenty Principal Departments, so we recognize there clearly a distinction between the executive and the legislative functions of these officers. We allocate them to the Legislature.

MR. EDWARDS: Well, all I can do is express an opinion, which is that the wording of this proposed revision doesn't do that, and anyway I think that it is proper practice to have at least one of them in the Executive Department and one in the Legislative Department.

ASSEMBLYMAN GLICKENHAUS: Which one would you put in the Executive?

MR. EDWARDS: I would put the Auditor.

ASSEMBLYMAN GLICKENHAUS: In the Executive Department?

MR. EDWARDS: No. Pardon me. I suppose I would put the Comptroller, who O.K.'s the bills and signs the checks which go to the Treasurer in the Executive Department and I would make the Auditor the exclusive agent of the Legislature.

ASSEMBLYMAN GLICKENHAUS: How would you provide for the appointment of the Comptroller?

MR. EDWARDS: I wasn't going to fuss with that. Let the Legislature appoint him as it does now, and I wasn't fussing with the terms of them either; I wasn't going too far.

SENATOR PROCTOR: Miss Grace Freeman of East Orange, representing the New Jersey State Federation of Women's Clubs --

MISS FREEMAN: I am the Recording Secretary and am representing theBoard of Trustees.

SENATOR PROCTOR: You are Miss Freeman?

MISS FREEMAN: Yes, I am.

Gentlemen, the New Jersey State Federation of Women's Clubs has formally supported the principle of revision of our State Constitution. 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 by the impartiality with which the hearings have been conducted.

We heartily endorse the provision in Article IV, Section I, paragraph 11, requiring the Senate to act on nominations with a time limit of 45 days, and hope it will be retained in the final draft.

We mentioned that in particular because we want to commend some of the fine things as well as ask for any modifications. However, in Article IV, Section I, paragraph 6, to insure the separation of powers in the three departments of government, we suggest the creation of the office of lieutenant governor or the designation by the Governor of a member of his cabinet to act in event of his absence or disability rather than having the President of the Senate take that office of acting Governor.

The third thing which we wish to suggest is that that Constitution contain some definite provision for its own revision, such as Mr. Paul or some of these people suggested. Thank you.

SENATOR PROCTOR: You mean every twenty years?

MISS FREEMAN: We didn't say that. We simply thought there should be a provision for revision in there, not just simply for amendment and not have any provision for a revision of the Constitution.

We would like the privilege of sending in a brief on those things.

SENATOR PROCTOR: All right. Now Eugene Greider, Good Government Council of New Jersey --

DR. GREIDER:

"The Honorable Haydn Proctor, Chairman, and Members of the Legislative Subcommittee on Executive Provisions of the Proposed Constitution of 1944.

"Gentlemen, the adoption of a constitution is a serious and weighty matter as you well appreciate. It is of the utmost importance that its provisions shall achieve what they intend, that alone, and that fully.

"My purpose today is to invite your attention to one respect in which it appears that the present draft does not fulfill this purpose.

"My appearance is on behalf of the Good Government Council of New Jersey, a federation of civic, business and political organizations (of both parties), organized in 1934 for the purpose of studying problems of fiscal and administrative organization, and formulating proposals for the improvement of fiscal management in State and local government. Its efforts in past years have been fruitful in legislation, the results of which have been constructive and useful.

"The specific matter presented today is that of removing a paragraph from the draft constitution, which interposes serious obstacles in the way of achieving effective centralized fiscal management in the state government.

"It is my purpose to urge the deletion of paragraph 9 of Section III of the Executive Article (Artice IV) of the draft constitution. This paragraph provides that the Governor shall not have the power "to divest the State Treasure, the State Comptroller or the State Auditor of any of the functions, powers and duties conferred and imposed by law upon them, which relate to the receipt and disbursement of public moneys and to accounting, auditing and control", by an executive order. In effect, this provision definitely forbids the Governor to do precisely what he must do, in order to establish an effective department of fiscal control, by whatever name such a department may be called.

"Furthermore, it seems reasonable to infer, from the executive article as a whole, that this consequence is not intended, but actually runs counter to the leading purpose that runs all through the section (Section III), in which it appears as the final paragraph.

"What is more, the provision contained in this paragraph is not necessary to protect the power of the Legislature in the regard for which it seems to have been included. That protection is fully and adequately provided in the second sentence of paragraph 5 preceding, in the same section, which quite properly, preserves the joint responsibility of the executive and legislative departments for good organization, while leaving the initiative in these matters with the executive, again quite properly, but reserving broad power of change to the Legislature.

"The administrative process, for effective financial management, must bring together under a single head, the complete control of accounting (now in the Comptroller's Department) budget-making (now the duty of a separate Commissioner) and the control of expenditure against appropriations by an allotment procedure (now the function of the Commissioner of Finance) as a minimum. It may be desirable to include in this financial department such functions as those of pre-audit (Comptroller), disbursement (Treasurer), purchase (now separate), personnel and revenue, as has been widely urged, and as is done in some states. These latter are not essential to its effectiveness, however, and some of them, in my view, are of doubtful wisdom. Certainly, however, all the functions named, none the less, are management functions, not legislative functions.

"Essentially the Legislature determines policies, while the Executive fulfills its will in administration.

"The Legislature defines and authorizes functions, supports them by appropriations; and has the right and the duty to see to it that its will as to management, and its will to expenditure, as expressed and formulated in the Appropriations Act, are honored by strict compliance on the part of management.

"These things it can accomplish only through the administrative process,-only by (1) making the Governor fully responsible for financial management, (2) furnishing him the up-to-date machinery and methods which he must have to achieve effectiveness in financial management, and (3) establishing full accountability to the Legislature for effective performance, and strict compliance with the legislative instruction.

"The Legislature is responsible for determining needs and supplying needs to achieve purposes which it has made the policy of the State.

"The Legislature needs administrative reports, estimates and recommendations, but it also needs its own effective check on management, through an auditing officer of its own appointment, provided with a sufficient staff to perform an annual audit of every unit in every department, on a continuous basis, and to conduct such special studies and investigations as the Legislature may require. This office, which may well be developed from the existing office of State Auditor, should operate under the supervision of a Joint Committee on Accounts, or of the Joint Appropriations Committee, whose members in either instance, should receive adequate extra compensation for this extremely important work. This independent reviewing official should have no part in the administrative process; he should be entirely independent of those persons whose accounts and operations he is scrutinizing.

"The accounts, themselves, on the other hand, should be under administrative control, designed not only to record, summarize and report all financial facts, but shaped and planned as the specific foundation for skilled, informed, scientific budget-making.

"The central task of fiscal management is that of financial planning (i.e. budget-making) and the control of planned operation pursuant to the financial plan as finally approved by the Legislature. Unless the accounting, budget-making and allotment procedure are in the same hands we break up what is actually an integral process. Each of its three phases supplements the other and none of them can be performed to full advantage separately.

"It is generally conceded that the Governor is to be made a responsible executive. The project is not to make the Governor more powerful but more responsible. If we really have the serious intention of doing this he will have to be given the accepted tools of modern management which are essential in even a business of moderate size, and utterly indispensable in a large one. The entire administrative process must be under his direction, performed by officers of his own choosing. None of them can be appointed by the Legislature without a rupture of executive control and hence of responsibility.

"Furthermore, if the Legislature is to maintain a realistic and adequate check upon management, which it is certainly its duty to maintain, it is important that it be not in the position of having to act as critic of its own officers and appointees, who should, accordingly, have no part in management. A properly organized auditing department is a mechanism more extensive, more effective and more important than the three fiscal officers named in this paragraph all put together. Here again the inclusive organization is required for effectiveness of legislative control, just as on the management side it is required for effective operation.

"It is well settled in our legal and constitutional system that the power to appoint officers for its advice and assistance is an integral part of the legislative power, save only for such express limitations as may be included in the Constitution. To me it seems preferable to omit all such officers from the Constitution, so that the Executive becomes clearly and wholly responsible for appointing and directing all officers having administrative duties, and so that the Legislature can never become involved in matters of management. This, in my view, places the Legislature in a more exalted position, speaking directly for the people, as the author of policy, and the legitimate and effective critic and overseer of its administrative execution.

"It has been suggested, and the idea seems to me to have merit, that the head of the Legislature's audit and control staff should be a Board of Audit of three members, who should be adequately compensated for the important functions they have to perform, all too long neglected in this state. One or more of these should be former legislators, preferably with Appropriations Committee experience. Under their supervision a competent, numerous staff of permanent civil service employees would audit routinely and make studies and investigations as required by the Legislature. The Board of Audit itself, besides its supervisory duties, would perform a liaison function with the Legislature and its committees, the Joint Appropriations Committee in particular.

"The whole burden of this explanation is to disburden the Legislature of a few administrative officers, whom it cannot supervise by any present means at its disposal, and to urge that it furnish itself, instead, with the means of exercising a genuine check over the whole administrative process, which is a proper legislative function. By exercising this important duty the position of the Legislature would in actual function be the dominant one which it is in theory. As we implement the Governor, so in the corresponding way should we implement the Legislature.

"If the pressure of tradition requires that we retain legislative appointment of more than one fiscal officer, despite the enlargement of the auditor's function and facilities to the point of full adequacy, it might be conceded that the Treasurer be retained, with purely custodial and disbursing functions. This would keep the actual handling of the funds under legislative control.

"The Comptroller, realistically speaking, should be thehead of the financial department, appointed by the Governor, and fully responsible to the Governor. The essential functions of such a department are those exercised by a comptroller in the business world, -- accounting, budgeting and control of expenditure. If he, too, be kept as a legislative officer, he should retain only the pre-audit duty, so that accounting, budgeting and control may be rationally organized as the Governor's indispensable equipment for financial responsibility. The division just considered is not an efficient one; but to deprive the Governor of his accounting-budgeting-control mechanism would be even more fatal to responsible management.

"Essentially the need is for one unified financial department on the management side, and one, with quite different functions, on the legislative side, the auditing office above referred to.

"At all events the question of keeping or not keeping the three named officers as legislative officers is not the one on which I urge you to action. That is a separate matter, incidentally involved in the foregoing statement regarding the organization required for good financial management. The arguments on that question have no doubt been presented to you and will receive your careful consideration.

"The actual question is whether the accounting process, now in the Comptroller's office, can be unified with budget-making and allotment as needs to be done. The deletion of paragraph 9 of Section III is essential to permit the Governor to make this transfer. It would be still better to take the Comptroller into the administrative process, but at least the accounting must be administratively managed, along with the connected financial tasks. The mere deletion of paragraph 9 in no way affects the Status of the three officers named, which is fully covered in other paragraphs. Standing there paragraph 9 performs no function, except one undesired and undesirable and evidently not intended. Its deletion can affect no other matter, except that of making the express language of Section III serve the evident purpose of the article as a whole.

"The annexedprinted reports of the Good Government Council (Report No. I, January 1935 and Report No. II, May 1936) explore more fully the considerations involved in good fiscal organization Particular attention is invited to the paragraph on page 17 of Report No. II, which I will read:

"U.S.Civil Service Commissioner Leonard D. White, in 'Trends in Public Administration' a monograph prepared and published under the direction of President Hoover's Research Committee on Social Trends, lists the following states as having inadequate staff agencies for financial administration, --Arizona, Arkansas, Delaware, Mississippi, Nevada, New Jersey, South Carolina and West Virginia. West Virginia has been taken out of this list by the adoption last year of recommendations from the University of West Virginia, prepared under the direction of Dr. John F. Sly, now Director of the Princeton Local Government Survey and Dr. George A. Shipman of the Princeton Survey staff."

"What about New Jersey?"

"The whole course of events since these reports were prepared has served to confirm what is there stated with regard to fiscal management and executive responsibility.

"The purpose of striking out paragraph 9 is to remove an obstacle to good management and executive responsibility, and incidentally to make a cleaner, more consistent draft so far as Section III is concerned.

"Automatically this proposal raises the question whether any legislative prerogative would be impaired and the answer must be in the negative. Paragraph 9, if not deleted, takes back the power to reorganize which is granted in the first three paragraphs of the section. Striking it out does no more than to keep the instructions of the first three paragraphs true, subject to the 28-day period for legislative veto of any executive order. The appointment of these officers is elsewhere provided for, and remains unaffected.

"Speaking again more broadly, the Legislature, in my view, would vastly enhance its prestige by divesting itself of appointment of any officer who performs any administrative task. In so far as administrative work, by whatever historical accident, is performed by a legislative officer, the basic legislative supremacy is impaired, since the Legislature cannot demand responsibility of the Executive unless it commits to him the management of the entire administrative process.

"The sound arrangement is to implement the legislative department so that it has the means, effectively, not only to speak with the voice of the people in determining the policy of the State, but to see to it that the legislative instructions are actually fulfilled in administrative application.

"This can be done by making the Executive fully responsible, and then holding him to his responsibility, through the work of an office of audit, study and investigation which genuinely serves the Legislature, not perfunctorily, but fully, actively constantly, and with which there is continuing legislative communication and contact. Under modern conditions the Legislature needs modern facilities of control,not less than does the Executive.

"If the Legislature will thus move on to the full exercise of its existing powers, by providing itself the facilities required for effective oversight of a complex and extensive modern administrative mechanism, it will regain the primacy in the State Government which is its birthright under the American system.

"At the same time it will make a contribution to the revival of strong and effective state governments, which possess the immunity to encroachment from federal centralizing trends, which can inhere in nothing less than true internal vitality.

"The striking out of paragraph 9 takes nothing away, but neither does retaining it add anything of legislative prerogative. That can be done only by independent affirmative action.

"The task of the day, as previously stated, is to utilize the tools of modern management for the work not only of the Executive, but also of the Legislature.

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SENATOR FARLEY: Mr. Greider, I would like to ask you a question. From the statement that you have given here this morning I conclude that you believe in a strong centralized power of the Governor; is that right?

DR. GREIDER: Definitely.

SENATOR FARLEY: And would that in any way interfere with the fundamental doctrine of checks and balances?

DR. GREIDER: Quite the contrary, because I also advocate most strongly that the Legislature equip itself with the facilities for maintaining its equally strong check on the administrative process. I would advocate a well staffed Auditor's Office reporting to a Committee on Accounts or the Joint Appropriations Committee so that there would be a check back and forth and the Appropriations Committee would have the facilities of information and of check.

SENATOR FARLEY: Mr. Greider, it is apparently anticipated that the Governor will set up a cabinet appointed for his four-year term and when a new Governor comes in, he likewise shall have the same privilege. Under your recommendations don't you think that would create rather a strong political situation where "to the victor belongs the spoils" and would defeat career men?

DR. GREIDER: It could. That depends on the Governor. This is no longer a $200,000 concern as it was in the previous century; it is an $80,000,000 concern. Now, if the Governor is going to furnish good management, you will have to give him the power and if he uses the power, well, that will be fine; if he doesn't use the power, well, that won't be so good. I have known every Governor of New Jersey since 1926 and most of them in my opinion have been pretty conscientious about their duties as Governor. Incidentally, if you will pardon my going on ----

SENATOR FARLEY: Our only purpose is to bring out your ideas. We have listened to the people who presented their recommendations and we want the benefit of your recommendations and experience.

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DR. GREIDER: Each of these Governors has asked for this power.

SENATOR FARLEY: I don't necessarily agree with you because we had three Governors before us and I didn't hear any of the three Governors make any recommendation, outside of Governor Edison, asking for this power ----

DR. GREIDER: He did.

SENATOR FARLEY: ---- Governor Fielder ----

DR. GREIDER: I don't remember him.

SENATOR FARLEY: ---- Governor Hoffman and Governor Moore. If you will look at a transcript of their testimony, I think you will find they felt there was sufficient inherent power in themselves. There was some criticism of the provision relative to confirmation; outside of that, I don't know of any material conflict involved between their viewpoints and the present setup. Who prepared that booklet which you read from this morning? May I see it?

DR. GREIDER: I did. Governor Hoffman, by the way, recommended this program in his inaugural message. Welber introduced these bills. Hoffman and Lamb both approved and urged this Fiscal Control Act which set up precisely the plan that I have suggested here this morning. In our program, however, there was nothing about the auditing arrangement because our recommendations were confined to the management side at that time.

SENATOR FARLEY: Mr. Greider, do you subscribe to the fact that every appointment by the Joint Legislature has proven to be outstanding and the men have proven themselves efficient and capable and have done an excellent job?

DR. GREIDER: On the whole I think that is right.

SENATOR FARLEY: Now, are you conversant with the Council of State Governments?

DR. GREIDER: Yes.

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SENATOR FARLEY: Did you ever read their reports and their recommendations as to Auditors and Comptrollers and Treasurers?

DR. GREIDER: I read some of them. I don't know which one you are referring to.

SENATOR FARLEY: I refer you to the report of 1941 in which the State of New Jersey was complimented on their present system and they felt that the Finance Commissioner was an adequate check on the Governor as to the financial situation. Are you conversant with that report?

DR. GREIDER: I am a little bit surprised they went that far. I would say the Finance Commissioner was an excellent mechanism and it was a great improvement when that was put in.

SENATOR FARLEY: Whether or not it was printed in their annual report, I don't know. I never examined it. In the section I happened to be in, New Jersey was discussed at length and it was decided that New Jersey's system was pretty sound.

DR. GREIDER: Commissioner Lamb felt very definitely on that. I talked to him many times about it and we collaborated in preparing this bill, which was eventually introduced by Judge Wolber. He felt that this control of the accounting system and the budget-making process was essential to a really unified management. After all, when a man sets up the accounts for this purpose, manages those accounts, oversees them, and then has the allotment experience, he knows a lot about making a budget by that time and he ought to make it.

SENATOR FARLEY: Mr. Greider, we are not here to argue. We are here for the purpose of listening to the public and their recommendations and statements. We may want to ask you questions and reconcile your recommendations with other recommendations heretofore submitted. There seems to be a general feeling - maybe I am wrong - that there is too much centralized power in the present administration. Is that the public opinion you come across in Washington? Do you feel that way?

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DR. GREIDER: I would agree to that. I would agree to that, and yet I don't think there is good fiscal management there. I think there is a serious fault.

SENATOR FARLEY: Isn't there a gradual assumption of states' rights by the Federal government year in and year out?

DR. GREIDER: I think that is a separate thing. I don't think it results from the exercise of executive power by the President. I think it results from the appropriation of funds that are used through various governmental agencies directly for the benefit of the various people in the community, particularly municipalities, and it ought to come through the state, if at all.

SENATOR FARLEY: Are you conversant with the fact that the legislators of the respective states are concerned about the states' rights immediately after the war and that resolutions are being passed for the purpose of trying to regain what they have lost as a result of this emergency?

DR. GREIDER: That is right.

SENATOR FARLEY: The principle is submitted here involving more power being given to the Governor, particularly in the financial picture. I am not speaking for the entire Committee, but we are laboring under the impression that it would be sound governmental policy, and basic reasoning would dictate that there be an adequate check by the Legislature against the Governor, particularly where finances are involved. These men have made rather a serious study. We appreciate your recommendation, but we generally are of the opinion that the recommendations of the Governor himself, Governor Edge, and the Constitution Foundation, are that there should be a check, and of course ----

DR. GREIDER: I absolutely agree to that.

SENATOR FARLEY: Your recommendation of taking the State Auditor ----

DR. GREIDER: I am building him up into a very important officer.

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SENATOR FARLEY: Mr. Edwards a few moments ago was particularly concerned to make sure that the office of Auditor was definitely independent.

DR. GREIDER: I said so too.

SENATOR FARLEY: How can you reconcile it if the Governor has the power to appoint the Auditor?

DR. GREIDER: It is just the same situation you have in a business corporation where you have the comptroller directly under the president of the company with the power to manage the financial planning and to control the financial execution, and you have the auditor who has nothing to do with this, and is therefore entirely free to criticize it because it is none of his own work. He is an outsider and he can go in there and find what he sees and say what he pleases about it. That is the kind of fellow I would like the Auditor to be.

SENATOR FARLEY: Under the proposed program with the Governor empowered to select his own cabinet, of which the Auditor would be a member ----

DR. GREIDER: He would be a legislative officer. He is entirely outside of that.

SENATOR FARLEY: I misunderstood you. I am sorry.

DR. GREIDER: I say this Auditor should have a sufficient staff to audit every unit of every agency every year and to carry it on as a continuous process and to make studies and investigations for the Legislature. I would put the Legislature right up on top of the whole process and give them a staff and give them the facilities.

SENATOR FARLEY: We are not here to protect our powers. I think the record indicates that we have been pretty generous in giving our powers away. Our purpose is to create organic law. What we may say today may be effective fifty or one hundred years from now.

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Basically, we are talking about government. We are vitally interested in the system and theory and the kind of government which would be best suited for the people, in view of the fact that we are contemplating and anticipating future economic conditions. We appreciate your recommendations and our only thought is to get information and a general idea as to the pros and cons and the adaptability of the thing.

DR. GREIDER: I appreciate the spirit in which you have handled this thing.

SENATOR PROCTOR: Dr. Greider, what bothers me is that practically every Constitution that has ever been written has been based on past experience. I mean, that has been brought out recently in this book by Dr. Charles Beard, called "The Republic" in which, as I recall it, he says that practically every word that went into the Federal Constitution was based on some misuse of power theretofore. Now, the way we have drafted it here is practically in line with the present Constitution, regarding the Treasurer, the Comptroller and the Auditor. Has there been any abuse or has there been any misuse of the power of those officials in the past hundred years that we should correct?

DR. GREIDER: Well, I would not say that. There must have been occasionally, but there can be abuse of any power that is ever committed to any office. I think it has worked----

SENATOR PROCTOR: I mean, constitutional.

DR. GREIDER: My objection is not that it hasn't worked but that it can be done still better. After all, what has been going on in the last one hundred years? Business has developed under the stress of the necessity of competing to survive; business has developed what I consider to be the best management mechanism, and I would like to say right here, if I may, that I don't want to enlarge the Governor's power; the Governor has all the power already that is contemplated in anything I have said. I only want to give him tools to do, in an effective and informed way through this financial officer, the things that are now done separately.

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SENATOR PROCTOR: The point that I am coming to is, have these tools been used in the wrong manner?

DR. GREIDER: No.

SENATOR PROCTOR: In the past?

DR. GREIDER: I don't think so but I think they have been used inefficiently and wastefully.

SENATOR PROCTOR: Now, if we can find out where they have been used wastefully; for example, the Federation of Women's Clubs endorsed a certain section in there requiring the Senate to act on confirmations. There is some evidence that has not been done in the past and they are for it. Is there any evidence in there that shows we should give the Governor these tools? Is there any evidence that the tools have not been used properly?

DR. GREIDER: About all I can do there is to refer to what is known in law as persuasive authority, when you cite the experience of another State. After all, I can't give you a comparison between the old way and the new way until the new way has been tried. We see this in corporate management; we see it in the State Government, and we see it in New York State. Doesn't it stand to reason that a budget officer who doesn't have the benefit of accounts that have been shaped for his use but which have been shaped primarily as a record-keeping job, is going to have less information for that reason and is also going to know less about some things than the Commissioner of Finance over there who has been controlling the expenditures under an allotment procedure? Now, if one man does those three things, isn't he going to know intimately the immediate past in the financial operations of the various units and isn't he going to make a better budget and, if he makes a better budget, isn't he going to manage it better? I am not talking about taking any more power into the Executive Department; I am only talking about administrative interpretation of things that belong together and that serve one another in being done. I am really

adding something when I recommend this properly-equipped auditing service which the Legislature I think needs.

SENATOR PROCTOR: Of course, that can be done under this draft.

DR. GREIDER: The Legislature can always do that under its general legislative power. I would not even put it in the Constitution because, as you say, we don't know what will be fifty years from now. The Legislature, if not forbidden, under inherent legislative power always has power to do that. Personally, I think it would be of great advantage to the Legislature to have that agency.

SENATOR FARLEY: Do you think this could all be accomplished by a legislative program, Mr. Greider?

DR. GREIDER: Yes, it all could but since the intent of this Section III is to give the Governor the initiative in reorganization it would be necessary to delete this paragraph which takes nothing from the State Comptroller, the State Treasurer and the State Auditor, and doesn't modify the power of the Legislature in their appointment or management. In paragraph 5, same section, the last sentence says, after the Governor issues an executive order, the Legislature may modify it, may add duties, abolish duties, and so on. The Governor in issuing an executive order of reorganization, which this section is apparently intended to enable him to do, would find he cannot unify these three functions, which are really one function. He would have to ask the Legislature to do it. That seems to me to violate the spirit of Section III.

SENATOR PROCTOR: Do you mind leaving those books?

DR. GREIDER: I am going to. This statement is not fully typed. I am going to get it typed and will leave it with you. I appreciate the attitude in which you have approached this thing.

SENATOR PROCTOR: Thank you.

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SENATOR PROCTOR: Mr. J. H. Thayer Martin, as counsel for the Newark Chamber of Commerce.

MR. MARTIN: It is rather amusing for me to immediately follow Professor Greider because we form such a contrast. I disagree with almost everything that he said and he has discussed his subject from a purely theoretical or student point of view and I think I have had some real, practical experience in the subject of executive or administrative duties. I understand from the newspapers that the advocates of a strong Governor anticipate there will be terrific pressure brought on the Legislature on the part of state departments to protect them. As you know, I am not in the state service now, and I am not a candidate for any position under the state so that I think when I speak of something that is a result of my experience you will realize that it is at least disinterested. I am not seeking to protect any of my prerogatives in any way.

SENATOR FARLEY: Not to interrupt you, but will you state for the purpose of the record how long you have been in the state service?

MR. MARTIN: Well, I was a member of the Legislature in the years 1904 and 1905. Then I was not in actual state service but was employed in local government as counsel, for a great many years between then and the time I became State Tax Commissioner. I was chairman of a Tax Revision Commission for two years before I became Tax Commissioner and I was Tax Commissioner for ten years, from 1931 to 1941. I have been in the private practice of law for the past three years and I have no hankering to get back into state government but I have some very definite ideas that I accumulated during the ten years that I served under three different Governors.

With reference to Mr. Greider's suggestion, I might say, while this is not under the jurisdiction of this sub-committee, that I just left the legislative sub-committee before coming here and I suggested that there should be included, in addition to the departments that the Legislature may elect or appoint the head of, any public official fixed by law whose principal function is to collect state revenue. The entire theory of the division of powers in constitutional government is based

on the Legislature controlling the purse string and I think the Comptroller, Treasurer, and Auditor are obviously necessary to be under the control of the Legislature if they are to control the purse string. And as I said downstairs, the Legislature may find it necessary sometime in the control of the purse string to select the heads of those departments whose princiapl function is the collection of state revenue.

Now, turning to the portions of the Constitution which I understand are being considered specifically by this sub-committee, I want to refer first to Article IV, section 1, paragraph 11, which is on page 10 of what I might call the official print of this proposed Revision, the limitation of forty-five days for confirming or rejecting nominations. I think the sole basis for this proposal is the irritation felt by a former Governor of New Jersey over the fact that the Senate did not agree with him as to what the Constitution meant when it said the Governor shall nominate, and by and with the advice of the Senate shall appoint. The disagreemtnt that arose between that Governor and the Senate is the sole foundation for this recommendation, and I think it is unsound. If the Governor is to be under a duty to receive the advice of the Senate it is inconceivable that he does not know within forty-five days whether the Senate is going to confirm a nomination that he has made. A constitutional requirement that the Senate, if it does not confirm, may reject and return the nomination within forty-five days simply means that if another Governor is obstinate as was the last Governor, the Senate will impose on a lot of nominees the humiliation of being rejected, when a much more considerate way would be for the Governor to realize that he could not get confirmation and withdraw that nomination and submit another. This provision will not result in the confirmation of anybody that would otherwise not be confirmed but it will result in the rejection of a whole lot of people who should not have that indignity put upon them if a future Governor should turn out to be as obstinate as the last Governor and as little appreciative of the practical side of government. The great difficulty in my opinion has been the lack of practical knowledge of both the former Governor and the Committee for Constitutional Revision. As I read the report of the Commission that

recommended an earlier draft of the Revision, that report recited a lot of the evils of government and in general terms said this Proposed Revision will cure them, when it did not attack the root of most of those problems of misgovernment, and I think this is the wrong way to go about correcting some of the evils that are attempted to be reached here.

Now, turning to paragraph 14, which is on the next page.

SENATOR BODINE: Excuse me, Mr. Martin. Then you think that that should be eliminated entirely?

MR. MARTIN: I do. There never has been any trouble before the administration of the past Governor. There never was any trouble over confirmations; that is, lots of nominations were not confirmed but there never was any wrangle about it as there was during the past administration.

MR. FELLER: May I ask a question? Don't you think, Mr. Martin, that a Constitution that has a provision based on, as you say, a more cooperative Governor and a more cooperative Legislature would be one that would have a loophole in it if that condition does not exist? In other words, the purpose of this provision is to plug up that possible loophole. You say in the last administration the Governor and the Legislature were not cooperative and that is the only reason for this provision. Now, if we want to draw a Constitution anticipating cooperation, then if that cooperation ceased to exist, this would plug up the loophole in the Constitution, isn't that so?

MR. MARTIN: This doesn't plug up any loophole.

MR. FELLER: It would prevent the freezing of these nominations in committee.

MR. MARTIN: There can't be any freezing now. The Governor can withdraw a nomination any time if he finds the nomination is not going to be acted on by the Senate.

MR. FELLER: Suppose a nomination might require investigation. It is possible it might require forty-five days for investigation.

MR. MARTIN: I agree with you. That is a reason I didn't mention for striking out this limitation. I say this limitation

wouldn't do any good and may do harm. It does not plug the loophole; it doesn't provide for cooperation, and the Governor at any time could, when there is a block of a nomination, withdraw the nomination that he has found won't be approved.

MR. GLICKENHAUS: Commissioner, don't you think this will serve a useful purpose in facilitating and expediting within a limited time the appointment of these gentlemen?

MR. MARTIN: I don't think so at all. If the provision that the appointment should be made with the advice and consent of the Senate means anything the Governor can find out by advising with the Senate what is going to happen. If he doesn't like what is going to happen, it is not going to help at all, in case there is an actual fight between them, if the Senate is required within forty-five days or even sixty days to publicly reject a nomination instead of informally telling the Governor that if it isn't withdrawn they won't confirm it.

MR. GLICKENHAUS: The Senate doesn't have to reject. It has three alternatives; it can accept, reject, or return without comment.

MR. MARTIN: There is not a particle of difference in the public view between returning a nomination unapproved and rejecting it. There is not a particle of difference in legal effect or psychological effect.

MR. GLICKENHAUS: All right, assuming there is no difference, suppose you came up against a situation ten years from now where the Senate received a nomination and filed it with the Judiciary Committee and then did not desire to extend the advice that is required by the Constitution. That is going to leave you in a rather static position. It may run for the entire year and that position will be frozen. Don't you think that it is incumbent upon the Senate to exercise its constitutional right to advise and that this time limitation would compel the Senate to proffer its advice within the limited time? Don't you think that is a healthy situation?

MR. MARTIN: I don't think that is a situation that could possibly arise in actual practice. It is inconceivable to me that the Governor could not find out whether the Senate was going to

confirm Mr. "A" or was not going to confirm him.

MR. GLICKENHAUS: Commissioner, isn't that, without determining the merits or demerits of the argument, what has occurred in the past, without even touching upon the adjudication of that situation as a practical situation; has it not already arisen, have there not been nominations submitted, have they not been referred to the Judiciary Committee, and isn't it a fact that they have not been acted upon?

MR. MARTIN: Certainly, there isn't any doubt that that has happened but that doesn't mean that a provision like this would have cured that. The Governor in every one of those cases knew that the Senate was not going to confirm that nomination. Now, if he chose to insist on leaving that nomination with the Senate instead of withdrawing it quietly and nominating somebody else, if he chose to take that course, he didn't need the assistance of a constitutional provision requiring the Senate automatically to send that name back to him at the expiration of a given time.

MR. GLICKENHAUS: Isn't that the very point? Did the Senate choose in its constitutional prerogative of proffering advice to return, reject or approve when those nominations came to it?

SENATOR FARLEY: For the purpose of the record, I would like to say--

MR. GLICKENHAUS: I am touching this as a purely theoretical proposition without commenting on the past situation. It works both ways.

SENATOR FARLEY: I still want to put something on the record as a Senator and a member of the Judiciary Committee. There were a lot of times when the Senators did not have an opportunity to advise when these nominations were submitted. I agree with the forty-five days but for the purpose of the record I would like to say they were never consulted or given an opportunity to advise as to the proposed names.

MR. GLICKENHAUS: What I am trying to bring out--

SENATOR FARLEY: Let me finish. I want it in the record--and when they were called in for advice and informed the Governor they

could not possibly confirm, because of the qualifications of the nominees, etc., feeling they were more conversant with home conditions than the Governor, the names were sent in notwithstanding the disapproval of the respective Senators. I just want it in the record.

MR. GLICKENHAUS: I am dealing with a purely theoretical proposition. We will say ten years from now we have a Senate under the provisions of the old Constitution, one that doesn't care to advise the Governor.

SENATOR FARLEY: I am still for the forty-five days.

MR. GLICKENHAUS: I am trying to bring out for the Commissioner,- Doesn't that reduce it to the human equasion of securing cooperation by putting a time limit on it? You see my point, Commissioner, is that the time limit in my personal opinion would reduce the situation to the human equasion of securing cooperation between the Governor and the Senate.

MR. MARTIN: Well, I have watched appointments being made for the last forty years and I have been in fairly intimate touch both with members of the Senate and with Governors during all that time, and as a practical matter I don't think that this provision will facilitate that a particle. I can't conceive of any situation where as a practical matter this would be beneficial.

MR. GLICKENHAUS: Would you not believe it would be beneficial, assuming ten years from now we had a Senate that did not want to act on any nominations, did not want to advance its advice, and therefore the offices would remain vacant?

MR. MARTIN: They don't remain vacant; the Governor makes an ad interim appointment.

MR. GLICKENHAUS: There are positions, Commissioner, where there are no ad interim appointments.

MR. MARTIN: Of course there are some where there are no ad interim appointments but that is relatively seldom and sometimes the former officer-holder continues in office under the law. It varies in different positions, of course.

MR. GLICKENHAUS: There are situations where there are no holdover provisions.

MR. MARTIN: That is perfectly true but a provision requiring the Senate, if it is not going to confirm, automatically to return or reject a nomination within a given period of time is not going to fill a vacancy. The Senate simply rejects Mr. "A" and then the Governor nominates Mr. "B" and if the Senate is in the frame of mind that you have pictured, then after the forty-five days it rejects Mr. "B", and so it continues down the alphabet.

SENATOR FARLEY: Mr. Martin, I think we have covered that point pretty thoroughly. Will you go on to the next point you are interested in, please?

MR. MARTIN: Yes. I started on paragraph 14. In the last two lines of that say, "... the Governor may remove any such officer whenever in his opinion the hearing discloses misfeasance or malfeasance in office," If there is to be a hearing at all is up to the Governor, isn't it, and he has the privilege of removal without a public hearing. Then, the right of removal should be based on an actual disclosure of misconduct in office and not what the Governor may choose to say in his opinion is misconduct.

SENATOR FARLEY: Mr. Commissioner, I think there is a provision there that sets forth, "as shall be prescribed by law," for the purpose of setting up the mechanism. Is that correct, Mr. Clapp?

MR. MARTIN: That is for public hearing.

MR. FELLER: You want to eliminate the words "in his opinion"?

MR. MARTIN: Yes, "in his opinion," I think in effect means if he states in his decision it is misconduct then his decision is absolutely unreviewable in any way no matter how--

SENATOR FARLEY: In case it is arbitrary, is that what you mean? You feel the conclusion involving his opinion should be based on the finding in fact?

MR. MARTIN: Yes.

MR. FELLER: Within the legal terms of misfeasance and malfeasance, the legal definition?

MR. MARTIN: Yes. Also, I would like to suggest in reference to that same paragraph that it would be reasonable to extend

the power of investigation to the conduct of local officers as well as state officers. At present, a local official can only be investigated by the Prosecutor and the Grand Jury or by the Legislature. The Legislature has enough duties of its own so that it ought not be burdened with the responsibility of all investigation of local officials where the Presecutor doesn't act. I think it would do no harm to permit the Governor to make an investigation of local officials as well as state officials. Whether you want to give him the power to remove a local official or leave that to impeachment is purely a matter of policy and I don't want to express an opinion on that.

SENATOR PROCTOR: Commissioner, you could do that by statute, couldn't you, later, if you so desired? I understand another provision in the Constitution permits the Legislature to set up Commissions to investigate local officials.

MR. MARTIN: Yes, but I am not at all sure with that provision the Legislature by statute could give the Governor similar power.

Now, taking up what the Constitutional Revision organization I believe considers the heart of this revision, Section III, I agree with most everybody that consolidation where practical is desirable but to call most of the contemplated groups that would be created under this provision Principal Departments is just a misnomer. A whole lot of them would be more like a basket of eggs or assorted groceries. You have a Principal Department that is comprised of a consolidation of all of these different licensing boards such as barbers, beauticians, morticians, etc. That isn't really a Principal Department of the State even if you do dignify it by that title..

SENATOR PROCTOR: Well, if you consolidated them with the Board of Health, we will say, just using that as a hypothetical case - those things you mention do belong to Health.

MR. MARTIN: Those I mention do, but there are a lot of others.

SENATOR PROCTOR: Let's take those you mentioned and consolidate them with the Board of Health. That is a Principal Department.

MR. MARTIN: In that case, it would be, if that is what the idea is.

SENATOR PROCTOR: That is a Principal Department.

MR. MARTIN: But it may be that the Legislature and the Governor or either one of them might conclude it is better to put all licensing authorities in one single department to simplify administration. From the point of view of simplifying and economizing administration, that would be very helpful but if that were done it would really be a Principal Department.

MR. CLAPP: I don't quite get the point. Why wouldn't it be a Principal Department, assuming it has an executive at the head of it? What is so incongruous about that being a Principal Department?

MR. MARTIN: If there is no relation between all the things put together, it is a basket of eggs. If you mix the eggs, you get an omelet.

MR. CLAPP: I understand what you mean. Of course they have to be put together so as to group the same according to major purposes.

MR. MARTIN: If a lot of these things were put under Health, as suggested by Senator Proctor, that would be a Principal Department, but if it were just a collection of licensing boards it would be a misnomer to call it a Principal Department.

MR. ARTASERSE: What is your principal suggestion, then, Commissioner?

MR. MARTIN: Well, I personally think it is very much better to leave the question of consolidation to the Governor and the Legislature than to attempt to provide for it in the Constitution, and I am coming to that.

MR. FELLER: That is what we are doing.

MR. MARTIN: Well, but there is provision in the Constitution here. You provide that there shall be not more than twenty in number. Now, I don't know, I don't believe--

(Mr. Martin was interrupted at this point and requested to appear before the Judicial Committee)

SENATOR PROCTOR: We will wait for you, Commissioner. Is there anyone else who wishes to speak this morning? Senator Durand, have you any thoughts? I don't know whether you want to testify or not. I don't mean to embarrass you.

MR. DURAND: I didn't come in with that intention.

SENATOR PROCTOR: This the State Auditor, Frank Durand.

I don't want to embarrass you but if you have any thoughts, we would appreciate having them. You heard Dr. Greider.

MR. DURAND: I was very much interested in what was said by some of those who appeared this morning. I didn't come in with any thought of presenting anything to theCommittee. Perhaps the members of the Committee may have some questions they would like to ask me.

SENATOR PROCTOR: I will ask you one simple question: As you know, this proposed draft sets forth that the Governor shall appoint all officers in this State with the advice and consent of the Senate, with the exception of the State Treasurer, State Comptroller and State Auditor, and as I understand it the Governor cannot make any order which impairs the duties and rights of those three officials. What is your feeling as to that?

MR.DURAND: Well, I think that those three officials are primarily legislative officials, that they represent the power and the authority of the Legislature. Of course, primarily the greatest power which the Legislature has is the imposition of tax and the regulation and budgeting of the State's expenditures and those three fiscal officials are the only control which the Legislature has directly over those functions. I think that in discussing those three officials it is necessary to understand first the function of the three officials and not confuse them with some of the administrative functions of other departments which has been done in some of the discussion today.

SENATOR FARLEY: May I ask a question? Will you give us for the record the specific duties of the State Treasurer, State Comptroller and State Auditor; that is, the individual duties, and how they more or less check on each other?

MR. DURAND: I can do it, although they of course are defined in the statutes.

SENATOR PROCTOR: In a broad sense.

MR. DURAND: Primarily, the Treasurer has no function other than to disburse the State's funds on warrant from the Comptroller and be custodian of the State's money and the State Sinking Fund. He has no authority to pay out any State funds except on the Comptroller's warrant, except in one instance, I think; that is, the payment of interest as it falls due on bonds. The Comptroller is primarily the custodian of state property. He is charged with the duty of receiving all state revenues and he controls the expenditures as prescribed by the Legislature in seeing that no payment is made unless it has been appropriated for that purpose or unless it is available. Primarily, those are the functions of the Treasurer and the Comptroller. The State Auditor as now constituted performs no function except the function of post-auditing of any State department, primarily the departments which produce revenue.

MR. FELLER: One more or less checks on the other, then?

MR. DURAND: That's right.

SENATOR PROCTOR: Do you believe it would be sounder fiscal management to have at least the Treasurer and the Comptroller appointed by the Governor, and to go in and out of office with the Governor?

MR. DURAND: I think not. I think the allegiance belongs to the Legislature where the function exists; in other words, the duties of those three fiscal officers are to control the appropriations and expenditures made by the Legislature and they should be primarily responsible to the Legislature, itself. They should not owe their allegiance to the Governor and there should not be any other method of executive appointment.

SENATOR PROCTOR: Then you approve of the draft in regard to the articles?

MR. DURAND: I think it is perfectly proper as set up.

SENATOR PROCTOR: In regard to the paragraphs, I should say, as now proposed.

MR. DURAND: Yes.

MR. ARTASERSE: On this particular item, though.

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SENATOR PROCTOR: Yes, I didn't mean in toto.

MR. ARTASERSE: Let's confine it.

MR. DURAND: Simply about this.

SENATOR PROCTOR: You approve of the draft regarding the Treasurer, Comptroller and Auditor?

MR. DURAND: Yes.

SENATOR FARLEY: Frank, you follow articles, and probably you have read the article by the Interstate Council How does the New Jersey system compare with other states? Is it favorable or does it need some repair, so to speak, in your judgment?

MR. DURAND: It is rated very highly in the reports and reviews of the Council on State Government, particularly as to the function of the State Auditor, because of the fact that the State Auditor in New Jersey has no other executive function. He is purely a Post-Auditor and his allegiance is due entirely to the Legislature, where he is appointed.

SENATOR FARLEY: As a matter of fact, there was commendation from the Council of State Government, I think in 1939, 1940 and 1941, as to the system, isn't that true?

MR. DURAND: That is true. There are only three states which meet nearly theoretical perfection. In one state; that is, Maine, the Auditor has a few additional functions, and I think it is West Virginia and New Jersey where the post-audit function is purely independent. In all other states, where there is an official designated as a post-auditing official, he has been given some additional functions which impair his independence.

SENATOR FARLEY: And you firmly believe that the appointment of the three officials should be by joint session of the Legislature?

MR.DURAND: By joint session, and that the Legislature should retain control of the operation and selection of those three officials.

SENATOR PROCTOR: Any further questions? Thank you very much, Senator.

All right, Mr. Martin. We have to adjourn at one o'clock, sharp, because we have to meet together. We will come back at two o'clock.

MR. MARTIN: I will see if I can finish up before then.

SENATOR PROCTOR: We have to meet with another committee. That is the reason I said that.

MR. MARTIN: I understand that.

Now, the practical part of Section III regarding the departmental rearrangement comes in paragraph C: "The head of each Principal Department shall be a single executive unless otherwise provided by law;" and that after appointment he shall hold his office until a new Governor shall be elected and qualified. My years of experience in government have convinced me that that is wholly unsound. The Governor is entitled to a cabinet. Every Governor in a state having as much state business as New Jersey is entitled to a cabinet, and that cabinet should be provided by law and authorized by the Constitution, if you want it, but the size of the cabinet should depend on the development of state business and the Governor should not be limited in his cabinet to people who are heads of departments.

MR. CLAPP" May I interrupt you to point out that in the language of paragraph 8 of the section you refer to we specifically state, "such State officers as he may select," and thereby make the language more inclusive than heads of the Principal Departments; so, if he wishes, he can bring in the State Treasurer, the State Comptroller, etc.

MR. MARTIN: But I don't think his cabinet should be limited to people who hold any state office. My observation is that the Governor's informal cabinet - Governors have had them in the past - is more apt to consist of people who are holding nominal state offices, such as the Secretary of State, the Supreme Court Clerk and the Clerk in Chancery have very often been, when the head of that department came down to Trenton and spent most of his time in the Governor's Office and elsewhere than in his own department. There have been exceptions, of course, but you all know that generally the man who has been at the head of these three departments, has been in the Governor's cabinet if of the same political faith and has not really run the department. That is all right for the Governor's cabinet but it is a mistake to try to put men who form the Governor's cabinet in at the head of a State Department.

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You are not going to get efficient management of that department. Of course, there are one or two exceptions, which I may mention later. If you are going to have an efficient department, if it is a real department not merely a basket of eggs, the head of that department has got to be either one of two types, a career man or a man of general business experience with some specialized knowledge along the line of the department so that he can give, even though not a career man, broad gauge and direction to the details of that department. When I was Tax Commissioner, I of course was not a career man. I hope I came within the second class that I have referred to either one of these two. Some departments are best with a career man and some departments are best with the other type of businessman who can bring in an outside point of view and not devote his whole time to the department, but you cannot get either of those classes of men to come down and take a position that they know is purely political and can only be held until the end of the Governor's term. You will have much more efficient government if you have as "heads"of the departments men who are going to be the heads of the departments and not members of the Governor's cabinet. Now, the Governor doesn't have any trouble getting along with the head of any department just because he is not a member of his cabinet or just because he is not an appointee of the Governor. A man who is going to really run a department should not have to be burdened, unless the Governor happens to want him to, with the political views that the Governor's cabinet should consider, and my opinion is that if you want to get efficient government you will get it a whole lot more by providing for a real cabinet, salaried, with no other duties than to advise the Governor, and then provide that the department heads shall have long enough terms-I mean the Principal Department heads-so that you can get either a career man or an experienced man in business who is a specialist in that subject, who can afford to take the office because the term is long enough and who can afford to reduce his outside business activities in order to be the real head of the department.

MR. ARTASERSE: What you really mean, Commissioner, is that there should be an overlapping of "Principal Department Heads"as being in the best interests of the State instead of their going out with

the Governor; you mean, they should be permitted to stay as they are now?

MR. MARTIN: Yes. Of course, there are exceptions. I think the Attorney General should serve for the term of the Governor. A new Governor should have the privilege of appointing a new Attorney General.

MR. ARTASERSE: Is he any different than a Tax Commissioner?

MR. MARTIN: Yes, because the Tax Commission is running a department. The Attorney General is advising the Governor and the Legislature on questions of law very much more; that is a bigger part of his function than the prosecuting of suits. The corollary is that some of the departments should be permitted to have their own counsel or attorneys the same as they do now. It is extremely unwise in my opinion to attempt to put all the legal staff of the State in the Attorney General's department. This Constitution of course does not compel it but it rather suggest it should be done. Now, I can quote an instance-- Mr. Artaserse perhaps won't wholly agree with me-- but in this railroad tax litigation if the Constitution had provided that the Attorney General should be the sole person in charge of all State litigation, when the Attorney General chose to question the validity of an act of the Legislature as he did, the Legislature could not have provided for the employment of outside counsel as they did, to defend the constitutionality of the act. Now, I think the office of Attorney General should terminate with the Governor, and there are a few other departments where the same thing is true but there are not many. I think in the vast bulk of departments, you will get more efficiency if you have a longer term of office than four years and I don't think that you can safely put down a constitutional limit of term on those offices. I think that should be left to the judgment of the Governor and Legislature by law, from time to time to change as circumstances may indicate.

MR. FELLER: May I ask, Mr. Martin, wouldn't that situation, though, make the administration of the government less responsive to the will of the people? For example, we are operating under a two-party system. If the people elect a Republican Governor they have a

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right to assume that the government will be administered in accordance with the principles he was elected for, but if they elect a Democratic Governor they also have a right to assume the government will be administered according to those principles. Now, if you have an overlapping, and retain some of the heads of those Principal Departments from a previous administration, then in my opinion the administration of the government would be less responsive to the will of the people.

MR. MARTIN: Your feeling on that I think is due to a misconception of the part which political views have to do with State Government. At present there is no material difference between the Republican and Democratic political views on any subject that substantially affects State Government. That is very different than down in Washington.

MR. FELLER: According to State platforms there are.

MR. MARTIN: Well, there are differences in the State platforms but they are not differences that ever would affect the administration of a State Department. In State elections the differences in the State platforms practically always reflect provisions that require legislative action rather than a change of policy on the part of any one or any group of State departments. Take the department I was head of - it made no difference whether it was a Republican or Democratic Governor. The politics of the Governor could not affect the policies of the department one way or another. The only effect of the political complexion of the Governor was the political complexion of such appointees as were made subject to the Governor's influence but there is nothing in the policy of any department in State Government that can be altered by the political views of the Governor. Questions of economy are not based on politics, Republican or Democrat. One of them may be economical and the other extravagant but it is not associated with the Party and the Governor today without any power of appointing anew the head of every department has a tremendous power over every State official. The control that he can exercise over expenditures under the provisions of the Finance Commissioner Act, whether theorists like Professor Greider recognize it or not, is so completely controlled that no department head can success-

fully combat any request of the Governor under that law unless the Governor asks something contrary to the statute under which the department operates. Because the Governor today has complete power is the reason I say he doesn't need to appoint new department heads and have a new group, as somebody expressed it after I came in this morning. If the Governor appoints the head of every department, that is merely an application of the maxim "To the victor belongs the spoils." This provision in this section would simply make politics sprout in State government to many times the degree that at present exists. Politics would predominate. Instead of the departments being operated for efficiency the Governor could not get capable men to go in and head a department for four years on a political basis and there would be tremendous pressure to put in all the way through appointees just on political grounds.

MR. FELLER: Would you change your opinion if this set up prevailed: Let us suppose departments A, B, C, D, were merged into Department X. Department X would be a Principal Department. The head of the Principal Department would go in and out with the Governor but let us assume that these departments A, B, C, D and E were of such a nature and extent they would retain more or less their identity, each with a subhead, and those subheads would go out say when their terms expired not in and out with the Governor. Would you change your opinion as to the head of the Principal Department with that system?

MR. MARTIN: Not a bit. We have that exact system in the State Tax Department-the Inheritance Tax, Motor Fuel Tax, Railroad Tax, Utility Tax and the Corporation Tax, every one of them, were separate units. They were best operated by career men, civil service men, but the head of the department had to have a broad-range view of the whole thing and know what the general trend of taxation throughout the country was, a man who could keep familiar with the methods that were being tried out in different states both as to the principle of taxes and as to the administration of taxes. Now, a career man's view is centered on his problem. A man coming in from the outside, as I did, was in better position to get the benefit for instance of the Council of State Governments and its subsidiaries and to watch the trend of general taxation

throughout the State than any man who was limited in his training and experience to a particular type of tax, and I never was a member of the cabinet of any of the Governors that I served under. I served under four different Governors but there wasn't anything that I could do anywhere, any time, in opposition to anything that the Governor for the time being might want. The Governor today has perfect power to require any department head to go along with him on anything that is legal that he wants to do.

SENATOR PROCTOR: Do you mind coming back at two o'clock, Commissioner? We have to go down now. We will return at two o'clock

(Recess)

ASSEMBLYMAN FELLER: Have you anything further, Mr. Martin? We want to finish up because we have to meet with the other Committees this afternoon, and they are finished. Incidentally, may we have a copy of the brief too. (Mr. Martin submitted brief, which is attached) This is what you spoke on, isn't it?

MR. MARTIN: Yes, That contains a reference to all the different things that I mentioned, but this covers what is involved in all three of your subcommittees. Of course, I have amplified some parts of it, but it goes touch on each point that I have mentioned and all that I expect to mention.

ASSEMBLYMAN FELLER: All right, we are ready to go ahead.

MR. MARTIN: I was speaking on the sections involving consolidations, and I think I explained pretty fully the reason why I believe the real business departments of the Government should be limited by the Constitution to a four-year term. There are some which may change from time to time, some departments which properly should have new heads when the Governor comes in, but the majority of departments should not, for the reason that I have stated, and that applies particularly to such departments as Education and Institutions and Agencies, where long trial has convinced the State that the best way to operate those departments is under a Board composed of members whose terms stagger, so that there is a continuity of policy in the Board, and those two departments have a single head with fairly long tenure, and the policy is determined by the board so that it is not a change with the politics of the Governor, and it would be a very serious mistake by the Constitution to upset the possibility of such continuity of policy in the departments where it is thought advisable to have that continuity. Now, as I said in the beginning, consolidation of some of the departments is very desireable. Personally, I think it can be best accomplished by the Legislature and the Governor, but the provisions of this Section for consolidation by the Governor would - inasmuch as

they could be vetoed by the Leglisture - be relatively harmless if the provision of the department heads going out of office were eliminated, although, as I have indicated, I think it is unnecessary to provide this in the Constitution. Everything in this section could be written into law without being in the Constitution, and it would then be flexible in a way that it couldn't be if written into the Constitution.

Now, I have also said, that the Governor's control under the existing law over the finances of the State through the Finance Commissioner is absolutely complete. The Legislature has its own check, but the Governor has just as complete a check. In fact, I don't know whether it is realized, but if the Governor vetoed an item in a appropriation Bill and the Legislature repassed that item over his veto, nevertheless, under the Finance Commission Act the Governor could prevent the spending of that money.

Now, I want to refer to a provision in another Article, which I understand is referred to this sub-committee. That is, Article VI, relating to public officers and employees.

MR. CLAPP: That is in the Judiciary.

ASSEMBLYMAN FELLER: We don't have that, it was the amending clause that was referred to us.

MR. MARTIN: They gave us just the reverse information. They said the amending clause was --

MR. CLAPP: You will see it on the cover of this. (Indicating the Proposed Revised Constitution)

MR. MARTIN: I just got this this morning.

ASSEMBLYMAN FELLER: That was wrong, we had nothing to do with that.

MR. MARTIN: Then there is a provision and I am to submit the Judiciary a written memorandum that covers the point I want to cover there, rather completely. If you have only the amending article, I have a point I want to make in respect to that. Two points rather. Paragraph 1, provides at the end of the Paragraph - I will take

that up first - that it should be published in a newspaper in each county not less than three months prior to its submission to the people. That is adequate publication of the proprosed amendment, but as that stands that would permit the adoption of the Legislature of this proposed amendment three months and three days before the election, and that isn't adequate time. That is, while three months is ample for publication, the definite **text** of any proposed amendment ought to be before the people through the newspapers much more than three months. Personally, if the change is one of any consequence, I don't believe that a year is too long a period, but it seems to me everyone would agree that three months is entirely too brief a period to permit the people to give reasonable consideration to it.

Turning back to the first part of that paragraph, the change presently proposes that an amendment may be submitted after passing one Legislature if passed by two-thirds of the members of each house. Now, particularly in view of the proposed change of election of Assemblymen every two years, it may be undesirable to limit the possibility of proposing amendments to action by two differently elected Legislatures, and therefore, I don't criticize this proposal here, but it seems to me that there should be added to that permission to use the old method in case two-thirds of the house do not approve but a majority of both houses in two different Legislatures wanted to.

ASSEMBLYMAN FELLER: In other words, an alternate method, one or the other?

MR. MARTIN: Yes, I think that is very desirable, because it might easily happen that it wouldn't be possible to get a two-thirds majority for a desired amendment and yet it might be entirely possible to get a majority in one Legislature and a majority in the next elected Legislature, and certainly if two successive Legislatures approved it it ought to be legitimate to submit it to the people.

That concludes what I had to say,

except what you now tell me goes to the Judiciary.

ASSEMBLYMAN HERBERT: Do you want to leave this memorandum?

ASSEMBLYMAN FELLER: We would like to have it.

MR. MARTIN: You may have that, yes.

(Mr. Martin submitted the following "Comments on Proposed Constitution")

COMMENTS ON PROPOSED CONSTITUTION

Art. III Sec. I Par. 3 page 3 - The requirement for adjournment in ninety days is unsound. In theory this would lead to speeding up the legislative program and prevent long, drawn out sessions. Those of us who remember the conditions prevailing on the last day or two before adjournment in the days when the legislature itself definitely fixed its adjournment date in advance and stuck to that adjournment date, know the results were bad. Good legislation was crowded out and bad legislation sneaked in. There has been less of that since the legislature has been more deliberate in adjourning. There should be added at the end of this paragraph the words "or except as provided in case of impeachment."

Par. 4 page 3 - Provision should be made for the meeting of a valid session of the legislature when called by a majority, even if the Governor disregards their petition. Since the agitation for a revised constitution springs from the former Governor's distrust of the legislature, it should be remembered that the legislature may at times justly distrust the Governor.

The same clause as to impeachment should be added at the end of this paragraph.

Sec. V par. 4, page 6 - The limitation in the last two lines validating any law which is not attacked within two years, is unsound. In case a law includes a secondary object or does not honestly express its object in the title, it is exceedingly likely that no one interested in challenging the law may discover it until long after the two-year limit.

Sec. VI par. 1, page 6 - There should be added to this paragraph the provision "and such other state officials designated by law as may have for their principal duty the collection of state revenue". Without this provision the legislature may some day find it is not the guardian of the purse string which is intended.

Sec. VI, par. 2, page 6 - This provision should be accompanied by an affirmance of the equal right of labor to work, free from threat or compulsion of, or free from paying tribute to, other workers, or strangers.

Sec. VI par. 6 page 6 - This zoning provision fails to permit the legislature to provide for some zoning regulations which may be greatly needed in the general public interest, in municipalities which may refuse to pass zoning ordinances. It is inconsistent that the legislature should be able to give municipalities a power which it does not itself possess.

Art. IV Sec. 1 par. 11 page 10 - An attempt to limit the time within which the senate shall confirm, reject or return a nomination is unsound. If the senate is unwilling to confirm a specific nomination and the Governor is obstinate enough not to withdraw that nomination,

the nominee is subjected to an unfair indignity by forcing the senate publicly to reject his name. This provision can have no other effect but that. It will never lead the senate to confirm a nomination.

Par. 14 page 11 - The right of removal should be based on actual disclosure of misconduct, not what the Governor may choose to say in his opinion is misconduct.

It would seem reasonable to extend the power of investigation to the conduct of local officers as well as state officers. The legislature should not be burdened with the sole responsibility for initiating such investigation.

Sec III pages 11-12 - Consolidation where practical is desirable, but most of the contemplated groups cannot fairly be called departments. Many of them may prove to be baskets of eggs or assorted groceries.

A constitutional limitation of the number of such principal groups may in time prove very unsatisfactory.

Par. 6 page 12 - The provision in this paragraph that the head of each principal department is to hold office only during the four-year term of a Governor is unsound. Perhaps there is an implication in paragraph 7 that all boards which head principal departments should also hold office only for the term of the Governor. This doubt should be clarified. It is equally unsound to limit the terms of boards by the constitution. It has been found in some departments, such as education, desirable to establish a continuity of policy independent of a transitory Governor. In some branches of government that is sound, and should not be blocked by any constitutional provision.

It is also unsound to think that business-like management or administration of any principal department can be had, if the head of the department knows he is subject to be superceded when a new governor takes office. To the extent it is desirable that the active head of a department be a career man, it would be obviously impossible to get a career man to take such a position with such uncertain tenure. If, on the other hand, the head of a department is to be selected because of special qualifications, no man capable of meeting these requirements would accept on such short tenure. In many departments it is desirable to have a qualified head to provide a broad range vision, which a career man might not have. We cannot secure such a man on a really full time basis, nor under such tenure as provided in paragraph 6.

The principal exception to this reasoning is the office of Attorney General. Because the Governor should be privileged to rely on this officer, his term should properly be co-terminus with the Governor's. However, some other departments should be permitted by law to have independent counsel.

The Governor should have the privilege of an official cabinet, but he should not be limited to selecting state officers for that cabinet. He should have an adequate staff of adequately paid assistants to form his cabinet, to facilitate imparting his policies to the department heads, and carrying on such follow-up as may be necessary, and to advise him where he seeks advice. That should be provided by law without constitutional limitation. He should be privileged to include in his cabinet any additional state official whom he desires. Therefore, paragraph 8 should be changed to make this possible.

No governor needs any greater control of departments than is provided by existing law. No state official today can successfully defy or resist a governor who knows what he wishes to accomplish, unless that something is contrary to law. A governor who wishes to insure efficiency and economy in government

can accomplish it through a cabinet such as above described. Most governors heretofore have been able to carry out their policies under existing conditions, unless their policies required an actual change in existing statutes.

But the proposal under this section as now drawn, ending the term of each department head with that of the governor, can have no other effect but to inject into the state government a much greater volume of low politics than has ever been before. A good governor might not misuse his power, but a politically minded governor could not avoid a misuse of this power.

Art. V Sec. I par. 2 page 13 - No one in the state can say what is the meaning of the clause "equity shall prevail", and those words will be a fruitful source of litigation and revenue to lawyers for years and years to come.

Par. 3 page 13 - To limit by the constitution the place of the meetings of the Supreme Court and the Appellate divisions of the Superior Court, is simply to invite trouble in the future. It would save litigants money, if our present high court sessions were held in part in Trenton and in part in North Jersey.

Sec. III page 13 - Each member of the Superior Court may exercise the original jurisdiction of the court under paragraph 4; but by the Schedule, Art. XI Sec. IV par. 1, page 36, the lay judges of the present Court of Appeals who are not attorneys at law become justices*** of the Superior Court for the balance of their present terms. This is made convincing by the last sentence in this paragraph of the Schedule, which reads: "Any such justice may be re-appointed at the expiration of his said term if he shall then have been an attorney at law***for at least ten years". The effect of this provision will give those existing lay judges of the Court of Errors who are not attorneys the power to issue injunctions, grant prerogative writs, try any type of case and exercise all law, equity and probate jurisdiction. That does not seem business-like.

Sec. IV page 14-15 - This section would seem to permit as many successive appeals in most cases as are now possible.

Sec. V par. 4 page 15 - It seems unsound to provide for the trial of one of the justices by the same body which is required to prefer charges against him.

Par. 5 page 15 - It is contrary to the interest of the public automatically to end the term of a competent judge because he has attained seventy; and it is unfair to the judge to include such provision without at the same time providing for retirement on pension.

Art. VI Sec. 1 par 2 page 17 - Merit and fitness in the higher classes of governmental positions cannot be reasonably ascertained by competitive examinations.

Art. VII par. 2 page 18 - The provision that all revenues be put into a single fund and be subject to appropriation for any public purpose, is unfair to those occupational license fees which are imposed solely for regulation and not for revenue. When a group of persons of a single vocation join for self-government by voluntary organizations, such as attorneys, their membership fees are the property of the members. If such a voluntary association believes better control can be exercised by statute (such as barbers) the license fees paid by them should not be diverted to other purposes.

Par. 4 page 19 - The provision for taxing "according to fixed standards of value" should be restored to its present form. The change will not produce any benefit, but will simply result in creating years of litigation to determine the meaning and effect of the new words. That litigation may be profitable to lawyers, but cannot be beneficial to anyone else.

Art IX par. 1 page 20 - Under this paragraph an amendment might be adopted only a few days over three months prior to its submission to the people. That is an unreasonably short period. It may be long enough for the advertisement but the people should know what is coming no less than six months.

It also seems unwise to limit the proposal as here stated. It may be reasonable to permit two-thirds of each house to propose an amendment to be voted on in the same year, but it should also be possible for a majority of each house in two successive sessions, one after the election of a new assembly, to submit an amendment.

ASSEMBLYMAN FELLER: All right, thank you very much, Mr. Martin. You will observe that what we are talking about is the avoidance of rigidity. We just want you to know that any questions we asked were for amplification in our minds and to get it on the record so we will have a comprehensive ides.

Mr. Charles O. Frye is here.

MR. FRYE: This is my third trip.

ASSEMBLYMAN FELLER: Would you mind avoiding any repetition, Mr. Frye?

MR. FRYE: Yes, I will, I would like to emphasize what this gentlemen has just said about revision. I think, to retain the other as an alternative would be good. The thing I presented to you before is in writing here.

ASSEMBLYMAN FELLER: Mr. Frye, you are a committee of the American Citizenship Foundation?

MR. FRYE: Yes, I am talking for the Planning Committee.

ASSEMBLYMAN HERBERT: You have a memorandum of that which can be put in the record?

MR. FRYE: Yes, I am submitting a memorandum, and I would just like to say that when I submitted my letter last week I did not specify how it might be set up in the Constitution.

Here is what I have in mind, Section II, Article VI:

"1. The State Legislature, in joint session, shall have power to make rules governing the election, term of office, salary, and the duties and powers of a State Auditor, a State Librarian, and a State Library Board; and by the affirmative vote of 13 members of the State Senate, and the affirmative vote of 36 members of the General Assembly, the State Legislature, in joint session, shall have power to change such rules from time to time; provided should the Governor fail to concur in the change of such rule or rules, the affirmative vote of two-thirds of the members of each branch of the State Legislature will be required to effect and validate such change or changes."

What I am trying to do there is to give you a general clause that will give the Legislature wide powers to handle its own setup and still not encroach upon the Governor's functions. I think under that general clause there you would have a tremendous advantage in handling the affairs of the Legislature.

The other item I mentioned there was the third item of Section II. I realize that there may be some objection on the part of County Clerks, Surrogates, Sheriffs, and so forth, due to worry about the abandonment of their jobs.

MR. CLAPP: All article VI is referred to the Judicial Committee and both these changes you are suggesting as to Section II are not within the scope of our Committee.

(Mr. Frye submitted the following statement and proposed wording of Article VI, Section II)

ARTICLE VI

PUBLIC OFFICERS AND EMPLOYEES

SECTION TWO:

1. The State Legislature, in joint session, shall have power to make rules governing the election, term of office, salary, and the duties and powers of a State Auditor, a State Librarian, and a State Library Board; and by the affirmative vote of 13 members of the State Senate, and the affirmative vote of 36 members of the General Assembly, the State Legislature, in joint session, shall have power to change such rules from time to time; provided should the Governor fail to concur in the change of such rule or rules, the affirmative vote of two-thirds of the members of each branch of the State Legislature will be required to effect and validate such change or changes.

Here is a conservative "GENERAL POWER" that should enable the State Legislature, without encrouchments upon the Executive Branch, to develop, as time calls for change from one age to another. It also is sufficiently flexible to enable the Legislature to work out the

most IMPROVED PROCEDURES FOR CITIZENSHIP INTEREST AND UNDERSTANDING in each of the major purpose functions of the state government. The latter provision very easily may become the chief function of CONSTITUTIONAL GOVERNMENT IN THE FUTURE.

ASSEMBLYMAN FELLER: That was one of the miscellaneous provisions that were allotted among the three committees.

ASSEMBLYMAN HERBERT: It is not properly before us.

ASSEMBLYMAN FELLER: They gave us the amendment clause.

MR. FRYE: Over in the Senate, Senator Eastwood?

ASSEMBLYMAN FELLER: Yes.

MR. FRYE: I will leave what I have submitted to you, but I felt this was in your province. I just want to thank you for the courtesies that you have shown me in these hearings and to say that I hope you will take plenty of time to get this draft so perfect that we will go out and throw our coats for the whole job this fall.

ASSEMBLYMAN FELLER: Thank you very much, thank you for coming. Is Colonel Stevens here this afternoon? Does anyone else want to be heard now?

ASSEMBLYMAN GLICKENHAUS: I want to submit a letter which I got from Mr. Bilder, and which he asked me to pass on to the committee.

ASSEMBLY HERBERT: Can we put that in the record?

(Assemblyman Glickenhaus submitted for the record the following letter from Walter J. Bilder, Counsellor at Law, together with copy of letter written to Governor Edge)

"February 14, 1944

"Hon. Jacob S. Glickenhaus,
60 Park Place
Newark, 2, New Jersey

"Dear Assemblyman Glickenhaus:-

"It seems to me both proper and appropriate for me to send you herewith a copy of a letter which I have written to Governor Edge today. At any rate, my doing so will serve as an expression of my appreciation of the worth and dignity with which you and your colleagues invested the hearings held

before you and of the genuine courtesy which you accorded to all those citizens (myself included) who had the honor and the pleasure of addressing you.

"I would be obliged to you for treating this letter as a communication to the fellow-members of your Committee as well as to yourself.

Respectfully yours,"

(signed) Walter J. Bilder."

COPY

"February 14, 1944

"Hon. Walter E. Edge,
State House,
Trenton, New Jersey.

"Dear Governor Edge:-

"No one who attended and participated in the hearings before the "Joint Legislative Committee to formulate a draft of a Proposed Revised Constitution", could fail to be impressed deeply with the earnest, thoughtful and public-spirited attitude displayed by the members of that Committee in the conduct of those hearings. A mere half-hour's presence at one of those sessions was sufficient to dissipate any pre-conceived notion of the citizen that the hearings were regarded by these legislators as perfunctory proceedings and were intended by them purely as a nominal satisfaction of the public expectations in the matter. In particular, the questions which the Committee members invariably put to each speaker at the close of his remarks were so pertinent and searching as to show that those remarks not only had been listened to attentively but had been appraised carefully by officials who had labored to become expert in the matters under consideration.

"To say this is to do justice and honor to the particular officials whose important public service is referred to. But it is also to pay due respect to your Excellency himself, of whose surpassing devotion to the public interest in this matter, the estimable conduct of those officials is unquestionably a reflection. For, however, much the attitude and action of those legislators were an appropriate and just response to the public demand for a genuine and thorough canvass of the subject, it must be recognized to have been owing no less to the inspiring influence of your own stirring and public-spirited example in that behalf.

Very respectfully yours,"

(Signed) Walter J. Bilder."

MR. FRYE: About the letter I submitted last week, should it be submitted to Senator Eastwood?

MR. CLAPP: The two items which should be sent to Senator Eastwood --

ASSEMBLYMAN GLICKENHAUS: Just mention the fact that you sent it to us by mistake.

ASSEMBLYMAN GLICKENHAUS: Write them a letter and give them the thought in the letter.

ASSEMBLYMAN FELLER: If there is no one else who wants to be heard, we will adjourn.

ASSEMBLYMAN HERBERT: I move we adjourn.

It was stated, for the record, that this terminates the hearings on the Proposed Revised Constitution before the Sub-Committee on Executive Provisions.