State of New Jersey

CONSTITUTIONAL CONVENTION

OF

1947

HELD AT

RUTGERS UNIVERSITY

The State University of New Jersey

NEW BRUNSWICK, NEW JERSEY

Volume I

CONVENTION PROCEEDINGS
RECORD

JERSEY PRINTING CO., INC., BAYONNE, NEW JERSEY

PREFACE

THE DELEGATES to the New Jersey Constitutional Convention of 1947 were actively alert to the importance of preserving the records of the Convention and took definite steps to insure that desirable result.

All discussions and actions on the floor of the Convention, as well as the deliberations of the Standing Committees, were recorded, transcribed and made available to the Delegates within 24 hours. The Delegates properly paid tribute to the heroic efforts of the volunteer staff of State employees who made this possible.

Before the Convention adjourned *sine die* it adopted a Resolution providing for the editing and publishing of all the formal proceedings of the Convention and its Standing Committees. The Resolution directed the Historian and Archivist of the Convention, Sidney Goldmann, to proceed with this work. The Committee on Rules, Organization and Business Affairs, which continued to handle the business affairs of the Convention, directed the Business Manager of the Convention, Herman Crystal, to cooperate with Mr. Goldmann.

Since this record presents the historical background of the New Jersey Constitution of 1947, overwhelmingly adopted by the people of New Jersey in November of that year, it must always remain dedicated to the Delegates who assembled in New Brunswick on June 12, 1947, and, at the sacrifice of personal comfort and business and professional demands, continued at their task until their historic work was completed.

ROBERT C. CLOTHIER
President
Constitutional Convention of 1947

INTRODUCTION

NEW JERSEY lacks a complete record of the meetings of those who framed the Constitution of 1776, or of the Constitutional Convention of 1844. The resolution that would have resulted in a verbatim report of the proceedings and debates of the 1844 Convention was defeated by a single vote. Our knowledge of what transpired in that body is derived from the official Journal and a reconstructed record prepared from newspaper accounts by the New Jersey Writers' Project of the Works Projects Administration in 1942—almost a century after the occasion.

The New Jersey Constitutional Convention of 1947 did not fall into the error made by the 1844 Convention. The Governor's Committee on Preparatory Research, appointed early in 1947, had no difficulty in demonstrating the importance and advisability of preserving a complete record of the Convention to be held at New Brunswick later that year. The Official Rules specifically provided that all records of the Convention and its committees be deposited in the Archives and History Bureau of the State Department of Education. The Convention proceedings and debates were stenographically transcribed in full, as well as sound-recorded, and the same procedure was followed for the five major committees. These volumes have been prepared from the daily mimeographed record of the Convention and its committees.

The plan of publication provides for five volumes. Volume I contains the entire formal proceedings and debates of the Convention in the 22 days on which sessions were held. Volume II, the Appendix, contains the Proposals presented by the delegates, the Committee Reports and Proposals, amendments proposed by the delegates to the Committee Proposals, the Reports of the Committee on Arrangement and Form, the final draft of the Constitution presented by the Convention to the people,

the biographies of the delegates, as well as other relevant material, including the legislation providing for the Convention, the Governor's Proclamation calling the Convention, and the Official Rules. In addition, Volume II includes the entire set of the 35 monographs prepared by the Governor's Committee on Preparatory Research in advance of the Convention. These contain all of the basic research and references that might possibly be required by the delegates in the way of background information. Volumes III, IV and V contain the proceedings of the Standing Committees.

The work of editing and publishing the record has been somewhat slow, due to the necessity of carefully assembling the material in orderly array, and checking and cross-checking the references. Each delegate was also given the opportunity of reviewing the record to make sure that his remarks were correctly reported.

TRENTON
September, 1949.

TABLE OF CONTENTS

VOLUME I

	PAGES
Preface	iii
Introduction	v
First Day, June 12, 1947 (Morning Session)	1
First Day, June 12, 1947 (Afternoon Session)	23
Second Day, June 18, 1947	46
Third Day, June 24, 1947	56
Fourth Day, July 1, 1947	66
Fifth Day, July 8, 1947	77
Sixth Day, July 15, 1947	88
Seventh Day, July 22, 1947	103
Eighth Day, July 29, 1947	113
Ninth Day, August 5, 1947	136
Tenth Day, August 11, 1947 (Morning Session)	163
Tenth Day, August 11, 1947 (Afternoon Session)	184
Eleventh Day, August 12, 1947 (Morning Session)	226
Eleventh Day, August 12, 1947 (Afternoon Session)	262
Twelfth Day, August 13, 1947	280
Thirteenth Day, August 14, 1947 (Morning Session)	345
Thirteenth Day, August 14, 1947 (Afternoon Session)	387
Fourteenth Day, August 15, 1947	413
Fifteenth Day, August 18, 1947 (Morning Session)	460
Fifteenth Day, August 18, 1947 (Afternoon Session)	503
Sixteenth Day, August 19, 1947 (Morning Session)	537
Sixteenth Day, August 19, 1947 (Afternoon Session)	581
Seventeenth Day, August 20, 1947 (Morning Session)	615
Seventeenth Day, August 20, 1947 (Afternoon Session)	658
Eighteenth Day, August 21, 1947 (Morning Session)	690
Eighteenth Day, August 21, 1947 (Afternoon Session)	728
Nineteenth Day, August 26, 1947 (Morning Session)	761
Nineteenth Day, August 26, 1947 (Afternoon Session)	796
Twentieth Day, August 28, 1947 (Morning Session)	808
Twentieth Day, August 28, 1947 (Afternoon Session)	845
Twenty-first Day, September 8, 1947	860
Twenty-second Day, September 10, 1947	906

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

June 12, 1947

(Morning session)

(The session began at 11:00 A. M.)

GOVERNOR ALFRED E. DRISCOLL: The hour appointed by the Legislature of the State of New Jersey having arrived for the convening of the Constitutional Convention of 1947, I do accordingly as Governor of this State call this Convention to order.

It is appropriate that those to whom so much has been entrusted by our great citizenry call upon God for guidance at the outset of their task. It is my privilege to present the Right Reverend Dr. Theodore R. Ludlow, President of the New Jersey Council of Churches, Bishop of Newark. Will the delegates please stand.

BISHOP LUDLOW: Almighty God, who are the Father of all men, we ask Thy blessing upon the representatives of the people here assembled, charged with the task of creating an instrument of government for our State.

Bless the Governor and all in authority and grant to these representatives both the will and the wisdom to fashion such a government as shall draw our people together into one community of purpose and of responsibility for the accomplishment of Thy will. Save them from prejudice and partisanship. May they have the courage to think and to act in terms of the welfare of our whole people and not in terms of any personal, political, economic, racial or religious interests. Give them the patience and the self-control which mark true democracy and grant them such faith in Thee as shall enable them to resolve differences into a greater and more inclusive whole. Grant that we, the citizens of this State, may undergird their efforts by self-restraint and by a prayerful cooperation with their labors which shall manifest a sincere willingness among us to put the common good above selfish interest. . . . So may Thy will be done to the safety, honor and welfare of our people through Jesus Christ, Our Lord, Amen.

GOVERNOR DRISCOLL: Thank you, Bishop Ludlow.

Pursuant to the authority vested in me as Governor of the State of New Jersey, I do hereby appoint the Honorable Lloyd B. Marsh, Secretary of State, as Secretary Pro Tem of this Convention until the election of a President by the Convention and the election of a Secretary.

Will the Secretary of State present the certificate of results of the referendum.

MR. MARSH *(reading):*

"STATE OF NEW JERSEY
DEPARTMENT OF STATE

A STATEMENT OF THE DETERMINATION OF THE BOARD OF STATE CANVASSERS relative to an election held in the STATE OF NEW JERSEY, on the 3rd day of JUNE, 1947, for the Approval or Rejection of the Public Question, in the State of New Jersey.

THE SAID BOARD do determine that, at the said Election the Public Question voted upon in the State of New Jersey, which reads as follows:

> 'Do you favor the holding of a State constitutional convention which shall prepare for submission to the legal voters next November fourth, for their adoption or rejection, in whole or in part, a new State Constitution revising, altering or reforming the present Constitution in such part or parts and in such manner as the convention shall deem in the public interest, *provided,* that the convention shall in no event agree upon, propose or submit to vote of the people, either separately or included among other provisions, any provision for change in present territorial limits of the respective counties, or any provision for legislative representation other than provision for a Senate composed of one Senator from each county and a General Assembly composed of not more than sixty members apportioned among the counties according to population so that each county shall at all times be entitled to at least one member, chosen for, and elected by the legal voters of, the counties respectively, *and provided further,* that the Secretary of State shall review such proposed Constitution and parts thereof to determine whether the Convention has complied with the foregoing restrictions, and that only upon his certification that it has so complied may the proposed Constitution and parts thereof be submitted as aforesaid?'

was adopted.

I DO CERTIFY that the foregoing is a true, full and correct STATEMENT of the DETERMINATION OF THE BOARD OF STATE CANVASSERS therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, 1947.

ALFRED E. DRISCOLL
Chairman of the Board of
State Canvassers.

ATTESTED TO with the great seal of the State of New Jersey:

LLOYD B. MARSH,
Clerk."

GOVERNOR DRISCOLL: The certificate of the Secretary of State will be received and filed.

The Secretary will read the certificate of the list of delegates elected to this convention.

MR. MARSH *(reading):*

"A STATEMENT OF THE DETERMINATION OF THE BOARD OF STATE CANVASSERS relative to an election held in the STATE OF NEW JERSEY, on the 3rd day of June, 1947, for the election of Delegates to the STATE CONSTITUTIONAL CONVENTION.

THE SAID BOARD does determine, that at the said election, the following Delegates to the State Constitutional Convention, were elected:

Frank S. Farley	Spencer Miller, Jr.	George F. Smith
Leon Leonard	Alfred C. Clapp	Haydn Proctor
George T. Naame	Nathan L. Jacobs	Wayne D. McMurray
David Van Alstyne, Jr.	Wesley A. Taylor	Thomas Brown
Walter G. Winne	Dominic A. Cavicchia	David Young, 3rd
J. Wallace Leyden	Frank J. Murray	Ruth C. Streeter
Myra C. Hacker	Henry W. Peterson	Albert H. Holland
Milton C. Lightner	Lawrence N. Park	Percy Camp
J. Spencer Smith	John Milton	Oliver F. Van Camp
Leland F. Ferry	Thomas J. Brogan	Charles K. Barton
Arthur W. Lewis	Edward J. O'Mara	Marion Constantine
Lester A. Drenk	Lewis G. Hansen	Ronald D. Glass
Bartholomew A. Sheehan	Frank H. Eggers	Louis V. Hinchliffe
John L. Morrissey	Francis D. Murphy	William A. Dwyer
William T. Read	Frank G. Schlosser	Arthur R. Gemberling
George H. Walton	John Drewen	Pauline H. Peterson
A. J. Cafiero	Robert Carey	Ralph J. Smalley
Clyde W. Struble	William J. Dwyer	H. Rivington Pyne
Elmer H. Wene	Wesley L. Lance	Henry T. Kays
Francis A. Stanger, Jr.	John F. Schenk	Amos F. Dixon
Frank H. Sommer	Wilbour E. Saunders	Sigurd A. Emerson
Allan R. Cullimore	Charles P. Hutchinson	Milton A. Feller
William J. Orchard	Thorn Lord	William L. Hadley
Olive C. Sanford	Marie H. Katzenbach	Edward A. McGrath
Jane E. Barus	Robert C. Clothier	Gene Williams Miller
Winston Paul	Christian J. Jorgensen	J. Francis Moroney
Oliver Randolph	John J. Rafferty	John H. Pursel

I DO CERTIFY that the foregoing is a true, full and correct STATEMENT and DETERMINATION OF THE BOARD OF STATE CANVASSERS therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, 1947.

ALFRED E. DRISCOLL
Chairman of the Board
of State Canvassers.

ATTEST:
LLOYD B. MARSH,
Clerk."

GOVERNOR DRISCOLL: The Secretary Pro Tem will call the roll of delegates.

Will the delegates please answer by saying "Present."

(The Secretary Pro Tem then called the roll and the following delegates answered as their names were called:)

ATLANTIC COUNTY
Frank S. Farley
Leon Leonard
George T. Naame

BERGEN COUNTY
David Van Alstyne, Jr.
Walter G. Winne
Myra C. Hacker
Milton C. Lightner
J. Spencer Smith
Leland F. Ferry

BURLINGTON COUNTY
Arthur W. Lewis
Lester A. Drenk

CAMDEN COUNTY
John L. Morrissey
William T. Read
George H. Walton

CAPE MAY COUNTY
A. J. Cafiero
Clyde W. Struble

CUMBERLAND COUNTY
Elmer H. Wene
Francis A. Stanger, Jr.

ESSEX COUNTY
Allan R. Cullimore
Olive C. Sanford
Jane E. Barus
Winston Paul
Oliver Randolph
Spencer Miller, Jr.
Alfred C. Clapp

ESSEX COUNTY (Continued)
Nathan L. Jacobs
Wesley A. Taylor
Dominic A. Cavicchia
Frank J. Murray

GLOUCESTER COUNTY
Henry W. Peterson
Lawrence N. Park

HUDSON COUNTY
John Milton
Thomas J. Brogan
Edward J. O'Mara
Lewis G. Hansen
Frank H. Eggers
Francis D. Murphy
Frank G. Schlosser
John Drewen
Robert Carey
William J. Dwyer

HUNTERDON COUNTY
Wesley L. Lance
John F. Schenk

MERCER COUNTY
Wilbour E. Saunders
Charles P. Hutchinson
Thorn Lord
Marie H. Katzenbach

MIDDLESEX COUNTY
Robert C. Clothier
Christian J. Jorgensen
John J. Rafferty
George F. Smith

MONMOUTH COUNTY
Haydn Proctor
Wayne D. McMurray

MORRIS COUNTY
David Young, 3rd
Ruth C. Streeter
Albert H. Holland

OCEAN COUNTY
Percy Camp
Oliver F. Van Camp

PASSAIC COUNTY
Charles K. Barton
Marion Constantine
Ronald D. Glass
William A. Dwyer

SALEM COUNTY
Arthur R. Gemberling
Pauline H. Peterson

SOMERSET COUNTY
Ralph J. Smalley
H. Rivington Pyne

SUSSEX COUNTY
Henry T. Kays
Amos F. Dixon

UNION COUNTY
Sigurd A. Emerson
Milton A. Feller
William L. Hadley
Edward A. McGrath
Gene Williams Miller

WARREN COUNTY
J. Francis Moroney
John H. Pursel

GOVERNOR DRISCOLL: I do declare a quorum of the delegates elected present.

MR. CHARLES K. BARTON: I beg leave to introduce a resolution.

GOVERNOR DRISCOLL: Senator Barton.

MR. EDWIN C. SEGAL (of Camden County): Mr. Chairman—Governor. I'd like to read for about two minutes a statement on the delegates from Camden, if I may.

GOVERNOR DRISCOLL: You will be given an opportunity at a later date.

The following resolution has been offered by Mr. Barton of Passaic *(reading):*

"RESOLVED, that the reading of the certificate of election of the respective delegates be dispensed with and that the certificate of the Secretary of State as to their election, presented by Honorable Lloyd B. Marsh, Secretary Pro Tem, be accepted in lieu thereof.

FURTHER RESOLVED, that each delegate who has answered the roll call and whose name appears on the certificate of the Secretary of State take and subscribe an oath or affirmation, before the Honorable Lloyd B. Marsh, acting as a Master in Chancery, that he will abide by the instructions of the people as contained in the referendum held under Chapter 8, of the Laws of One Thousand Nine Hundred and Forty-Seven, and support the Constitution of the United States and faithfully discharge his duties as delegate."

Is there a second to that resolution?

(Resolution seconded)

GOVERNOR DRISCOLL: You have heard the reading of the resolution. Question on the resolution?

(Delegates call for question)

GOVERNOR DRISCOLL: If there is no discussion, all those in favor of the resolution will signify by saying "Aye."

(Chorus of "Ayes")

GOVERNOR DRISCOLL: Opposed, "No."

(Silence)

GOVERNOR DRISCOLL: The resolution is declared carried.

Accordingly, I will ask the delegates to sign the oath of office here on your desks and after you have completed that, to rise in your seats and to be sworn by the Secretary of State, acting as a Master in Chancery. Please rise, raise your right hand.

MR. MARSH: You will repeat after me the following oath:

"I (giving your full name) do solemnly swear that I will abide by the instructions of the people as contained in the referendum submitted at a Special Constitutional Convention election held June third, one thousand nine hundred and forty-seven, that I will support the Constitution of the United States, and that I will faithfully discharge all of the duties of delegate to the said Constitutional Convention, so help me, God."

(Delegates repeat oath)

GOVERNOR DRISCOLL: A quorum being present, it is perhaps appropriate that I address myself to this Convention for a few brief moments:

Ladies and Gentlemen of the Convention:

We meet today upon an historic occasion under favorable auspices with the encouraging approval and confidence of our fellow citizens, as evidenced by their vote on June 3rd.

We begin the task of constitution-making at a time when the world is beset with doubts and misunderstandings, and preoccupied with a clash of apparently conflicting interests. There is a real kinship between the development of an international charter now in the early stages of development and the writing of a State Con-

stitution. The strength of our nation and the part it is to play in the development of the international charter is largely dependent upon the virility of its component parts—the 48 sovereign states.

It is hardly necessary to emphasize the far-reaching importance of the work you are about to undertake. The American people, foremost among the world's populations in their veneration of a written constitution, look upon a constituent assembly, chosen for the specific purpose of making a constitution, as an expression of basic sovereignty. The making of a modern constitution is a difficult process, the more so when we seek agreement upon the complex issues of modern society in a popularly elected assembly of 81 individuals. The course of your work during the next three summer months will undoubtedly be trying, and the responsibility you have undertaken will test your capacity for statesmanship. It is part of our tradition, and a valuable tradition it is, that when we revert to fundamentals in government we look for the highest form of representative democracy, as well as the ultimate consent of the governed expressed through the process of free elections.

It is only fair to say that a great work is expected of you. While this State has lived under the same Constitution, with but little change, for over a century, its people, their life and work have undergone the effects of a civil war, of two world wars, and of industrial and social revolutions since our present Constitution was adopted in 1844. It is your task to appraise these great forces in terms of present constitutional standards, to test what we have against what we need, to retain what has withstood the test of time and to re-examine and discard what is no longer acceptable, to build in new fields which were unknown a century ago.

One characteristic of our modern life more than any other makes your task more difficult than that confronting your predecessors in 1844. I refer to the intricate interdependence of individuals and groups in our modern society as compared with the relative independence of the individual prior to the Civil War. Not only has government become inestimably larger and more significant in the daily lives of our people, but the industrial revolution has brought great aggregations of capital and labor, well described as "private government," in the form of business corporations and trade unions. Government has become so large that responsibility is difficult to identify. Other social forces, as well, have come to have a commanding effect upon every citizen, with responsibility also difficult if not impossible to define. The result is that from the viewpoint of any law-making body, whether it be a legislature or a constitutional convention, it becomes necessary to recognize the significance of highly organized group interests, the intense conflicts and pressures which such organization brings in its wake, and the confusion of political values which it creates.

This kind of environment makes it all the more important that the organic law under which our State may live for the next century be restricted to the establishment of a sound structure, to the definition of official responsibility and authority, to the assurance of the fundamental rights and liberties of all the people. To do less is to fail in your trust. To seek to do more is to impose upon the future.

We can best insure against the pressures of our age and the vicissitudes of the future by limiting our State Constitution to a statement of basic fundamental principles. Our Federal Constitution has the ageless virtue of simplicity. Its authors stated their fundamental concepts of government without compromise or complication. By way of contrast, our 1844 document imposes oppressive restrictions upon each branch of the government entirely apart from the historic philosophy of checks and balances between the legislative, executive and judicial branches. These cross-checks and restrictions within the basic divisions of government are the cause of many of our present day difficulties. They account for the cumbrous size of our court of last resort and the presence of so-called lay members on the court to check the activities of men trained in the law—to give but one illustration.

In the course of your debates you will, on many occasions, be tempted to adopt legislative enactments. You will be wise to guard against this natural temptation by the judicious and conscientious exercise of statesmanship and will power. The State Constitution is an organic document—a basis for government. It should not be a series of legislative enactments. Our search for a modern government in this State has all too frequently been frustrated by legislation enacted by our ancestors over a century ago and embalmed in our Constitution. When legislation is permitted to infiltrate a constitution, it shackles the hands of the men and women elected by the people to exercise public authority. The longer a constitution, the more quickly it fails to meet the requirements of a society that is never static. To quote one authority: "The more precise and elaborate" the provisions of a constitution, "the greater are the obstacles to the reform of abuses. Litigation thrives on constitutional verbosity."

Accordingly, I earnestly recommend that all proposals of a legislative character be rejected. If you deem it desirable, these may be incorporated in a supplemental report addressed to the Governor in the nature of a presentment. This report will be forwarded by me to the Legislature for consideration at either a special or general session. By this device, the Convention may confine its draftsmanship to the creation of a document restricted to principles, while permitting a natural outlet and expression for related legislative proposals either for the purpose of implement-

ing or supplementing the proposed Constitution.

Over a century ago your predecessors forged the handcuffs that today prevent your government from freely meeting the challenge of an industrialized society. Unhappily, the key to the handcuffs was thrown away by the framers of the 1844 document, by the adoption of a time-consuming and costly amendment process which has proved to be substantially unworkable.

It may well be said that the history of constitutional government everywhere has seen a constant advancement of the balance between the liberty of the individual and the interests of society. To serve this process, a written constitution must be flexible, must not impose excessively rigid conditions of government, must be open to reasonable amendment and adaptation to changing conditions and ways of life which none of us can foresee. It is this very characteristic of the Federal Constitution which has given it its enduring quality.

The highest trust in a constitutional government is imposed on the men who comprise the judiciary. It is in the judiciary that we find the balance-wheel of our whole constitutional system. Our unique institution of judicial review of the acts of the Legislature and Executive, giving power to courts to set aside laws and executive action where the judges determine that they violate the written constitution, has come to make the quality of our justice synonymous with the values of democracy held by the average citizen.

It is for this reason that we think of our courts not so much as a forum for the settlement of differences between private litigants, or as the peculiar working arena of professional adversaries and legal technicians, but rather as our principal instrument of individual liberty and political security. It is only in our courts that an individual of the lowliest estate can set himself up against his government by appealing to the kind of fundamental law which this Convention is about to formulate. Moreover, it is through the courts that the prerogatives of government may be asserted against the individual in an orderly and systematic manner. Accordingly, it is particularly important that our judicial system, by its performance and ability to adjust itself speedily to new requirements, merit the confidence and respect of our citizens.

We may look upon the Constitution as the vehicle of our life as a State. In your work of designing and building it you will have the advantage of many other minds and hands that have labored, particularly over the past five years. The report of the Commission on Revision of the New Jersey Constitution in 1942, the record of the public hearings on that report, the record of the hearings conducted by the legislative committees in 1944, and the proposed Constitution drafted by the Legislature in 1944

are documents entitled to your thoughtful consideration.

The Convention opens with every advantage of a promising prelude. Following the recommendation contained in my Inaugural Address of January 21st, the enabling legislation to provide for this Convention was adopted by a unanimous vote in both Houses of the Legislature. In your nomination and election as delegates petty partisanship was largely laid aside. You have the mandate of the people of New Jersey to dedicate yourselves to a period of constructive service to our State, without regard to partisan advantage or distracting personalities.

The duty confronting you today is not unlike that confronting the authors of the Declaration of Independence, as explained by Thomas Jefferson in a letter to Henry Lee. "The important task," Jefferson wrote, was "not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, (in) terms so plain and firm as to command their assent, ***."

I am confident that you will so conduct yourselves that it will be said of your work, as James Madison said of the work of the Convention in Philadelphia in 1787:

> "Whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives or more exclusively or anxiously devoted to the object committed to them to *** best secure the permanent liberty and happiness of their country."

The rights that you exercise in this Convention were won in 1776 and protected in memorable struggles through the years. The fight for liberty, however, must be won anew each day and the contest for good government waged during the days of peace is no less important than the battle waged in the heat of armed conflict. May your service in the drafting of a new Constitution be one of dedication to the memory of the men and women who fought in the wars to make and keep us a free people. May you be blessed with clearness of vision, soundness of purpose, and successful accomplishment, to the end that citizens of this State a hundred years hence will repeat your names with pride and call you devout, wise and just. Yours, ladies and gentlemen, is the opportunity of a century.

(Applause)

MR. BARTON: Mr. Chairman.

GOVERNOR DRISCOLL: The chair recognizes Mr. Barton of Passaic.

MR. BARTON: May I introduce a resolution?

GOVERNOR DRISCOLL: The resolution submitted by Mr. Barton of Passaic reads:

> "RESOLVED, that the Governor appoint a temporary Committee on Rules of seven delegates, who shall promptly prepare and report to the Convention its recommendations for the permanent rules for the Convention."

Is there a second to the resolution?

(Several delegates second the resolution)

GOVERNOR DRISCOLL: You have heard the reading of the resolution.

MR. SIGURD A. EMERSON: Mr. Chairman, I would like to offer an amendment. I think the Committee on Rules should consist of one member from each county to be selected by the delegates in the respective counties. A set of rules has very carefully been prepared. I think we ought to avoid as far as possible forcing a set of rules which is not fairly considered by a large group that would be representative of the Convention. I think our experience of two years ago was rather a sad one. I think one of the principal reasons why the Constitution was defeated in 1944 was not because of any fault of the Constitution, which was so intelligently, fairly, and well prepared. I think it was because of the manner in which it was done.

GOVERNOR DRISCOLL: Are you offering an amendment to the resolution?

MR. EMERSON: Yes, I would like to amend the resolution that the committee be increased to 21, consisting of one delegate from each county, to be selected by the delegates in such county.

GOVERNOR DRISCOLL: Is there a second to the amendment that has been offered?

(Second from the floor)

GOVERNOR DRISCOLL: You have heard the amendment. What is your pleasure?

MR. SEGAL: On the question, Governor?

GOVERNOR DRISCOLL: On the question. . . . I am sorry; I cannot recognize the gentleman from Camden. Your application for admission to this Convention will undoubtedly be referred to the Committee on Credentials at the appropriate time.

MR. SEGAL: Mr. Governor, what I have to say is that there should be no appointment of a chairman of the committee until we know who are the eligible delegates.

GOVERNOR DRISCOLL: Thank you. You have heard the proposed amendment. So many as are in favor of it will please signify by saying, "Aye."

(Some "Ayes")

GOVERNOR DRISCOLL: Opposed?

(Loud "No")

GOVERNOR DRISCOLL: The amendment to the resolution offered by Mr. Barton is declared lost. Now we will vote on the resolution offered by the gentleman from Passaic. All those in favor of the resolution will please signify by saying "Aye."

(Loud "Aye")

GOVERNOR DRISCOLL: Opposed?

(One "No")

GOVERNOR DRISCOLL: The resolution is declared carried. The Governor will appoint the following temporary Committee on Rules. Please note that it is a temporary committee only, and subject to the pleasure of the Convention. Accordingly, I will appoint a man who worked on the rules as Chairman, Colonel George H. Walton of Camden; Lewis G. Hansen of Hudson, Winston Paul of Essex, H. Rivington Pyne of Somerset, Milton A. Feller of Union, Arthur R. Gemberling of Salem, and A. J. Cafiero of Cape May.

MR. BARTON: Mr. Chairman.

GOVERNOR DRISCOLL: The chair recognizes the gentleman from Passaic.

MR. BARTON: I beg leave to submit another resolution.

GOVERNOR DRISCOLL: Mr. Barton of Passaic presents the following resolution *(reading):*

> "RESOLVED, that the Convention now choose a President by the vote of at least forty-one delegates, by call of the roll, each delegate rising in his place as his name is called and stating his choice."

Is there a second to the resolution?

(Seconded from the floor)

MR. EMERSON: I offer an amendment. I think no President should be appointed before the rules are actually adopted; there should be a temporary President or a temporary Chairman. I wish to amend the resolution, that the Chairman or President appointed be a temporary Chairman or President.

GOVERNOR DRISCOLL: Is there a second to that motion to amend?

(Silence)

Failing a second, I declare the proposed offer of an amendment not effective. Is there any discussion on the proposed resolution by the gentleman from Passaic? What is your pleasure, gentlemen?

(Calls for "Question" from floor)

GOVERNOR DRISCOLL: Question on the resolution? All those in favor of the resolution will please signify by saying "Aye."

(Chorus of "Ayes")

GOVERNOR DRISCOLL: Opposed?

(Silence)

The resolution is declared carried. Pursuant to the action of this Convention as adopted in the previous resolution, I call for nominations for President of the Convention.

MR. JOHN J. RAFFERTY: I rise to make a nomination.

GOVERNOR DRISCOLL: The chair recognizes Mr. Rafferty of Middlesex. You may proceed.

MR. RAFFERTY: May I advance to the rostrum?

GOVERNOR DRISCOLL: If you will, please. Or there is a microphone right here on the floor which you may use, Mr. Rafferty.

MR. RAFFERTY: Your Excellency, Governor Driscoll; Your Excellency, Most Reverend and Dear Bishop Griffin; Right Reverend Doctor Ludlow; Rabbi Narot; gentlemen of the Judiciary and Executive Departments of the State; my fellow delegates:

It is my great honor on behalf of the delegates of Middlesex County to present to this Convention as a candidate for the office of President of the Convention one of Middlesex County's great citizens. I refer to the President of Rutgers University.

As a prefatory remark, however, I desire to refer to some of the correspondence—one item, at least, thereof—which we as delegates have received from the various organizations, groups and individuals throughout the State. I refer particularly to a copy of a resolution forwarded to the delegates by the New Jersey Farm Bureau and the New Jersey State Grange. I do it, ladies and gentlemen, because I think—although we express no view one way or another as to the different matters referred to in this resolution—I think it sets before us in a particular way the importance of the work before the Convention, and that, of course, is a matter to be considered by the delegates in the selection of the presiding officer of this Convention.

Firstly, this great organization of citizens of our State—or rather these great organizations—point out to the delegates of the Convention the primary and the exceedingly great importance of the rights of the individual. They stress the personal dignity of the individual. They stress the point that under our system of government the State is the servant of the people and not its master, and they go to some length in pointing out and justifying, if justification need be expressed of the validity of these points, the primary rights, the inalienable rights of the individual, and they ask the Constitutional Convention to pay particular note to those points. Indeed, they say it is well if we occupy a great portion of this instrument which it is proposed that this Constitutional Convention adopt, to placing God in the Constitution (in their language). This, of course, we all heartily endorse.

They point out to the delegates some of the items which will probably come before the delegates. They say regarding changes

in the form of government, generally, that we—that is to say, these two organizations of whom I am speaking—are very jealous of the independence and integrity of our State Board of Agriculture and its Secretary, and the preservation of specific funds dedicated to highway and to other uses beneficial to agriculture. Regarding changes in structure, they tell us: "We have long favored biennial sessions of the Legislature and adequate compensation of legislators, with corresponding extension of terms of office both of legislators and the Governor." Regarding the judiciary, they point out: "We recognize the great desirability for revision, but as laymen we regard the kind of change as being beyond our sphere."

I refer to this communication, my fellow delegates, and urge you that you read it again and again because therein is the essence of the American spirit, therein do we find the independence of the individual asserting itself before a body which the citizenry has directively assembled, as we are assembled this morning, in order to consider this basic document. I point it out to you especially that you may have it in mind, as I said before, in the selection of a presiding officer, recognizing there is great and hard and long work before us, recognizing that there must be a man directing the day-to-day sessions and business of this Convention who is a man pre-eminently qualified, qualified by the nature and character of his experience, qualified by his great understanding of human nature.

I must refer to my written notes, my friends, because we in Middlesex County have such boundless enthusiasm and such great admiration for this man. Taking into consideration his innate modesty, it has been found necessary to put down in writing and not depend upon our fervor and enthusiasm as we go along, in order that there may be some reasonable limit to the presentation which I am making. Necessarily, therefore, what I say will suffer from over-simplification. We cannot overestimate the value of this man.

Dr. Clothier, the President of Rutgers University, is a man of widest public experience. Born in Philadelphia, the seat of the Federal Constitutional Convention held in 1787, Dr. Clothier is a graduate of Haverford School and Princeton University. As a student he majored in political economy and history. He studied under such great educators as Woodrow Wilson, Van Dyke and Garfield. Upon leaving the ivied walls of Princeton he worked as a reporter for a while and later became employment manager of the Curtis Publishing Company. During World War I he contributed to the military effort with his technical skills and his intellectual capacities. He served as a Lieutenant Colonel on the General Staff of the Army. His work overseas in establishing liaison between the forces in Europe and in this country was an outstanding

performance. Upon leaving the Army Dr. Clothier engaged in industry and became vice-president of his firm from 1918 to 1923.

Thereafter, Dr. Clothier entered into his life's work as an educator. He returned to Haverford School as Assistant Headmaster, thereafter going to the University of Pittsburgh as the Dean of Men. Dr. Clothier came to Rutgers University in 1932, an event and a date which history will record as the real beginning of the great and extensive practical service of Rutgers University to the State of New Jersey and to the people generally. Under his leadership the University has had such tremendous expansion in plant, in personnel, and in accomplishments as to class the University as one of the country's really great schools, until now and by legislation it is designated as the State University of New Jersey.

Rutgers has become world renowned in the field of agriculture under Dr. Clothier's leadership. This School of Agriculture alone is rendering a service to the people of this State and of this country of incalculable value. Dr. Clothier's inspiring drive and leadership has made this School of Agriculture what it is today, and this expansion is typical of every department of Rutgers under his administration, reflecting, therefore, the great qualities of the candidate whom I espouse. Perhaps the greatest contribution of Rutgers under the leadership of Dr. Clothier has been its tremendous work with the returned veteran. Dr. Clothier early stated that it was the moral obligation of the University to accomodate all qualified veterans and high school graduates for whom it is possible to provide, not just those whom it is convenient to take. It is not possible, as I said before, to overstate the achievements of this great educational leader and I cannot here take the time to give further detail.

Dr. Clothier has been a leader in public life in urging the preparation of our great country to defend itself against the totalitarian aggressions which forced us into World War II. He had clearly visualized and early warned against the might and the purpose of these aggressors. Three months prior to Pearl Harbor Dr. Clothier warned the people of this country:

> "Unless Germany backs down in a way which until now Germany has not done, it is hard to see how we will escape a shooting war. We may lose our lives and many luxuries, but we shall have helped restore their countries and their freedom to the bludgeoned people of Europe and we shall have saved our souls."

Similarly, only recently Dr. Clothier, again warning against the advances and aggressions and the plans of the Communist group, warned again and again aloud as he warned before, that we in America must know and understand our American way of life, we must be aggressive and exemplary in our living the way of the American life, and we must support all of the great efforts on the part of our great national leader, the President of these United States, and the Congress of these United States, in their efforts to

forestall what some people seem to feel and many earnest persons think is inevitable, World War III.

This great man of whom I am talking and whose candicacy I present to you has been alert to these matters. He has unhesitatingly and fearlessly warned us against the things that sought to overcome us. He has ever been available with his talents and with his energies for the service that his country has required of him and which he has readily and effectively performed. He is prepared and ready to again serve the people of his State in this gathering of citizens who have come at the direction of the people to consider and formulate a revision of our Constitution.

Whatever bias and prejudice Dr. Clothier may have is a bias and prejudice in favor of the American way of life. His capacities will direct this Convention effectively and expeditiously in the work that lies before it. His administration of this high office will be a beacon light to the great men and women of this country who are determined that representative government shall fulfill its role in the world. His inspired and courageous leadership and his exemplary industry will commend itself to all of the delegates and will encourage the delegates to the accomplishment of the great task which is ours to accomplish.

I present to you, ladies and gentlemen of this Convention, the name of a great man, of a good man, a superlative citizen, Dr. Robert Clarkson Clothier, President of Rutgers University, the University of the State of New Jersey, as a candidate for the office of President of this Convention.

(Applause)

GOVERNOR DRISCOLL: Is there a second to the nomination of Dr. Clothier?

MR. BARTON: Yes.

GOVERNOR DRISCOLL: Mr. Barton.

MR. BARTON: Members of the Convention:

It is with profound pleasure that I rise to second the nomination of Dr. Clothier for the presidency of this Convention. He is a man of rare intellectual attainments and is eminently qualified to fulfill the duties of this distinguished office in a distinguished manner. I second the nomination.

(Applause)

GOVERNOR DRISCOLL: Are there any other nominations?

(Silence)

DELEGATE: I move the nominations be closed.

GOVERNOR DRISCOLL: Is there a second to the motion?

(Second from floor)

GOVERNOR DRISCOLL: You have heard the motion that the

nominations be closed. All those in favor will please signify by saying "Aye."

(Chorus of "Ayes")

GOVERNOR DRISCOLL: Opposed?

(Silence)

And so under the authority of the resolution I will ask the Secretary Pro Tem to call the roll. You will answer by voting either for Dr. Clothier or remaining silent, I assume, under the circumstances.

MR. MARSH *(calls the roll):* Barton, Barus, Brogan, Cafiero, Camp, Carey . . .

(All answer "For")

GOVERNOR DRISCOLL: May I interrupt the roll call for just a moment, please. The resolution provided for the calling of the name by the delegate, as I remember it. Mr. Secretary, may I ask that you begin the roll call again?

MR. MARSH: Barton, Barus, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lightner, Lord, McGrath, Miller, G. W., Miller, S., Milton, McMurray, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Park, Paul, Peterson H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Stanger, Streeter, Struble, Taylor, Van Alstyne, Van Camp, Wene, Walton, Winne, Young.

(All announce their vote as for "Clothier")

GOVERNOR DRISCOLL: I do declare Robert Clothier elected unanimously President of this Convention.

(Long applause)

GOVERNOR DRISCOLL: Mr. Barton.

MR. BARTON: I take leave to submit a resolution and I move its adoption.

GOVERNOR DRISCOLL: Resolution by Mr. Barton, of Passaic *(reading):*

> "RESOLVED, that the Convention now choose a Secretary by the vote of at least forty-one delegates, by call of the roll, each delegate rising in his place as his name is called and stating his choice."

(Second from floor)

GOVERNOR DRISCOLL: You have heard the reading of the resolution. The resolution has been seconded. What is your pleasure?

(Calls for "Question" from floor)

GOVERNOR DRISCOLL: All those in favor of the resolution will please signify by saying "Aye."

(Chorus of "Ayes")

GOVERNOR DRISCOLL: Opposed?

(Silence)

GOVERNOR DRISCOLL: The resolution is declared carried. . . . We are now ready to receive nominations for Secretary of this Convention. . . . Mr. Camp.

MR. PERCY CAMP: Your Excellency, Governor Driscoll, my fellow delegates:

I arise briefly to place in nomination the name of my fellow-delegate from Ocean County, as Secretary of this Convention. Oliver Van Camp presently is and has been Secretary of the New Jersey Senate for the past 18 years. Every Senator serving any part of that period in that body has benefited from his guidance, skill and experience. While he is best known state-wide for his services in New Jersey—in the New Jersey Senate—those of us who know him best and personally can attest to the fact that over the span of the last 30 years he has fulfilled a multitude of public trusts to his home town and county with credit and distinction. He is respectfully commended to your sincere consideration for the position he is now being nominated to.

We delegates shall travel this road but once. This Convention should have the benefit of the best skill and experience obtainable. Therefore, it is with a great deal of pleasure that I place in nomination for the office of Secretary of this Convention the name of Oliver F. Van Camp, of Point Pleasant, New Jersey.

(Applause)

GOVERNOR DRISCOLL: You have heard the nomination of Mr. Van Camp. Is there a second? . . . Senator Van Alstyne, of Bergen.

MR. DAVID VAN ALSTYNE, JR.: Governor and delegates:

It is with a great deal of pleasure I rise to second the nomination of Oliver Van Camp as Secretary. Mr. Van Camp has been Secretary of the Senate for many years. I cannot possibly imagine anybody filling an office of that kind with more efficiency or more thoroughness and speed. I doubt very much if we could find a person more ably versed in parliamentary procedure. That is what this Convention needs—somebody versed in parliamentary procedure. It gives me great pleasure to second the nomination of Oliver Van Camp as Secretary of the Convention.

(Applause)

GOVERNOR DRISCOLL: Are there any other nominations for

the office of Secretary of the Convention?

(Silence)

MR. FRANK S. FARLEY: I move that the nominations be closed.

DELEGATE: I second the motion that the nominations be closed.

GOVERNOR DRISCOLL: It's been moved and seconded that the nominations be closed . . . Question on the motion? All those in favor of the motion will please signify by saying "Aye."

(Chorus of "Ayes")

GOVERNOR DRISCOLL: Opposed?

(Silence)

GOVERNOR DRISCOLL: The motion is declared carried, and the Secretary Pro Tem is instructed to call the roll. . . . Mr. Milton.

MR. JOHN MILTON: May I suggest in the interest of expediting the business of the Convention, that there being no other nominations for this office, let the chairman of the meeting be authorized to declare that Mr. Van Camp is elected Secretary of the Convention.

GOVERNOR DRISCOLL: Do you offer that as a resolution, Mr. Milton?

MR. MILTON: Yes.

GOVERNOR DRISCOLL: Is there a second?

(Seconded from the floor)

GOVERNOR DRISCOLL: All those in favor of the resolution offered by Mr. Milton will please signify by saying "Aye."

(Chorus of "Ayes")

GOVERNOR DRISCOLL: Opposed?

(Silence)

GOVERNOR DRISCOLL: As I understand, the resolution was that the temporary Chairman be instructed to declare Mr. Van Camp elected Secretary of this Convention. Mr. Van Camp is accordingly declared elected as Secretary of the Convention.

(Applause)

I should like to appoint Mr. Rafferty and Mr. Paul as two delegates to escort Dr. Clothier to the platform.

(Applause as Dr. Clothier is escorted to the platform)

GOVERNOR DRISCOLL: I will ask the Secretary Pro Tem, the Secretary of State, acting in his capacity as a Master in Chancery, to administer the oath of office to Dr. Clothier. . . . May I ask the delegates to please stand during this?

DR. ROBERT C. CLOTHIER *(repeating oath administered by Mr. Marsh):*

I, Robert C. Clothier, do solemnly swear that I will abide by the instructions of the people of this State, as set forth in the referendum conducted pursuant to Chapter 8 of the Laws of 1947; that I will faithfully, impartially, and justly perform all the duties of the office of President of the Constitutional Convention of the State of New Jersey held pursuant to that law and referendum, according to the best of my ability and understanding, and that I will support the Constitution of the United States, so help me God.

(Applause)

GOVERNOR DRISCOLL: I will ask Mr. Camp and Senator Morrissey to escort Mr. Van Camp to the platform.

(Applause as Mr. Van Camp is escorted to the platform)

GOVERNOR DRISCOLL: There has been submitted to the Convention the following resignation *(reading):*

> "The State Constitutional Convention
> New Brunswick, New Jersey
> **Gentlemen:**
> **In view of my election as Secretary of the State Constitutional Convention of 1947, I hereby tender my resignation as a delegate to said Convention from the County of Ocean.**
> *(Signed)* OLIVER F. VAN CAMP."

Mr. Van Camp having qualified as a member of the Convention, it would seem appropriate that there be a motion at this time accepting his resignation.

DELEGATE: I so move.

(Second from floor)

GOVERNOR DRISCOLL: It has been moved and seconded that the resignation of Oliver Van Camp as a delegate to this Convention be accepted. If there is no discussion on that motion, all those in favor will please signify by saying "Aye."

(Chorus of "Ayes")

GOVERNOR DRISCOLL: Opposed?

(Silence)

GOVERNOR DRISCOLL: The motion is carried. I will now ask the Secretary of State, acting as Secretary Pro Tem of this Convention, and in his capacity as a Master in Chancery, to swear in your new Secretary.

MR. OLIVER F. VAN CAMP *(repeating oath administered by Mr. Marsh):*

I, Oliver F. Van Camp, do solemnly swear that I will abide by the instructions of the people of this State, as set forth in the referendum conducted pursuant to Chapter 8 of the Laws of 1947;

that I will faithfully, impartially, and justly perform all the duties of the office of Secretary of the Constitutional Convention of the State of New Jersey held pursuant to the law and referendum, according to the best of my ability and understanding, and that I will support the Constitution of the United States, so help me God.

GOVERNOR DRISCOLL: I will ask one of the State Troopers to collect the oaths of office that have been signed by the delegates certified by the Secretary of State and the Board of Canvassers as elected to this Convention. . . . They are here? . . . That task has already been accomplished, as it should be.

It is now with a great feeling of personal confidence that I entrust the gavel and the leadership of this Convention to the President elected by you men and women this morning. Dr. Clothier.

(Applause)

GOVERNOR DRISCOLL: Dr. Clothier, as you undertake your new duties may I assure you and the members of this Convention that you will receive the whole-hearted support of your state administration. We believe in you delegates! We are confident that you have high purpose, and in you the citizens have great hopes.

PRESIDENT CLOTHIER: Thank you, Governor Driscoll.

Ladies and gentlemen, my first task is to ask you to rise while the Rev. Dr. Joseph R. Narot, Rabbi of the Reform Temple Beth Israel, of Atlantic City, leads us in prayer.

RABBI JOSEPH NAROT: "This is the day which the Lord hath made; we will rejoice and be glad in it." . . . O God, as we contemplate the noble motives and the high hopes that have brought us together from every corner of the State, the cry of the Psalmist rings again in our ears. With rejoicing do we look back upon the paths to progress already hewn, and with gladness do we turn to the broad highway of final achievement into which these paths may yet converge.

We thank Thee for the present Governor of our State and his precessors who, each in turn, caught the vision of a Commonwealth unfettered by outworn and cumbersome law, and for the devoted citizens who labored to make this day possible. We thank Thee, too, for the lessons which we have learned in our striving for this cause, the patience we must manifest toward the democratic process, and the faith we must have that truth will surely prevail.

We pray now that Thou mayest give the assembled delegates the understanding to use their opportunity with foresight and courage. Bestow upon the newly elected President and Secretary the talent to guide the work to such conclusion that its meanings will be understood by all and its justice escaped by none. Aid us all to be mindful of the need for cutting away the tangled maze of precedent

to which men cling, either because they are too timid to change it, or because they would use it for their own interests alone. Revive in us the spirit of the constitutional fathers of our country that we may cleanse our state law of the inherited wrongs that still cling to it. Grant us wisdom so to refashion our statutes that they may become the true expression of the fairer ideals of freedom, truth and brotherhood which are now seeking reality in a new age.

Thus alone wilt Thou give us our greatest reward: the knowledge that a thankful posterity will, in its time, proclaim: "That was a day which the Lord did make. Let us rejoice and be glad for it . . ."

PRESIDENT: Governor Driscoll, ladies and gentlemen, delegates to the Convention:

I am greatly honored by your action in electing me to serve as President of this Constitutional Convention. It is unquestionably a far greater tribute to your courage than to your judgment. Notices in the newspapers from time to time have suggested the possibility of something of this kind happening, but I replied to those who referred to them that this Convention would be able to think of many other men better qualified by experience and training for this responsibility.

I can only say that I shall do my best to perform the duties of this office to your satisfaction and that I shall be grateful to each of you for your continuing advice and assistance. I have no doubt that they will be forthcoming, for we are embarking on an enterprise of the utmost importance to the people of this State, the success of which depends on our ability to work together. It will depend no less upon our ability to reconcile differing points of view through intelligent compromise, upon our willingness to subordinate group interest to the welfare of all the people of the State, and upon our determination to exalt principle above expediency.

It will not be an easy task. The legal difficulties are many and intricate. New Brunswick is not noted for its cool summers, but I can promise you that the University will do everything in its power to expedite your labors and to make your sojourn here as pleasant as possible. Let me say, too, that we at the University consider it an honor and a privilege to have the Convention hold its sessions here at Rutgers, now the State University of New Jersey.

Governor Driscoll, I am perhaps presumptuous in assuming so soon to speak for my fellow delegates, but I think I shall not exceed my authority when I pledge you that we shall do our best to carry out the mandate of the people expressed so overwhelmingly at the recent election, and to prepare a draft of a revised Constitution which will correct some of the inadequacies of the old and which, in the end, will meet with the people's approval.

(Applause)

PRESIDENT: Governor Driscoll has asked me to announce that the delegates and specially invited guests are to be his guests and those of Mrs. Driscoll at luncheon following the pageant which is to be held now. The luncheon will be served in the Faculty Dining Room of the University Commons, which is the large building directly across the street from where we are meeting. We shall meet there immediately upon the conclusion of the pageant. And now we shall have a five-minute recess—I am told that is the length of time—during which the members of the company on the platform will withdraw and the platform will be made ready for the pageant. We will reconvene in five minutes' time.

(Five-minute interval)

PRESIDENT: Will you be good enough to resume your seats, ladies and gentlemen? The pageant is ready. . . . The purpose of this pageant is primarily to provide something of an historical background for the discussions of this Convention. It also has one or two other more practical purposes. One is to allow the Commons time to make ready for our luncheon. Luncheon will be ready at the time the pageant comes to an end. It also provides an opportunity for the Rules Committee to meet, and I would like to ask the members of the Rules Committee to meet at luncheon at the Commons at the time we meet there, at the conclusion of the pageant. The pageant will now begin. . . . One more announcement—we shall convene this afternoon, according to the printed program, at three-fifteen.

(The pageant begins. It ended at 1:30 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

June 12, 1947

(Afternoon Session)

(The session began at 3:15 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . . I have a message from the women delegates conveyed through Mrs. Stanford—so far as it is necessary—in which they express the hope that the men members of the Convention who have not already taken off their coats will do so. . . .

The Chair will recognize Mr. Miller.

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Convention: As we commence the first of our business sessions this afternoon, I think all of us are aware of the fact that very great efforts have been made by the Arrangements Committee to Sound-Scribe these proceedings. I would like, therefore, Mr. President, to introduce this resolution which is in the nature of a non-controversial resolution. First, that no delegate speak unless he or she is recognized by name by the Chairman; and secondly, that no delegate speak unless he or she does so from the microphone. I think this will facilitate not only the accurate recording of the proceedings of this Constitutional Convention, but I think it will greatly aid all of us in hearing what is said. I move you, Sir, the adoption of this resolution.

MR. ARTHUR R. GEMBERLING: I second the resolution.

PRESIDENT: Is there any discussion on this resolution? If not, all in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is carried. . . . Mr. Smith, of Middlesex County.

MR. GEORGE F. SMITH: Mr. President, fellow delegates: I am sure we all appreciate the facilities that have been made available to us by Rutgers University and I suggest that we formalize our acceptance of those facilities. I therefore offer this resolution:

> "RESOLVED, that the Convention hold its meetings in the Gymnasium of Rutgers University, the State University of New Jersey, at New Brunswick, New Jersey."

PRESIDENT: Is the resolution seconded?

(Seconded from the floor)

PRESIDENT: Is there any discussion? All in favor of the adoption please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is carried. . . . I will ask the Chairman of the Committee on Rules if the Committee is ready to submit its report.

MR. GEORGE H. WALTON: Mr. President, the Committee is ready to report.

Mr. President, fellow delegates: Your committee has met and unanimously agreed on a set of rules. On the desks of the various delegates you will find a proposed set of rules.

PROPOSED RULES
for
CONSTITUTIONAL CONVENTION OF 1947

THE PRESIDENT AND VICE-PRESIDENTS

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call the Convention to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

(a) He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When 2 or more members arise at the same time, he shall name the one entitled to the floor.

(b) He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

(c) He shall appoint all committees, except where the Convention shall otherwise order.

(d) He may substitute any member to perform the duties of the chair while he is present, but for no longer period than that day, except by special consent of the Convention.

(e) When the Convention shall be ready to go into Committee of the Whole, he shall name a Chairman to preside therein.

(f) When necessary or required, he shall, with the Secretary, certify all official acts and all vouchers for payment of expenditures of the Convention with the date thereof.

(g) He shall designate and assign to seats or authorize the designation and seating of the persons who shall act as reporters for the public press within the Convention Hall. Such reporters, so appointed, shall be entitled to such seats and shall have the right to pass to and fro from such seats in entering or leaving the Chamber. No such reporter shall appear before any committee in advocacy of, or in opposition to, anything under consideration before such committee. A violation of this rule will be sufficient cause for the removal of such reporter. Power of removal for this cause shall be vested in the President.

(h) He shall be a consulting member without vote in the several committees to which he is not specifically appointed.

(i) He shall declare the vote and announce the result according to the fact on all questions and divisions.

(j) He shall not engage in any debate, or propose his opinion on any question, except the assigning of his reasons for his decision on appeal therefrom, without first calling some delegate to occupy the chair.

Rule 3. In the event of a vacancy in the office of President, by death, resignation or otherwise, the Convention shall, by vote of not less than 41 of the delegates, elect a President to fill such vacancy.

In the temporary absence of the President, or in event of his temporary inability to preside, his duties shall devolve upon the First Vice-President, or if he also be absent, upon the Second Vice-President. For the purpose of this rule, the terms "temporary absence" and "temporary inability" shall mean an absence or inability not to exceed 5 consecutive Convention days.

In the event of the continued absence or inability of the President to preside for more than 5 consecutive Convention days the Convention shall, by the affirmative vote of at least 41 delegates, elect an acting President who shall have the same power and enjoy the same privileges as the President and who shall serve as President only during the absence or inability to preside on the part of the President.

Rule 4. In the event of a vacancy in the office of either Vice-President by death, resignation or otherwise, the Convention shall, by the vote of at least 41 delegates, elect a new Vice-President.

In the temporary absence of both Vice-Presidents, or in the event of the temporary inability on the part of both Vice-Presidents to discharge the duties of their offices, the Convention shall have the power to designate and appoint some other delegate to discharge the duties of the office during such temporary absence, or temporary inability.

SECRETARY

Rule 5. The Secretary shall keep a journal of the proceedings of the Convention and, under the direction of the President, shall prepare and place on the desk of the President each day a calendar of the business of the Convention, as provided by these rules.

Rule 6. The Secretary shall prepare for printing all proposals and other documents which are required to be printed under these rules under the direction of the Committee on Printing and Authentication of Documents and shall see to it that they are properly and correctly printed.

Rule 7. The Secretary shall give to every proposal for revision, alteration or reformation of subject matter of the present Constitution, when introduced, a number and the numbers shall be in numerical order. When a Committee proposal is reported from a Committee, he shall give it a number, in separate series for each Committee, which shall be known as the Committee proposal number. He shall keep the several proposals on file in order by their numbers, unless otherwise ordered by the Convention.

Rule 8. He shall preserve all proposals, reports of Committees and all other records, books, documents and papers of the Convention and after the adjournment of the Convention, shall deliver them to the Bureau of Archives and History in the State Department of Education or shall make such other disposal of them as the Convention shall direct.

Rule 9. When necessary or required, he shall, with the President, certify all official acts and all vouchers for payment of expenditures of the Convention with the date thereof, and he shall perform such other duties as are required of him by these rules and as from time to time shall be required of him by the Convention.

Rule 10. One copy of the final draft of any material or proposal presented to or prepared by the Convention, or any committee thereof, shall be retained by the Secretary and delivered by him to the Bureau of Archives and History in the State Department of Education. The Secretary shall also retain and deliver to the Bureau of Archives and History a copy of any other material or proposal presented to or prepared by the Convention, or any committee thereof, where such a copy is available.

QUORUM AND MAJORITY

Rule 11. The presence of at least 41 delegates shall be necessary to constitute a quorum of the Convention but a lesser number may meet and adjourn the Convention from day to day when necessary.

Rule 12. A majority of delegates present, a quorum being present, shall be sufficient for the adoption of any motion or resolution or the taking of any action except where the affirmative vote of a greater number shall be required by law or by these rules.

STANDING COMMITTEES

Rule 13. The Standing Committees of the Convention shall be 9 in number. They shall be appointed by the President unless the Convention shall otherwise order.

The person first named shall be the Chairman, and the person next named shall be the Vice-Chairman, of the Committee.

Rule 14. The Standing Committees of the Convention shall be as follows:

GENERAL STANDING COMMITTEES

Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, consisting of 11 members.

Committee on the Legislative, consisting of 11 members.

Committee on the Executive, Militia and Civil Officers, consisting of 11 members.

Committee on the Judiciary, consisting of 11 members.

Committee on Taxation and Finance, consisting of 11 members.

Committee on Arrangement and Form, consisting of 7 members.

Committee on Submission and Address to the People, consisting of 7 members.

ADMINISTRATIVE STANDING COMMITTEES

Committee on Rules, Organization and Business Affairs, consisting of 7 members.

Committee on Credentials, Printing and Authentication of Documents, consisting of 7 members.

Rule 15. The following General Standing Committees shall consider and report upon the following, that is to say:

Committee on Rights, Privileges, Amendments and Miscellaneous Provisions—The subject matter of the Preamble, Article I, Rights and Privileges, except paragraphs 19 and 20, Article II, Right of Suffrage, Article III, Distribution of the Powers of Government, Article VIII, General Provisions, and Article IX, Amendments, of the present New Jersey Constitution, and all proposals embracing subject matter which does not fall within the proper consideration of any other General Standing Committee, including all provisions of the Proposed Schedule relating thereto.

Committee on the Legislative—The subject matter of Article IV, Legislative, except Section VI, paragraphs 2, 3 and 4 and Section VII, paragraphs 6, 10 and 12, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Committee on the Executive, Militia and Civil Officers—The subject matter of Article V, Executive, Article VII, Appointing Power and Tenure of Office, excepting Section II, paragraph 1, paragraph (2), paragraph 3 so far as it relates to the clerk of the Supreme Court and the clerk of the Court of Chancery, paragraph 4 and paragraph 7, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Committee on the Judiciary—The subject matter of Article VI, Judiciary, and of Article IV, Legislative, Section VII, paragraph 10, and of Article VII, Appointing Power and Tenure of Office, Section II, paragraph 1, paragraph (2), paragraph 3 so far as it relates to the clerk of the Supreme Court and the clerk of the Court of Chancery, paragraph 4 and paragraph 7, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Committee on Taxation and Finance—The subject matter of Article I, Rights and Privileges, paragraphs 19 and 20, Article IV, Legislative, Section VI, para-

graphs 2, 3 and 4 and Section VII, paragraphs 6 and 12, of the present New Jersey Constitution, including all provisions of the Proposed Schedule relating thereto.

Rule 16. The Committee on Arrangement and Form shall examine and correct the proposals which are referred to it for the purpose of avoiding inaccuracies, repetitions and inconsistencies and shall arrange the same in the proper order in the proposed new Constitution or the part or parts thereof to be submitted and shall report thereon to the Convention, but the Committee shall have no authority to change the sense or purpose of any proposal referred to it and if any 5 delegates shall object to any report of said Committee on the ground that said report has changed the sense or purpose of any such proposal, the proposal shall be referred to a Special Committee on Arrangement and Form consisting of 10 delegates included in which shall be not less than 3 of the 5 delegates objecting to said report.

Rule 17. The Committee on Submission and Address to the People shall consider and make recommendations to the Convention as to the matters and things provided by these rules to be referred to it and as to such other matters and things as may be referred to it by order of the Convention.

Rule 18. The Committee on Rules, Organization and Business Affairs shall, subject to the directions of the Convention:

(a) Consider and report upon such changes in the rules of the Convention and changes in its organization as shall be referred to it by the Convention from time to time;

(b) Be in charge of the business affairs of the Convention, the checking and auditing of its expenditures, the supervision and control of the Convention Hall and other quarters available to the Convention, the supervision and control of the employees of the Convention, the contracting for and the purchase of such furniture, equipment, supplies and services as the Convention may require and the provision for the proper distribution of the same, and shall make rules and regulations in connection therewith;

(c) Examine and certify to the President and Secretary the correctness of all bills rendered to the Convention;

(d) Perform such other duties as the Convention may, from time to time, direct, and report to the Convention, from time to time, as it may deem desirable or as the Convention may require, as to the performance of its duties.

Rule 19. The Committee on Credentials, Printing and Authentication of Documents shall supervise the preparation for printing and the printing of all proposals, Committee proposals, reports and other documents, with their amendments, ordered to be printed by the Convention and shall ascertain that they are accurately and correctly printed. The Committee shall, subject to the approval of the Committee on Rules, Organization and Business Affairs of the Convention, contract for all printing for the Convention and supervise the carrying out of any contract so made and certify to the Committee on Rules, Organization and Business Affairs the correctness of all bills rendered for printing.

Rule 20. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the Committee on Credentials, Printing and Authentication of Documents, for its report thereon before final action by the Convention.

Rule 21. All resolutions authorizing or contemplating the expenditure of money shall be referred to the Committee on Rules, Organization and Business Affairs, for its report thereon before final action by the Convention.

Rule 22. No Committee shall sit during the sessions of the Convention without special leave.

Rule 23. The report of a minority of any Committee shall be received and printed and on motion of any delegate, the Convention, by an affirmative vote of at least 41 delegates, may substitute such minority report and any proposal submitted therewith for the majority report and for any proposal submitted

therewith. In the event any Committee is evenly divided on any matter pending before it, the Chairman shall refer such matter back to the Convention without recommendations.

Rule 24. Public hearings before each of the General Standing Committees addressed to the subject matter, lying within its consideration in accordance with these rules or referred to it, shall be held as and when ordered by the Convention, by general or special order, and according to uniform rules to be made by the Committee on Rules, Organization and Business Affairs governing the notice to be given to the public of such hearings, and the method of conducting the same.

COMMITTEE OF THE WHOLE

Rule 25. The Convention may upon motion resolve itself into a Committee of the Whole for consideration of proposals for the revision, alteration or reformation of the subject matter of the present Constitution. In forming the Committee of the Whole, the President of the Convention shall appoint a chairman to preside.

Rule 26. Before a proposal shall be considered by the Committee of the Whole, any delegate (the chairman of the General Standing Committee in charge of the proposal having prior right) shall be privileged to move a limitation upon the time of debate and consideration by the Committee, and the Convention may fix in advance of consideration, a time for the Committee to rise and report.

Rule 27. Upon a proposal being submitted to the Committee of the Whole, the same shall be read by the Secretary and then read and debated as may be determined by the Committee. All amendments made to reports, resolutions and other matters submitted to the Committee of the Whole shall be noted and reported. After the report by the Committee of the Whole the proposal shall be subject to be debated and amended on the floor of the Convention.

Rule 28. The rules of the Convention shall be observed in the Committee of the Whole so far as they are applicable. Where there are no provisions, the proceedings shall be controlled by Cushing's Manual of Parliamentary Practice.

Rule 29. Forty-one delegates shall be a quorum for the Committee of the Whole to do business; and if the Committee finds itself without a quorum, the Chairman shall cause the roll of the Convention to be called and thereupon the Committee shall rise, the President resume the chair and the Chairman report to the Convention the cause of the rising of the Committee.

Rule 30. A motion for the rising of the Committee of the Whole shall always be in order unless a member of the Committee is speaking or a vote is being taken, and shall be decided without debate.

ORDER OF BUSINESS, MOTIONS, DECORUM AND DEBATE

Rule 31. At meetings of the Convention the order of business shall be as follows (except at times set apart for the consideration of special orders):

1. Calling Convention to order.
2. Prayer.
3. Reading of Journal.
4. Roll Call.
5. Presentation of petitions, memorials and remonstrances.
6. Reports of standing committees.
7. Reports of select committees.
8. Introduction and first reading of proposals.
9. Reference of proposals.
10. Motions and resolutions.
11. Unfinished business.
12. Special orders of the day.
13. General orders of the day.

Rule 32. Consideration of the general orders of the day shall be in the following order:

1. Consideration by Committee of the Whole.
2. Reports of the Committee of the Whole.

3. Committee Reports and Proposals reported from Committees.
4. Second reading and action on reports of the Committee on Arrangement and Form, as to arrangement and phraseology only.
5. Third reading and agreement.

If the matter is not considered in its order, it shall lose its precedence for the day, but shall appear on the calendar on the following day in its regular order. Any matter may be made a special order of business for any particular day or time by a majority vote of the delegates present.

Rule 33. Any subject matter having been made the special order for a particular day, and not having been reached on that day, shall be upon the order of "Unfinished Business" on the next succeeding Convention day.

Rule 34. Upon calls of the Convention, the names of the delegates shall be called alphabetically.

In case of the absence of delegates, the delegates present shall take such measures as they shall deem necessary to secure the presence of absentees.

Any delegate requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; or any delegate may explain his vote, for not exceeding three minutes; but nothing in this rule shall abridge the right of any delegate to record his vote on any question previous to the announcement of the result.

Rule 35. After a question has been stated by the President, and the calling of the roll has begun by the Secretary, the President shall not recognize a delegate for any purpose whatever until the call shall have been completed.

Rule 36. The vote upon any question shall be taken by the yeas and nays and entered upon the journal of the Convention, on motion made and seconded before the question is put and upon the affirmative vote of at least 41 delegates.

Rule 37. The rules of Parliamentary Practice comprised in Cushing's Manual of Parliamentary Practice shall govern in all cases in which they are not inconsistent with the standing rules and orders of the Convention.

Rule 38. Any rule of the Convention may be suspended or repealed, altered or amended by a vote of at least 41 delegates and any amendment offered shall lie on the table one day before being voted upon.

Rule 39. When a motion is made it shall be stated by the President, or being in writing, it shall be handed to the Secretary and read aloud by him before being debated.

Rule 40. Every motion shall be reduced to writing if the President or any delegate shall request it and shall be entered upon the Journal, together with the name of the delegate making it, unless withdrawn or ruled out of order by the President before discussion.

Rule 41. After a motion has been stated by the President, or read by the Secretary and seconded by a delegate, it shall be deemed to be in the possession of the Convention, but may be withdrawn at any time before decision or amendment.

Rule 42. When a question is under consideration by the Convention only the following motions shall be received; which motions shall have precedence in the order stated, viz.:

Motions to, or for:

1. Adjourn.
2. Recess.
3. Call of the Convention.
4. Lay on the table.
5. Previous question.

} Not amendable or debatable except as hereinafter provided.

6. Postpone indefinitely. Not amendable, but debatable.
7. Postpone to a certain time. Debatable and amendable.
8. Go into Committee of the Whole. Debatable and amendable.
9. Commit (or recommit) to Committee of the Whole. Debatable and amendable.

10. Commit (or recommit) to a standing committee. Debatable and amendable.
11. Commit (or recommit) to a select committee. Debatable and amendable.
12. Close debate at a specified time. Not debatable, but amendable.
13. Amend. Debatable and amendable.

(Numbers 7 to 12, both inclusive, preclude debate on Main Question.)

The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order, and the last motion shall be amendable and debatable.

Calls for information, for reading a paper, for division of a divisible question, for division of the house, for the yeas and nays, and a motion for reconsideration shall always be in order, but shall not be amendable or debatable.

An appeal from the decision of the chair may be taken at any stage of the proceedings.

Rule 43. The previous question shall be put in this form, "Shall the main question be now put?" It shall be admitted when demanded by a majority of the delegates present, a quorum being present, and its effect shall be, if decided affirmatively, to put an end to all debate and bring the Convention to a direct vote upon pending amendments, if any, to the main question, and then upon the main question, but if decided in the negative, to leave the main question and amendments, if any, under debate for the remainder of the sitting, unless sooner disposed of by taking the question, or in some other manner. All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

Rule 44. A motion to reconsider any vote must be made before the end of the 2nd convention day after the day on which the vote proposed to be reconsidered was taken, and by a delegate who voted in the majority and the same majority shall be required to adopt a motion to reconsider as was required to take the action to be reconsidered. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.
To lay on the table.
To take from the table; or
For the Previous Question.

Rule 45. Any delegate may call for the division of a question which is in its nature divisible. A motion to strike out and insert shall be deemed indivisible; but a motion to strike out being lost, shall neither preclude amendment nor a motion to strike out and insert.

Rule 46. No delegate shall speak more than twice on 1 question, or longer than 15 minutes the first, or longer than 5 minutes the second time, or more than once until other delegates who have not spoken shall speak if they so desire, without first obtaining leave of the Convention; and the mover of the proposition shall have the right to close the debate, provided that the person in charge of a proposal on third reading and final agreement shall have the right, if he desires, to close the debate and he may announce such desire at any time before the taking of the vote on the question.

Rule 47. No delegate rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President and been recognized by him as entitled to the floor.

Rule 48. While the President is putting a question or a count is being had no delegate shall speak or leave his place; and while a member is speaking no delegate shall entertain any private discourse or pass between him and the chair.

Rule 49. When a motion to adjourn, or for recess, shall be carried, no delegate or officer shall leave his place until the adjournment or recess shall be declared by the President.

Rule 50. Any delegate may at any time rise and speak to a question of personal privilege. No delegate speaking to a question of personal privilege

shall be subject to any rule of the Convention limiting the time a delegate may speak.

PROPOSALS, SUBMISSION AND ADDRESS TO THE PEOPLE

Rule 51. No proposal for revision, alteration or reformation of the present Constitution which does not comply with the Convention's instructions as voted by the people shall be introduced in, reported by any Committee to, or agreed upon by, the Convention.

Rule 52. Each proposal shall receive 3 separate readings in the Convention previous to being agreed upon, but no proposal shall be read twice on the same day or be considered on third reading until after at least 48 hours notice, of the day upon which it is to be so considered, has been given by mail to each delegate or by announcement made in open session of the Convention.

All proposals may be read by their titles but no proposal shall be read the third time by its title unless copies thereof have been distributed and are on the delegates' desks before such reading. No amendment shall be received to any proposal on its third reading unless by unanimous consent of the delegates present.

All proposals shall, after the first reading, be printed for the use of the members. Printed copies of proposals shall be used on their second and third readings.

Rule 53. The regular order to be taken by proposals, introduced in the Convention and Committee Proposals reported to the Convention shall be as follows:

(a) Introduction, first reading, and printing of 300 copies of each proposal.
(b) Reference to a General Standing Committee by the President.
(c) Report by Committee of a Report and Committee Proposal, and printing of 500 copies thereof.

Five Convention days after the filing of said Report, the Report shall be placed on the general orders.

(d) Second Reading: Consideration by the Convention and action on amendments offered by delegates to the Convention.

If consideration in the Committee of the Whole is moved and adopted, then such Committee, after consideration, shall make its Report to the Convention, which Report shall be disposed of before amendments are offered by delegates to the Convention.

(e) Reference to the Committee on Arrangement and Form for report within 3 Convention days.
(f) Report of the Committee on Arrangement and Form, and printing of 500 copies.
(g) Action on Report of Committee on Arrangement and Form; consideration and action on amendments as to arrangement and phraseology only, offered by delegates to the Convention; action on the Report as amended and printing of 500 copies.
(h) Third reading and agreement, without amendment.
(i) Reference to Committee on Submission and Address to the People as to manner of submission to the people.
(j) Report of Committee on Submission and Address to the People as to manner of submission.
(k) Action on Report of Committee on Submission and Address to the People as to manner of submission only.
(l) Reference to the Committee on Arrangement and Form for arrangement of Sections and Article or Articles and for form.
(m) Report of Committee on Arrangement and Form as to arrangement of Sections and Article or Articles and printing of 500 copies.
(n) Agreement upon manner of submission without amendment and printing of 500 copies.

Rule 54. A proposal revising, altering or reforming the present Constitution or any part thereof in any manner shall be introduced by one or more delegates or by a Committee of the Convention or reported to the Convention by a General Standing Committee as a Committee Proposal.

Rule 55. Each proposal shall be in quadruplicate, shall be typewritten with

1 original copy and 3 carbon copies thereof, or printed, shall be endorsed on the back with the caption and the signature of all delegates or of the Chairman of the General Standing Committee introducing or reporting it.

Rule 56. The caption of each proposal shall be

"Constitutional Convention of New Jersey of 1947
Proposal
Introduced by .....
(Name of delegate or Chairman of Committee)"

Rule 57. Each proposal shall contain a short title stating concisely the general nature of its subject matter and it shall be indicated therein the Article, Section and paragraph of the present Constitution intended to be revised, altered or reformed thereby. If any proposal is intended to revise, alter or reform the present Constitution by the addition of any Article, Section or paragraph, the title shall state the place in the present Constitution at which the new Article, Section or paragraph logically belongs.

Rule 58. Each proposal shall be in the form of a resolution as follows:

"RESOLVED, that the following be agreed upon as part of the proposed new State Constitution."

Rule 59. Each proposal introduced shall be presented in quadruplicate to the Secretary for introduction. The Secretary shall number all proposals as they are presented and make a list of them. At each Session of the Convention the Secretary shall read the number and title of each proposal so presented to him for introduction after the last session of the Convention, which shall be taken as the first reading of the proposal and as the ordering thereof to a second reading, and the President shall thereupon refer it to a General Standing Committee.

Rule 60. It shall be the duty of the President to consider each proposal for revision, alteration or reformation of the subject matter of the present New Jersey Constitution, introduced in the Convention or submitted to the Convention and to refer it to the General Standing Committee whose duty it is under these rules to consider proposals dealing with the subject matter therein dealt with, and where a proposal embraces subject matter which falls within the proper consideration of several committees, the President, where practicable, shall divide the proposals and refer them to the appropriate committees; but if they are not subject to such division, the President shall have authority to refer them to an appropriate committee with instruction to consult with other committees on related matter.

Any proposal which does not comply with the provisions of these rules relating to its form shall be referred to the appropriate Committee as a petition.

Rule 61. The original of each proposal introduced shall be delivered by the Secretary to the printer for printing, 1 copy shall be retained by the Secretary until the original is returned to him, 1 copy shall be made available to the Press and 1 copy shall be delivered to the Chairman of the General Standing Committee to which the proposal has been referred. The original of each proposal introduced, after being printed, shall be returned to the Secretary and be retained in his files and the copy retained by him shall be delivered to the Bureau of Archives and History, in the State Department of Education.

Rule 62. After July 7, 1947, no proposal shall be introduced, except on the report or recommendation of a General Standing or Select Committee, or by unanimous consent.

Rule 63. At such dates as may be convenient after July 7, 1947, and not later than July 31, 1947, each General Standing Committee shall submit to the Convention a report or reports in writing of the result of its deliberation in connection with the subject matters within its consideration under these rules and the proposals referred to it.

Rule 64. Each Committee Report shall be accompanied by a Committee proposal containing a complete Article or other appropriate subdivision or group of Articles or subdivisions of the proposed new Constitution recommended for consideration and agreement upon by the Convention and the Report shall state as to each Proposal referred to the Committee and relating to the subject matter

of the Report and Committee Proposal, whether it (1) has been adopted in whole in the Committee Proposal, or (2) has been adopted in part in the Committee Proposal, or (3) has been disapproved, or (4) has been disposed of in such manner as may be indicated.

Rule 65. Each General Standing Committee may originate and report without specific reference, any Committee proposal the subject matter of which properly falls within the consideration of such Committee under these rules.

Rule 66. The report by any General Standing Committee of a Committee Proposal shall be taken as the first reading of such Committee Proposal and it shall be ordered to a second reading without reference but no other proposal shall be ordered to a second reading except by a vote of at least 41 delegates to the Convention.

Rule 67. Each amendment offered to a proposal before being read, shall be presented to the Secretary, in quadruplicate, either typewritten, with 1 original and 3 carbon copies thereof, or printed, and shall be entered in the Journal. The Secretary shall forward the original to the printer for printing, shall retain 1 copy until the original is returned to him, 1 copy shall be made available to the Press and 1 copy shall be delivered to the Chairman of the General Standing Committee in charge of the proposal intended to be amended. The original of each amendment, after being printed, shall be returned to the Secretary and shall be retained in his files and the copy, retained by him, shall be delivered to the Bureau of Archives and History in the State Department of Education.

Rule 68. Any proposal which has passed its second reading, together with all amendments thereto, shall be referred to the Committee on Arrangement and Form for consideration as provided by these rules and when reported by said Committee shall be subject to consideration and amendment as to arrangement and phraseology only and if any such amendment be adopted, shall be again referred to the Committee on Arrangement and Form for similar consideration and report thereof, and if said Committee's report shall be adopted, it shall be ordered to be printed and to third reading.

Rule 69. Proposals which have passed two readings together with all amendments thereto shall be prepared by the Secretary in proper form for printing for third reading and when the Secretary receives from the printer any proposal ordered to a third reading and the same shall be found correct, he shall affix an official stamp to each page of the copy to be used as the official copy.

Rule 70. On the question of the agreement upon any proposal on third reading, the vote shall be taken by yeas and nays and entered on the Journal, and no proposal shall be declared adopted unless at least 41 delegates to the Convention shall have voted in favor of the adoption of the same.

Rule 71. All proposals agreed upon by the Convention shall be referred to the Committee on Submission and Address to the People and such Committee shall consider and report to the Convention recommending the method and manner of submitting them to the people in accordance with law and particularly as to whether such proposals and all provisions of the present Constitution, if any, which have not been revised, altered or reformed by the Convention shall be submitted by framing a Constitution to be submitted as a whole to the people for adoption or rejection, or whether the proposals revising, altering or reforming the present Constitution shall be submitted by framing 1 or more parts of a Constitution, each to be so submitted to the people that they may adopt or reject any part, designating and describing in its report the part or parts of a Constitution so to be submitted, and whether they or any one of them shall be submitted by framing 1 or more parts, designating and describing in its report the part or parts, to be submitted in the alternative in order that the people may adopt any of the alternatives or reject any or all of them.

Rule 72. The manner of submission to the people of the Convention's Proposal shall be agreed upon by resolution of the Convention by the affirmative vote of at least 41 delegates but after a Constitution or part or parts of a Constitution have been framed and before final agreement thereon, the Convention shall refer to the Committee on Arrangement and Form, the Constitution or part or parts of a Constitution so framed, for submission for arrangement in

proper order and form and report thereon, and upon the coming in of said Report, the Convention shall by the affirmative vote of at least 41 delegates agree upon the final form of the Constitution or part or parts of a Constitution so to be submitted and the manner of submission thereof.

Rule 73. When the Convention by the affirmative vote of not less than 41 delegates shall have agreed upon its proposals and shall have agreed upon and framed the final form of the Constitution or part or parts of a Constitution and the manner of submission to the people according to law, an original and 2 true copies thereof shall be prepared and signed by the President and Secretary of the Convention and delivered to the Governor and a printed copy of the proposed Constitution or the part or parts thereof shall be delivered by the Secretary to each member of the Legislature.

Rule 74. When the Convention shall have agreed upon its proposals and the manner of their submission it shall refer to the Committee on Submission and Address to the People, and such Committee shall consider and report to the Convention, in what manner the question or questions, to be placed upon the ballot submitting to the people the proposed Constitution or the part or parts thereof agreed upon, shall be framed and whether it is deemed appropriate that an interpretative statement shall be placed thereon or should be dispensed with and in what form such interpretative statement should be framed.

Rule 75. There shall also be referred to the Committee on Submission and Address to the People the preparation of an Address to the People consisting of a summary and explanation of the proposed Constitution or the part or parts agreed upon and the making of such directions, if any, to officials and others for submission to the people of the Constitution or the part or parts agreed upon and for notice and publication of the same and of the Address and for the distribution of copies thereof to such persons, places and institutions through the office of the Secretary of State or other persons and at such times and in such manner as may seem desirable and proper and the said Committee shall prepare such an Address and report the same and shall report also as to the other matters so referred to it to the Convention for its action thereon.

Rule 76. The Convention may act upon the matters so referred to said Committee by Resolution adopted by the affirmative vote of at least 41 delegates but it shall proceed to arrange for submission of the Constitution or part or parts thereof to the people or make any direction in connection therewith only after certification by the Secretary of State to it that the proposed document and part or parts thereof comply with the instructions as voted by the people.

Rule 77. In framing, adopting and agreeing upon:

(1) a Constitution to be submitted as a whole, to the people for adoption or rejection, or in framing one or more parts of a Constitution, each to be submitted to the people in accordance with law; and

(2) the Question or Questions, to be placed upon the ballot, submitting to the people for adoption or rejection the proposed Constitution or the part or parts agreed upon; and

(3) any Interpretative Statement to be placed upon said ballot; and

(4) an Address to the People; and

(5) any Determinations as to directions to officials and others for the submission to the people of the Constitution or the part or parts agreed upon and for notice and publication of the same and of the Address and as to the distribution of copies thereof to such persons, places and institutions through the office of the Secretary of State or other persons and at such times and in such manner as it shall determine and any direction that its provisions or any of them for notice and publication and distribution shall be in lieu of any other provisions of law relating to public questions and any requirement and determination of the method of submission of the question or questions, which it may frame, by the use of voting machines or with paper ballots or with the use of voting machines and paper ballots;

the vote shall be taken by the yeas and nays and entered upon the Journal.

MR. WALTON: They are the rules that your committee has agreed upon, with the following changes:

On page 5—tenth line from the top, following the fifth word, "three" should be inserted.

PRESDENT: Would you mind, Mr. Walton, saying where that is again?

MR. WALTON: The tenth line from the top, page 5, the word "three" should follow the word "paragraph," which is the fifth word over from the left. . . . That was left out by a stenographic omission.

On page 9—Rule 36—the bottom of the page. The words on the last line, "affirmative vote of at least 41 delegates" should be deleted. "Request of at least 5 delegates" should be added.

PRESIDENT: You mean, substituted for the other phrase?

MR. WALTON: That's correct, sir. The rule will then read:

> "Rule 36. The vote upon any question shall be taken by the yeas and nays and entered upon the Journal of the Convention, on motion made and seconded before the question is put and upon the request of at least five delegates."

Page 13—Rule 53, sub-paragraph (c), third line. The word "Five" should be changed to "Four." It will then read:

> "Four Convention days after the filing of said Report. . . ."

On page 16—I think I had better read the whole rule:

> "Rule 66—The report by any General Standing Committee of a Committee Proposal shall be taken as the first reading of such Committee Proposal and it shall be ordered to a second reading without reference."

The period is an addition. The word "but" is to be deleted. The words "no" and "other" are to be deleted, so that it will read "No proposal." And then the words shall be added, after the word "proposal"—"other than a Committee Proposal shall"—and you should delete the words "be ordered to" and substitute therefor the word "have"—so that that sentence will read:

> "No proposal other than a Committee Proposal shall have a second reading except by a vote of at least 41 delegates to the Convention."

Mr. President, that is the report of the Rules Committee and I move its adoption.

PRESIDENT: You have in your hand the report of the Rules Committee which has been moved for adoption. Is the motion seconded?

(Seconded)

PRESIDENT: Is there any discussion on this motion?

MR. FRANCIS A. STANGER, JR.: May I ask a question of the Committee?

PRESIDENT: Will you please take the microphone?

MR. STANGER: I ask the Rules Committee: Is there any provision in here for the opening of the various sessions of the Convention with an invocation? Any power given to any committee for an invocation at the various sessions?

MR. WALTON: Yes, there is, sir.

MR. STANGER: May I have it called to my attention, if you please, sir.

MR. WALTON: On page 8, Rule 31, in the Order of Business.

MR. STANGER: I thank you. I have no objection.

PRESIDENT: Is there any discussion? If not, are you ready for the question?

(Calls for "Question")

PRESIDENT: All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted.

MR. WALTON: Mr. President, I have a resolution to present and I move its adoption.

PRESIDENT: Will you please read the resolution?

SECRETARY: Resolution by Mr. Walton *(reading):*

> "RESOLVED, that 500 copies of the Rules be printed for the use of the delegates of the Convention and that two copies be distributed to each of the delegates."

PRESIDENT: Is the motion seconded?

(Seconded from floor)

PRESIDENT: Is there any discussion? All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted.

MR. WINSTON PAUL: I move the following resolution, Mr. Chairman *(reading):*

> "RESOLVED, that the offices of First Vice-President and Second Vice-President of the Convention be established and that said officers be chosen by the vote of at least forty-one of the delegates of the Convention."

(Seconded)

PRESIDENT: You have heard the resolution. The resolution is seconded. Is there any discussion? Are you ready for the question?

(Call for "Question")

PRESIDENT: All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. . . . Mr. Barton.

MR. CHARLES K. BARTON *(reading):*

> "RESOLVED, that the Convention now choose a First Vice-President by the vote of at least forty-one delegates, by call of the roll, each delegate rising in his place as his name is called and stating his choice."

I move the adoption of this resolution.

(Seconded from floor)

PRESIDENT: Is there any discussion on this resolution? All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. . . . Nominations are now open for the office of First Vice-President. Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President, Governor Driscoll and members of the Convention:

Second only in importance to the presidency of this Convention is the office of First Vice-President. The delegate whom we elect to this high office must have the same attributes which impelled this Convention to name Robert C. Clothier its President.

Our First Vice-President must have capability, courage, integrity and an overpowering sense of fairness. He must possess an eagerness to permit every delegate to express his opinion upon the momentous questions which we shall be called upon to decide in the days ahead. He must believe that all groups of our State should have a full opportunity to lay before this Convention and its committees the ideas that may be dear to their hearts. Thus, and thus only, may the document which we finally draft contain the best thought of all our citizens and be a true expression of the people's will.

To this high office I should like to nominate a man who, in my opinion, meets those tests. He was born on a farm. After a successful career in the professional field he was again returned to the land. He knows the problems of our State. He has had experience in industry and he has wrestled with the problems of agriculture. His vision and originality are attested by more than 60 patents which have been granted him in the field of communications. He has served as chairman of the New York Section of the American Institute of Electrical Engineers and is a licensed professional engineer in New Jersey and in our neighboring State of New York. As an engineer and as an executive he has knowledge of the industrial problems of our State; as a member of the Grange, as a director of his county's board of agriculture, and as an operator of a dairy farm he knows the problems of those who draw their living from the

soil. As president of the New Jersey Association of Township Committeemen and a member of the General Assembly of this State he knows the problems of government; as an inventor he has demonstrated that resourceful type of mind so needed in the field of government and so invaluable to this Convention.

It is my privilege to nominate for the office of First Vice-President of this Convention, Amos F. Dixon, of Sussex.

PRESIDENT: You have heard the motion. Is the motion seconded? . . . Mr. Wene.

MR. ELMER WENE: Mr. Chairman and members of the Convention. You have heard the able presentation of the nominee for First Vice-President, and I am very happy to second the nomination of Mr. Dixon, the distinguished gentleman from Sussex.

PRESIDENT: Are there other nominations to be offered for this office?

MR. SIGURD A. EMERSON: I move that the nominations be closed.

(Seconded)

PRESIDENT: It is moved that the nominations be closed and the motion has been seconded. Is there any discussion? Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. . . . Mr. Dixon becomes our First Vice-President—following the calling of the roll.

(Secretary starts roll call)

MR. BARTON: Mr. Chairman, may we not dispense with the calling of the roll? I move that the Chairman be authorized to designate the nominee for this office.

PRESIDENT: You have heard the motion. Is it seconded?

MR. FRANCIS D. MURPHY: Seconded.

PRESIDENT: Is there any discussion? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The chair, I understand, designates Mr. Dixon as First Vice-President.

(Applause)

PRESIDENT: Will Mr. Dixon come to the platform, please?

(Mr. Dixon comes forward. Secretary administers the oath)

MR. AMOS F. DIXON *(repeating oath)*:

I, Amos F. Dixon, do solemnly swear that I will abide by the instructions of the people of this State as set forth in the referendum conducted pursuant to Chapter 8 of the Laws of 1947; that I will faithfully, impartially and justly perform all of the duties of the office of First Vice-President of the Constitutional Convention of the State of New Jersey held pursuant to that law and referendum, according to the best of my ability and understanding, and that I will support the Constitution of the United States, so help me God.

MR. DIXON: President Clothier, Governor Driscoll, men on the platform and delegates of the Convention:

I trust that I may express my appreciation more in action than in words today. This group of delegates represents men and women from many different walks of life, from many backgrounds, and from many different points of approach. And if we together can resolve these problems that are before us and produce a satisfactory Constitution, we can certainly show to our State, our Country and to the rest of the world that democracy can work. And if by petty bickering and strife we should not be able to turn out such a document, it would allow those nations abroad which have their eyes upon us to point the finger of shame at us for not making democracy work. I thank you.

MR. LAWRENCE N. PARK: Mr. President.

PRESIDENT: Mr. Park, will you take the microphone?

MR. PARK: Mr. President and fellow delegates. I have a resolution to offer *(reading):*

> "RESOLVED, that the Convention now choose a Second Vice-President by the vote of at least forty-one delegates, by call of the roll, each delegate rising in his place as his name is called and stating his choice."

I move the passage of the resolution.

PRESIDENT: Mr. Milton.

MR. JOHN MILTON: Mr. President, may I make this amendment to expedite matters: That where there is but one nominee, it shall not be necessary to call the roll, but the President shall announce the fact that the nominee is the choice of the Convention for the office.

PRESIDENT: Is that amendment satisfactory?

MR. PARK: I accept that amendment.

PRESIDENT: You have heard the motion as amended. Is there further discussion? If not, all in favor say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed.

(Silence)

PRESIDENT: The motion is carried. Nominations for the position of the Second Vice-President may now be made. Mr. Saunders.

MR. WILBOUR E. SAUNDERS: I speak not only for myself, but

for all the Mercer County delegation in placing in nomination the name of Mrs. Marie Hilson Katzenbach, of Princeton. We in the State of New Jersey have many things to be proud of, but none more than of the interest our women take in the public affairs of our State. You cannot understand the competency of the public spirit of our Governor except as you know his mother and her long-time interest and participation in public affairs There is no group which is going to watch our efforts with keener interest when we have finished and presented our product to the public—there is no group that is going to criticize us more fairly nor more exactingly—than are the women of this State. There is no group to whom our work is of more importance.

Now I give you briefly biographical facts concerning Mrs. Katzenbach, who was born in Trenton, New Jersey, on December 8, 1882, but has recently moved near Princeton. She is the daughter of Cleveland and Matilda E. Hilson, and the wife of Edward L. Katzenbach, who died in December, 1934. She has two sons, Edward L. and Nicholas deB. She served for a number of years as cataloger and chief of staff of the Trenton Free Public Library. She was appointed to the Board of Education by Governor Edwards in 1921, reappointed to the Board of Education in 1929 by Governor Larson, and reappointed by Governor Hoffman in 1937. In 1945 she was appointed a member of the reorganized State Board of Education by Governor Edge for four years, her term expiring in 1949.

Mrs. Katzenbach is a member of the Board of Trustees of Rutgers University, President of the Board of Managers of the Union Industrial Home Association of Trenton, New Jersey, First Vice-President of the Family Service Association of Trenton, and a member of the Board of Directors of the Trenton Community Chest and Council.

We know she is capable of carrying on the duties of the office for which she is being nominated. We feel we are not only honoring her but the women of this State in selecting her to this office, and I would like to place her name in nomination.

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

It is a very real privilege and pleasure to second the nomination of Mrs. Katzenbach of Mercer County for the office of Second Vice-President of this Convention. Not only does she bear a name which is illustrious and distinguished in the annals of New Jersey, but in her own right she has made a very generous contribution to the civic, the cultural and the philanthropic welfare of her own community and the State of New Jersey. As Mr. Saunders has said, she has for many years been a valued and a valuable member of the State Board of Education, serving under the appointment of Democratic and Republican Governors alike. She is a member of the Board of Trustees of Rutgers University, our gracious host on

this occasion. She has made a very real contribution, I say, to the welfare of the public of the State of New Jersey, and in electing her to the office for which she has just been nominated, this Convention would pay a very great tribute to the lady who has brought so much to countless thousands of our citizens. It is a great pleasure for me to second her nomination.

PRESIDENT: Are there any more nominations from the floor?

(Motion from floor that nominations be closed)

PRESIDENT: Who will second the motion?

(Seconded from floor)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried and Mrs. Katzenbach is elected to the office of Second Vice-President. I will ask Judge Hutchinson to escort her to the platform.

(Mrs. Katzenbach is escorted to the platform by Judge Hutchinson. The Secretary administers the oath.)

MRS. MARIE H. KATZENBACH *(repeating oath):*

I, Marie Hilson Katzenbach, do solemnly swear that I will abide by the instructions of the people of this State as set forth in the referendum conducted pursuant to Chapter 8 of the Laws of 1947; that I will faithfully, impartially, and justly perform all the duties of the office of Second Vice-President of the Constitutional Convention of New Jersey held pursuant to that law and referendum, according to the best of my ability and understanding, and that I will support the Constitution of the United States, so help me God.

MRS. KATZENBACH: May I say something, please?

PRESIDENT: Yes, certainly.

MRS. KATZENBACH: Dr. Clothier and honored delegates: I appreciate very deeply the honor you have conferred upon me, and I can only say I will do to the best of my ability to show my appreciation of the trust that you have placed in me by making me the Second Vice-President. Thank you.

MR. O'MARA: Mr. President, ladies and gentlemen of the Convention:

In order that the Convention might have some sort of a time table at which we can shoot with some hope of carrying on our affairs expeditiously, I offer the following resolution and move its adoption:

> "RESOLVED, that proposals to be made by delegates to the Convention, and recommendations and suggestions to be made by the public, for revision, alteration and reformation of the present Constitution, and

requests for public hearings thereon or in relation to the revision, alteration and reformation of the present Constitution, be received by the Convention, when filed in writing with its Secretary, up to and including July 7, 1947; that the several General Standing Committees of the Convention report on the matters within their consideration not later than July 31, 1947; and that the Convention's deliberations on proposals for revision, alteration and reformation of the present Constitution shall be concluded on or before August 31, 1947; and that appropriate publicity through the press and otherwise be given to the adoption of this Resolution."

PRESIDENT: You have heard the resolution. Is it seconded?

MR. PERCY CAMP: Seconded.

PRESIDENT: Is there any discussion on this resolution? Are you ready for the question? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. Mr. Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: I have a resolution, sir.

SECRETARY: The following resolution is submitted by Mr. Van Alstyne:

"RESOLVED, that when the Convention adjourns, it be to meet on Wednesday, June 18, 1947, at 2 oclock P. M."

MR. VAN ALSTYNE: Mr. President, fellow delegates: The reason for postponing the meeting of the Convention until Wednesday afternoon is so that our President may have time to confer and consult in picking the committees without which this Convention cannot very well function. It is felt that that much time is needed to pick these committees properly. I move the resolution.

PRESIDENT: You have heard the resolution. Is it seconded?

(Second from the floor)

PRESIDENT: Is there any discussion? . . . Are you ready for the question? It was next Wednesday, June 18, 1947, at 2 o'clock. Am I correct, Mr. Van Alstyne?

MR. VAN ALSTYNE: Yes, sir.

PRESIDENT: Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. Mr. Barton.

MR. BARTON: Mr. President, I ask your permission, sir, to submit a resolution concerning the credentials and vacancies, and move that it be adopted.

SECRETARY: The following resolution is submitted by Mr. Barton:

"RESOLVED, that there be referred to the Committee on Credentials, Printing, and Authentication of Documents the matter of the existence of vacancies in the membership of the Convention by reason of the declination, resignation, or failure to qualify, of certain persons elected as delegates to the Convention, and the matter of the qualifications and election or appointment, as delegates to the Convention, of persons who may be, or may claim to be, appointed to fill any such vacancies, and of persons whose names appear upon the certificate of the delegates elected to the Convention, presented by the Secretary of State to the Convention, who did not qualify as delegates to the Convention by taking the oath required by law, and of persons who may claim to have been elected as delegates to the Convention whose names do not appear upon said certificate, and that said Committee examine into the same and report thereon to the Convention, with all possible dispatch."

PRESIDENT: You have heard the resolution. Is it seconded?

(Seconded from the floor)

PRESIDENT: Is there a discussion? . . . Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. Governor Driscoll has asked me to call the attention of the delegates to Rule 38 in these rules presented by the Rules Committee. It has been perfectly apparent that the members of the Convention have not had an opportunity to study these rules and to form their opinions about them. Rule 38 provides that upon such study it will be entirely possible for the Convention to make such changes in them as is deemed appropriate.

Rule 38 provides that:

"Any rule of the Convention may be suspended or repealed, altered or amended by a vote of at least 41 delegates and any amendment offered shall lie on the table one day before being voted upon."

No action is necessary, I think, but Governor Driscoll has asked me to call that provision to the attention of the delegates.

This brings us, ladies and gentlemen, to the end of the established agenda. Is there business to be presented from the floor before we adjourn this afternoon?

(Silence)

If not, a motion to adjourn is in order. . . . Mr. Leonard. Would you mind taking the microphone?

MR. LEON LEONARD: Before we adjourn, I wonder if it will be possible to find out what our schedule is going to be for next week. As I understand it, the present motion is that we return on Wednesday. I am wondering whether we can find out if it is contemplated that we have any other sessions in addition to Wednesday during next week so that delegates can arrange their programs.

PRESIDENT: As far as we know, there has been no decision

on that. The matter is entirely up to the discretion of the Convention itself. However, I have no way of offering a recommendation at this time because I do not know what the wish of the delegates may be. Does anyone have any thought to offer in this connection?

MR. PAUL: I assume, Mr. Chairman, that it will be your purpose to announce the committees so that the committees can begin their work approximately Monday afternoon. Is that your purpose, sir?

PRESIDENT: I propose to give that my study immediately. I hope that we will reach some decision by Monday.

MR. PAUL: If the committees are announced or are prepared to organize on Wednesday, I think that might answer Mr. Leonard's question. The committees will then break down into their respective functionings. Is that your purpose, sir?

PRESIDENT: I think that is, in principle, what we have in mind.

MR. PAUL: So that presumably the Convention, as a Convention, will not have so much to do for a couple of days until the committees get organized and start their work.

PRESIDENT: A suggestion is made by one of our delegates, Mr. Spencer Miller, Jr., that some delegates of the Convention might be interested to know that Senator Taylor of Idaho is to be the guest speaker at the Labor Institute this evening here at the University, directly across the street at 6:30 at the University Commons. I think you know of Senator Taylor's reputation, and some of you may care to be present and hear him.

We shall, then, if there is no further business, adjourn, and I shall ask you to rise while the Most Reverend William A. Griffin, Bishop of Trenton, pronounces the benediction. Bishop Griffin.

BISHOP WILLIAM A. GRIFFIN: Mr. Chairman, delegates:

In the name of the Father, the Son and the Holy Ghost. Amen. Go before us, O Lord, we beseech Thee, in all our doings with Thy gracious inspiration, and further us with Thy continual help, that every prayer and work of ours may begin from Thee, and by Thee be duly ended, through Christ our Lord. Amen.

We are come, O God the Holy Spirit, we are come before Thee, hindered indeed by our many and grievous sins, but especially gathered together in Thy Name. Come unto us and be with us; vouchsafe to enter our hearts; teach us what we are to do and whither we ought to tend; show us what we must accomplish, in order that, with Thy help, we may be able to please Thee in all things. Be thou alone the Author and the Finisher of our judgments, Who alone with God the Father and His Son dost possess a glorious Name. Suffer us not to disturb the order of justice, Thou who lovest equity above all things; let not ignorance draw us into devious paths, nor partiality sway our minds; neither

let respect of riches or persons pervert our judgment; but unite us to Thee effectually by the gift of Thine Holy Grace, that we may be one in Thee and never forsake the truth.

Inasmuch as we are gathered together in Thy Name, so may we in all things hold fast to justice, tempered by pity, that so in this life our judgment may in no wise be at variance with Thee, and in the life to come we may attain to everlasting rewards for deeds well done. May the blessing of Almighty God, the Father, the Son, and the Holy Spirit descend upon us and remain with us forever. Amen.

PRESIDENT: A motion to adjourn is now in order.

DELEGATE: I so move.

DELEGATE: Seconded.

PRESIDENT: The motion is carried.

(The session adjourned at 4 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

June 18, 1947

(The session began at 2 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the members of the Convention to rise while the invocation is pronounced by Mr. Bradford S. Abernethy, the University Chaplain.

CHAPLAIN ABERNETHY: Almighty God, give wisdom and understanding to all who acknowledge their need of guidance. We come before Thee in the spirit of humility, asking that Thy blessing may rest upon this assembly as it begins the great work entrusted to it. Spread to all the members a keen sense of the solemn responsibility which rests upon them, to think with clarity, to work with diligence, to speak with charity, to plan with courage and vision. Give to them a lively awareness of the unseen audience which will attend the sessions: the people, great and small, rich and poor, of all classes and creeds, who make up this great State of ours. Let the self-seeking, and personal or group advantage give way to the good of all. And may there be fashioned here such an instrument as will guide us surely and safely through the difficult days ahead.

Our times are in Thy hands, as were our fathers before us. They trusted in Thee and were not ashamed. Give to us such trust and abiding confidence that the future will be big with promise. In Thy name, we ask it. Amen.

PRESIDENT: The first item of business on the program is the reading of the Journal. What is your pleasure?

SECRETARY OLIVER F. VAN CAMP: Resolution by Mr. Barton *(reading):*

> "RESOLVED, that the reading of the Journal of the previous session be dispensed with."

(Seconded from floor)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. . . . The Secretary will call the roll.

SECRETARY *(the Secretary called the roll, and the following delegates answered "present"):*

Barton, Barus, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Milton, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

A quorum is present.

PRESIDENT: The Secretary announces that a quorum is present.

Ladies and gentlemen: The order of business as set forth in the rules adopted by the Convention last week hardly lends itself to our guidance today. With your consent I shall not proceed with the presentation of the petitions, memorials and remonstrances, and reports of the standing committees, etc., because the standing committees, as you know, have just been appointed. But I would like to make an introductory statement.

As you know, under the rules and regulations of the Convention, it has been the responsibility of the President to appoint the members of the standing committees. As you also know, the Convention adjourned from last Thursday until this afternoon in order to provide ample time for thoughtful and unhurried consideration of this very important problem. The real work of the Convention, naturally, will be done by the nine committees, and it obviously has been of the greatest importance that the committees be constituted most effectively.

In making my selection of the members of the committees, I consulted, as far as possible, the wishes of the delegates themselves. Everything else being equal, it is to be presumed that a man or woman will serve most effectively on that committee on which he or she wishes to serve. It has also been necessary to take into consideration the experience, training and qualifications of the members of the Convention, so far as they are known; and it has been desirable to distribute the membership of the committees over the various county delegations as successfully as possible, though I felt, and I am sure we all feel, that *all* the delegates represent *all* of the citizens of the State. Again, so far as possible, I have endeavored to see that varying points of view are represented on the several committees.

Now, naturally, it has not been an easy task, but I have been in consultation with a number of the delegates and many of them have telephoned and written me to let me have the benefit of their recommendations and advice. All of these I have found most helpful. I suppose it will be asking the millennium to expect that these com-

mittee memberships will satisfy everyone 100 percent, but I entertain the hope that they will meet with the approval of the great majority of the delegates and the friendly acquiescence of the others.

I have not hurried the matter, because it has seemed to me, and those with whom I have consulted, that an extra day taken now may serve to speed the work of the Convention later on and to increase the effectiveness of the work of the several committees. It has been my hope and expectation, as I am sure it is the hope and expectation of all of us, that the committees will initiate their work promptly, invite the testimony of all who wish to appear, consider all points of view and prepare their recommendations, solely with the larger interest of the people of the State in mind.

Our agenda today, as I see it, is primarily to complete our organization, and I entertain the hope that we shall proceed with that as promptly as possible, and that we shall then adjourn in order that the committees themselves may organize.

You have received telegrams, I believe, indicating your appointment to the several committees. I would like to ask the Secretary if he will now read the members of the committees.

SECRETARY *(reads the following committee lists)*:

RIGHTS, PRIVILEGES, AMENDMENTS AND MISCELLANEOUS PROVISIONS

Schenk, Hunterdon, *Chairman*
Carey, Hudson, *Vice-Chairman*

Delaney, Passaic
Ferry, Bergen
Glass, Passaic
Mrs. Katzenbach, Mercer
Park, Gloucester
Pursel, Warren
Randolph, Essex
Stanger, Cumberland
Taylor, Essex

LEGISLATIVE

O'Mara, Hudson, *Chairman*
Lewis, Burlington, *Vice-Chairman*

Camp, Ocean
Cavicchia, Essex
Mrs. Hacker, Bergen
Jorgensen, Middlesex
Lance, Hunterdon
Leonard, Atlantic
Morrissey, Camden
Proctor, Monmouth
Mrs. Sanford, Essex

EXECUTIVE, MILITIA AND CIVIL OFFICERS

Van Alstyne, Bergen, *Chairman*
Feller, Union, *Vice-Chairman*

Barton, Passaic
Mrs. Barus, Essex
Eggers, Hudson
Farley, Atlantic
Hansen, Hudson
S. Miller, Jr., Essex
J. S. Smith, Bergen
Walton, Camden
Young, Morris

JUDICIARY

Sommer, Essex, *Chairman*
Jacobs, Essex, *Vice-Chairman*

Brogan, Hudson
Dixon, Sussex
Drenk, Burlington
McGrath, Union
Mrs. Miller, Union
Peterson, Gloucester
G. F. Smith, Middlesex
Winne, Bergen
McMurray, Monmouth

TAXATION AND FINANCE

Read, Camden, *Chairman*
Murray, Essex, *Vice-Chairman*

Cullimore, Essex
Dwyer, W. J., Hudson
Emerson, Union
Lightner, Bergen
Rafferty, Middlesex
Mrs. Streeter, Morris
Struble, Cape May
Wene, Cumberland
Milton, Hudson

ARRANGEMENT AND FORM

McMurray, Monmouth, *Chairman*
Hutchinson, Mercer, *Vice-Chairman*

Berry, Ocean
Clapp, Essex
Holland, Morris
Schlosser, Hudson
Drewen, Hudson

SUBMISSION AND ADDRESS TO THE PEOPLE

Saunders, Mercer, *Chairman*
Cafiero, Cape May, *Vice-Chairman*

Lloyd, Bergen
Montgomery, Monmouth
Murphy, Hudson
Paul, Essex
Moroney, Warren

RULES, ORGANIZATION AND BUSINESS AFFAIRS

Gemberling, Salem, *Chairman*
Paul, Essex, *Vice-Chairman*

Mrs. Constantine, Passaic
W. A. Dwyer, Passaic
Mrs. Peterson, Salem
————————, Camden
(When the vacancy is filled the name will be substituted.)
Pyne, Somerset

CREDENTIALS, PRINTING AND AUTHENTICATION OF DOCUMENTS

Kays, Sussex, *Chairman*
Hadley, Union, *Vice-Chairman*

Lloyd, Bergen
Lord, Mercer
Orchard, Essex
Smalley, Somerset
Naame, Atlantic

PRESIDENT: The list of the members of the committees will

now be distributed to the delegates.

I recognize Mr. Paul of Essex.

MR. WINSTON PAUL: Mr. Chairman, I have the following resolution to offer:

> "BE IT RESOLVED, that in order to expedite the work of its standing committees as far as possible, and for the purpose of scheduling the meetings of the Convention and of its committees, also to enable members of the Convention to regulate their personal affairs, that this Convention, until further notice, make it its practice to convene each Tuesday morning at 10 A. M. to dispatch necessary business and to hear progress reports from its committees, and to transact such other business as shall properly come before the Convention, and
>
> BE IT FURTHER RESOLVED, that the committees shall meet from Tuesday through Friday of each week, as such committees shall themselves determine, and that for the above purpose the Convention itself shall not for the present meet on Mondays, Fridays or Saturdays, unless the business of the Convention shall later be found to require same."

I offer this resolution, Mr. Chairman.

PRESIDENT: Is the resolution seconded?

(Seconded from floor)

PRESIDENT: Is there any discussion, or are there any questions?

I think it is perfectly apparent that the purpose of the resolution is to clarify in the minds of all of us just what the projected time table is, so that the work of the committees may be expedited and that all delegates may make their personal plans most effectively. Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: Mr. President, I think it is time that this Convention now give serious thought to the employment of personnel and members of the working staff for the period of the Convention.

Under our rules—Rule 18 (b)—the Committee on Rules, Organization and Business Affairs would seem to be the appropriate committee to which to turn over the function of getting together and employing the working staff of the Convention. I therefore offer this resolution, Mr. President:

> "RESOLVED, that the Committee on Rules, Organization and Business Affairs be authorized to appoint the necessary stenographers, clerical assistants, and other employees of the Convention, and to fix their compensation."

I move the adoption of the resolution.

PRESIDENT: Is the resolution seconded?

(Seconded from floor)

PRESIDENT: Is there discussion? Are there any questions? Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

MR. PAUL: Mr. Chairman.

PRESIDENT: Mr. Paul.

MR. PAUL: In order to expedite the work of the committees pursuant to the resolution which was just approved—that the Committee on Rules, Organization and Business Affairs should provide the necessary staff and so forth to the various committees—I offer the following resolution:

> "RESOLVED, that the committees appointed by the President be and they hereby are authorized:
> (1) To meet, organize, and proceed to perform their respective functions, subject to the Rules of this Convention; and
> (2) To requisition from the Committee on Rules, Organization and Business Affairs such facilities and services as they may require, subject to the provisions of Rule 18 of the Rules of this Convention and the rules and regulations made in connection therewith."

I offer that resolution, Mr. Chairman.

PRESIDENT: Is the resolution seconded?

(Seconded from floor)

Is there discussion, or are there questions? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted.

The Secretary has some communications to present.

SECRETARY *(reading):*

> "June 13, 1947
>
> Mr. Oliver F. Van Camp,
> Secretary,
> New Jersey State Constitutional Convention,
> Rutgers Gymnasium,
> New Brunswick, New Jersey.
>
> Dear Mr. Van Camp:
>
> I am sorry that circumstances prevented my attendance at the opening of the Constitutional Convention yesterday, so that I could not be sworn in with the other delegates. Attached is the oath, duly subscribed.
>
> Please accept my congratulations upon your election as Secretary of the Convention.
>
> Very truly yours,
> *(Signed)* William J. Orchard"

"June 18, 1947

Mr. Oliver F. Van Camp, Secretary,
Constitutional Convention,
New Brunswick, New Jersey.
Dear Sir:

I have been requested to forward to you the attached oath of office for Frank H. Sommer, a delegate from Essex County.

Very truly yours,
(*Signed*) J. Lindsay de Valliere
Secretary to the
Governor."

(Oath of office attached)

"To the President and Secretary
of the Constitutional Convention,
of the State of New Jersey,
Gymnasium, Rutgers University,
New Brunswick, New Jersey.
Gentlemen:

Please be advised that I, J. Wallace Leyden, duly elected at a special constitutional convention election held on June 3, 1947, as a delegate from Bergen County to said Constitutional Convention, do hereby decline the said office and refuse to qualify as such delegate.

(*Signed*) J. Wallace Leyden.

Dated: June 12, 1947.
(*Signed*) Kenneth L. Demarest
(Witness)"

"June 10, 1947

Honorable Lloyd B. Marsh,
Secretary of State,
State House,
Trenton, New Jersey.
Dear Sir:

I have this day received from the Clerk of the County of Camden a Certificate of Election as a delegate to the Constitutional Convention to convene Thursday, June 12, at New Brunswick, New Jersey. Please be informed that I will not present myself to the convention to qualify as such delegate.

Very truly yours,
(*Signed*) Bartholomew A. Sheehan"

"June 11, 1947

Honorable Lloyd B. Marsh,
Secretary of State,
State House,
Trenton, New Jersey.
Dear Sir:

This is to advise you that I have received from Judge Thomas Brown an official notice he has withdrawn as delegate-elect to the Constitutional Convention to be held at New Brunswick, New Jersey.

In accordance with the act governing the Convention I have notified the two remaining delegates, Judge Haydn Proctor and Wayne D. McMurray of the withdrawal.

This is for your information.

Yours sincerely,
(*Signed*) J. Russell Woolley
County Clerk
County of Monmouth"

PRESIDENT: In accordance with the resolution heretofore

adopted, these communications will be referred to the Committee on Credentials, Printing and Authentication of Documents. Also, the vacancy in the Ocean County delegation will similarly be referred to the Committee on Credentials.

I think the members of the standing committees may be interested in having the report on the rooms which have been assigned to them for their permanent occupancy and use:

The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions is provided Room No. 5 in the Music Building. The Music Building is one block down the street and is in many ways, for the reassurance of the members of that committee, one of the most attractive buildings we have on the Rutgers campus . . . Room No. 5 in the Music Building.

The Committee on the Legislative will have Room 205 in the Gymnasium, on the second floor immediately in back of where the persons are seated in the bleachers. . . . Room 205 in the Gymnasium.

The Committee on the Executive, Militia and Civil Officers will have assigned to it Room 203 in the Gymnasium.

The Committee on the Judiciary will have Room 202 in the Gymnasium, on the second floor.

The Committee on Taxation and Finance will have Room 201 in the Gymnasium, on the second floor.

The Committee on Arrangement and Form will have assigned to it Room No. 12 in the Arts House, which is a half-block down College Avenue, the first building, the white building, on this side of the street. . . . Room No. 12 in the Arts Building.

The Committee on Submission and Address to the People will have Room No. 13 in the Arts Building.

The Committee on Rules, Organization and Business Affairs has had assigned to it Room 115 in the Gymnasium. That is the room on the lobby floor, at this end.

The Committee on Credentials, Printing and Authentication of Documents has had assigned to it Room No. 11 in the Arts House, one-half block down the street.

Unless the delegates instruct me otherwise, it would seem appropriate that we recess for a few minutes while the Committee on Credentials meets and takes action on these matters which have just been referred to it. If that is agreeable to the delegates, we shall stand recessed, to reconvene shortly after quarter of three.

(Recess at 2:28 P. M. The Convention reconvened at 2:55 P. M.)

PRESIDENT: Will the delegates take their seats, please? I shall call for a report from the Committee on Credentials.

SECRETARY: The Committee on Credentials reports a vacancy in the delegation from the County of Ocean, and certifies the

appointment of Franklin H. Berry, of Toms River, by Percy Camp, the remaining delegate from said county, in accordance with the law.

The Committee certifies a vacancy in the delegation from the County of Monmouth, because of the failure of Thomas C. Brown to qualify. It certifies the appointment of John L. Montgomery, of Red Bank, Monmouth County. This certification is signed by the remaining members of the delegation.

The Committee reports a vacancy in the delegation from the County of Bergen because of the failure to qualify of J. Wallace Leyden. It certifies the filling of the vacancy by the appointment of Francis V. D. Lloyd, of Ridgefield Park, New Jersey, County of Bergen, by the remaining members of the delegation.

The Committee certifies a vacancy in the delegation from the County of Passaic because of the failure of Louis V. Hinchliffe to qualify. It certifies the appointment of Joseph A. Delaney, City of Paterson, County of Passaic, by the remaining members of the delegation.

PRESIDENT: Will the delegates who have just been certified please come forward to be sworn?

SECRETARY: Mr. Berry of Ocean; Mr. Montgomery of Monmouth; Mr. Lloyd of Bergen; Mr. Delaney of Passaic. *(The Secretary administered the following oath to Franklin H. Berry, John L. Montgomery, Francis V. D. Lloyd and Joseph A. Delaney):*

> "I, ————————————, do solemnly swear that I will abide by the instructions of the people as contained in the referendum submitted at a special Constitutional Convention election held June 3, 1947, and that I will support the Constitution of the United States and I will faithfully discharge all the duties of delegate of said Constitutional Convention."

(Each signs the oath of office)

PRESIDENT: Ladies and gentlemen: In order to comply with the Rules adopted by the Constitutional Convention last week which provide the order of business, I shall, with your consent, read these various items, and if there are any matters of business to be brought up under any of them, we shall, of course, entertain them, although I imagine most of them at this meeting today will be purely formal.

First, is the presentation of petitions, memorials and remonstrances.

Reports of standing committees.

Reports of select committees.

Introduction and first reading of proposals.

Reference of proposals.

Motions and resolutions.

Unfinished business.

Special orders of the day.

General orders of the day.

Before we adjourn, may I ask if any member of the Convention has any matter to present for consideration?

If not, I would like to suggest a motion that we adjourn until next Tuesday in accordance with the resolution adopted a few moments ago, in order to provide opportunity for the standing committees to go into session at once and undertake their own organization.

MR. CAVICCHIA: I move that we adjourn.

SENATOR EDWARD J. O'MARA: I second the motion.

PRESIDENT: You have heard the motion and the seconding. Is there any discussion? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: I declare this meeting adjourned. I think the members of the standing committees know where the several meetings are to be held.

(The session adjourned at 3:13 P.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

June 24, 1947

(The session began at 10 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask everyone to rise while Monsignor Peter J. Hart, Pastor of St. Peter's Roman Catholic Church, New Brunswick, pronounces the invocation.

MONSIGNOR HART: O Heavenly Father, we ask Thee to bless and bring to a successful issue all conventions and gatherings and especially the deliberations of this Constitutional Convention today. Be Thou the inspiration of their labors, resolutions and decisions. Accept graciously the solemn homage they render to Thee. Enkindle the hearts of delegates and representatives, citizens and residents of the State of New Jersey, so that as a result of the deliberations here taking place, Christianity will rightfully benefit and true justice will be administered. We ask Thee particularly, O God, Who didst teach the hearts of Thy faithful people by sending them the light of Thy Holy Spirit, grant us by the same Spirit to have a right judgment in all things and ever more to rejoice in His Holy Comfort, through Christ, Our Lord. Amen.

PRESIDENT: The next item of business on the docket is the reading of the Journal. May I ask your pleasure with reference to this item?

DELEGATE: Dispense with it.

PRESIDENT: It has been moved that the reading of the Journal be dispensed with. Is the motion seconded?

DELEGATE: Seconded.

PRESIDENT: Is there any discussion? Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. The Secretary will call the roll.

OLIVER F. VAN CAMP *(the Secretary called the roll, and the following delegates answered "present"):* Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer,

W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Schenk, Smalley, Smith, G. F., Smith, J. S., Stanger, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: A quorum is present, sir.

PRESIDENT: I want to take this opportunity very briefly to congratulate the members of the standing committees upon the dispatch with which they have organized and initiated their work. The Convention has now passed from the organizational stage into the operational stage, and the important work is about to begin. I want to assure the members of the committees that if there is any way whatever in which we can be of assistance to them, I hope that they will let us know. I think we all feel that the Convention is off to a good start, but the eyes of the people of the State will be on us, especially from this time on, and we shall have to justify their confidence. I know I express the profound conviction of all of us when I express the hope that we shall hear carefully all proposals and all points of view and give them our serious consideration; that we shall regard ourselves, all of us, as representatives of the people of the State first, and representatives of our counties second; that we shall resist pressures from any groups which may seek special advantage in the construction of the new State Constitution; that we shall refrain from recommending that there be incorporated in the Constitution those provisions which are temporary in nature rather than basic in principle, which should be handled, of course, by legislation rather than by incorporation into basic law; and that we shall with our eyes on the long view continue to adhere to the principles of a sound Constitution rather than deal in any measure in the cause of expediency. If I may do so without presumption, and I hope I am not presumptious, I would like to congratulate the members of the standing committees upon the good start they have made and wish them every success in their work. I know we shall all be interested in hearing from the chairmen as they report briefly before we adjourn.

The next item of business on the docket is the presentation of petitions, memorials and remonstrances. Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: I think this is the proper time for me to bring up a question for clarification.

It appears to me that the delegates are receiving individually what should be termed either memorials or petitions, and I am

wondering whether those are going to the Secretary of the Convention so that they may be properly received and referred to the appropriate committee. I am afraid that that procedure is being overlooked, Mr. President. For instance, I have in my hand now what purports to be a proposal from the New Jersey Education Association, in form as provided for by the rules for the submission of proposals, beginning "RESOLVED, that the following be agreed upon as part of the proposed new State Constitution . . ." Now, it would seem to me, that is not a proposal until it it submitted by a delegate, and I bring this up at this time, Mr. President, so that we might save ourselves embarrassment at a later date. Do I make myself clear, Mr. President?

PRESIDENT: Perfectly.

MR. CAVICCHIA: I wonder if we may be informed whether these petitions or memorials that are coming to us individually are being received officially by the Secretary.

PRESIDENT: If it is in order for me to do so, I might say, speaking for myself as a delegate, that these communications which I have received, I have referred to the Secretary for proper reference to the proper committee. I would like to suggest that if it meets with the approval of the Convention as a whole, that that same practice be followed by the other delegates. Is that your thought, Mr. Cavicchia?

MR. CAVICCHIA: Yes.

PRESIDENT: Is a motion in order to that effect, or may we accept that as the sense of the meeting? Do you care to offer that as a motion, Mr. Cavicchia?

MR. CAVICCHIA: No, I don't think a motion is necessary. I think it is just a matter of clarification so that the public will know how to proceed with reference to communications on memorials.

PRESIDENT: We might, then, summarize it briefly: that any communication that a delegate receives should be referred to the Secretary, to Mr. Van Camp, for reference to the proper committee. Is there any other business under this item, presentation of petitions, memorials and remonstrances?

If not, we will call for a report from the standing committees. May I ask that the chairmen of the several committees report in sequence? I don't seem to have the list of committees here in sequence, but I will ask Mr. Schenk if he will report first for the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. Mr. Schenk, will you take the microphone?

MR. JOHN F. SCHENK: Mr. President, and delegates:

The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, convened for the first meeting in the Music

Building, Room 5, after the close of the last Convention session. It seemed advisable to have a permanent secretary to assist our technical secretary, and Mr. Lawrence N. Park, of Gloucester County, was elected as secretary of the committee.

By way of getting the committee session under way, the chairman urged the various members of the committee to review the work of the 1942 Hendrickson Committee and compare it with the 1844 Convention, and also compare all three of the efforts together,—in other words, the legislative effort of 1944, the 1844 Constitution, and the 1942 Report.

There was some discussion of the work assigned to the committee under Rule 15. In other words, a brief review was made of Article I, Article II, Article III, and the other Articles, the miscellaneous provisions and the amendment provisions. It was decided to select the chairman and secretary as a committee of two to arrange with Dr. Clothier and with Mr. Van Camp a schedule for open hearings. It was felt that our room was too small for some of the hearings we probably shall have, and that an effort should be made to have a coordinated program with the right-size room so that we would not overlap with some of the other committees.

It was contemplated that later today a schedule would be worked out, and announcements would be made at the end of today or tomorrow of the first hearings of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. The chair urged all members of the committee to be prepared to discuss fully all of the material assigned to it, so that when we open our hearings each member of the committee will be equipped to follow the hearings carefully and answer any pertinent questions.

There will be a meeting of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions at 11 o'clock today, or as soon thereafter as is practical, in the Music Building, Room 5. Thank you.

PRESIDENT: May I ask Senator O'Mara for the report on the Committee on the Legislative.

MR. EDWARD J. O'MARA: Mr. President and ladies and gentlemen of the Convention:

The Legislative Committee organized after the conclusion of the session of the Convention last Wednesday. Mr. Leon Leonard, the delegate from Atlantic, was chosen as secretary of the committee. The committee outlined a program of work for the next two meetings which consists mainly of study of the various monographs and other literature which have been submitted to the Convention dealing with the subject matter which has been referred to this committee under the Rules. It was thought that we could best

proceed with our work in an orderly manner by having the members of the committee familiarize themselves with the literature which has been submitted to us, discuss the contents of that literature, and consider in a tentative way whether they agree with this or not, all subject, of course, to the public hearings which the committee is to hold.

The committee has set the first public hearing for July 12, a week from today. May I say, in concluding the report, that although 1:30 P. M. today was set as the time for the meeting of the committee, several members of the committee have suggested that we meet immediately after the conclusion of this session. I would like all the members of the committee who are present now to understand that we will meet in Committee Room 205 immediately upon conclusion of this session of the Convention.

PRESIDENT: Are there any questions members of the Convention would like to ask Mr. Schenk or Senator O'Mara?

If not, we will proceed with the report on the Committee on the Executive, Militia and Civil Officers. Senator Van Alstyne?

MR. DAVID VAN ALSTYNE, JR.: Mr. President, and delegates:

At the Executive Committee organization meeting last week we elected delegate Mrs. Jane Barus, from Essex, as our permanent secretary. We elected Mr. William Miller as technician and draftsman, which is subject to the approval of the Committee on Rules and Organization.

The Executive Committee felt that the best way to start was to get the opinions of the living Governors. At 11 o'clock this morning the committee is meeting with ex-Governor Morgan Larson, at 2 o'clock this afternoon with Governor Driscoll, at 3:30 P. M. with ex-Governor Hoffman, and at 11 A. M. tomorrow with ex-Governor Moore. We also want to get the opinion of the public, so we have a hearing scheduled in this room at 11 o'clock Thursday morning to deal with executive matters. If that doesn't finish up, we are going to continue our public hearing in this room at 11 o'clock a week from today, to finish up with the civil officers and military sections. I think we are making progress. Thank you.

PRESIDENT: Are there any questions the members of the Convention would like to ask Senator Van Alstyne? If not, we will proceed with the report of the Judiciary Committee. I will ask Vice-Chairman Jacobs to report.

MR. NATHAN L. JACOBS: Mr. President, and delegates:

In the absence of Dean Sommer, who is absent because of illness, our committee met last Wednesday and organized and elected Mrs. G. W. Miller, of Union, as secretary. It was decided to invite repre-

sentatives who have heretofore initiated proposals for changing our judicial system.

Accordingly, the committee will at 11 A. M. today hear Mr. Hendrickson, who was chairman of the 1942 Commission; at 12 o'clock a representative of the New Jersey Committee for the Constitutional Revision; at 2 P. M. a hearing for the State Bar Association; and at 3 o'clock a representative of the League of Women Voters. Tomorrow we expect to hear a representative of the Essex County Bar Association and one of the Hudson County Bar Association. It is planned that further invitations will be sent to interested public officials and citizens next week. Full formal hearings probably will not be held until after the committee has deliberated on the informal presentation and submitted a tentative draft for consideration. At the formal public hearings we will, of course, invite the delegates to attend the sessions today or any later sessions that the committee will have. Thank you.

PRESIDENT: Are there any questions that the members would like to ask Mr. Jacobs? If not, I will ask Mr. Read for his report of the Taxation and Finance Committee.

MR. WILLIAM T. READ: Mr. President, and ladies and gentlemen of the Convention:

The Taxation and Finance Committee met following the adjournment of the Convention last week and organized by the selection of the Honorable John J. Rafferty, delegate from the County of Middlesex, as our permanent secretary. The Committee discussed fully various phases of the Constitution which are coming under its jurisdiction. It was decided to meet today at 11 o'clock, or immediately following the Convention session, and request that state taxation officials Homer Zink and Walter R. Darby and various other officials meet with us today, as well as representatives of the State Chamber of Commerce, the New Jersey Taxpayers' Association, and people of that sort. The idea was to develop just exactly what we will need in the way of public hearings later on. The committee also has decided that if it is necessary for the benefit of the public, that we meet in Trenton, Newark, Jersey City, Paterson, Camden, and Atlantic City, the latter with the suggestion of Mr. Wene that we might cool off in a heated argument. When we are ready, we will, of course, have to contact Mr. Gemberling in order to get rooms, but we stand ready not only to meet here but in other places if that is convenient to the public. Thank you very much.

PRESIDENT: Are there any questions the members of the Convention would like to ask Mr. Read? If not, I will ask Mr. McMurray to report for the Committee on Arrangement and Form.

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentle-

men of the Convention:

The Committee on Arrangement and Form organized last week and elected Alfred C. Clapp its Secretary. Our report is necessarily brief, Mr. President, because our work really doesn't get under way until the other committees have reported their recommendations to the Convention. So I can only report that our committee is organized, we are ready to go, and we await expectantly the things the Convention will refer to us.

PRESIDENT: Mr. Saunders is not here today. Will Vice-Chairman Cafiero report for the Committee on Submission and Address to the People?

(Pause)

PRESIDENT: In his absence I will ask Mr. Gemberling to report for the Committee on Rules, Organization and Business Affairs.

MR. ARTHUR R. GEMBERLING: Mr. President, ladies and gentlemen of the Convention:

Our committee met following the adjournment of the meeting last week, organized, and elected Mrs. Constantine as our secretary. We have discussed many of the problems which have come before our committee but about the only thing I can report at the present time is progress.

PRESIDENT: Are there any questions members of the Convention would like to ask Mr. Gemberling? If not, I'll ask Vice-Chancellor Kays to report for the Committee on Credentials, Printing and Authentication of Documents.

MR. HENRY T. KAYS: Mr. President, we met after the meeting of the Convention last week and elected Mr. Lloyd as secretary of the committee. We made our report last week and we have nothing further to report today.

PRESIDENT: Are there any questions? If not, this brings us to the conclusion of the reports of the standing committees. The next item is the report of the select committees. I am assuming there is none. The next item is the introduction and first reading of proposals. Is there any business under this item?

SECRETARY: Proposal No. 1, introduced by Mr. Schlosser of Hudson County *(reading)*:

> "A PROPOSAL to add to the Bill of Rights, Article I of the present Constitution, a new paragraph abolishing prosecution for common law crimes.
>
> *Resolved,* that the following be agreed upon as part of the proposed new State Constitution:
>
> '....., Prosecution for common law crimes is abolished and no person shall be held to answer for any criminal offense unless, before commission of the act, such crime shall have been created and defined by statute.' "

PRESIDENT: The title of the proposal will be taken for its

first reading, it will be printed, it will have a second reading and be referred to the Judiciary Committee.

SECRETARY: Proposal No. 2, by Mr. Schlosser of Hudson County *(reading):*

"A PROPOSAL to implement the Search and Seizure clause of the Bill of Rights in the present Constitution, Article 1, Paragraph 6, by adding thereto a provision forbidding use as evidence of papers and things obtained by unconstitutional search and seizure.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Add to the present Article 1, Paragraph 6, the following sentence: 'Nothing obtained in violation hereof shall be received into evidence.' "

PRESIDENT: You have heard the proposal. The title of the proposal will be taken for its first reading, ordered to be printed and have a second reading, and referred to the Judiciary Committee.

SECRETARY: Proposal No. 3, by Mr. Schlosser of Hudson County *(reading):*

"A PROPOSAL to revise Article 1, Paragraph 9, of the Bill of Rights in the present Constitution, by striking out the words 'presentment or' and thus requiring grand juries to proceed only by indictment.

Resolved, that the following be agreed upon as part of the proposed new State Constitution:

Strike out in the third line of Article 1, Paragraph 9, the two words 'presentment or' so that the wording of the altered first part of the paragraph will read:

'No person shall be held to answer for a criminal offense, unless on the indictment of a grand jury,'****."

PRESIDENT: The same action will be taken with reference to this proposal. Are there any others to be presented?

MR. PERCY CAMP: Mr. President.

PRESIDENT: Mr. Camp, would you mind taking the microphone?

MR. CAMP: I beg leave to submit three proposals.

PRESIDENT: If agreeable to the members of the Convention we shall read these more carefully. Time does not permit it at the moment. We shall handle them in the same way, if this is acceptable to the delegates. Are there any other proposals?

MR. FRANCIS A. STANGER, JR.: Mr. President, may I be heard for just a moment? I submitted a proposal which I believe has been overlooked, as I didn't hear it reported upon.

PRESIDENT: It is necessary to revise the form, Mr. Stanger. The office is now working on it.

MR. STANGER: Thank you very much; there are no other questions.

PRESIDENT: Are there any motions and resolutions to be presented by members of the Convention at this time? Is there any unfinished business to be brought up for consideration? Are there

any special orders of the day? This brings us to the conclusion of our formal agenda this morning.

I have one or two informal announcements. It is requested that the women delegates meet on the steps promptly at 12:45. I believe someone wants to take their pictures at 12:45 on the steps of the Gymnasium here in front just before we leave for luncheon.

Mrs. Clothier and I are looking forward to having the delegates as our luncheon guests. I think there is no further announcement necessary. A bus will be provided in front of the Gymnasium at 12:50 for those who do not find it convenient to take their cars. We are looking forward to having you with us for personal reasons, but also we have an ulterior purpose, and that is making it possible for the delegates to learn to know one another a little more easily than is possible on this formal floor. With this in mind we are going to have one or two admittedly attractive young ladies pin badges on your lapels. It won't be necessary in the case of some of the delegates, but on some of the other ones it may be necessary as we wish to have everyone there know everyone else. So if a young lady does come up to you and pin a badge on your lapel, it is not a sign that she doesn't know who you are or that anybody else doesn't know who you are.

We would like to have you adjourn, if you will, several minutes just before 1 o'clock in order that those of you who have committee meetings at 1 o'clock may return in time.

May I ask whether there is any other business to come before this meeting before we adjourn? Mr. Hadley, would you mind taking the microphone?

MR. WILLIAM L. HADLEY: Mr. President, there were several delegates who came in after roll call. I think it would be in order to have them stand so that the Secretary may have them properly counted present.

SECRETARY: I already have them, sir.

PRESIDENT: Is there any other business to come before the meeting?

MRS. JANE E. BARUS: May we assume that any delegate may go to any hearing if not otherwise occupied in any of the committees?

PRESIDENT: I did not hear that, Mrs. Barus.

MRS. BARUS: May any delegate who is interested, go to any hearing held by any of the other committees, of which they are not members?

PRESIDENT: That is certainly my understanding, Mrs. Barus, and I am sure no one would have any other. If I am in error, will someone correct me?

(No Answer)

PRESIDENT: I have an order from the Supreme Court which shows how the Superior Courts, or whatever they are, can be overruled.

I have a message from Mrs. Clothier. After conferring with Dr. Biel, who is the meteorologist here in the University and who has an uncanny gift of foretelling weather, it is decided to hold the luncheon in the Faculty Dining Room, at the University Commons, right across the street, at the same hour, instead of over at the President's house. So instead of taking the bus and our cars to the President's house, we shall meet in the same room in which Governor Driscoll had us as his guests two weeks ago.

Is there any other business to come before the session?

MR. VAN ALSTYNE: There will be a meeting of the Executive Committee immediately upon adjournment.

PRESIDENT: Is there any other business to come before the meeting? Mr. Gemberling.

MR. GEMBERLING: Will you make the same announcement for the Rules Committee?

PRESIDENT: The same announcement applies to the Rules Committee. The committee will meet immediately after our adjournment in the Rules Committee Room.

Is there a motion that the meeting be adjourned?

MR. FRANK S. FARLEY: I move that the meeting be adjourned.

PRESIDENT: Any discussion?

(Silence)

PRESIDENT: All in favor, please signify by saying "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

(The session adjourned at 10:30 A.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

July 1, 1947

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the members of the Convention to rise while Mr. Saunders, the Head Master of Peddie Institute and our delegate from Mercer County, pronounces the invocation.

MR. WILBOUR E. SAUNDERS: Let us pray. O, Gracious Father of us all, as we meet today in the interests of all the people of this, our State, we pray that Thou will give us the consecration of the highest ideals. May we not rely upon our own wisdom alone but, giving the best that we have, also seek from Thee the guidance that Thy spirit can give, that we may think all things for the best for this, our State of New Jersey, that the future may find that we have planned well and in consecration given our best. We ask it in the name of all Thy people. Amen.

PRESIDENT: The next item on the docket is the reading of the Journal.

MR. DOMINIC A. CAVICCHIA: I move the reading of the Journal be dispensed with.

(Seconded from floor)

PRESIDENT: It is moved and seconded that the reading of the Journal be dispensed with. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll, and the following delegates answered "present"):* Barton, Barus, Berry, Brogan, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lightner, Lord, Lloyd, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson,

P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Young.

(Mr. Joseph W. Cowgill was present but his name was not called. He was sworn later in the session.)

SECRETARY: A quorum is present, Mr. President.

PRESIDENT: The Secretary reports that a quorum is present.

I have a letter from the Governor which I would like to read to the delegates. It says:

> "My dear Mr. President:
> There is no more important service being performed in the State of New Jersey today than that which occupies the time and attention of the delegates at the Constitutional Convention now assembled in New Brunswick. Accordingly, I desire formally to repeat the offer made upon the occasion of the opening session of the Convention: The executive branch of your government is prepared to serve the officers and members of the Convention in any way we may be helpful. All of the facilities, factual information, and personnel of the executive branch of the government of the State of New Jersey are subject to the command of yourself and your associates."

I would like to express just a word as to how happy we all are that Dean Sommer has joined us. Dean Sommer has not been well, but is better. He is with us today. He is chairman, as you know, of the Committee on the Judiciary.

(Applause)

Dean, we are very happy to have you here.

I believe I am right, am I not, when I express the hope that all the members of the Convention have received through the mail the schedule of committee meetings this week? If any delegate has not received his or her schedule of committee meetings, let him please consult with Mr. Van Camp.

May I remind the chairmen of the standing committees that they will lunch together today at one o'clock in the private dining room which has been reserved for our use at the University Commons across the street.

The next item on the docket is the presentation of petitions, memorials and remonstrances. Is there any business under this item? . . . If not, we will receive the reports of the standing committees. I would like to call first on Mr. Kays, Chairman of the Committee on Credentials, Printing and Authentication of Documents.

MR. HENRY T. KAYS *(reading):*

> "Mr. President and Delegates:
> Your Committee on Credentials, Printing and Authentication of Documents respectfully reports that it met on Tuesday, June 24, 1947, relative to the seating of a delegate from Camden County by reason of an alleged vacancy caused by the failure of Honorable Bartholomew A.

Sheehan to qualify by taking the oath prescribed by law.

The Committee heard the arguments presented on behalf of the remaining three delegates from Camden County who had qualified, and the argument of Mr. Edward Segal who claimed to be the person who should be seated as a delegate from that county. Mr. Segal received fewer votes at the election than either of the other four candidates.

There was presented to the Committee a letter from Judge Sheehan addresed to the Secretary of State stating that he would not qualify, and also a certificate of appointment of Mr. Joseph W. Cowgill signed by the remaining three delegates of Camden County certifying that they appointed Mr. Cowgill to fill the vacancy caused by the failure of Judge Sheehan to qualify.

The Committee reports that it has concluded a vacancy did exist and that Mr. Joseph W. Cowgill of Camden County should be seated as the delegate to fill the vacancy from that county by reason of his said appointment pursuant to Chapter 8, P. L. 1947."

The report is signed by all members of the committee, and I move you, Mr. President, that Mr. Cowgill be seated as a delegate from Camden County.

PRESIDENT: You have heard the motion. Is it seconded?

(Seconded from the floor)

PRESIDENT: Is there discussion? Are there any questions? Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Will Mr. Cowgill please come to the platform?

(Mr. Cowgill advanced to the platform)

SECRETARY: Will you repeat after me *(Mr. Cowgill repeated after the Secretary the following oath):*

"I, Joseph W. Cowgill, do solemnly swear that I will abide by the instructions of the people as contained in the referendum submitted at a special Constitutional Convention election held June 3, 1947, and that I will support the Constitution of the United States and that I will faithfully discharge all the duties of delegate to the said Constitutional Convention."

(Mr. Cowgill then signed the above oath.)

PRESIDENT: I will ask Mr. Schenk if he will report for the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

MR. JOHN F. SCHENK: Mr. President and delegates:

The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions has made substantial progress since our last report. The sections of the present Constitution assigned under Rule 15 have been thoroughly reviewed and a great wealth of facts and material studied by all members of the committee. The committee members have informally exchanged views as to the various clauses assigned us to study and report. The chairman of the committee

has answered all correspondence received either by the committee or by the delegates as individuals. Every person or group with a matter to bring before our committee has been supplied with a printed schedule of our hearings and has been invited to appear and be heard.

Our hearings start today. Briefly our schedule is as follows:

July 1—1:00 P.M.
Location—Room 5, Music Building
Subject Matter:
Preamble
Article II—Right of Suffrage
Article III—Distribution of Powers of Government
Article VIII—General Provisions

July 2—10:00 A.M. and 1:30 P.M.
Location—Room 5, Music Building
Subject Matter:
Article IX—Amendments

July 8—1:30 P.M.
Location—Convention Hall, Gymnasium Building
Subject Matter:
Article I—Rights and Privileges

July 9—10:00 A.M. and 1:30 P.M.
Location—Convention Hall, Gymnasium Building
Subject Matter:
Article I—Rights and Privileges

The committee has likewise sought the viewpoint of a large group of well-known citizens, a group broadly representative of the diverse walks of life of our great State. I wish to announce that at the close of this Convention session there will be a committee meeting in Room 5 of the Music Building, probably at 11 A.M.

Thank you.

PRESIDENT: Are there any questions which the delegates would like to ask Chairman Schenk? If not, I will ask Senator O'Mara if he will report for the Committee on the Legislative.

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

The Committee on the Legislative has held two meetings since the last session of this Convention. They have resulted in a very satisfactory round-table discussion of the existing provisions of the Legislative Article of the Constitution. The committee has practically finished its discussion of the existing provisions and hopes to do so at the meeting which will be held immediately upon the conclusion of this session of the Convention.

The committee has scheduled its first public hearing for tomorrow, Wednesday, July 2, at 10 o'clock, in the Gymnasium, and wide publicity has been given in the press to that meeting.

The committee is happy to report that substantial progress is being made.

PRESIDENT: Are there any questions the delegates would like to ask Senator O'Mara? If not, I will ask Senator Van Alstyne if he will report for the Committee on the Executive, Militia and Civil Officers.

MR. DAVID VAN ALSTYNE, JR.: Mr. President and fellow delegates:

The Executive Committee wishes to report that we have heard in public session Governor Driscoll and three ex-Governors: Moore, Hoffman and Larson. The other three ex-Governors could not appear before us, either because of sickness or because of absence from the State, but they are presenting briefs for our consideration.

We also had a public hearing on Thursday which lasted all of the morning.

At 11 o'clock in this room we resume our public hearings on the Executive section, to be followed by public hearings on the Civil Officers and Militia sections.

We have already gone through the entire Executive Article that we are charged with and have reached certain tentative conclusions. I wish it understood, however, that these are only tentative, subject to review of all of the work that we have done.

I think we have made progress.

PRESIDENT: Are there any questions? . . . Thank you, Senator.

I will ask Dean Sommer or Mr. Jacobs, one or the other, to report for the Committee on the Judiciary. Mr. Jacobs?

MR. NATHAN L. JACOBS: Mr. President and delegates:

Your Judiciary Committee, and particularly its Vice-Chairman, are delighted that Dean Sommer is back. At his request I will submit this week's report.

Last week we held hearings two days during which various proposals for reform of our Judicial Article were presented. This week we have invited distinguished persons within and without the State, and I would like to list them for you and invite those delegates who will not be busy with their own hearings to hear some of the people who will appear before our committee.

This morning we are expecting Dean Pound of Harvard, who, as all of you lawyer delegates know, is considered the foremost legal scholar in the world. Many of you here have studied with him and I am sure that his views will be helpful to you. We had invited Chancellor Oliphant, but he has requested a later date and we probably will hear from the Chancellor next week. Chief Justice Case is expected at two o'clock this afternoon. Judge Hartshorne and Russell Watson, counsel to the Governor, will also appear today. Tomorrow we are expecting Judges Brennan, Smith

and Ackerson, in addition to Dean Harris of Rutgers Law School, and Dean Platt of South Jersey Law School. On Thursday we are expecting Justice Colie, and invitations have been sent to the deans of Fordham and Columbia Law Schools, although we have not thus far been advised if they will attend. Prominent members of the bar will also appear on Thursday. Included among those invited are: Edward Gilhooly, Kirby Marsh, Josiah Stryker, James Carpenter, and others.

The Judiciary Committee has not sought to reach any conclusions whatever, and it is anticipated that no conclusions will be sought until after we have substantially completed hearing from all interested parties. So far as I know there have been no deliberations which sought to lead to any conclusions with respect to any particular Article of the Constitution, and so far as I know there have been no discussions with any other committee of the Convention. The last remarks are made because of the repeated inquiries we have had on both subjects. Thank you.

PRESIDENT: Are there any questions? If not, I will ask Mr. Read to report for the Committee on Taxation and Finance.

MR. WILLIAM T. READ: Mr. President and fellow delegates:

The Committee on Taxation and Finance met last Tuesday and heard many witnesses, more specifically, Comptroller Zink, Deputy Comptroller Vermeulen, Budget Director Walsh, the head of the Tax Appeals Division, Mr. Waesche, and the head of the Inheritance Tax Bureau, Mr. Kelly, and his assistant, Mr. Neeld. I particularly mention the last man because I want to call to your attention that among the many brochures you are to receive is one by Mr. Neeld on this question of state taxation. It is a very able and learned treatise, and I think you will find, if you will read it, that it probably deals with all of the points on which you will want to think when making your decision on that part of the Constitution. We also had the gentleman representing the State Chamber of Commerce; Mr. Everson of the State Taxpayers' Association, and Mr. John O'Brien of Essex County representing many groups, more especially the League of Women Voters which, I think, has circularized all of us with a comprehensive brochure of recommended constitutional changes.

We have hearings scheduled for today, and next week we expect to hear more minutely from the Comptroller's Department on things we developed last week. We are to hear from State Treasurer Hendrickson, not only on finance but on his 1942 committee report and on some of the matters that were discussed at that time. Also the American Legion wants to be heard on that feature of the tax clause which would grant veterans an exemption. We have had one or two other applications.

We report progress, and it is expected that we will be finished

on the thirty-first of July in time to present a proper report to this Convention.

PRESIDENT: Thank you, Mr. Read. Are there any questions?

MR. ROBERT CAREY: I would like to ask Mr. Read the name of the document that all the delegates should read?

MR. READ: You have gotten about 34 monographs prepared by the Governor's Committee on Preparatory Research for the Constitutional Convention. It is the one by Aaron Neeld of the Department of Taxation and Finance.

PRESIDENT: Are there any further questions? If not, I will ask Mr. McMurray to report for the Committee on Arrangement and Form.

MR. WAYNE D. McMURRAY: No report.

PRESIDENT: Mr. Saunders—the Committee on Submission and Address to the People?

MR. SAUNDERS: Mr. Chairman, obviously the work of our committee will increase as the Convention goes on, for the Address to the People is something that will progressively come into reality. I wish to report that Mr. J. Francis Moroney was elected the secretary of this committee. I am submitting that for the record. And I would like to ask that the members of the committee meet on the adjournment of this session in Room 13 of the Music Building.

PRESIDENT: Mr. Gemberling, will you report for the Committee on Rules, Organization and Business Affairs?

MR. ARTHUR R. GEMBERLING: Mr. President, no report.

PRESIDENT: I want to acknowledge the presence here this morning of a group of young women who are attending the Girls' State, now meeting on the campus of our College for Women. These young ladies are over here at our invitation to see how a Constitutional Convention performs. I think in your behalf I may extend a cordial welcome and tell you young ladies that we are happy to have you here.

(Applause)

There are, I assume, no reports of select committees. The next item of business on the docket, then, is the introduction and first reading of Proposals.

SECRETARY: Proposal Number 4, by Mr. Camp: "A Proposal to reform paragraph 12, Section VII, Article IV, of the present Constitution to provide additionally that certain lands shall escheat to respective municipalities in which same are situate." [1]

PRESIDENT: For the approval of the Convention, the title of the Proposal will be taken for its first reading. The Proposal is ordered to be printed, have a second reading, and referred to the Committee on Taxation and Finance.

---

[1] The text of this and other Proposals appears in the Appendix in Vol. 2.

SECRETARY: Proposal Number 5, by Mr. Camp: "A Proposal to revise Section VII, Article IV, of the present Constitution by adding another paragraph (No. 13) thereto to prevent diversion of any money or fund raised or accumulated by State of New Jersey for public highways."

PRESIDENT: The same action will be taken with reference to this Proposal.

SECRETARY: Proposal Number 6, by Mr. Camp: " A Proposal to revise Article I of the present Constitution by adding another paragraph (No. 22) thereto to restrict persons seeking to overthrow, by force, the present form of government."

PRESIDENT: The title of the Proposal will be taken for its first reading. The Proposal is ordered to be printed, have a second reading, and referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

SECRETARY: Proposal Number 7, by Mrs. Peterson: "A Proposal that provision be made for the use of the Initiative and Referendum."

PRESIDENT: The same action will be taken with reference to this Proposal.

SECRETARY: Proposal Number 8, by Mr. Glass: "A Proposal that the Bill of Rights (Article I of the present State Constitution) make it clear that there shall be no discrimination under the law against any citizen because of race, color, or religion."

PRESIDENT: The same action with reference to this Proposal.

SECRETARY: Proposal Number 9, by Mr. Stanger: "A Proposal altering Section 4, Article I, of the 1844 Constitution to provide against any racial or religious test as a qualification to public office or public trust and against a denial of civil right on account of race or religious principles."

PRESIDENT: It will similarly be taken for first reading, ordered to be printed, have a second reading, and similarly referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

SECRETARY: Proposal Number 10, by Mr. Drewen: *"Resolved,* that . . . the General Assembly shall be composed of members elected by the legal voters of Assembly Districts established within the respective counties. . . ."

PRESIDENT: The same action will be taken and this Proposal referred to the Committee on the Legislative.

SECRETARY: Proposal Number 11, by Mr. Glass: "A Proposal that benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired."

PRESIDENT: The same action, and the Proposal will be referred to the Committee on Rights, Privileges, Amendments and

Miscellaneous Provisions.

SECRETARY: Proposal Number 12, by Mr. Carey: "A Proposal for the increase of the term of Governor from three to four years without the right of succession until four years after the expiration of the term; and is intended to revise Article V, paragraph 3, of the present Constitution."

PRESIDENT: This Proposal will similarly be referred to the Committee on the Executive, Militia and Civil Officers.

SECRETARY: Proposal Number 13, by Mrs. Peterson: "A Proposal that rights or privileges granted public employees under tenure or civil service be deemed contractual, not to be diminished or impaired."

PRESIDENT: This Proposal will similarly be referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

Are there any motions or resolutions to be presented to the Convention? Mr. Paul?

MR. WINSTON PAUL: Mr. Chairman and fellow delegates *(reading)*:

> "WHEREAS, the prompt and efficient starting of the work of this Convention was possible only by reason of the thorough advance planning for the requirements of the Convention, and the efficient provision for its initial facilities and staffing; all of which have been so excellently suited for the Convention's work;
>
> THEREFORE BE IT RESOLVED, that this Convention express its appreciation to those public officials and private citizens who gave unstintingly of their time and thought in the planning and to the execution of the necessary arrangements, and especially to those state departments which have generously loaned members of their staffs;
>
> THEREFORE BE IT FURTHER RESOLVED, that the Convention record its appreciation to Governor Alfred E. Driscoll, under whose direction this work was carried out, to Dr. Robert C. Clothier and the staff of Rutgers University, to Commissioner Homer C. Zink, Colonel John P. Read, Mr. A. S. Johnson, Mr. Vincent Padula, Mr. Herman Crystal, Mr. Sidney Goldmann, and to those students of government who prepared valuable monographs after careful research, together with the many other officials, public employees and private citizens who contributed so much to the planning and successful execution of the preliminary work required for this Convention."

I offer this resolution, Mr. Chairman, and move its adoption. I think it is only fitting and proper that this Convention should make official record of the very excellent advance work in the planning and the preparation for our Convention.

PRESIDENT: Senator O'Mara?

MR. O'MARA: Mr. President, ladies and gentlemen of the Convention:

It is a great pleasure to second the resolution which has just been offered by Mr. Paul. It is self-evident, I think, that the smoothness with which the Convention has been gotten under way could only be a result of the very careful planning of those who were charged

with the responsibility of making the preliminary arrangements. I think that the resolution, if anything, is an understatement of the gratitude which the members of the Convention owe to the persons who are named in the resolution.

I second its adoption.

PRESIDENT: Is there any discussion? Are you ready for the question? All in favor, will please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is carried. Are there other motions or resolutions to be presented?

MR. GEMBERLING: I wish to submit the following resolution and move its adoption.

SECRETARY: Resolution by Mr. Gemberling *(reading):*

> "In accordance with the provisions of Rule 38, the following supplement is hereby proposed:
> 'Wherever in these rules the word "printing" appears it shall be construed and interpreted to include mimeographing.' "

MR. VAN ALSTYNE: I second the motion.

PRESIDENT: Do you wish to speak to that, Mr. Gemberling?

MR. GEMBERLING: In the rule it distinctly says "printing," and we have found that we can save a great deal of money by mimeographing many of the copies. That is the reason we are offering this resolution.

PRESIDENT: If there is no discussion, we will put the question. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

Are there other motions or resolutions to be presented?

Is there any unfinished business to be brought before the Convention?

Are there any special orders of the day? Or general orders of the day?

May I remind the chairmen of the standing committees again of the appointment for luncheon?

If there is no further business, a motion to adjourn until next Tuesday at ten o'clock is in order.

Mr. Miller, did you make a motion?

(No answer)

Senator Van Alstyne?

MR. VAN ALSTYNE: May I ask the members of the Executive Committee to appear in the committee room immediately following this meeting?

PRESIDENT: Senator Van Alstyne wishes the members of the Committee on the Executive to meet in Room 203 at 11 o'clock.

Is there a motion to adjourn?

MR. FRANCIS D. MURPHY: I so move.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

(The session adjourned at 10:50 A.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Tuesday, July 8, 1947

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the members of the Convention kindly take their seats? . . .

I will ask you to rise while the Reverend George Moore, Pastor of the Six-Mile-Run Reformed Church of Franklin Park, pronounces the invocation.

REVEREND GEORGE MOORE: O, Thou great eternal God, Creator and Sustainer of all things created, mighty Redeemer who with great pity and compassion hath saved us to Jesus Christ, Thy Son, we praise Thee; Thy providence controls all things, both in Heaven and in earth. Thou art a God who keepeth covenant and mercy with Thy people, the children of Thy inheritance. We thank Thee, O Father, for the great blessing upon our State and upon our Nation. We beseech Thee for the members of this Convention, O God our Father, that they may be filled with wisdom and guided by Thy holy spirit. May they ever be mindful that Thy law changes not, and that Thou art a God of mercy even as of judgment. May they be mindful of the Fathers and their great sacrifices and of their great gifts, handed down to us, blessings immeasurable. May each and every one, our Heavenly Father, be without fear and compromise, and strong in the Word and in the faith. We beseech Thee for the people of this State that they may constantly recognize the invisible hand which directs the affairs of men. May they learn to love Him and keep His law. May these blessings be ours through Jesus Christ, who is the peace of the world and our peace, in Whose name we pray, for to Him shall be the glory as well as the power, forever and ever, Amen.

PRESIDENT: Thank you, Reverend Moore.

The next order of business is the reading of the Journal. May I ask your wishes in this respect?

MR. JOHN DREWEN: I move that the reading of the Journal be dispensed with.

(Seconded from the floor)

PRESIDENT: It has been moved and seconded that the reading of the Journal be dispensed with. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll, and the following delegates answered "present"):* Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Farley, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Young.

A quorum is present.

PRESIDENT: The Secretary reports that a quorum is present.

The next item on the docket is the presentation of petitions, memorials and remonstrances. Is there any business under this item?

(No response)

The next item on the docket is the reports of the standing committees. I ask Mr. Schenk to report for the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

MR. JOHN F. SCHENK: The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions reports further substantial progress. Our public hearings have been completed on the Preamble; Article II, Right of Suffrage; Article III, Distribution of Powers of Government; Article VIII, General Provisions, and Article IX, Amendments.

Today at 1:30 P. M. and July 9, tomorrow, at 10 A. M. and 1:30 P. M., we will conduct public hearings in this room on Article I, Rights and Privileges.

Considerable groundwork has been done by the committee on our recommendations to the Convention on the Preamble; Article II, Right of Suffrage; Article III, Distribution of Powers of Government; Article VIII, General Provisions, and Article IX, Amendments. Drafting of the committee recommendations on these subjects will be done quite soon. Much study has been given by the committee to Article I, Rights and Privileges. The hearings this week will develop further expressions of opinion from various sources on this

vitally important article, which expressions will be given serious study, review and consideration by our committee.

With the probable close of our public hearings on Wednesday, July 9, this committee should be able to report to the whole Convention within a reasonable time thereafter on all work that has been assigned to it.

PRESIDENT: Are there any questions that the members of the Convention would like to ask Mr. Schenk?

(Silence)

PRESIDENT: Thank you, Mr. Schenk. I will ask Senator O'Mara to report for the Committee on the Legislative.

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

The Committee on the Legislative is happy to report further substantial progress. The committee has concluded its round-table discussion of the provisions of the existing Legislative Article and held a very interesting and fruitful public hearing on last Wednesday. The public hearing will be continued today, and it is hoped that we can conclude the initial public hearings with this session. Immediately thereafter we shall commence the draft of a tentative Legislative Article which, when it is completed, will be publicized and further public hearings held on that tentative article.

PRESIDENT: Are there any questions the delegates would like to ask Senator O'Mara?

(Silence)

PRESIDENT: Thank you, Senator. Senator Van Alstyne, will you report for the Committee on the Executive?

MR. DAVID VAN ALSTYNE, JR.: Mr. President, ladies and gentlemen of the Convention:

The Executive Committee has reached a tentative agreement on all sections assigned to it, with the exception of the gubernatorial succession, Military sections and Board of Parole. We will take up those matters this week, and we hope to review all the work we have done to date and by next week have in the hands of every delegate and every interested organization in the State, our proposals as to our section. And then we intend to do as Senator O'Mara suggested —after allowing the public ten days or two weeks to digest the report, to hold another public hearing before finally submitting our report to the Convention.

PRESIDENT: Are there any questions the delegates would like to ask Senator Van Alstyne?

(Silence)

If not, I will ask Dean Sommer or Mr. Jacobs, Chairman or Vice-Chairman of the Committee on the Judiciary, to report.

MR. NATHAN L. JACOBS: Mr. President, ladies and gentlemen:

As you know, the Judiciary Committee has been inviting distinguished persons from within and from without the State to appear before it. Last week, you will recall, we had Dean Roscoe Pound and Chief Justice Case, many of the circuit judges, Justice Colie, and others. We hope to conclude that type of hearing this week.

For this week we have for this morning, Attorney General Van Riper and representatives of the Bankers' Association and the Manufacturers' Association. In addition, for this afternoon we have invited representatives of the State Grange and the Farm Bureau, and the Dean of John Marshall Law School. Tomorrow morning, we expect representatives of the labor organizations, primarily the C. I. O. and the A. F. of L., and in the afternoon we have invited the Deans of the University of Pennsylvania and Temple Law Schools. On Thursday, which we expect to be the last day for this type of hearing, we have in the morning Chancellor Oliphant, at 11 o'clock Judge Learned Hand of the United States Circuit Court of Appeals, Second Circuit, and Governor Driscoll.

I hope that as many of the delegates as are free will attend Thursday's session, since that should be particularly interesting. Judge Hand, for those of you who don't know him, is probably the outstanding federal judge in the country today, and I am sure that it will be very interesting. Thank you.

PRESIDENT: Are there any questions the delegates would like to ask Mr. Jacobs?

(Silence)

PRESIDENT: Thank you, Mr. Jacobs. I will ask Mr. Read, Chairman of the Committee on Taxation and Finance, to report.

MR. WILLIAM T. READ: Mr. President and fellow delegates:

The Committee on Taxation and Finance has held several hearings and heard from quite a few groups of our State. Today we expect to hear further from the financial end of the State, the State Comptroller, the State Treasurer; and tomorrow we hope to have John Sly of the Princeton Surveys, and perhaps Judge Thayer Martin, who some time ago made a very deep and detailed study and report on the taxation of the State.

Thursday morning, it's my understanding that we have this room. I am not sure whether one of the other chairmen reported that or not. We are supposed to have this room at 10:30 to allow the people to have a big hearing on the exemptions to the tax clause. I might state that in our hearings, which have been very thorough and

brought forward varied groups, two matters are developing which I might call to your attention, because in my own mind and those of some others on the committee with whom I have talked, those two matters had a great bearing on the result of the vote on the Constitution submitted in 1944. I refer particularly to the exemptions contained in the tax clause and to the general clause in the new finance portion of that 1944 proposal, which put all the money of the State into the State Treasury, therefrom to be appropriated.

We had quite a few hearings and quite a good deal of debate upon the dedicated funds. Those two matters had quite a little to do with the constitutional vote of 1944. This is intended more or less to show you that there will probably be two sides to be heard on that question when we come to the formal voting.

PRESIDENT: Are there any questions the delegates would like to ask Mr. Read?

(Silence)

PRESIDENT: Thank you, Mr. Read. Mr. McMurray, will you report for the Committee on Arrangement and Form?

MR. WAYNE D. McMURRAY: Mr. President and fellow delegates:

The Committee on Arrangement and Form has no report to make at this time, but I do want to remind the members of that committee that there will be a meeting immediately after the close of the Convention today, in Room 204, which is the Library. I urge that all members of the committee attend.

PRESIDENT: Thank you, Mr. McMurray. Mr. Saunders, will you report for the Committee on Submission and Address to the People?

MR. WILBOUR E. SAUNDERS: Mr. President and delegates:

Our report is word for word the same as that of Mr. McMurray, except that the committee will meet in Room 13 of the Arts Building.

PRESIDENT: The Committee on Rules, Organization and Business Affairs, Mr. Gemberling . . .

MR. ARTHUR R. GEMBERLING: Mr. President and fellow delegates, no report.

PRESIDENT: Any questions?

(Silence)

PRESIDENT: I will ask the Committee on Credentials, Printing and Authentication of Documents, Mr. Kays, to report.

MR. HENRY T. KAYS: Mr. President, ladies and gentlemen:

The Committee on Credentials, Printing and Authentication of Documents respectfully reports that it met with the Committee on

Rules, Organization and Business Affairs on June 24 and June 30, 1947 for the purpose of letting and approving a contract for all printing of the Convention.

Rule 19 provides that the Committee on Credentials, Printing and Authentication of Documents "shall, subject to the approval of the Committee on Rules, Organization and Business Affairs of the Convention, contract for all printing for the Convention . . ." Representatives of certain printing establishments appeared before the committees as a result of letters forwarded to them by the Honorable Homer C. Zink, Commissioner of Taxation and Finance. The printers, whose representatives appeared before the committees in joint session, were: Hudson Dispatch, Scott Printing Company, Jersey Printing Company, Thatcher-Anderson Company, McCrellish & Quigley, and Spokesman Publishing Company. Each representative was accorded an opportunity to present a bid for the printing for the Convention.

All the representatives agreed that it was impossible to submit such a bid, as the amount and character of the work cannot be anticipated. McCrellish & Quigley, however, agreed to undertake all the printing for this Convention in the same maner as it has handled the printing for the Legislature in this and other years, and to render its bills for printing to this committee weekly. The Committee on Rules, Organizations and Business Affairs has signified that it approves such an agreement. For the reason that it is impossible to estimate the amount of printing which may be necessary to be done for this Convention, your committee has been unable to determine whether the appropriation made under the act calling this Convention into being is sufficient to meet the printing and other costs of this Convention.

Your committee, therefore, recommends that this Convention approve the arrangement it has made with the firm of McCrellish & Quigley to do all the printing for the Convention, in a way satisfactory to this committee; and that all orders for printing not specifically provided for in the Rules or authorized by this Convention, be approved by this committee before said work is undertaken by the printer.

This committee further recommends that it be authorized to designate the Secretary of this Convention, as the person to whom all copy and orders for printing shall be delivered. This committee also recommends that it be authorized to engage some suitable person, either a representative of the Department of Taxation and Finance or one familiar with job printing business, to assist this committee and, if necessary, to pay such person a reasonable compensation for his services.

I might add, Mr. President, that McCrellish & Quigley expect to sublet part of this work, owing to the fact that vacations are now on and they are also rushed in other matters. They will sublet part of this work to the other representatives who appeared before the committee. I might also state that it seems to be the consensus of all printers who appeared before the committee, that the cost of this printing will probably be about 10% more than the contract between McCrellish & Quigley and the Legislature for the session of 1947. I move, therefore, Mr. President, that the recommendations of this committee be adopted as the order of this Convention.

PRESIDENT: Are there any questions or discussion?

(Silence)

DELEGATE: I second the motion.

PRESIDENT: You have heard the motion that has been seconded. Are there any questions? Is there any discussion?

(Silence)

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: All in favor will please signify by saying "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. Are there any questions which members would like to ask Mr. Kays?

(Silence)

PRESIDENT: This brings us, then, to the next item, which is the report of select committees, under which item, I assume, there is no business.

The next item is the introduction and first reading of Proposals.

(Off-the-record discussion)

PRESIDENT: Mr. Gemberling calls to my attention that there is a proposed motion from last week for consideration at this time.

MR. GEMBERLING: Mr. President, in accordance with notice of intent to amend the Rules, presented at the last session of the Convention, I now move the adoption of the following resolution *(reading):*

> **"Wherever in these rules the word 'printing' appears, it shall be construed and interpreted to include mimeographing."**

PRESIDENT: Is that motion seconded?

(Seconded from the floor)

PRESIDENT: Is there any discussion, or any questions?

(Silence)

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: All in favor will please signify by saying "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

The next item will be the introduction and first reading of Proposals.

SECRETARY: Proposal No. 14, by Mr. Struble: "A Proposal that Paragraph 6 of Article IV, Section VII, in the present State Constitution be retained, but that it be made into two paragraphs." [1]

PRESIDENT: The title of the Proposal will be taken for its first reading. The Proposal is ordered to be printed, have a second reading, and be referred to the Committee on Taxation and Finance.

SECRETARY: Proposal No. 15, by Mr. Struble *(reading)*:

> "A Proposal that Article IV, Section VII, Paragraph 12, of the present State Constitution be amended.
>
> *Resolved,* that the following be agreed upon as part of the proposed new constitution:
>
> 1. Property shall be assessed according to classifications and standards of value to be established by law."

PRESIDENT: The same action will be taken with reference to this Proposal, and it will be referred to the Committee on Taxation and Finance.

SECRETARY: Proposal No. 16, by Mr. Randolph: "Equal protection of the laws; discrimination in civil rights prohibited. Article I, Paragraph 19 (New)."

PRESIDENT: The title of the Proposal will be taken for its first reading. The Proposal is ordered to be printed, have a second reading, and referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

SECRETARY: Proposal No. 17, by Mr. Paul: Proposal prescribing a twenty-year periodic referendum on revision.

PRESIDENT: The same action will be taken with reference to this Proposal, and it will be referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

SECRETARY: Proposal No. 18, by Mr. Paul: Proposal prescribing the procedure to be followed by the Senate, General Assembly, Governor, and people regarding the proposal of amendments.

PRESIDENT: The same action will be taken with reference to this Proposal, and it will be referred to the Committee on Rights,

[1] The text of this and other Proposals appears in the Appendix in Vol. 2.

Privileges, Amendments and Miscellaneous Provisions.

SECRETARY: Proposal No. 19, by Mr. Taylor: Proposal to assure and protect the rights of labor to organize and bargain collectively.

PRESIDENT: The same action will be taken with reference to this Proposal, and it will be referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

SECRETARY: Proposal No. 20, by Mr. Lewis: Proposal to provide that "The judicial power of the State of New Jersey shall be vested in one Supreme Court and in a Superior Court with a Law and Chancery Division thereof, in County Courts and in such Inferior Courts as the Legislature may from time to time ordain and establish, which Inferior Courts the Legislature may alter or abolish as the public need and good shall require."

PRESIDENT: The same action will be taken with reference to this Proposal, and it will be referred to the Committee on Judiciary.

SECRETARY: Proposal No. 21, by Mr. Stanger: Proposal to prescribe the method of election, the powers, jurisdiction, and duties of the Justices of the Peace.

PRESIDENT: The same action with reference to this Proposal, and referred to the Committee on Judiciary.

SECRETARY: Proposal No. 22, by Mr. Stanger: Proposal to prescribe the number of Justices of the Peace to be elected in the townships, wards, and cities of the State.

PRESIDENT: The same action with reference to this Proposal, and referred to the Committee on Judiciary.

SECRETARY: Proposal No. 23, by Mr. Stanger: Proposal to prescribe the establishment of clinics for the study of crime and delinquencies.

PRESIDENT: Ordered that the title to this Proposal be taken for its first reading, following the usual practice, and referred to the Committee on Legislative.

SECRETARY: Proposal No. 24, by Mr. Lewis: "A Proposal in lieu of Article IV, Section VII, Paragraph 6 of our present Constitution," to provide for the maintenance and support of a thorough and efficient system of free public schools.

PRESIDENT: Ordered that the title of this Proposal be taken for its first reading, following the usual practice, and referred to the Committee on Taxation and Finance.

I would like to report that Proposals 1, 2 and 3, heretofore referred to the Committee on Judiciary, have been transferred to the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

Are there any motions or resolutions to be presented to the Convention?

(Silence)

PRESIDENT: Is there any unfinished business?

(Silence)

PRESIDENT: Are there any special orders of the day?

(Silence)

PRESIDENT: Are there any general orders of the day?

(Silence)

PRESIDENT: I would like to remind the chairmen of the standing committees that we shall meet for luncheon at 1:00 o'clock today in the usual room.

Is there anything else to come before the Convention? Mrs. Barus. Do you mind taking the microphone, Mrs. Barus?

MRS. JANE E. BARUS: I mailed some proposals to the Secretary on Thursday, and I note they have not been read. May I just know if they have been received?

SECRETARY: They were not received up to the time I came in here.

MRS. BARUS: They were sent by registered mail, Mr. Van Camp. All right, I will take it up later, then.

PRESIDENT: Mr. Miller.

MR. SPENCER MILLER, JR.: Mr. President, I also mailed some resolutions, in proper form, to the Secretary. They were mailed from the Newark postoffice, and they were not reported this morning. And while I am on my feet, Mr. President, may I ask a question as to what is to be the practice with reference to the receipt of various resolutions? It was the understanding, I take it, in connection with our standing orders that all resolutions should be submitted to the Secretary, which I understood might be postmarked as late as the 7th of July. I raise this question not only because there has been no acknowledgment either of Mrs. Barus' or my own resolutions, but because there have been a good many inquiries as to what procedure is to be followed, and what notation is to be made of resolutions that have been sent by mail.

PRESIDENT: It seems reasonable, Mr. Miller and fellow delegates, that in view of the fact that the Convention is not meeting daily through this week, that any Proposal received during the week will be acceptable. We shall be governed by that ruling unless the Convention rules otherwise.

I might say that we have received a number of communications from citizens throughout the State on various issues and these have been referred, without announcement, to the appropriate committees. If you feel that some public statement from the chair should

be made with reference to these individual Proposals, we shall, of course, be glad to be governed accordingly.

(Silence)

PRESIDENT: Is there any other business to come before the Convention?

(Silence)

PRESIDENT: If not, a motion to adjourn until next Tuesday at 10:00 o'clock will be in order.

MR. O'MARA: I so move.

PRESIDENT: All in favor will please signify by saying "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

(The session adjourned at 10:30 A.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

July 15, 1947

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: I will ask the members of the Convention to rise at the invocation. Rabbi Keller was to have been here this morning to lead us in prayer, but has been prevented from coming. Mr. Saunders is good enough to make the invocation in his place.

MR. WILBOUR E. SAUNDERS: Almighty God and Father of us all, again this week we beseech Thy blessing upon our meeting together and upon the consideration of these important issues, important to Thine own heart, for Thou dost want the best for Thine people. Give us humility of mind and of purpose that we may never rely upon our own wisdom or our own judgment alone, but that we may seek to combine the best intelligence, the best spirit and the greatest sincerity that we may bring to this task with the guidance of Thy spirit which we ask in the name of all of Thy people. Amen.

PRESIDENT: The next item on the docket is the reading of the Journal. May I ask your wishes in this matter?

MR. DOMINIC A. CAVICCHIA: I make a motion that the reading be dispensed with.

(Seconded from floor)

PRESIDENT: It has been moved and seconded that the reading be dispensed with. Are there any questions? All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll, and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller,

S., Jr., Milton, Montgomery, Moroney, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Stanger, Streeter, Struble, Taylor, Walton, Wene, Winne, Young.

PRESIDENT: I am sure we are all happy to know the acting Governor of the State is with us this morning. It certainly will be appropriate, I think—I haven't taken him into my confidence on this—but I think we would like to hear a word from him if he would be willing. Governor Barton.

(Applause)

GOVERNOR CHARLES K. BARTON: Thank you very much, Doctor. I just thought I would like to be here today as a delegate, if you wouldn't mind, and I am sure the delegation would be glad to hear that from me. I am still a delegate and not going to make a speech.

PRESIDENT: We also are glad to have with us this morning some 150 teachers of state government attending the New Jersey Government Institute, which has been in session here on the campus of the University since yesterday. It is being held at this time to provide an opportunity for high school and college teachers of government to see the Constitutional Convention in action and hear the problems of state government discussed as they relate to the State Constitution. Ladies and gentlemen, we are very happy to have you with us this morning.

Just over a month ago we met here at the direction of the citizens of the State to inaugurate the preparation of a new Constitution for New Jersey. I am sure that all the delegates assumed this responsibility with a sense of deep earnestness. The events of the last four weeks seem to have left no doubt that this is so. If I may do so without appearing presumptious, I would like to congratulate the chairmen and the members of the several committees upon the very substantial results which they have already achieved in the limited time which has elapsed since they began work. In doing so, I believe very sincerely that I express the reaction of the people of the State who want a Constitution adapted to the infinitely complex and mechanistic society of 1947 as compared with that of 1844.

This favorable reaction of the people of the State so far has been due, as I have said, to the effective manner in which the committees of the Convention have gone about their work. But it is due, too, to the exceptionally adequate coverage which the newspapers of the State have given us. We felt, and very properly so, that doors should

be open at a Convention at which representatives of the people are writing a new Constitution for the people. The representatives of the press have been welcome at our meetings and have reported the discussions fully and well. The result has been a better understanding of what the Convention has been doing, and keener interest in the work of the Convention on the part of the citizens of the State. On behalf of all of us, I would like to express the Convention's appreciation to the editors and the reporters who are cooperating with us, and also to the radio stations which have been helping out.

It is of the utmost importance that we inform the people fully of what the Convention is doing. Officially, we all want to turn out the best Constitution possible for the age in which we live, and one which will be acceptable to the people. Each of us has personally dedicated his summer months to this important task, and many delegates, I happen to know, have done so at great personal inconvenience and personal sacrifice. We don't want the fruits of our labors to be rejected by the voters at the polls in November through lack of information of what we are doing here, or because we have failed to lend the press every cooperation, or because we have neglected to utilize the radio and other agencies of public information effectively and well, to insure that the people of the State do know and do understand what we are doing, to awaken and maintain their interest and to develop an underlying attitude of approval and receptivity, rather than one of suspicion and lukewarmness.

A number of the delegates have expressed the feeling that a special committee on public relations and information should be created. This committee will, if approved, cooperate with the chairmen or the members of standing committees to achieve these results, utilizing the able services of the New Jersey Committee for Constitutional Revision and other agencies. It will not replace any existing committee, but will serve as a planning and coordinating committee.

Not only must we do a good job, but we must make sure that the people of the State know that we are doing a good job here. We should not wait until September twelfth to begin this important job in public relations. We should begin now. As a matter of fact, we have already informally begun, while public opinion is still responsive and free from foregone conclusions. It is my hope that the Convention will approve the appointment of a committee on public relations and information.

These past four weeks have been characterized by an exceptional spirit of cooperation and good will and overall purpose. I suppose we might call it the Convention's honeymoon. That this has been

true has been a source of assurance to all of us and, I think, to the people of the State generally. But it is not reasonable to expect that all our discussions are going to be characterized by sweetness and light. We are not going to agree on everything. Someone has said that where everyone thinks alike, nobody thinks too much. We all have differences of opinion, and perhaps at times marked differences are going to characterize our discussions both in committee and on the Convention floor. Certainly, we have no desire to avoid these differences of opinion. Every point of view should be given a careful and open-minded hearing. We should seek out the *pros* and *cons* with all the vigor and persuasiveness of which we are capable.

At the risk of repetition, let me express the hope that these changes will be in good heart, free from recrimination and free from preconceived prejudice or conclusions. After all, our opponent may be right. I doubt if wisdom will rile any of us. Many of us may change our minds after listening to those with whom previously we have not been in full agreement. Let us preserve open minds.

From time to time we may find ourselves under pressure to include provisions in the new Constitution which would favor special interests and limit the power of the members of the Legislature in carrying out the will of the people in behalf of all the people. Occasionally, this pressure will put the interest of these groups above the interest of the people as a whole. Advocates of such specialized provisions may from time to time threaten to vote against the Constitution as a whole in the November elections, no matter how excellent a document it may prove to be, unless these special provisions are included. At such times, we should keep clearly in mind that our task is to resist such special pressures and to prepare the best Constitution, representing the soundest basic law and safeguarding the welfare of all the people, that we are capable of drafting. The people have given us a mandate to do this, and I think we can do it.

At the same time, controversial issues will come up before us. Most of them, I hope, we can resolve by argument and persuasion on the floor. As to the others, I have two suggestions to offer, neither of which is original with me; and then I'm through. The first is that made by Governor Driscoll in his opening speech on June twelfth. The basic law should be re-written to bring the Constitution into harmony with present-day conditions, but we should not restrict unwisely the freedom of the Legislature in interpreting the will of the people with respect to less fundamental matters. Elasticity in government is essential to good government. I hope the Convention will refer proposals of this kind to the Governor and

to the Legislature in a report supplementing the Constitution, but exclude them from the Constitution itself.

My second suggestion has been made by a number of the delegates. There are, of course, a few issues which are particularly acute. It is my earnest hope that wise and open-minded discussion will resolve these controversial issues. I think the people of the State are looking to us to prepare a document acceptable to them, which will be thought through here in the Convention and which will take into consideration all points of view. There may be one or two issues which it will be difficult to resolve in that way. If they are incorporated in the Constitution, they may or may not result in an adverse vote on the Constitution as a whole. In such cases, it is entirely within our jurisdiction to include them as amendments to the Constitution in the November polls.

Yet, while offering this as a possible course of action in the case of these particularly controversial issues, I would like to express the hope, too, that we restrict the number of such issues referred to the people to the extreme minimum, that we shall not refer to the people in this manner any issues which we have the intelligence and capability of resolving here in the Convention. I recommend these two courses of action to the serious consideration of the members of the committees.

Thank you for your attention—those of you who have given it—and we'll call now for the next item on the docket, the presentation of petitions, memorials and remonstrances. Is there any business under this item?

(Silence)

Reports, then, of the standing committees. I will ask, first, Mr. Schenk if he will report for the Committee on Rights and Privileges.

MR. JOHN F. SCHENK: The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions has completed its series of public hearings. Testimony has been taken of interested individuals and groups from all parts of the State, individuals and groups of many different opinions on the several issues before our committee. This week the committee plans to draw up tentative proposals on the Preamble; on Article I, Rights and Privileges; Article II, Right of Suffrage; Article III, Distribution of the Powers of Government; Article VIII, Miscellaneous Provisions; and Article IX, Amendments.

Next week, after serious consideration and further examination by the committee members, the tentative proposals will probably be put in final form for referral to the Convention within the time set by our Rules. I wish to say, as you well know, that our com-

mittee is considering several subjects of vital importance, some of which easily arouse the emotions and on which witnesses have spoken either personally or by brief, with very positive opinions but with many different viewpoints. This week we will weigh all the testimony in the light of our personal study and findings, and get our proposals reduced to writing. Progress is evident and I am hopeful that when you receive our committee recommendations you will feel they represent a conscientious effort to preserve the good of our present Constitution and to make such changes as are needed in order that the new document will be in tune with the times, while always adhering to proven American fundamentals of government. That's all, Mr. Chairman.

PRESIDENT: Are there questions which members of the Convention would like to ask Mr. Schenk?

(Silence)

All right. Thank you.

I think possibly this is a good time for me to remind the members of the Convention of Mrs. Sanford's early admonition to the men that they are entirely free to take their coats off, if they want to do so. This promises to be a warm day.

Senator O'Mara, may we hear from you with reference to the Committee on the Legislative?

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

The Committee on the Legislative has concluded for the time being its public hearings and is now engaged in the draft of a tentative Legislative Article. It is the hope of the committee that the tentative article will be completed by the end of this week. It then will be publicized and a further public hearing held thereon. The committee reports substantial progress.

PRESIDENT: Are there questions members of the Convention would like to ask Senator O'Mara? . . . Thank you, Senator.

The Committee on the Executive, Militia and Civil Officers. Chairman Van Alstyne is not here. Vice-Chairman Feller, may we call on you?

MR. MILTON A. FELLER: Mr. Chairman, ladies and gentlemen of the Convention:

In the absence of Senator Van Alstyne, I have the first complete report of our committee to make, which report has been prepared by Mrs. Barus, our secretary.

We completed our work last week on the tentative draft of the sections assigned to us. This draft is now at the printer's and will be ready before the end of this week for as wide a distribution as the funds available will permit. Copies have already been given to

the delegates this morning and will be mailed to all newspapers and to heads of all state civic organizations, so far as they can be determined. A covering statement goes with the draft, emphasizing its tentative nature and the fact that it is subject to change by the committee itself and, of course, by the Convention in full session. Source notes are included in the draft which refer to the present Constitution and indicate which clauses are unchanged, which have been revised, and which are new. This statement also informs the public how copies of the present Constitution may be obtained for comparison.

The committee has set a public hearing for Tuesday, July 29, at 11:00 A. M. This hearing will be continued until all interested citizens have had an opportunity to be heard. The committee will then resume its discussions in the light of these hearings and hopes to have its final draft prepared for the consideration of the Convention at a very early date in August. That is all.

PRESIDENT: Are there questions delegates would like to ask Judge Feller?

(Silence)

Thank you, Judge Feller. Mr. Jacobs, will you report for the Committee on the Judiciary?

MR. NATHAN L. JACOBS: Mr. President and delegates:

Last week the Judiciary Committee completed its informal public hearings, the last day being taken up with testimony by Chancellor Oliphant, Judge Learned Hand and Governor Driscoll. This week, including Tuesday, Wednesday and Thursday, the committee will be meeting in closed sessions—open, of course, to all the delegates. Any delegate who is interested in our informal committee discussion is welcome to attend. At the close of this week we hope to prepare a tentative article which will be submitted for public hearing before the close of the month. After that public hearing the final draft will be prepared and submitted to the Convention. Thank you.

PRESIDENT: Are there questions members of the Convention would like to ask Mr. Jacobs?

(Silence)

Mr. Read, will you report for the Committee on Taxation and Finance?

MR. WILLIAM T. READ: Mr. President and fellow delegates:

The Committee on Taxation and Finance has a very similar report to that of the Judiciary. We had hearings on Tuesday, Wednesday and Thursday of last week, especially Thursday, on the exemptions to the tax clause and on dedicated funds. I think we have given the public the very fullest opportunity to be heard. We

have had very full hearings and have heard very thoroughly from them.

The members of our committee have not made up their minds on any matters that have come before us. We have kept our minds open and we expect to finish our hearings this morning. The other night a newspaper man called me on the phone and said, what did I think was the reaction of the Democrats in the Convention to certain matters coming before one of the committees. I said I really didn't know, I hadn't talked to any Democrats. In fact, I didn't know how the Democrats on my own committee felt about it. We hadn't discussed it. We were discussing it as citizens and as delegates of the State of New Jersey.

I hope we shall follow the very excellent admonition you gave us this morning in your opening words. There is one little breach I would call to your attention; it might, on a hot day like this, ease up the matter. In line with this non-political idea, I read in one of the Camden papers last Thursday when I got home from a very hard day here, that Senator O'Mara, *Republican* of Hudson, Chairman of the Legislative Committee, made a certain report.

(Laughter and applause)

Therefore, I cannot report on how the Democrats feel when they're all coming over to our side of the house. However, very seriously, Mr. Chairman, we do hope to finish today and, like the Committee on the Judiciary, have a tentative draft ready for next Tuesday when, if necessary, further public hearings may be had during the rest of the week.

PRESIDENT: Are there questions delegates would like to ask the Chairman?

MR. O'MARA: Is there a lawyer in the house? I feel I have an excellent suit for libel against that newspaper.

(Laughter)

PRESIDENT: Mr. McMurray, would you report for the Committee on Arrangement and Form?

MR. WAYNE D. McMURRAY: No report except a brief meeting after the Convention in the Library.

PRESIDENT: Are there any questions members of the Convention would like to ask Mr. McMurray?

(Silence)

Mr. Saunders, of the Committee on Submission and Address to the People.

MR. SAUNDERS: Mr. Chairman and fellow delegates:

Our committee has no work until the so-called "hot potatoes"

are passed along to us. The committee, however, is meeting just to get its hands pickled in brine and in order to get asbestos gloves or whatever we need for these "hot potatoes" when they come. I would, therefore, just like to have the privilege of asking the members of this committee to meet at the end of the session.

PRESIDENT: Are there any questions?

(Silence)

Mr. Kays of the Committee on Credentials, Printing and Authentication of Documents.

MR. HENRY T. KAYS: No report at this time.

PRESIDENT: Are there any questions members would like to ask the Chairman?

(Silence)

I assume there are no reports from select committees. The next item, then, will be the introduction and first reading of Proposals.

Mr. Gemberling, did I omit you? I'm sorry. Have you a report? My oversight . . .

MR. ARTHUR R. GEMBERLING: Mr. President. As usual, I wish to report progress. However, since it is the responsibility of the Committee on Rules, Organization and Business Affairs that all the activities and affairs of the Convention shall proceed in orderly fashion, our report of progress is an indication that everything is operating properly. Each problem that arises is promptly met and disposed of by the committee.

However, this report could not be made if it were not for the splendid cooperation of the members of the staff, both paid and voluntary. As you are aware, the committee, in its desire to keep the cost of operating the Convention within the limited appropriation made available, has found it necessary to employ but a small group of paid employees, nine in number, of whom seven are full-time and two are part-time. But, this would not be possible if we did not have available a total of 41 state employees who have, voluntarily, at great personal sacrifice, made their services available to the Convention.

I cannot speak too highly of the outstanding and invaluable services being rendered to you by these employees. Working hours for them mean from early in the morning until exhaustion forces them to stop work late at night. The records reveal that up to the end of last week, this group put in a total of some 2500 hours of overtime, over and above the normal working hours required of them as state employees. They have worked week-ends and over the Fourth of July holiday. Most of them have already indicated that so far as this summer is concerned, they expect to forego their

vacations.

This group, working under the supervision of Messrs. Herman Crystal and Albert Ari of the Department of Taxation and Finance, Sidney Goldmann of the State Library, and Raymond Male of the Department of Institutions and Agencies, are performing all necessary services to keep the Convention functioning properly. Many of them worked with the committee in making preparations for the Convention prior to June 12, and have continued their services since. They deliver the mail, drive the cars, take down everything that is said on the Convention floor and in committees, service the committees and members with their mail and other requirements, transcribe and edit the minutes, cut the stencils, operate the mimeograph machines, pay your bills, run errands, and do everything else necessary to make you comfortable.

The committee is fully appreciative of the services being rendered by these employees and is making arrangements to compensate them for these additional services, in addition to providing meals and transportation for them. The names of these employees have been spread upon the minutes of the Committee on Rules, Organization and Business Affairs.

However, we cannot overlook the sacrifices which have been made by the heads of the various state departments in giving up these employees at a time when their services are most vitally needed. On behalf of the committee and the Convention, I personally will write to each department head, appraising them of the appreciation of the Convention.

I cannot finish this report without giving due credit to the splendid way in which your Secretary, Oliver Van Camp, has been performing his many and difficult duties. He brought to the Convention his long years of experience as Secretary to the New Jersey Senate, and the manner in which the work of his office is being run is an indication of his ability.

Mr. President, will you ask the delegates if they will kindly hand in their expense reports for the month of June?

PRESIDENT: I think the delegates heard what Mr. Gemberling has said. He has asked me to repeat it. Will the delegates kindly hand in their expense accounts for the month of June? Are there any questions members of the Convention would like to ask Mr. Gemberling?

We shall proceed, then, with the introduction and first reading of Proposals.

SECRETARY: Proposal 25, by Mr. Spencer Miller: "The Right to Nominate Candidates. (A new paragraph to be included in Article IV, Section VII)."

PRESIDENT: This Proposal will be referred to the Committee on the Legislative.

SECRETARY: Proposal 26, by Mr. Spencer Miller: a Proposal to provide for the right of suffrage; a revision of Article II.

PRESIDENT: This Proposal will be referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Business.

SECRETARY: Proposal 27, by Mr. Spencer Miller: a Proposal to provide that "The Constitution to Be Self-Executing; Each Department to Take Appropriate Action to Facilitate Its Operation (A new paragraph to be included in Article VIII)."

PRESIDENT: Rights, Privileges, Amendments and Miscellaneous Business.

SECRETARY: Proposal 28, by Mr. Spencer Miller: a Proposal to provide for the right of collective bargaining; a new paragraph to be included in Article I.

PRESIDENT: Same action. Rights, Privileges, Amendments and Miscellaneous Business.

SECRETARY: Proposal 29, by Mr. Randolph: Proposal to amend the Constitution of 1844 as amended, Article I, Paragraph 5, to extend the protection of the Bill of Rights to media of communication and expression, such as radio, moving pictures and television.

PRESIDENT: Also referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Business.

SECRETARY: Proposal 30, by Mr. Spencer Miller: Proposal to provide for the organization and powers of counties, cities and other civil divisions; new sections or paragraphs to be included either in a new section of Article IV or a new Article on Local Government.

PRESIDENT: Referred to the Committee on the Legislative.

SECRETARY: Proposal 31, by Mr. Spencer Miller: Proposal providing that bills and joint resolutions must be printed in final form three days before passage; a new paragraph to follow Article IV, Section IV, Paragraph 6.

PRESIDENT: Committee on the Legislative.

SECRETARY: Proposal 32, by Mr. Spencer Miller: Proposal providing for legislative committees and committee reports; a new paragraph to follow Article IV, Section IV, Paragraph 3.

PRESIDENT: Also the Committee on the Legislative.

SECRETARY: Proposal 33, by Mr. Spencer Miller: Proposal providing that certain mandatory laws affecting local governments be prohibited; a new paragraph to be included in Article IV, Section VII.

PRESIDENT: Committee on the Legislative.

SECRETARY: Proposal 34, by Mr. Spencer Miller: Proposal regulating lobbying and prohibiting certain acts by members of the

Legislature; a new paragraph to be included in Article IV, Section IV.

PRESIDENT: Committee on the Legislative.

SECRETARY: Proposal 35, by Mr. Spencer Miller: Proposal providing for succession to Governorship, Acting Governor and filling a vacancy in the office of Governor; new paragraphs to replace Article V, Paragraph 12, (first sentence), Paragraph 13 and Paragraph 14.

PRESIDENT: Committee on the Executive, Militia and Civil Officers.

SECRETARY: Proposal 36, by Mrs. Gene W. Miller: "A Proposal to be added to Section VII, Article IV, Paragraph 6, to insure the obligation of the State or any of its subdivisions for free public library service to the people of the State."

PRESIDENT: Referred to the Committee on Taxation and Finance.

SECRETARY: Proposal 37, by Mrs. Barus: Proposal to provide for amendment by petition.

PRESIDENT: Referred to the Committee on Rights, Privileges, Amendments and Miscellaneous Business.

SECRETARY: Proposal 38, by Mrs. Barus: Proposal providing for the power of the Governor to enforce compliance with the law.

PRESIDENT: Referred to the Committee on the Executive, Militia and Civil Officers.

SECRETARY: Proposal 39, by Mrs. Barus: Proposal providing for limited referendum.

PRESIDENT: Committee on the Legislative.

SECRETARY: Proposal 40, by Mrs. Barus: Proposal to provide for investigatory powers by the Governor, Legislature and Chief Justice.

PRESIDENT: Committee on the Legislative.

SECRETARY: Proposal 41, by Mr. Rafferty: "A Proposal to reform Paragraph 11, Section VII, Article IV, of the present Constitution to provide additionally for the aid, care and support of certain persons."

PRESIDENT: Referred to the Committee on the Legislative.

SECRETARY: Proposal 42, by Mr. Rafferty: "A Proposal to reform Paragraph 6, Section VII, Article IV, of the present Constitution to provide additionally for the transportation of children to and from any school or institution of learning."

PRESIDENT: Referred to the Committee on Taxation and Finance.

This brings us now to the motions and resolutions. Mr. Paul.

MR. WINSTON PAUL: Mr. Chairman, *(reading resolution):*

"WHEREAS, the increased public interest in the proceedings of this Convention has made clear the need for the broadest possible dissemination of the discussions of the important problems of government with which this Convention is concerned, and in order to more efficiently disseminate such information throughout the State through the press, radio and through forums and civic organizations generally,

BE IT RESOLVED, that the President shall appoint a special committee on Public Relations and Information whose duty it shall be to furnish to the citizens of New Jersey information on the discussions, debates and conclusions of this Convention through the medium of the press, radio and such other facilities as may be available;

BE IT FURTHER RESOLVED, that said committee, when appointed, shall prepare and submit to the Committee on Rules, Organization and Business Affairs, an estimated budget of the operating cost of said committee, and that said committee be authorized to expend such funds as may be allocated to it by the Committee on Rules, Organization and Business Affairs."

I move the adoption of the resolution, Mr. Chairman, and in doing so may I state that it is not the purpose of this committee to change in any way the procedure whereby the committees have most excellently and effectively given information as to their work and their proceedings. The committees have assumed a definite responsibility in that particular. It is not the idea that the new committee shall interfere with that, but shall, as the Chairman said this morning, coordinate, support and assist. It is not the desire to change in any particular, or act as a clearing house or as a censor for such information as has been disseminated through the newspapers.

I want to underscore, Mr. Chairman, remarks that you made that the newspapers have given us most splendid coverage. Their cooperation has been exceptional. They have not only sent to this Convention their ablest staff members, but have been most generous in their allotment of space to the proceedings of this Convention. The reporting has been objective and excellent. It is most commendable, and I am sure that I voice the sentiments of every member of this Convention in thanking the newspapers and their reporters for their excellent and informative reporting of this Convention.

There are, however, ladies and gentlemen, some other newspapers throughout the State who do not have sufficiently large staffs to enable them to send them here. I refer particularly to some of the weeklies, and the thought is that there might be a summary or a digest of the weekly proceedings of this Convention which might be sent around to them and which they might greatly value and appreciate.

There is, furthermore, Mr. Chairman, a large number of our citizens who spend more time listening to the radio than they do reading our newspapers. The thought is that although a number of our New Jersey radio stations have been helpful in disseminating

information about this Convention, that the Convention might stimulate and assist other New Jersey radio stations, particularly in having better and more coverage of the Convention. These radio stations can serve a great need for the citizens of the State. This Convention can help those stations in doing a better job in that particular.

In the third place, Senator Morrissey recently suggested the establishment throughout the State of public forums for public discussions of the proceedings and the work and the discussions of this Convention. I know that at least one such forum has been held in Camden. Nothing was done about Senator Morrissey's suggestion on a state-wide basis because there were no facilities. It is hoped that these may be stimulated through various means.

There is, therefore, Mr. Chairman, the great need not merely that this Convention shall prepare an excellent document, but that the people of this State shall know the kind of document that is being prepared. It is much better, much more advantageous and desirable, that currently, as the discussions and the proceedings progress, the citizens of this State should know day by day and week by week of the discussions and the conclusions of this Convention. We believe that would be much more effective than endeavoring, after September 12 and at one time, to spread information about the work and results of this Convention. This resolution which I have presented, Mr. Chairman, and I move its adoption, has been prepared after a number of meetings between President Clothier, Chairman Saunders of the Committee on Submission and Address to the People, Mr. Wayne McMurray, Chairman of the Arrangement and Form Committee, Mr. Gemberling, Chairman of the Rules Committee, Mr. Sidney Goldmann, Mr. Wallace Moreland, and others who have been interested in this matter of the wider dissemination of information about the proceedings and work of this Convention. I heartily and strongly urge its adoption, Mr. Chairman.

PRESIDENT: Dr. Saunders.

MR. SAUNDERS: The Committee on Submission and Address to the People has recognized from the beginning that the effectiveness of the presentation to be made, in the form that the Convention shall decide, will be largely dependent upon the work that is done in public relations before this presentation is made to the people at the time of the November elections. Therefore, I would like to speak as Chairman of that Committee in seconding this motion and in strongly urging its adoption.

PRESIDENT: You have heard the resolution, which has been seconded. Is there any discussion? Any questions? Are you ready

for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. Are there any other motions or resolutions to come before the body? If not, is there any unfinished business? Judge Feller.

MR. FELLER: Mr. Chairman, I would like to announce that there will be a meeting of the Committee on the Executive, Militia and Civil Officers at 11:00 o'clock.

PRESIDENT: Any other unfinished business? . . . Special orders of the day? . . . General orders of the day?

I would like to remind the chairmen of the standing committees that the regular weekly luncheon will be held at 1:00 o'clock in Room C, I think it is, of the University Commons across the street. Is there anything else to come before the Convention this morning? If not, a motion to adjourn until next Tuesday at 10:00 o'clock is in order.

MR. O'MARA: Mr. President.

PRESIDENT: Senator O'Mara.

MR. O'MARA: May I announce that the meeting of the Committee on the Legislative will take place in Room 109, rather than Room 205? Room 109 on the first floor is the room which was formerly used by the Committee on the Executive, and I understand it will be free from now on.

PRESIDENT: Will someone offer a motion that we adjourn until next Tuesday at 10:00 o'clock?

DELEGATE: Move we adjourn.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

(The session adjourned at 10:50 A. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

July 22, 1947

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask you to rise while Rabbi Nathaniel Keller of the Anshe Emeth Memorial Temple, New Brunswick, New Jersey, pronounces the invocation.

RABBI NATHANIEL KELLER: Sovereign of the universe, praised be Thy glory and Thy splendor, O Thou shield of all that trust in Thee. Let Thy favor abide with those who are gathered here. Fill us with the joy of Thy presence and show us Thy loving kindnesss. Guide us this day as we seek to walk in the path of duty and of right. In hours of trial uphold us in Thy mercy and inspire us with courage to sustain our souls with faith in Thy power. And sanctify our lives with righteousness, O God of truth, who revealest Thyself in truth. Open our souls unto Thy truth and enlighten us with Thy precepts. Vouchsafe to us Thy spirit to understand the spirit of counsel and of might, the spirit of knowledge and of the fear of Thee. Bless Thou our handiwork; may it draw us together in an indissoluble bond of brotherhood, promoting the welfare of our beloved State and increasing the happiness of our fellow-men. Hear Thou our prayers, O God, and bless us with vision and peace. Amen.

PRESIDENT: The first item of business on the docket is the reading of the Journal.

MR. DOMINIC A. CAVICCHIA: Mr. President, I move that the reading of the Journal be dispensed with.

(Seconded from the floor)

PRESIDENT: It has been moved and seconded that the reading of the Journal be dispensed with. Is there any discussion?

(Silence)

PRESIDENT: All those in favor please signify by saying "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The Secretary will please call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Morrissey, Murphy, Murray, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Randolph, Proctor, Pursel, Rafferty, Read, Sanford, Schenk, Saunders, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Walton, Wene, Winne.

A quorum is present, sir.

PRESIDENT: The Secretary reports that a quorum is present. The next item of business on the docket is the presentation of petitions, memorials and remonstrances. Is there any business under this heading?

(Silence)

PRESIDENT: We will proceed, then, with the reports of the standing committees. First, the Committee on Rights and Privileges. Mr. Schenk?

MR. JOHN F. SCHENK: Mr. President:

The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions is well along with its work. As you know, hearings have been completed. A mass of material has been received, and it has been studied by the committee. Many discussions have been held on our assigned work.

As to Article I, Rights and Privileges, 13 sections have been written and tentatively approved by the committee. The other six sections assigned will probably be tentatively approved by the committee, together with possible new material, today or tomorrow, since the groundwork has already been laid on these six together with new material also.

Article II, Right of Suffrage, has four out of five probable sections tentatively approved, and the fifth will probably be finished today.

Article III, Distribution of the Powers of Government, has been finished and tentatively approved.

Article VIII, General Provisions, containing at this time four sections, is finished and tentatively approved except for one point in one section, and this will be settled by Thursday of this week.

Article IX, Amendments—we have this tentatively set up in seven

sections, and several of these have been approved as to basic philosophy. We should complete our tentative draft of this article by Thursday of this week, if progress is as expected. I feel we will complete our work and have it before the Convention within the time set by the Rules.

Before closing I wish to say to the delegates assembled that we of the Rights and Privileges Committee have received from Mr. Albert Ari, who has great responsibility in the taking, typing, and printing of the record of all proceedings, very splendid cooperation in expediting our work. We at this time wish publicly to express our appreciation for his cooperation and that of the very willing and hard working clerical staff, and to reaffirm our gratitude for the services of the several others thanked in the resolution passed last week.

That is all, Mr. President.

PRESIDENT: Are there any questions members of the Convention wish to ask Mr. Schenk?

(Silence)

PRESIDENT: All right, Mr. Schenk, thank you.

Senator O'Mara, will you report for the Committee on the Legislative?

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

I am happy to report that the Committee on the Legislative has completed the tentative draft of the Legislative Article. It is now in the hands of the printer and I expect that it will be delivered some time during the day. It will be sent to as many people as we can reach in the course of the next week, and a public hearing on the tentative article has been scheduled for next Monday at 10:00 o'clock, on the main floor of the Gymnasium.

PRESIDENT: Are there any questions members of the Convention would like to ask Senator O'Mara?

(Silence)

PRESIDENT: Thank you, Senator O'Mara.

The Committee on the Judiciary—will Chairman Sommer or Vice-Chairman Jacobs report?

MR. NATHAN L. JACOBS: Mr. President, fellow delegates:

The Committee on the Judiciary has tentatively reached agreement on all issues except one, and we feel that that section will be disposed of today. The draft of the tentative article has been prepared and probably will be in final shape by tomorrow. It will then be distributed for criticism, so that by next week we can have our final hearing and following that the final draft will be sub-

mitted to the Convention. That's all, Mr. President.

PRESIDENT: You don't contemplate a public hearing, do you?

MR. JACOBS: We will have a hearing next week, during which any person who desires to appear before us will have the privilege of being heard. I don't know whether you call that a formal hearing or not, in the sense that the previous chairmen have been talking about.

PRESIDENT: Are there questions members of the Convention would like to ask of Mr. Jacobs?

(Silence)

PRESIDENT: If not, Mr. Read, will you report for the Committee on Taxation and Finance.

MR. WILLIAM T. READ: Mr. President and fellow delegates:

The Committee on Taxation and Finance held a very full hearing last Tuesday following the adjournment of this body. It took up to the late afternoon. We were fortunate in getting this room because we were crowded out of our room upstairs. Those who have been observing the Convention tell us that it was the largest attended meeting of any of the various meetings of the Convention.

We feel that we went very fully over every part of the Constitution referred to us—in fact, over some matters which were not referred to us but which might come under the heading of taxation and finance. We worked last week and adopted a few of the clauses that are not too argumentative, and we hope today and tomorrow to finish up the various matters referred to us. We feel that the arguments made *pro* and *con* before our committee were fully heard. Everybody, so far as I know, was given an opportunity to be heard.

We want to thank the press for the very good cooperation it gave, and we feel that is the reason why we had such full attendance at our hearing. We do not believe that anything could be gained by any further hearings, because the subjects referred to us have been very fully covered. We expect to have our report ready for next Tuesday, and that will be the final report before the Convention acts upon it.

PRESIDENT: Any questions the members of the Convention would like to ask Mr. Read?

(Silence)

PRESIDENT: Thank you, Mr. Read.

The Committee on Arrangement and Form, Mr. McMurray?

MR. WAYNE D. McMURRAY: Mr. President and fellow delegates:

Your Committee on Arrangement and Form has been meeting each Tuesday and we have outlined the procedure that we are

going to follow. We have also given consideration, tentatively, to the order in which various articles should be placed in the Constitution.

We received, as did other members of the Convention, copies of the tentative Executive Article last week, and we have been working on that during the week. I would like to ask, on behalf of my committee, that the other committees get to us as quickly as possible any tentative drafts that they prepare. We understand that these drafts will be subject to further change by the committee and perhaps on the floor of the Convention, but it would be very helpful to us if we can have those tentative drafts as soon as possible, so that we can begin to organize our work.

There will be a brief meeting of the Committee on Arrangement and Form in this building, Room 204, following the adjournment of this session.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: The Committee on Submission and Address to the People, Dr. Saunders.

MR. WILBOUR E. SAUNDERS: I have no report.

PRESIDENT: No report. Are there any questions?

(Silence)

If not, the Rules Committee, Mr. Gemberling.

MR. ARTHUR R. GEMBERLING: No report.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: The Committee on Credentials, Printing and Authentication of Documents, Vice-Chancellor Kays.

MR. HENRY T. KAYS: Mr. President:

The Committee on Credentials, Printing and Authentication of Documents reports that it met on July 15 with Mr. John W. White, who is the editor of reports under Fred V. Ferber, State Director of Purchase and Property.

Mr. White is acquainted with printing costs and has agreed to confer with this committee each Tuesday and assist the committee in determining whether the printing bills are reasonable and proper. The regular printing charges will be for the customary eight-hour day. If overtime is required, an increase of 25 percent will be charged. And if the printing is required to be done on Saturday or Sunday the increased cost will be 50 percent. The committee trusts that all committees will endeavor to have their printing done during the regular eight-hour day, from Monday through Friday, in order to save the extra charges.

I might say that the Chairman of the Committee on Rules, Organ-

ization and Business Affairs, Mr. Gemberling, met with this committee and this report meets wih his approval.

PRESIDENT: Are there any questions members of the Convention would like to ask the chairman?

(Silence)

PRESIDENT: If not, we will proceed with the next order of business. Are there any motions and resolutions? Mr. Paul?

MR. WINSTON PAUL: Mr. Chairman and fellow delegates:

I wish to denounce publicly the organized campaign of propaganda and pressure to influence this Convention to change our present state policy of non-exclusive use of the State's highway funds.

For many years, lobbyists representing the road builders, the cement dealers, and the producers of highway machinery and materials, have sought to require that all highway funds be used solely for the construction and maintenance of highways. Legislature after Legislature has wisely refrained from doing this. Having failed to achieve their ends through the legislative branch of our government, this pressure group now seeks to attain its purpose through this Convention. It would be a serious step backward to tie the hands of all future Legislatures in this matter.

Shortly after our convening, our President, Dr. Clothier, advised us to "resist pressures from any groups which now seek special advantage in the construction of the new State Constitution." Only last week, Dr. Clothier again warned this Convention that "from time to time we shall find ourselves under pressure to include provisions in the new Constitution which would favor special interests and limit the power of the members of the Legislature in carrying out the will of the people in behalf of all of the people. Occasionally, this pressure will put the interest of these groups above the interest of the people as a whole."

Recently one of the State's leading newspapers stated:

> "It will be recalled that during the depression, when thousands of New Jersey's citizens were reduced to extreme poverty and were even denied the necessities of life, these highway lobbyists fought to the bitter end against the use of highway funds for relief. While men, women and children were hungry, the road construction interests sought through every means at their command to withhold the only money available to help them."

Now they seek to promote their own selfish financial interests through a provision in the fundamental law of this State.

Mr. Chairman, this Convention welcomes expressions of opinion from disinterested civic groups and public-spirited citizens, supported by sound arguments for the good of the State as a whole and devoid of selfish financial interest. Many delegates have commented on the large number of communications received on this subject of

segregation of highway funds. It is organized propaganda, it is intensive pressure. I understand that its lobbyists have appeared openly on the floor of this Convention. I hear that personal pressure and appeals have been made to individual delegates. Is their cause so weak that they must depend, not upon the weight of argument but upon the number of their letters? I want to say to those engaged in this propaganda that these tactics have antagonized many delegates and have done their cause more harm than good.

On this general subject of pressure, I would warn veterans' groups that they also should think and act as citizens first and should not seek special advantages contrary to the best interests of the people as a whole.

In conclusion, Mr. Chairman, I want to add this personal word. During the past several weeks I have observed with extreme pleasure and gratitude how many of the delegates to this Convention have laid aside partisan, political and sectional interests and concerned themselves primarily with the good of the State as a whole. It has been a pleasure, a satisfaction, and I am proud to have been associated with these fine delegates. Therefore, Mr. Chairman, on behalf of them and myself, I deeply and feelingly resent this effort to pressure this Convention into changing the policy of this State in this manner.

PRESIDENT: Senator Lance.

MR. WESLEY L. LANCE: Mr. Chairman, I oppose what Mr. Paul just said.

I think it's the fundamental right of the people of this State, through organizations or individuals, to come here and say in person or by print anything they want.

I read to you Article I, Paragraph 18, of our present Constitution: "The people have the right freely to assembly together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances." I hope that same provision is in the new Bill of Rights.

Personally, as a legislator—although a rural legislator—I have voted for diversion of highway funds many times. Personally, I would vote to leave the Legislature free in the future, and would be against a plank which would prevent the diversion of highway funds. Perhaps I am in sympathy with Mr. Paul as to the result, but the people of this State have a perfect right to come to this Convention and say anything they please. I think it's against the spirit of the Convention to put a resolution of that type or a statement on the floor.

PRESIDENT: Mr. Read.

MR. READ: Mr. President, my calendar says this is July, not August. We are not to debate these matters, and the matter referred

to comes before the Committee on Taxation and Finance. I move that the remarks be referred to that committee.

PRESIDENT: You've heard the motion. Is the motion seconded?

(Seconded from the floor)

PRESIDENT: Is there a discussion on the motion?

(Silence)

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Motion carried. Is there any other business to come before the Convention under motions and resolutions? Mr. Milton.

MR. JOHN MILTON: I have a resolution which is designed to amend standing Rule 46, and under Rule 38 the resolution will have to lie on the table for one day which, I assume, means—if we are to pursue our present practice of meeting weekly—that the resolution cannot be acted upon until the next meeting of the Convention, which will be a week from today.

The design of the resolution is to expand the time allotted the delegates for debating the propositions which are to be submitted to the Convention. Under the rule as now drawn, a delegate is limited in the first instance to speaking no more than 15 minutes, and in reply to five minutes. My resolution is so drawn as to permit the delegate, if it is adopted, to speak for the time allotted to him plus the time which may be granted, surrendered, or assigned to him by any other delegate to the Convention.

I offer the resolution and ask the Secretary to read it. I won't attempt to debate it since, under the rule, it must lie over.

PRESIDENT: The Secretary will read the resilution.

SECRETARY: The purpose of this amendment is to amend Convention Rule 46 so as to enable delegates to assign their allotted time. *(Reading):*

> "*Resolved,* that Rule 46 be amended to read as follows:
>
> 'Rule 46: No delegate shall speak more than twice on 1 question, or longer than 15 minutes the first, or longer than 5 minutes the second time, or more than once until other delegates who have not spoken shall speak if they so desire, without first obtaining leave of the Convention; *provided, however, any delegate may assign in writing all his time to another delegate which, when filed with the Secretary, shall entitle the delegate holding the assignments to speak for his own allotted time plus the time of all the delegates assigning to him. Any delegate so assigning shall not be heard on the question;* and the mover of the

proposition shall have the right to close the debate, provided that the person in charge of a proposal on third reading and final agreement shall have the right, if he desires, to close the debate and he may announce such desire at any time before the taking of the vote on the question.' (Italics indicates new matter)."

PRESIDENT: You have heard the resolution. Unless the Convention directs otherwise, this will be brought up for action at the meeting next Tuesday morning.

MR. WILLIAM J. DWYER: Mr. Chairman, I am somewhat amazed at the discussion on this highway pressure group coming before the Convention as it did this morning. I will not suggest a resolution but an amenity that might be the proper procedure,—that if a committee has been assigned to discuss and to propose to the Convention a solution of the very subject of debate before the Convention, that any delegate who is not on the committee might refer it to the committee membership and inquire of them as to the general situation relating to the matter to be discussed. Therefore, a cordial relationship could be established between the committee that is considering matters on taxation and finance, in this instance, and the members of the Convention as a whole. And then we will not precipitate a situation such as might have resulted from the presentation of Mr. Paul this morning.

PRESIDENT: Are there further comments, or is there further business under this item of business? Senator O'Mara.

MR. O'MARA: Mr. President, I would like to supplement my report for the Committee on the Legislative. I have just been advised that the tentative draft of the article will be delivered by the printer between 12:00 and 1:00 o'clock, and I would like to have any of the delegates as possible who want to get a copy of that article today to do so through the Secretary of the Convention, Mr. Van Camp, who will have it available not later than 1:00 o'clock.

PRESIDENT: Is there anything else to come before the Convention at this time? Is there any unfinished business to be brought up? Are there any special orders of the day or any general orders of the day?

I would like to remind the chairmen of the standing committees that we shall meet, as usual, at lunch today at 1:00 o'clock in the room usually used for that purpose. I would also like to advise the delegates that in the event of rain—and we seem to be running into rain on Tuesdays—so severe as it was last week as to make it difficult for persons to cross the street, we shall have a station wagon at that door (*indicating side door*) doing shuttle service back and forth, as we did last week. I failed to notify a number of the delegates in time last week.

Is there anything else to come before the meeting?

(Silence)

PRESIDENT: If not, a motion to adjourn until next Tuesday at 10:00 o'clock is in order.

MR. PAUL: I make that motion.

(Seconded from the floor)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Motion carried.

(The session adjourned at 10:30 A. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

July 29, 1947

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and the spectators to rise while Father Nolan of St. John's Parish here in New Brunswick leads us in prayer.

FATHER NOLAN: In the name of the Father, and of the Son, and of the Holy Ghost, Amen. Come Holy Ghost, fill the hearts of Thy faithful. Kindle in them the fire of Thy love. Send forth Thy spirit and they shall be created.

Let us pray. O God of might, wisdom and justice, through whom all authority is rightly administered, laws enacted, and judgments are decreed, assist with Thy Holy Spirit of counsel and fortitude, this Convention and its members, that their administrations may be conducted in righteousness and be eminently useful to Thy people, by encouraging due respect for the laws of justice and mercy. We pray for the President of the United States and Congress. We pray also for the Governor of this State of New Jersey, for the members of the Assembly, and for all other officers who are appointed to guard our political welfare. May they all, and especially this body of delegates and members of this Convention in carrying out the very sacred trust that is theirs, be enlightened, strengthened and assisted through the ever helpful graces that are ours, through the infinite merits of Christ, our Lord. Amen.

PRESIDENT: The first item on the docket is the reading of the Journal. May I ask your wishes?

MR. WILLIAM L. HADLEY: I move that we dispense with the reading of the Journal.

PRESIDENT: Is the motion seconded?

(Seconded from the floor)

PRESIDENT: Any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(The Secretary called the roll and the following delegates answered "present"):* Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursell, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: A quorum is present, sir.

PRESIDENT: The Secretary reports that a quorum is present. The Secretary will read a telegram just received.

SECRETARY *(reading):*

> "SECRETARY OF THE CONSTITUTIONAL CONVENTION, NEW BRUNSWICK, NEW JERSEY. DUE TO FUNERAL OF ASSEMBLYMAN LEONARD'S FATHER ON TUESDAY, JULY 29, THE ATLANTIC COUNTY DELEGATES WILL BE UNABLE TO BE PRESENT. GEORGE T. NAAME, DELEGATE."

PRESIDENT: May I suggest the propriety of the Convention sending a telegram of condolence to Mr. Leonard?

MR. EDWARD J. O'MARA: Mr. President, I so move.

MRS. JANE E. BARUS: I second the motion.

PRESIDENT: You have heard the motion and the second. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is carried.

Ladies and gentlemen: The first of August is almost here and the preliminary work of the Convention, as you know, has been completed. The Committees on Rights and Privileges, on the Executive, on the Legislative, on the Judiciary, and on Taxation and Finance have not spared themselves in studying the problems submitted to them, and those on the Executive, the Legislative, and the Judiciary have already issued their tentative reports in printed form for distribution and criticism. Those on Rights and Privileges, and Taxation and Finance have also completed their initial work, and I understand their reports will be available

soon. A cloud of witnesses has appeared before these several committees, many of them distinguished in their fields. The chairmen and members of the committees have left no stone unturned to take into consideration the opinions and points of view of all interested persons, no matter how much they have differed, and have prepared the tentative drafts of their parts of the new Constitution capably and well and with great seriousness of purpose.

The Legislative Committee had a public hearing yesterday. The Executive Committee will have a public hearing this morning after the Convention adjourns. The Judiciary will have a public hearing tomorrow.

Our deliberations thus far have been marked by good feeling and freedom from rancor, notwithstanding earlier predictions by the professional pessimists. We would like to have them continue that way, but all of us are realists and we appreciate, I think, that the likelihood of tensions and even acrimony, perhaps, will be greater in August, now that we have come to the point where we must make decisions—and we know that the decisions reached will not please everyone, and that there will doubtless be points of view which cannot be reconciled. It would be surprising if this were not the case.

Let's face these things frankly and balance them one against another, as part of the democratic process. Let's continue to take all these varying points of view into consideration. But by all means let's keep our sense of proportion and, if you will, our sense of humor and a reasonable willingness to compromise conflicting opinions. We should remember that whatever our special interests, we were elected by the voters to prepare the best possible Constitution for the people of the State as a whole. It would be a sorry commentary upon our ability to practice democracy in the simplest form if we were to fail them.

By the same token, the people are looking to us for leadership in this matter of framing a new Constitution. I hope we shall not fail to give it to them. On practically all of these issues the delegates here assembled should be better informed than are the people back home, for we have made it our business to study these issues and we have had ready access to a wealth of material not readily available to them, and we have had as well the opportunity of listening to the discussions in committee and on the floor of the Convention. The people back home have given us a mandate to prepare the best possible Constitution for them, and by virtue of that fact it is unquestionably up to us to think things through, so far as possible, to their proper conclusion and to reach our own decisions, and then to pass our conclusions and decisions on to the people for them to accept or reject on election day. I am

very sincere in hoping that only in extraordinary instances will we pass the buck on to the people in the shape of amendments to be voted on separately. Several of the committees in their tentative drafts have been forced to the necessity of contemplating referring certain of their controversial issues to the voters in this manner. I hope so far as possible the committees will restudy them to see if there isn't some way of avoiding the necessity of doing so.

In saying these things I don't want to appear officious, but since I have already, perhaps, done so, let me say, too, that in one or more instances it seems that matters not of principle, but of expediency—and in some instances matters of temporary significance—have found their way into the text of the proposed drafts. In the minds of most of us, I think, these matters should be omitted from the Constitution itself and should be referred to the Governor and the Legislature for statutory action. I hope the committees will review their drafts from this angle, too.

Personally, I feel indebted to Senator Milton for emphasizing last week the importance of making every reasonable provision for a delegate to speak effectively and unhurriedly upon any issue before the Convention. The spirit of the Convention has been one of full and frank discussion and, so far as your impartial chairman can achieve it, that will continue to be the spirit of the Convention—until our work is done. I don't know what the delegates will want to do with Senator Milton's motion that speakers be permitted, over and above their own 15 minutes, to borrow time from other delegates; we are to vote on it this morning. But whether the resolution is adopted or rejected, I propose to see to it that so far as possible every one who needs more than 15 minutes to present his arguments for or against any recommendation shall have it, and to ask the authority of the Convention in doing so. Furthermore, he should know in advance so far as possible how much time he will take. Senator Milton and I have exchanged thoughts on that.

In return, I shall expect, in your behalf, that a delegate granted this extension will present his arguments with reasonable succinctness and not at greater length than is necessary, for we are working within a rigid time limit and we must finish our overall work, in its entirety, by September 12. And we must not forget that after our discussions on the floor have been completed, we still must allow time for the Committee on Arrangement and Form and the Committee on Submission and Address to the People to discharge their part of the task.

I do not believe that any member of this Convention will wish to use up time for the sake of using up time, but I do believe that within the limits imposed upon us everyone with something to say should be given the time and opportunity of saying it. To this

end, with your consent, I propose, if it shall be necessary, to ask those delegates who feel they will need more than 15 minutes at any session to present their argument, to let me know in advance of the session how much time they think they will need in order that we may endeavor to make provision for them in the timetable of the meeting. Such procedure as this should allow a delegate the time he needs to present his arguments, will keep the control of the timetable in the hands of the Convention itself, and will enable us to complete our work within the rigid time limit which has been set for us by law.

We assembled just six weeks ago and we have just six weeks to go. If we are to complete our job by September 12 we shall have to have effective scheduling, as much brevity on the part of speakers as is consistent with effective presentation of their arguments, and a continuing spirit of reciprocal understanding—a mutual give and take.

(Applause)

PRESIDENT: The first item on our docket this morning, ladies and gentlemen, is the presentation of petitions, memorials, and remonstrances. Is there any business under this item?

(Silence)

PRESIDENT: The report of the standing committees. I will ask Mr. Schenk to report for the Committee on Rights and Privileges.

MR. JOHN F. SCHENK: Mr. President, fellow delegates:

The Committee on Rights, Privileges, Amendments and Miscellaneous Provisions has completed most of its assigned work. We will finish the balance and report to the Convention within the time set by the Rules. By a substantial majority, the committee decided to have no further public hearings.

Two sections remain to be cleared, by a final committee vote, under Article I, Rights and Privileges. Twenty other sections are finished and in final form, with the exception of possible minor changes in language in one or two sections.

Article II, Right of Suffrage, is finished.

Article III, Distribution of the Powers of Government, is finished.

Article VIII, General Provisions, is finished.

Article IX, Amendments, is finished and ready, except for a possible change in the interest of clarifying the language in one section.

We may have a small amount of work to do on the Schedule. We also have yet to prepare a covering letter to go with our recommendations.

That completes my report, Mr. Chairman.

PRESIDENT: Is there any question the members of the Convention would like to ask Mr. Schenk?

(Silence)

PRESIDENT: Senator O'Mara, will you report for the Committee on the Legislative?

MR. O'MARA: Mr. President, ladies and gentlemen of the Convention:

The Committee on the Legislative held a public hearing on the tentative draft of the Legislative Article yesterday. The hearing was very well attended and the committee was addressed by 28 witnesses. We had the benefit of the varying viewpoints of all of those witnesses. The committee will meet today, following the adjournment of this session of the Convention, and we hope before nightfall to have prepared the draft of the Legislative Article which will officially be presented to the Convention.

PRESIDENT: Are there any questions members of the Convention would like to ask Senator O'Mara?

(Silence)

PRESIDENT: Thank you, Senator. Senator Van Alstyne, will you report for the Committee on the Executive? We are glad to have you back.

MR. DAVID VAN ALSTYNE, JR.: Mr. President, and fellow delegates:

The Executive Committee finished its tentative draft proposals about two weeks ago. These were printed up in pamphlet form and given wide dissemination throughout the State. I particularly wish to thank the press for the excellent publicity they gave the proposals. We have set a public hearing to take place at 11:00 o'clock this morning in this room on this draft. I certainly hope that by Thursday we will have gone over the suggestions of the public and will be able to submit our final draft to the Convention.

PRESIDENT: Are there any questions members of the Convention would like to ask Senator Van Alstyne?

(Silence)

PRESIDENT: Thank you, Senator. Will Dean Sommer or Mr. Jacobs report for the Committee on the Judiciary?

MR. NATHAN L. JACOBS: Mr. President and fellow delegates:

The Judiciary Committee has completed its tentative draft according to schedule, and I understand copies of the tentative draft were mailed to the delegates at the close of last week.

Tomorrow we are having a public hearing starting at 10:00 o'clock, at the close of which the committee will meet again and continue on through Thursday. By the close of Thursday it expects to submit its final draft and schedule. Later, there will be a more complete narrative report which in effect will set forth the nature of the testimony before the committee, as well as the reasons under-

lying the committee's conclusions. That presumably will be available next week. The committee invites the suggestions of any individual delegate at the hearing tomorrow, or at any time before we close our work on Thursday evening.

PRESIDENT: Are there any questions members of the Convention would like to ask Mr. Jacobs?

(Silence)

PRESIDENT: Thank you, Mr. Jacobs. Mr. Read, will you report for the Committee on Taxation and Finance?

MR. WILLIAM T. READ: Mr. President and fellow delegates:

The Committee on Taxation and Finance practically completed its deliberations last Wednesday. The phraseology of some of the paragraphs was not quite agreed upon, but continuing in the non-partisan or non-political spirit of the delegation they chose Judge Rafferty and myself to finish up the tentative draft. We did that and sent it out to all members of the committee so that they might have a chance to study it and be sure that all of the words were properly in place. We expect to meet immediately following the adjournment of this Convention this morning and complete our draft this afternoon.

PRESIDENT: Mr. Chairman, do you intend to present the tentative draft in printed form, as other committees have done?

MR. READ: I don't believe we have time. It seems to me that we will not have a tentative draft, we will have a final draft. The same thing applies to the Rights and Privileges Committee. Our draft will go to the Secretary who will print it, of course, and it will be sent to every member of the Convention before being acted upon.

PRESIDENT: Is that your intention, too, Mr. Schenk, with reference to Rights and Privileges? Do you propose to follow the same procedure with reference to your report?

MR. SCHENK: Yes, sir.

PRESIDENT: Are there any other questions?

(Silence)

PRESIDENT: Thank you, Mr. Read. Mr. McMurray, will you report for the Committee on Arrangement and Form?

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen of the Convention:

The Committee on Arrangement and Form is, at the present time, studying the tentative drafts of the three articles that have been prepared in tentative form. There is one matter that the committee wanted me to bring to your attention, and that is the fact that in studying these tentative reports we do find some variation in the technical language used. We just want you to understand

that when we submit our final report on these articles we are submitting it from the standpoint of a coordinating agency. We are simply trying to bring them all into line. We have no pride of authorship and we are not trying to change the phraseology needlessly that has already been agreed upon by members of the various committees. Of course, we are very conscious of the fact that we have no right or desire to change the substance, so you may be sure that any changes we make are purely in the interest of making the whole document more cohesive. We are not in any sense attempting to change, either by direction or indirection, the intent of the members of the various committees.

Our committee will have a brief meeting after this session in the Library, Room 204. Thank you.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: Thank you, Mr. McMurray. Dr. Saunders, will you report for the Committee on Submission and Address to the People?

MR. WILBOUR E. SAUNDERS: Mr. President, and fellow delegates:

Our committee will meet at 11:00 this morning. We are troubled with a few things—the question of multiple choices which our President has spoken about, and particularly concerning the use of voting machines and the paper ballot. We would very much appreciate having any expressions of opinion from other delegates before the committee meets this morning, concerning the matter of a general paper ballot or the use of voting machines where they are used in some counties, for there is the necessity of our notifying the Governor of the need of securing paper if there is to be such a general paper ballot. This will be very expensive.

PRESIDENT: Are there any questions members of the Convention would like to ask Mr. Saunders?

(Silence)

PRESIDENT: Thank you, Mr. Saunders. Mr. Gemberling, will you report for the Committee on Rules, Organization and Business Affairs?

MR. ARTHUR R. GEMBERLING: Mr. President and fellow delegates:

No report. However, I would like to make an announcement. Records are being prepared of all discussions before each committee, together with an index. These reports will be ready in a few days.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: Thank you, Mr. Gemberling. Mr. Kays, will you report for the Committee on Credentials, Printing, and Authentication of Documents?

MR. HENRY T. KAYS: Mr. President, fellow delegates:

There seems to be no reason in the Rules for the printing of more than 500 copies of any report or proposal of committees, and that seems to be only after the first reading. Under Rule 53 only these 500 copies may be printed. I understand some tentative proposals have already been printed in the number of 3000. I see nothing in the Rules, and the committee has found nothing, which authorizes such a printing. I think, if the committees wish to do that, the rule should be amended or some authorization should be made, because I doubt very much if the committee has authority to approve anything over and above the number mentioned in the Rules.

Rule 20 says: "All resolutions for the printing of an extra number of documents shall be referred, as of course, to the Committee on Credentials, Printing and Authentication of Documents, for its report thereon before final action by the Convention." Now no such reference has been made to our committee.

PRESIDENT: Mr. Chairman, would you suggest a resolution authorizing such action in the future, and perhaps make it retroactive?

MR. KAYS: I think the action of the printing that has already been done should be approved by the Convention, and it seems to me that the main standing committees yet to report should be authorized to print probably not exceeding 3000 copies. I think there should be some action with respect to that.

PRESIDENT: Do you offer a motion to that effect?

MR. KAYS: Yes, I so move, that the general standing committees be authorized to have printed not to exceed 3000 copies, and that if any additional copies are to be printed it should be with the approval of the Committee on Printing.

PRESIDENT: Is that motion seconded? Senator O'Mara?

MR. O'MARA: Mr. President, as chairman of one of the committees which has offended against the rule I wonder if Vice-Chancellor Kays would accept an amendment to his motion so as to make it retroactive in effect?

MR. KAYS: That is perfectly agreeable to the committee, I understand. All printing of over 500 copies of reports which have already been printed should be approved.

MR. O'MARA: May I second the motion in its amended form?

PRESIDENT: I assume that under our Rules this resolution will have to lay over a day, but the Secretary has a record of it and it will be brought up for a vote at the next meeting of the Con-

vention.

MR. DOMINIC A. CAVICCHIA: Mr. President.

PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: I don't like to prolong this, but I think that the tentative drafts were made necessary by the circumstances. I don't think our Rules provide for the tentative drafts method that we have employed, and I don't think you can reconcile that with the Rules. We haven't acted on the motion made, and I was about to suggest a substitute motion that the Convention ratify the printing and the cost thereof of all tentative drafts to date, and that the same privilege be extended to other committees who have not filed tentative drafts.

PRESIDENT: Vice-Chancellor Kays?

MR. KAYS: I don't understand where he says they are not limited. Where do you find that in the Rules?

MR. CAVICCHIA: I tried to make the point that the Rules are silent on the question of tentative drafts. I thought I said that the tentative drafts were made necessary for the purpose of further public hearings, and they were not contemplated at the time the Rules were drawn.

MR. KAYS: It refers to an extra number of documents. I don't know what that means. Mr. President, I don't think it is necessary that this matter lie over if we have unanimous consent.

PRESIDENT: Will someone offer a motion to that effect?

DELEGATE: I so move.

DELEGATE: I second the motion.

PRESIDENT: You have heard the motion and the seconding. Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is unanimously carried. Is there any other business under this item? Mr. Orchard.

MR. WILLIAM J. ORCHARD: Mr. President, does this Convention have a budget? Have we allocated our funds? What is the condition of our pocketbook?

PRESIDENT: Mr. Gemberling, will you report on that?

MR. GEMBERLING: Mr. President, will you go on with some other business for just a few moments while I get some figures?

PRESIDENT: If that is agreeable to you, Mr. Orchard, we will proceed.

MR. ORCHARD: Yes, sir.

PRESIDENT: I neglected to report last week that the delegates appointed to the created Committee on Public Relations and Information are Mr. Wene, Mr. McMurray, Mr. Saunders, and Mr. Paul. Mr. Paul has been designated chairman. I don't know whether the committee has a report to make at this time or not.

MR. WINSTON PAUL: Mr. President, very briefly I report that the committee has had several meetings. One meeting was with several editors to see how we might facilitate and cooperate with them in their work. We also have been spending considerable time on the matter of broadening our radio coverage of this Convention.

There will be a picture taken of the delegates next week; I believe you will announce that from the chair later.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: This brings us into unfinished business. I would like to read for the information of the delegates the resolution presented by Senator Milton, the resolution regarding Rule 46. The minutes read as follows:

> "*Resolved,* that Rule 46 be amended to read as follows:
>
> 'Rule 46: No delegate shall speak more than twice on 1 question, or longer than 15 minutes the first, or longer than 5 minutes the second time, or more than once until other delegates who have not spoken shall speak if they so desire, without first obtaining leave of the Convention;'
> *(and then the following words are proposed to be inserted):*
> 'provided, however, any delegate may assign in writing all his time to another delegate which, when filed with the Secretary, shall entitle the delegate holding the assignments to speak for his own allotted time plus the time of all the delegates assigning to him. Any delegate so assigning shall not be heard on the question;'
> *(then the original text continues):*
> 'and the mover of the proposition shall have the right to close the debate, provided that the person in charge of a proposal on third reading and final agreement shall have the right, if he desires, to close the debate and he may announce such desire at any time before the taking of the vote on the question.' "

This resolution has been made and seconded, and is now open for discussion.

PRESIDENT: Mrs. Miller.

MRS. GENE W. MILLER: I should like to speak against the proposal to amend Rule 46. I have two reasons in mind for my opposing such an amendment. First, it would tend to remove the individual responsibility of each delegate to give to the Convention his own opinion of the question. Not all of us have the same forensic ability, but all of us are delegates, and as such ought to be heard.

My second reason is that as a practical matter I am sure every delegate will not need nor wish to speak on every question. His time will be saved, not used by another delegate. For those two

reasons I oppose amending Rule 46.

PRESIDENT: Senator Milton?

MR. JOHN MILTON: I think the reason for the offering of the resolution must be obvious to anyone who has given consideration to the matter. I was attracted by the very charming manner in which the President offered to assure any delegate that he will be given adequate time to speak on any subject. It is consistent with the manner in which the President has executed the duties of his office, and I am sure that is going to continue. However, the plan proposed by the President is unreasonable, unworkable, and I don't think it would answer the question.

There are a number of major issues which are to be debated by the Convention, transcended in importance by nothing that has occurred in the history of this State for generations. It would be a matter for extreme regret, in my judgment, if it were to go broadcast that we delegates, in accepting this rule, had so gagged ourselves that we were unable to fully discuss these questions which, if the Constitution should be adopted, will basically affect the lives of the entire population of this State.

The reason the President's suggestion doesn't meet the question is this: How can anyone who intends to present his views fully on such an important matter as the Judicial Article prepare an argument unless he knows in advance with certainty how much time he is going to have? Under the President's suggestion he wouldn't know whether or not he would be cut off in the middle of his argument. My resolution substitutes certainty for uncertainty.

Now, it has been said—at least, so I am advised—that there is a bit of skullduggery behind this resolution, and that the proposer intends with some unnamed persons to conduct a filibuster against one or more of the proposals. I have complete confidence in the mettle and the intellectual honesty and integrity of the ladies and gentlemen who make up this Convention. I am sure that none of them would resort to such practices to prevent any suggestion coming to a vote on the floor of this Convention. I assume I need not give any assurance on my own behalf. But to remove all possible doubt, I am willing to accept a limitation so that no one delegate shall be entitled to file more than five of such assignments from other delegates. In other words, a delegate would be permitted, if he secured five assignments from other delegates, to speak for one hour and a half in support of whatever argument he was making, and in rebuttal for 30 minutes.

I heard Mrs. Miller say that the effect of the resolution amounted to a surrender on the part of the delegates of a right, and a possible failure to exercise their duty. There is no coercion. A delegate

need not transfer his time if he doesn't wish to. Every delegate is free to act, and indeed a delegate may refuse to transfer his time if upon inquiry he should feel that the speaker has already secured sufficient time in the delegate's view to accomplish the desired purpose.

As I said before, I am extremely anxious that this Constitution shall go to the people adequately discussed. I have a very lively interest in this Judiciary Article. I have read the report of the committee. While I don't propose to discuss the merits of it—it would be inappropriate at this time—I hope to have sufficient time to do so, because I don't agree with the committee's report. So I say, this Convention can trust the good sense of its members to limit themselves in discussions on these questions to a reasonable time. And as an offer in good faith, to bring about that limitation and still to insure certainty, I offer to accept an amendment which will limit a delegate in securing transfers of time, to five in number.

I reiterate, over and above everything else, the people of this State must understand there was no gag rule imposed, even by ourselves. I move the proposal.

PRESIDENT: Mr. McMurray.

MR. McMURRAY: Mr. President, ladies and gentlemen of the Convention:

It is with some hesitancy that I arise at this time to speak in opposition to the original motion proposed by Senator Milton that would alter the time limitation now in force under our Rules. My hesitancy frankly springs from the fact that the gentleman offering the resolution possesses a far greater knowledge of parliamentary procedure and a far wider experience in the field of public affairs than I will ever have. However, since the session of the Convention last Tuesday I have been turning this proposed amendment over in my mind, and I have come to the considered conclusion that I cannot conscientiously vote for it.

I find two insurmountable objections to the proposed amendment. I do not offer them as unique conclusions; I do not intend to infer that I have journeyed alone to Mount Sinai and have returned with that which has been unrevealed to the rest of you. But I think my reasons are logical and compelling. I also think these objections are shared by many other delegates to this Convention. If they are not shared by other delegates, if I am expressing views that have occurred to me alone, then I ask your indulgence for imposing upon you what amounts to one man's view. This Convention has certainly too heavy a task before it to spend weary minutes listening to speeches which fail to find an echo in anyone else's mind except that of the speaker.

My first objection to this proposed amendment is, I think, an

eminently practical one. This Convention is attempting to do a job of great magnitude within the limits of a greatly compressed timetable. We must complete our work by September 12. Within the period between now and September 12 there will be time for every delegate who so desires to express his views. But I do not feel that there will be time available for delegates who do *not* desire to express their views on any particular subject to transfer that time to some one else just because it is technically theirs. Were that to be done to the fullest extent possible under the original suggested amendment to our Rules, there could be, according to my arithmetic, presentation speeches aggregating some 20 hours on each question, and rebuttal speeches of some six hours, in addition, on each question.

Under the existing rule, each delegate may speak on presentation for 15 minutes and in rebuttal for five minutes. The existing rules further provide that any delegate may speak longer by obtaining leave from the Convention. I have always subscribed to the proposition that few souls are saved after the first 15 minutes. But I also concede there may be very valid exceptions to the rule. Should a speaker in the course of discussing some particularly complex problem require more than 15 minutes I certainly think he should have it, and I for one would certainly vote to give it to him. And it is unthinkable that this Convention, time permitting, would not go along and grant him that time.

If the Convention did, however, refuse to grant such additional time, it would appear obvious that the delegates had no desire to hear the speaker longer. To force them to do so through the device of this amendment to our Rules would be my idea of "cruel and unusual punishment" and, therefore, unmistakably unconstitutional! Surely it is the inherent right of every delegate here to fix some limit upon the amount of oratory he will endure. And, certainly, that right is not forfeited by the mere fact that we are delegates to the Convention.

Under the original amendment to our Rules, some 26 hours of oratory on each question becomes a possibility—a remote one, I admit. But in this day and generation, with all the other hazards that beset us, I, for one, am disinclined to tempt a friendly Providence.

My second, and last, objection deals with the effect of this proposed amendment upon the atmosphere in which this Convention was organized and in which atmosphere it has thrived and justly earned the support and confidence of the people of this State. This is essentially a people's convention. We have emphasized the popular character of this assemblage on our letterhead which reads:

CONSTITUTIONAL CONVENTION
of the
STATE OF NEW JERSEY

And then significantly below that, in parenthesis, we say:

(Authorized by vote of the People June 3, 1947)

Each of the committees charged with the writing of a section of the Constitution has arranged public hearings, and every citizen of this State has been encouraged to express his views. The people of New Jersey have come to feel that their ideas are being considered—that they are truly being consulted upon the proposed basic law under which they will live in the future.

Our President has provided ample time for each delegate to be heard. On the least important motion before this Convention ample opportunity has been allowed for proponents and opponents alike to be heard.

If the amendment to the Rules that has been suggested is adopted there is grave danger, in my opinion, that this salutary atmosphere which now surrounds us will disappear. It seems to me there will be a tendency for us to divide into groups on each issue. And instead of all the delegates participating in the debate, spokesmen for each group will bear the brunt of the forensic battle. The atmosphere of a peoples' assembly will rapidly become that of a legislative body, with party lines more tightly drawn from day to day.

Upon first reading this amendment seems eminently reasonable. But upon further study I feel it is less reassuring. I would like to summarize its defects in conclusion:

1. I think it may fatally affect our timetable.
2. I think it grants that which, within reason, we already possess.
3. It possesses in my opinion the potentiality of impairing the healthful atmosphere in which this Convention is now operating.

I earnestly recommend that this amendment be defeated.

PRESIDENT: Mr. Smith.

MR. GEORGE F. SMITH: Mr. President and fellow delegates:

I believe that Mr. McMurray has placed a discerning finger on the inadvisability of the proposed resolution. As has been pointed out, Rule 46 provides for ample time for debate for any delegate, and the President has reassured us that he, and I am sure the delegates of the Convention as a whole, will provide additional time if that is required.

There isn't any question but that we are facing a very tight time schedule. The President has pointed out that we have six weeks left before we are required to submit the proposal to the Governor.

I think we should recall that those six weeks represent roughly 18 Convention days. When we reduce that to the number of hours that we could allow unlimited debate by individual groups, I am afraid that we will deny the people the right for which they fought in the vote that they cast for this Convention a few weeks ago.

I urge the rejection of this resolution.

PRESIDENT: I would like to call the attention of the delegates this morning to the intention of Senator Milton, which I think may have been overlooked. That is, as I understand it, Senator, in your judgment it would be inadequate from the point of view of the speaker not to know until the end of his first 15 minutes whether he is going to have additional time, so he couldn't plan his presentation.

I believe I set forth what Senator Milton has in mind in saying that his point of view involves the speaker knowing, by some device or procedure, in advance how much time he shall have. I should hope that whatever method the Convention adopts, provision will be made to that effect.

Mr. Orchard.

MR. ORCHARD: We have received a charge from our President this morning that delegates would get all the time they need. Will Senator Milton agree to tabling his resolution and, if we find that the President's program does not work out, then take the resolution off the table and vote on it?

PRESIDENT: Do you ask a question of Senator Milton?

MR. ORCHARD: Yes.

PRESIDENT: Do you care to reply, Senator?

MR. MILTON: I most certainly do. I shall be very glad to reply. I still think that we have not established with clarity, what can be done very simply by the adoption of this proposal. And despite the fear which I detect lurking in the minds of these gentlemen, there will be no abuse of the amended rule if my proposal should be adopted. With all respect to Delegate Orchard, I don't think his suggestion is a workable, practical one.

PRESIDENT: Mr. Dwyer.

MR. WILLIAM J. DWYER: Mr. Chairman and fellow delegates:

I would fear greatly an interpretation by the press throughout the State that we were stifling debate on the floor here on any of the greatly debatable subjects that are to come before us. And I would endorse the latter recommendation of Senator Milton because I feel assured from my experience with Senator Milton in committee work, and I feel I speak the feelings of most of the men who have contacted Senator Milton during the course of the Convention, that he would not resort to any undue process of getting before this

Convention in the form of filibuster or any other device which might hamper the efficiency of the Convention in its deliberation. But it is very easy for a press that is tactless in its criticism to seize upon an interpretation of this discussion this morning to say that we have denied complete deliberation on any subject.

Now, as to the limitation presented by the previous speaker. We are privileged to meet here, as I understand under the Rules, day in and day out, if necessary, to get the work of the Convention through. Rather than stifle any debate, I would prefer that we come here every day, if it be necessary, to complete the work of the Convention by September 12.

PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: Mr. President, I think the proposal of the delegate from Hudson proceeds wrongly from the premise that under the Rules there is an allotment of time to the delegates to speak. That is not so. There is no allotment of time, but there is a limitation of time consistent with the right of each member to be heard on any question. I think from that standpoint the proposal is not properly presented. It isn't consistent with the whole idea of a constitutional convention—deliberation and the benefit of common counsel among its members.

Oftentimes members may not desire, originally, to be heard on a question as it comes up, but as debate develops they may wish to be heard upon a point raised in the course of debate. Should the proposal of the gentleman from Hudson be adopted, the member who has assigned his time would find himself foreclosed from making known his views, and the other members would find themselves foreclosed from hearing the views which that member would have expressed upon the question.

In my studies of the proceedings of constitutional conventions in other states I have found there has always been a limitation of time. I see no reason why this Convention should depart from established parliamentary practice as it relates to constitutional conventions.

Now, Mr. President, the gentleman from Hudson has said that we ought to depend upon the good sense of the speaker with respect to prolonging his remarks needlessly. Perhaps I should say that he ought to depend upon the good sense of the members of this Convention that they will not attempt to stifle a speaker who is in the midst of an interesting exposition on any question, because I think it is the desire of this Convention and its members to listen to any interesting exposition on any point that any member may have.

I think that the proposal as originally introduced, and the amendment, should be defeated.

PRESIDENT: Senator Morrissey.

MR. JOHN L. MORRISSEY: Mr. Chairman. In agreement with

the suggestion made by Senator Milton, I would like to offer an amendment to read—inserting after the words "of all the delegates" —insert "not exceeding five in number." This would make the new part of the rule read—"provided, however, any delegate may assign in writing all his time to another delegate which, when filed with the Secretary, shall entitle the delegate holding the assignments to speak for his own allotted time plus the time of all the delegates, not exceeding five in number, assigning to him. Any delegate so assigning shall not be heard on the question."

I offer that as an amendment.

PRESIDENT: Is that amendment, Senator Milton, acceptable to you?

MR. MILTON: I have accepted the amendment, yes.

PRESIDENT: Judge Stanger.

MR. FRANCIS A. STANGER, JR.: A point of information, addressed to Senator Milton and now to Senator Morrissey, in view of the amendment that has been offered: Will the gentlemen agree that the number of assignments that may be presented be limited to three? That would give each speaker one hour, and in my judgment that would be sufficient time for one speaker to present the subject. There may be other speakers on the subject. And I would like to ask these gentlemen if it may be limited to three in the proviso limitation to be attached to the resolution, or in the resolution itself?

MR. MILTON: As the introducer of the resolution, I so agree.

PRESIDENT: Mr. Morrissey.

MR. MORRISSEY: Yes, I agree.

MR. STANGER: Then I may express myself as entirely favorable to the resolution.

PRESIDENT: Mr. Read.

MR. READ: Mr. Chairman and fellow delegates:

Judge Stanger practically echoed the idea I was going to suggest. Preserving the non-partisan line which Delegate McMurray feared might be violated if we adopted the amendment, I feel that a delegate should have the time of three delegates besides his own, which would give one hour on the proposal and 20 minutes in rebuttal. However, I might call your attention to the fact that we have in the Rules, on page 12, Rules 25, 26 and 27, a matter of the Committee of the Whole. I think if you will read Rule 26 somebody can move to go into Committee of the Whole, and under Rule 26 we can fix the time and limit the debate when we come up to the general proposition in full Convention.

But I am not adverse to Judge Stanger's proposal that the speaker have three besides his own, which will give him one hour. I believe there are subjects here which I wouldn't want to speak on for an

hour. I am not going to speak on anything for an hour, but some of you will.

PRESIDENT: Any other comments?

MR. LAWRENCE N. PARK: Mr. President and delegates: I arise to second the motion made by Senator Morrissey.

PRESIDENT: Any further discussion? Mr. Dixon.

MR. AMOS F. DIXON: Mr. President, I rise to a point of order. According to Rule 38, an amendment must lay over for one full Convention day. I take it that applies to Mr. Morrissey's amendment, just the same as it did to the original amendment, and that that amendment should not be debated until a full Convention day has passed. That is Rule 38.

PRESIDENT: It seems to me, Mr. Dixon, I am not a lawyer, but that we are still discussing the original proposal in modified form. Senator Morrissey.

MR. MORRISSEY: I wish to say, Mr. President, I don't feel as though this is an amendment. We are still discussing the original amendment.

MR. DIXON: Is that the ruling of the chair—we are still discussing the original amendment?

PRESIDENT: Yes.

MR. DIXON: Mr. President, I think we have discussed it pretty thoroughly, particularly in view of the President's comment. In view of the feeling of the delegates who have spoken, that plenty of time will be given to any man who is presenting material of interest or a new viewpoint, it seems to me that we should stick to the Rules of our Convention. I want to emphasize particularly that I have no lack of faith in the eminent gentleman who has sponsored this original amendment to our Rules. Nor have I any lack of faith in any other delegate in the Convention, but it seems to me that this rule was promulgated and adopted by the Convention for the purpose of keeping a firm hold upon the Convention, and I feel that we should stick to the original Rules.

Therefore, Mr. President, I move that the previous question shall now be put. I assume we are voting on the original amendment with such changes as have been accepted by the sponsor of the original amendment.

PRESIDENT: There is a motion on the floor, seconded, that the previous question be put. This motion, I understand, permits no debate. I would like to be informed if I am wrong.

MR. MILTON: I ask for a roll call.

PRESIDENT: The Senator has asked for a roll call, and I shall ask the Secretary to call the roll on this motion.

May I restate it in this form, if I may? I understand that Senator Milton's motion, as amended by Senator Morrissey is that

"No delegate shall speak more than twice on 1 question, or longer than 15 minutes the first, or longer than 5 minutes the second time, or more than once until other delegates who have not spoken shall speak if they so desire, without first obtaining leave of the Convention; provided, however, any delegate may assign in writing all his time to another delegate which, when filed with the Secretary, shall entitle the delegate holding the assignment to speak for his own allotted time plus the time of all, not exceeding three in number, the delegates assigning to him. Any delegate so assigning shall not be heard on the question; and the mover of the proposition shall have the right to close the debate, provided that the person in charge of a proposal on third reading and final agreement shall have the right, if he desires, to close the debate and he may announce such desire at any time before the taking of the vote on the question."

MR. MILTON: Will you please inform the delegates, Mr. President, whether or not we are voting upon whether the previous question should be put now, or upon the meritorious and fundamental question. You have not made that clear, as I understand it. My roll call is upon whether or not the previous question shall now be put.

PRESIDENT: Thank you, Senator. We will proceed to call the roll on the question—Shall the previous question be put? Secretary?

SECRETARY *(calls roll):*

YEAS: Barus, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Dwyer, W. A., Emerson, Feller, Ferry, Gemberling, Glass, Hadley, Hutchinson, Jacobs, Katzenbach, Lance, Lewis, Lightner, McMurray, Miller, G. W., Montgomery, Moroney, Murray, Orchard, Park, Paul, Peterson, H. W., Pursel, Randolph, Sanford, Saunders, Smith, G. F., Smith, J. S., Sommer, Struble, Taylor.

NAYS: Berry, Brogan, Camp, Drewen, Dwyer, W. J., Eggers, Hacker, Hansen, Holland, Jorgensen, Kays, Lloyd, Lord, Milton, Morrissey, Murphy, O'Mara, Peterson, P. H., Proctor, Pyne, Rafferty, Read, Schenk, Schlosser, Smalley, Stanger, Streeter, Van Alstyne, Walton, Wene, Winne, Young.

MR. A. J. CAFIERO: Mr. President, I got lost in the confusion as to "Shall the previous question be put," and I voted "No." I wish to withdraw that and vote "Yes."

MR. THOMAS J. BROGAN: Mr. President, would you be good enough to instruct the Secretary to change my vote to "No." I mistook the statement of the question, too.

PRESIDENT: Well, the Chairman apologizes to the delegates for any misunderstanding he may have caused on this point. We have voted on "Shall the previous question be put?"

SECRETARY: 42 in the affirmative, and 32 in the negative.

PRESIDENT: The motion, then, that the previous question be put, has been carried. Are you ready for the motion on the resolution offered by Senator Milton?

MR. MILTON: I ask for a roll call on the submission of the proposal, and I might state my understanding that the proposal which

is now before the Convention contains the amendment suggested by Senator Morrissey and Judge Stanger—in other words, it is limited to three in number, in addition to the original time.

PRESIDENT: The Secretary will call the roll on the resolution.

MR. WESLEY L. LANCE: It wouldn't take the Secretary more than two minutes to read exactly what we are voting on and I suggest that he do it.

SECRETARY *(reading):*

> "*Resolved,* that Rule 46 be amended to read as follows:
> 'Rule 46: No delegate shall speak more than twice on I question, or longer than 15 minutes the first, or longer than 5 minutes the second time, or more than once until other delegates who have not spoken shall speak if they so desire, without first obtaining leave of the Convention; *(new matter) provided, however, any delegate may assign in writing all his time to another delegate which, when filed with the Secretary, shall entitle the delegate holding the assignment to speak for his own allotted time plus the time of all the delegates, not exceeding three in number, assigning to him. Any delegate so assigning shall not be heard on the question;* and the mover of the proposition shall have the right to close the debate, provided that the person in charge of a proposal on third reading and final agreement shall have the right, if he desires, to close the debate and he may announce such desire at any time before the taking of the vote on the question.' "

MR. MORRISSEY: Mr. Chairman, so that we might not have any further confusion, I take it now that a vote "Aye" is in favor of the amendment.

PRESIDENT: A vote "Aye" is in favor of the resolution presented by Senator Milton, as amended by Senator Morrissey and Judge Stanger. A vote "No" is, of course, in opposition.

SECRETARY *(calls roll):*

YEAS: Berry, Brogan, Camp, Carey, Cowgill, Delaney, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Feller, Hacker, Hansen, Holland, Hutchinson, Jorgenson, Katzenbach, Kays, Lightner, Lloyd, Lord, Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, O'Mara, Park, Peterson, P. H., Proctor, Rafferty, Read, Schenk, Schlosser, Smalley, Smith, J. S., Stanger, Streeter, Wene, Winne, Young.

NAYS: Barus, Cafiero, Cavicchia, Clapp, Constantine, Cullimore, Dixon, Drenk, Ferry, Gemberling, Glass, Hadley, Jacobs, Lance, Lewis, McMurray, Miller, G. W., Orchard, Paul, Peterson, H. W., Pursel, Pyne, Randolph, Sanford, Saunders, Smith, G. F., Sommer, Struble, Taylor, Van Alstyne, Walton.

43 in the affirmative, 31 in the negative.

PRESIDENT: The Secretary reports that the vote in favor of Senator Milton's resolution, as amended, is 43; those in opposition 31. The resolution is carried and adopted.

I want to point out, although it's not necessary, that while we've had a difference of opinion here as to method and technique, what we've all wanted is the same thing, and that is to insure that all

those who have things to say have the opportunity of saying them. I beseech the entire support and cooperation of all the members of the Convention in support of this resolution.

MR. DIXON: Mr. President, I have a resolution to offer which I wish to hand to the Secretary to read.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "Whereas, definite consideration of proposals for the Revised Constitution will be ready for the Convention by Tuesday, August 5, and a study of the time required indicates the necessity for great expedition in their consideration;
>
> Therefore be it resolved, that the Convention meet on Tuesday, Wednesday, Thursday and Friday, at ten o'clock A.M. of each week, beginning August 5, unless developments indicate that a further change in the schedule should be made."

MR. DIXON: I move the adoption of the resolution.

MR. HADLEY: I second the motion.

PRESIDENT: The resolution has been made and seconded. Any discussion?

(Silence)

PRESIDENT: I think I understand what Mr. Dixon has in mind, and that is that time is growing short. While this resolution is not a rigid and cast-iron timetable, it will permit us to make our personal plans in such a way as to be present on these days in order to dispatch the work of the Convention and at the same time have Monday and Saturday in our own home bailiwick for the dispatch of personal business.

Mr. Dixon.

MR. DIXON: I have no other statement to make. I think the resolution speaks for itself, together with your comments, Mr. Chairman. As you point out, we will vary this schedule if needed, but this September 12 deadline is staring us in the face. Just a relooking over the schedule required for the handling of these reports back and forth between the committees and the Convention indicates that we are going to be very, very short of time. I feel that we are in a much better position in doing the spade work at the beginning of the consideration of these proposals, rather than finding that we have got to at the last moment do a great deal of night work in addition to the day work.

PRESIDENT: Is there a discussion on this motion?

(Silence)

PRESIDENT: Are you ready for the question? All in favor say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried.

Mr. Orchard some time ago made inquiry of Mr. Gemberling. I wonder if Mr. Gemberling is prepared to reply?

MR. GEMBERLING: Mr. President and delegates:

The cash balance today is $337,642.50. If all the commitments and bills were paid to date, there would be a balance of $299,000.97. That includes an amount set aside for the special committee, the special Publicity Committee. Very little has been paid to that committee.

I can't give you the detail of the outstanding bills and commitments, but I will have a complete report at our next meeting.

PRESIDENT: Will that be agreeable to you, Mr. Orchard?

MR. ORCHARD: Yes.

PRESIDENT: Are there any questions you want to present now?

MR. ORCHARD: I'll wait until next week.

PRESIDENT: All right. Is there any other business to come before the Convention at this time?

MR. GEMBERLING: The delegates are very slow in handing in their expense slips.

PRESIDENT: I would like to report that a request has been made that an official photograph of the Convention be taken. Arrangements have been made, I believe, for this group photograph to be taken here next Tuesday, a week from today, at the conclusion of the morning session.

I have been requested to announce this to the members of the Convention now, in order that they may as far as possible make their plans to be here at that time. We wish, of course, to have this group photograph complete in every detail.

I would like to remind the chairmen of the standing committees that we will meet at lunch today as usual.

Is there anything else to come before the Convention?

(Silence)

PRESIDENT: The Secretary has asked me to announce that he plans to send a timetable each week to the delegates to the Convention in order that each of us may have full information of the schedule of events. The first has already gone out and will doubtless be in your hands tomorrow, if it is not already in your hands.

Is there a motion to adjourn?

DELEGATE: I so move.

(Seconded from the floor)

PRESIDENT: It has been moved and seconded that we adjourn until next Tuesday morning at ten o'clock. All in favor, say "Aye."

(Chorus of "Ayes")

PRESIDENT: The motion is carried.

(The session adjourned at 11:40 A. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

August 5, 1947

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and spectators to rise while the Reverend Walter Herbert Stowe of Christ Church, New Brunswick, pronounces the invocation.

REVEREND WALTER H. STOWE: O God, the fountain of wisdom, Whose statutes are good and gracious and Whose law is truth, send Thy Holy Spirit into the hearts of the members of this Constitutional Convention that they may have a right judgment in all things, and that there may be ordained for our governance only such things as please Thee, to the glory of Thy name and to the welfare of the people, through Jesus Christ, our Lord, Amen.

PRESIDENT: The first item on the docket is the reading of the Journal. What are your wishes in this respect?

MR. ROBERT CAREY: I move the reading of the minutes be dispensed with.

(Seconded from the floor)

PRESIDENT: It has been moved and seconded they be dispensed with. Is there any discussion?

(Silence)

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):* Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson,

Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

A quorum is present, sir.

PRESIDENT: The Secretary reports that a quorum is present.

Last week we passed the half-way mark in our deliberations; six weeks gone and six weeks to go. A week has elapsed since then and now we stand seven gone and five to go. We're all aware that time is marching on. Whenever we stop to consider the magnitude of the task which still awaits us, we realize, I think, that the next three or four weeks will have to be a period of concentrated effort.

The Proposals of the Committees on Rights and Privileges, the Legislative, the Executive, the Judiciary, and Taxation and Finance, are all on our desks this morning in printed form, and the corresponding Reports are on our desks, too. The chairmen of these committees will present these reports officially this morning, and I hope that each of them, as he does so, will take the opportunity of discussing his Report briefly, or at least at reasonable length, touching on the high spots and summarizing very briefly the Proposals themselves. I have a feeling that all the delegates will be grateful if they will do so.

Under the Rules of the Convention we must recess for four days to permit the delegates time to read and study these Proposals and the corresponding Reports. Very few of the delegates, naturally, have been able to know what the several committees, other than their own committee, have done, and Rule 53 providing for this four-day interim was designed to serve this purpose. In order to save time, which is rapidly becoming precious, we considered the advisability of amending Rule 53 in order to permit the start of discussion on the floor Wednesday or Thursday of this week, instead of next Monday. The chairmen of the standing committees felt that in so doing we would defeat the purpose of the rule itself,—that of allowing all the delegates full and ample opportunity to study the several Proposals and Reports. So when we assemble next week, we should all have seized this opportunity and should come prepared to participate in the actual discussion.

The rapid passage of time indicates the urgent importance of saving every possible day. I hope that at the proper time this morning, the delegates will consider the advisability of adopting a resolution that until further notice we meet five days a week instead of four, from Monday until Friday. I'm sure that we all agree in

the hope that it will be possible to avoid resorting to evening work, at least until later in the month when we see where we stand on our timetable.

The next item on the docket is the report of standing committees. I will ask Mr. Schenk to report for the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

By the way, I should interrupt here long enough to say that our engineers have restudied our loud-speaking system, as you will have observed. I have been asked to announce to the speakers that they are requested to stand on those rubber mats. If they stand on the rubber mats, their voices will be audible all through the Gymnasium. Of course, for those who use the front rostrums, that takes care of itself, but those who use the four microphones in the middle of the floor are asked to stand on the rubber mats.

MR. JOHN F. SCHENK: Fellow delegates, I hope you can hear me. I don't feel quite up to the stature of Goliath this morning.

(Laughter) [1]

I also hope the rubber mat will insulate me from some of the comments that may be passed after this extemporaneous effort.

I did feel when we filed our Report that that would probably end the work of the chairman of the committee insofar as reporting to the Convention was concerned. But Dr. Clothier has asked me to comment briefly on the Proposal as presented by the committee, and I will now do so, very briefly.

You have on your desk Proposal 1-1, with the Committee Report. It is pretty much self-explanatory, in my opinion, except where we have the line or sentence, "No change from the present Constitution." That refers to language and philosophy, rather than section number. I wrote you all a letter to that effect over the weekend. You may or may not have received it.

We are recommending the Preamble as it is found in the present Constitution.

Article I, Section 1, of course, has a basic change, going to the word "persons" and the word "men."

Section 4 has an interesting and important change, in that we have added the word "racial" to the phrase referring to no religious test as a qualification for office.

New Section 5 goes to the matter of civil rights; no discrimination in civil rights, for five very important reasons.

Under Section 8 a new thought is added, that the Legislature may authorize trial of the issue of mental incompetency without a trial by jury. I know that that will be a matter the Convention will wish to look into. We feel very strongly that it is proper and right.

---

[1] The microphones were suspended a short distance above average head-level, requiring the speaker and those who followed to talk upward at the microphone.

New Section 17 is important, in that the words "but land may be taken for public highways as heretofore, until the Legislature shall direct compensation to be made," have been deleted. The effect of leaving that out, I believe, is to broaden the authority of the State or its political subdivisions to acquire land in advance of compensating the owners for it. For instance, if land is needed quickly for an important bridge or a housing project, it could be assembled and used and the proper compensation determined later.

New Section 19—there has been quite some comment on that. The free assembly clause has been included, but extended to include the right of privately employed labor to organize and bargain collectively, with the additional thought that publicly employed labor may organize and make known its grievances and requests to the public authorities.

I believe that covers the highlights of Article I, Mr. Chairman. I'll just comment briefly a little further on some other points.

Of course, under Article II, Right of Suffrage, Section 3, the word "male" has been stricken out. We now have all citizens included, in conformity with the Federal Constitution.

Under Section 4 a new thought has been added, giving the Legislature the right to provide for absentee voting by members of the armed forces in time of peace. The thought of the committee was this, that we might have eras of great public danger, but not actual war, and we might have a large military force under arms and away from the voting places and unable to return voluntarily on a particular voting day, and the Legislature might care to have the right —we thought they should have the right, rather—to extend the franchise to those citizens.

Under Section 6 the word "pauper" has been eliminated. The old phrase was "no pauper, idiot, insane person . . ." shall enjoy the right of an elector.

Article III is self-explanatory. I will pass over that one.

Article VIII, General Provisions. You will notice in our explanation under Section 3, that we included the words "countersigned by the Secretary of State," because it was the opinion of the majority of the committee that the Secretary of State should be included in the Constitution as a constitutional officer. This is a matter to be determined by the Convention.

Section 4 defines the words "person" and "persons," "people" or "peoples," "man" or "men," to include both sexes. The committee felt that this was important and would go to the question of equal rights for women, which has been much discussed before our committee and would be helpful in that respect.

Article IX, Amendments. You will notice that the special election has been eliminated. The need to go through two houses twice in

the Legislature has been eliminated in the majority report, and the basic vote needed to pass an amendment originally is three-fifths of the membership of each of the two houses. A public hearing is provided for before any amendment is to be acted upon, of course, and the additional thought is included of giving the Governor the right to pass on an amendment when it first passes both houses of the Legislature.

Under Article X, Schedule, we believe the items are self-explanatory.

We had 18 Proposals presented to us, and I won't go through them all. We approved some, we disapproved others, and approved some in part. I will call your attention to the fact that there was also included with our Report a minority report by Mr. Carey, which I believe explains his opinion and the opinion of other members of the committee on two important parts of the majority report, namely, the amending process and the collective bargaining clause.

I believe that covers all I have to say at this time, Mr. Chairman.

PRESIDENT: Thank you, Mr. Schenk. Are there any questions?

(Silence)

PRESIDENT: If not, I'll ask Senator O'Mara if he will report for the Committee on the Legislative.

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

The Report of the Committee on the Legislative is on the desk of the delegates, and also the two Committee Proposals, which are, I think, numbered Committee Proposal No. 2-1 and Committee Proposal No. 2-2. The Report consists of some 16 pages, and sets forth in narrative form the results of the deliberations of the committee. I shall not attempt to go through it in detail now because I don't think that any useful purpose would be served. I call it to the attention of the Convention that the matters which represent changes from the existing Constitution are dealt with first in the Report. Then, beginning on page 12, there is a recitation of the matters which appear in the present Constitution which have not been changed substantially in Committee Proposal No. 2-1.

Those matters which have been changed relate, first, to the terms and salaries of the members of the Legislature. We recommended an increase in the term of members of the Senate from three to four years, and an increase in the terms of the members of the General Assembly from one to two years; and that biennial elections occur in years when no presidential or congressional election is held. I might say now that the Schedule which is attached to the Report has for its purpose readjusting the terms of the members of the Legislature so that biennial elections may be carried out and the

Senate may be elected, as nearly as may be, in two equal classes.

This Report recommends taking out of the Constitution any provision for fixing the salaries of the members of the Legislature. We felt that the experience of this State and of other states demonstrates the wisdom of not freezing a legislator's salary in the Constitution. We realize the alternative is that the Legislature must fix the salary of its own members. We have decided to ask the Convention, by a resolution at the proper time, to recommend to the Legislature what the salaries shall be in the first instance. The Committee's thought on that was a salary of $3,000 annually for the Senate and $2,500 for the Assembly, with a provision in the Constitution that any subsequent change in the salaries shall not become effective until a general election for members of the House of Assembly shall occur after the passage of the bill.

We have added an important provision dealing with the calling of special sessions. Under the existing Constitution, the Governor alone has the right to call a special session of the Legislature. We have set up in this Report a recommendation that the Legislature itself may provide for the calling of a special session.

We have recommended important changes in legislative procedure, especially a provision which would avoid what some have referred to as "legislative lightning." By that they mean the practice of reporting a bill out of committee, giving it a second reading, and then on the same day, perhaps within a matter of minutes, giving it a third reading. The recommendation of the committee is that the Constitution contain a provision that there must be one full calendar day between the second reading of a bill and the third reading. That would mean that if a bill were passed on second reading on Monday, it could not be moved on third reading and final passage until Wednesday. The committee is confident that such a provision, if it be adopted, would mean far more orderly sessions of the Legislature, and would give every member an opportunity to read and study the bills which he knows are going to come on third reading.

We have changed to some extent the provision regarding the disqualification of members of the Legislature for appointment to public office. We have enlarged the existing provision so as to provide that no member of the Legislature shall be eligible for election by any state board or agency to a position which has been created or the emoluments of which have been increased during his term.

We have inserted, or recommended the insertion of, a very important provision limiting the right of the Legislature to appoint executive, administrative, or judicial officers in joint session, and recommend that only the State Auditor may be elected by a joint session of the Legislature, or by either house. That, we feel, will

prevent the Legislature in the future from exercising what is essentially an executive function.

We have broadened the zoning provision, so as to make it apply not only to the regulation of structures and buildings but also to the regulation of the use of land itself.

We had a great deal of difficulty with the gambling clause, and we have decided to recommend to the Convention that there be submitted to the people at the November election a referendum on two alternative clauses on the subject of gambling. The first is the present gambling, or anti-gambling, clause which restricts the Legislature from authorizing any kind of gambling except pari-mutuel betting at race tracks. The second would retain the provision authorizing the Legislature to legalize pari-mutuel betting, and in addition would permit the Legislature to authorize and regulate the conduct of specified games of chance by bona fide charitable, religious, fraternal and veterans' organizations, provided that the proceeds inure entirely to the benefit of the organization conducting the operation of the bazaar, or whatever it might be; provided, also, that any act which the Legislature might pass pursuant to this constitutional provision could not become operative in any municipality unless and until it was adopted by the votes of the people of that municipality.

We recommend that the present restriction on the Legislature in the matter of passing private, special or local laws regulating the internal affairs of municipalities, be changed so as to permit the passage of laws regulating the internal affairs of a county or a municipality under these circumstances: that the governing body of the municipality or county involved should initiate the proceedings by resolution or other appropriate action; that the act of the Legislature must be passed by a two-thirds vote of each house, and that after passage by the Legislature the act must be accepted by the municipality or county either by ordinance of the governing body or by referendum of the people, as the Legislature may ordain.

We have recommended the insertion of a home rule clause which I recommend to your careful consideration. In effect it will change the present rule of construction whereby the courts hold that a grant of power to a municipality shall be strictly construed. If the clause which we recommend is inserted in the Constitution it will have the effect of requiring the courts to construe grants of power to municipalities broadly. Also, the provision sets forth that the municipalities shall have not only those powers which are necessarily implied from the powers which are specifically granted, but may also have those which—I am trying to find the exact words—also all powers reasonably convenient for the execution of the powers which are specifically conferred upon the municipalities.

Then we come down to page 12 of the Report and we find there a recital of some 21 provisions of the existing Constitution which the committee recommends be written into the present Constitution without substantial change.

A number of matters were proposed to the committee which we felt had no proper place in the Constitution; for instance, the question of lobbying, and also the question of the continuous revision of the statutory law. While we felt that provisions dealing with those subject matters did not have a proper place in the body of the Constitution, we are unanimously of the opinion that they were subjects of such vital importance that this Convention should recommend to the Legislature the adoption of appropriate laws dealing with them. A resolution carrying out that recommendation will be presented to the Convention at the appropriate time.

We have appended to the Report the Schedule, the sole purpose of which is to re-arrange the terms of members of the Legislature to bring them in line with biennial elections and the election of half of the Senate every two years.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: Thank you, Senator.

I will ask Senator Van Alstyne to report for the Committee on the Executive, but before doing so, may I ask whether the loud speaking system is working satisfactorily?

(A number of delegates—"Yes")

PRESIDENT: All right, Senator.

MR. DAVID VAN ALSTYNE, JR.: Mr. President, and delegates to the Convention:

It gives me pleasure to introduce the Proposal marked 3-1 of the Committee on the Executive, Militia and Civil Officers which is on the Secretary's desk.

It has been suggested, in line with the reports of the two previous chairmen, that I make a brief summation of the outstanding features of our Report.

The Report comes first in the printed document, and the salient features of what we have tried to accomplish begin to be enumerated on page 5. Then the Report continues and it is followed by the Proposal and a very brief Schedule.

The Governor's term in this Proposal has been extended from three to four years. He is allowed to succeed himself once. The provisions are so worded that no Governor can be in office continuously for more than eight years. The phrase which is traditional to the Governor, "to take care that the laws be faithfully executed," has been implemented a little bit more by giving him

positive authority to bring action, if necessary—to call on the courts to impel action to see that the laws are upheld. No Constitution, so far as we know, of any of the 48 states has in it a provision such as we have put in this.

There is no provision in the Constitution to force action on the part of a Governor for nonfeasance. In other words, if a Governor is elected and fails to take office, or if a Governor is sick, or if a Governor absents himself from the State for any length of time, there is no provision in the Constitution that can force any action at all. We have put such a provision in this Proposal; if there is such a failure to qualify or an absence, or if a Governor is continuously unable to perform his duties, for more than six months, then the Legislature by a vote of two-thirds of the members of each of the houses may make a presentment to the Supreme Court of the State, and if the Supreme Court determines the fact of disability, then the office of Governor is declared vacant and the normal succession takes place.

We has set forth that the Legislature must authorize additional lines of succession to the ones which now exist.

The veto power is strengthened, requiring a two-thirds vote by both houses to override a veto instead of a majority.

At the present time the Governor, as you know, has the right to veto any single item of the appropriation bill, but he has no authority to reduce it. This will give him the authority to reduce such an item as well as to veto it.

The time allowed the Governor to consider bills under the present Constitution is only five days while the Legislature is in session. That has been extended to ten days. Also, after the Legislature has adjourned *sine die,* the Governor will have 45 days in which to consider bills, Sundays excepted. But there will be no chance for a pocket veto because automatically on the 45th day after the Legislature has adjourned *sine die* it will come back into session for the sole purpose of considering bills that have been vetoed.

The Governor's power of pardon is maintained completely, with the suggestion in the Constitution that he be assisted, if desired by legislative action, by a board or some other body. It is left entirely up to the Legislature to decide what system shall be used for parole. In fact, the Legislature in this Proposal is instructed to set up a parole method.

In the case of the Militia section, we have made two major changes. We have eliminated the old wording about the election of officers by the men and we have changed that so that we tied our militia up to federal standards. That seems to be so prevalent that we thought it was the thing to do. Furthermore, this method protects the present officers so far as tenure of office is concerned—

tenure as it is understood by the federal authorities or the United States Army. It means they are subject to investigation so far as their physical fitness and efficiency is concerned.

The number of principal departments in the Executive branch is limited to 20, and each principal department shall be headed by a single executive, except as otherwise provided by law. Senator O'Mara has dragged all the difficult ones right out on the Convention floor—we will drag this one out, too, by saying that we have allowed the Legislature to change that by law. If necessary in the wisdom of the Legislature, the head of a department can be a board or a commission, and that would mean that the Legislature could permit the present Department of Institutions and Agencies and the present Board of Agriculture to function in approximately the same way as at present.

The Governor shall appoint the heads of these principal departments by and with the consent of the Senate where they are a single head, and where there is a body or a commission as the head of a department the executive head will be appointed by that board or commission by and with the consent of the Governor.

Various present constitutional officers have been eliminated, following the practice of practically every other state constitution.

The Governor's power of removal has been very considerably strengthened so that the single heads of departments appointed by him serve distinctly at his pleasure, and he can remove them without cause of any kind. In the case where a board or a commission appointed the head of a department by and with his consent, he may remove such head of a department after notification, service of charges, and an opportunity to be heard at a public hearing.

We have put another new note in this Constitution by saying this—I think I would rather read you the wording exactly as we have it in the Report: "Administrative rules and regulations shall be required to be filed and published according to law, so that those citizens who are subject to them may have a reasonable opportunity to be informed of their contents." We do not think it is right for certain commissions that have practical rules and regulations to make to be able to make such rules and regulations without the people as a whole being given due notice so that they can be put in a position to obey the law.

So far as Civil Service is concerned, we have put in the Constitution that the merit system shall be mandatory but that the details of the functioning shall be left up to the Legislature.

In closing, one sentence in our Report, I think, exemplifies the attitude of your committee. This is the sentence: "Your committee has followed the principle that the Governor shall be strong in his branch of the government, but that he shall be precluded from

infringing upon the other branches."

We, of the committee, respectfully submit our Proposal and our Report.

May I ask that our committee meet in our Committee Room 109 immediately after this session?

PRESIDENT: Are there any questions the members of the Convention would like to ask Senator Van Alstyne? Mr. Emerson.

MR. SIGURD A. EMERSON: Senator, in the tentative draft there was a provision that the same person may not succeed himself after serving two full terms. Will that make it possible for him to be elected for an unexpired term and two full terms? Has that been corrected in the final draft?

MR. VAN ALSTYNE: Yes. I spoke of that in my report, sir. I stated that the way we have arranged it, nobody can serve as Governor for more than eight consecutive years. In other words—I forget the exact place here—but we specifically state that when we speak of two terms, partial terms are definitely specified as one term.

MR. EMERSON: Oh, yes, I didn't get that. Thank you very much.

MR. VAN ALSTYNE: Page 13.

MR. EMERSON: Yes, thank you very much.

PRESIDENT: I will ask Dean Sommer or Mr. Jacobs to report for the Committee on the Judiciary.

MR. NATHAN L. JACOBS: Mr. President and delegates:

At the request of Dean Sommer I am submitting Committee Proposal No. 4-1 with the committee's recommendation for its adoption.

The committee has sought to achieve several basic principles, notably unification, simplification, centralization of responsibility and authority, elimination of judicial wastage, and elimination of conflict of jurisdiction and other abuses that occurred in the past many years.

You will note from Section I that the judicial power under the Proposal is vested in a top court which is called a Supreme Court; a state-wide court which is a General Court; and inferior courts which are subject to legislative alteration. The top court consists of a Chief Justice and six Associate Justices.

There was some suggestion that the name be changed from Supreme Court to some other name. The committee felt that the Supreme Court was its appropriate terminology in view of the fact that most of the public considers the Supreme Court as being the top court.

You will note that the Supreme Court is given comprehensive power to adopt rules of practice and procedure for all the courts

in the State, a power analogous to that possessed now by the United States Supreme Court. However, the Legislature would have power under the Committee Proposal to alter those rules of practice, analogous to the power now possessed by the Congress of the United States.

The state-wide General Court is to consist of three divisions, a Law Division, an Equity Division, and an Appellate Division. The Law Division will, of course, hear cases which the legal profession commonly understands to be law cases; the Equity Division will hear equitable cases. We have left divorce cases exactly as they are now, namely with the Equity Division.

The Appellate Division will hear appeals primarily from the Law and Equity Divisions and from inferior courts as provided by law. In certain limited cases, appeals will go directly to the Supreme Court, namely, cases involving constitutional questions, cases where there is a dissent in the Appellate Division, capital cases, cases where the top court certifies, and such other cases as are provided by law.

Inferior courts, as I said, are subject to legislative control, but mind you, we have retained the county courts subject to that control.

I think if you go on to Section V, you will note the various details as to appointment. Members of the top court hold office during good behavior, and those of the General Court are given a trial term of seven years and life tenure thereafter. Retirement at 70 is compulsory, provided, however, that present judges may continue until the expiration of their terms.

The Schedule embodies a good deal of transitional material, none of which I will burden you with here. I think that if you read the details carefully you will find that we have achieved in very substantial measure the basic principles which I mentioned at the outset.

Thank you.

PRESIDENT: Are there questions members of the Convention would like to ask Mr. Jacobs?

(Silence)

PRESIDENT: If not, then I'll ask Mr. Read to report for the Committee on Taxation and Finance.

MR. WILLIAM T. READ: Mr. President and delegates to the Convention:

It was the intention of our committee to meet after the Convention this morning and draw up a Supplemental Report which would in a measure or fully, we hope, explain just exactly why we had acted upon the various proposals put before us and supplement this report. I may do that briefly. Of course, if not fully enough,

I am sure the committee will in its Supplemental Report cover all of those questions.

There was referred to our committee certain parts of the present Constitution under Article I, Rights and Privileges, and others under the Legislative Article. We have suggested that all of these articles be taken from their present place in the present Constitution and that a new article labeled or headed "Finance" be put in place thereof.

Starting out with Section I, the first sentence thereof is practically the first sentence, in fact it is Paragraph 12 of Article IV, Section VII of the present Constitution.

May I just correct a little error that has perhaps crept into the minds of some—perhaps not the delegates, but the general public? We are talking about reviewing and renewing and giving life to a Constitution 103 years old. This paragraph was not put in the present Constitution until 1875, within the lifetime of some of the members of this Convention. Therefore it is not so old a provision as to be considered ancient. However, in 1944, when the Constitution was proposed and voted upon adversely by the people of the State, there was attached to this provision, which was slightly differently worded, an exemption in favor of veterans. It was argued, perhaps rightly, by many persons, that that exemption being placed there would exclude all other exemptions; therefore all property now exempt would have to pay taxes. It would put burdens on churches and various hospitals and places of that sort which should not—I believe we feel should not—be taxed.

We have, therefore, put two exemptions into that clause, which exemptions merely try to keep the present exemptions we have. It would be a hardship to place taxation on those exempt properties today and also to allow the Legislature to do as it might please in regard to other exemptions, although somewhat limited.

Paragraph 2 is the same as in the present Constitution.

Paragraph 3: the first section is the same as in the present Constitution but more language, quite a little more, is added thereto to make more understandable and set forth more directly what the Legislature should do in regard to appropriations and change of fiscal year. This is necessary because, as you know, our United States fiscal year begins on July 1 and ends on June 30. As a matter of fact, not very long ago our fiscal year ended October 31 and began November 1. We changed it to the present fiscal year, so we could match the fiscal year of the United States Government. There are many who feel, however, that it ought to be made the calendar year. If so, this wording will allow them to make that change and also, in effecting that transition, not allow any appropriations to lapse.

Paragraph 4 is practically the same as the present one in regard to the debt of the State. We have added "or to meet an emergency caused by act of God or disaster," which was practically done in 1932 by the Legislature and looked upon with a great deal of propriety by the people of the State because those things had to be done. Therefore, we placed those words in there.

We had before us a proposition to limit the issuing of state bonds to serial bonds, the argument being that we compel the various municipalities to issue serial bonds and we ought to do the same thing with the State. However, we felt that that was a legislative matter and we have left it so that under this provision you can issue or have issued by the State either serial or general bonds, whichever you please.

Sections 5 and 6 are the present Sections 19 and 20 under Article I of our present Constitution. We did not change those. We had practically no one appear before us to ask a change in those sections, but we ourselves felt that some changes might be necessary. We asked questions of some of the state officials who appeared before us. We wondered whether it was constitutional for counties and municipalities to appropriate monies to hospitals. The state official said that it was because, generally speaking, the municipalities or the counties make a deal or a contract with the hospital authorities so that they are paying for indigent patients, and in that respect it is not unconstitutional but a carrying out of the proper wishes of the Legislature. Therefore, we made no change in those sections, although that matter was brought before us.

Section II, Paragraph 1 (a) and (b) are the provisions appearing in the present Constitution, except that you will find that (a) and (b) in our revision are separate sentences of a single paragraph in the present Constitution—Article IV, Section VII, Paragraph 6. A very charming lady came before the committee and appeared there 15 minutes, and we immediately decided—that was the first decision we reached—that that would be changed around. It makes much better reading and makes it more understandable.

Paragraph (c) is new. That is the one that I presume will come before the Convention for a hearing. It is the one which allows the school boards, within reasonable limitations as to distance, to provide free transportation for children between the ages of 5 and 18. That language was not the original proposal of '42 which came before us, but was suggested by culling out from the decision of the United States Supreme Court in the *Ewing Township Case.* That language seemed to be the only proper way to handle the matter.

I might state—going back to the very first paragraph, the first sentence of which is the present Paragraph 12, in Article IV, Section

VII of our present Constitution—we had several proposals in regard to that. One was not very seriously pressed; the other two were. The first was a proposal to keep the present language and add thereto words which would compel the assessing of real estate all over the State at an average real estate rate instead of another prescribed rate. It was felt, however, that in that case the law which was sought to be circumvented, or rather for which this constitutional provision would be substituted, did not relate wholly to real estate. Our sympathies were with those taxing districts, two of which are very seriously disturbed by the present legislation in that respect. The proposal would benefit those districts materially, but generally it would not help and would not be fair because that law, which it sought to circumvent or substitute for, contains matters of franchise tax and personal property tax, while this had only the real estate matter to decide. If some wording can be put in there which would solve the real estate matter and leave the personal property and franchise matter in another way, the committee might have looked upon it a little differently.

We had the State Chamber of Commerce and various other bodies and very many state officials propose that we keep the present Paragraph 12. The other proposal, an important one, which was presented to us, was one presented by the United Real Estate Boards of the State of New Jersey. That proposed to substitute language—I haven't got it before me—which allowed the assessing of property according to classification and by uniform rules, leaving out the true value. It was felt the words "true value" were the ones that had caused the present taxing system to be somewhat chaotic. However, it was the feeling of many in our committee that we could have, under the present Constitution, a proper redrafting of our taxing system which would compel assessors to tax as they should tax all over the State—in uniformity.

The last-mentioned proposal put to us was in four paragraphs—the first paragraph was the main one, which I have cited generally. The third paragraph provided, however, that where taxes were levied on an *ad valorum* basis they should be made according to true value, and therefore the proposal by the Real Estate Boards kept the words "true value" in that one instance only. It was felt by the committee, however, that on the whole we ran into less difficulty, perhaps, in keeping the present constitutional provision, with the exceptions I mentioned added, than we did in adopting the other. We have had a fund of decisions by our courts under the present constitutional provision. They have said we can classify, we can do certain things which are somewhat like the language of the proposal to us. You can have an income tax, you can have a sales tax, you can have lots of ways and means of raising money for

the State other than assessing and putting the burden on the real estate and the small property owner of our State.

We left undone something which perhaps should not be done at this time. It was the effort of our committee so to guide our efforts that nothing we did would add many adverse votes against the Constitution. I don't believe the people are going to vote 100 percent for it, but we tried to avoid creating other objections to other provisions and thus bring about the casting of enough adverse votes to defeat the proposed Constitution. We feel that this Convention is working in the very finest spirit, and its work ought to be passed upon affirmatively by the people of the State of New Jersey as a reward for our efforts, if we are conscientious and can get something that can be affirmatively voted upon.

In putting these exemptions into Section I, Paragraph 1 we removed one of the great grounds of objection to the last constitutional revision in 1944. And we removed another objection—that to Paragraph 2 of the Finance Article of the 1944 proposal, which was felt absolutely to prevent the dedication of funds. We had people appear before us in favor of such a provision. We had, on the other side, people who wanted specifically to have a dedicated fund clause in the Constitution. We felt that either one of those in the Constitution would perhaps throw out enough votes to impair the passing of the proposed Constitution. So, we have favored neither side. We have eliminated Paragraph 2 of the 1944 Finance Article, and we did not put in the dedication of funds. One of the speakers before us, one of the very important men, or at least one of the men who represented very important intersts, very graciously said that he realized the importance of that and he would personally rather see the matter left until another day, especially as he understood that the Bill of Rights Committee was offering a little easier way of amendment in the future.

We trust, Mr. President, that you will receive this Report in the spirit in which it was made, and we will not have our feelings hurt if there are any amendments made to this Report when it gets on the floor. In fact, we are expecting one or two. In our own committee meeting the question was asked, and we felt that we are all free, even though it is our Report, to vote for some amendment which might be offered and in which we would rather agree than vote for the Committee Report itself. I think that's the spirit in which we all should approach this Constitution.

I don't know whether there is any significance or not in the new public address system here, but I noticed that many of the chairmen in making their reports reminded me of something that appeared on, I think it was the main battle flag of the Revolution —when they make their reports they make an appeal to Heaven.

Those of us who have to make reports in here bow our heads in prayer. I hope we will keep that solemn principle.

PRESIDENT: All right. Any questions the members of the Convention would like to ask Mr. Read?

(Silence)

PRESIDENT: Thank you, Mr. Read. Mr. McMurray, the Committee on Arrangement and Form?

MR. WAYNE D. McMURRAY: Mr. President and delegates to the Convention:

Your Committee on Arrangement and Form has no detailed report to make today. We are at work and worked practically every day last week on the tentative draft, hoping to get out of the way much of the preliminary material that was obviously not controversial. Your submission of the final drafts today has made our task considerably easier and we will continue to work on the task assigned to us.

The housing shortage has affected our committee a little bit and we meet each day in a different room, it seems. Today, following the adjournment of this Convention, our committee will meet in Room 202. That is the room next to the Library on the second floor, and I trust that all the members will remember the room number—202. Thank you.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: If not, Mr. Saunders, will you report for the Committee on Submission and Address to the People?

MR. WILBOUR E. SAUNDERS: Our committee has no report to make. It will, at the proper time in this session, present to the Secretary a resolution dealing with preparations for the final vote. The committee will meet today at the end of this session in its accustomed room.

PRESIDENT: Are there any questions?

(Silence)

PRESIDENT: If not, Mr. Gemberling, will you report for the Committee on Rules, Organization and Business Affairs?

MR. ARTHUR R. GEMBERLING: Mr. President and delegates: I wish to submit the following financial report:

Appropriation	$350,000.00
Total Expenditures to July 31	16,910.61
Commitments	34,416.54
Balance	$298,672.85

I will not take time to go into details but I have a statement here in detail and any of the delegates who wish to see this statement

will find it in the office. I wish you would go in and examine it very carefully, and if there is anything you don't understand, I wish you would call the committee's attention to it.

(The following detailed statement is incorporated in the record):

NEW JERSEY CONSTITUTIONAL CONVENTION
COMMITMENT RECORD

Date Reported	Item	Commitment Reported	Status of Commitment 7-31-47	Change in Commitments
1947				
July 1	Authorized Payroll to 9-12-47 (Effective 7-1-47)	$ 5,780.00	$ 3,458.00	$1,272.00† 1,050.00‡
1	Prior Typewriter Co. Rental of Typewriters	180.00	105.00	75.00†
1	Moving Furniture to Trenton	240.00	240.00	.....
1	Balance of Soundscriber	1,675.00	850.00	825.00†
1	Purchase of Soundscriber	347.00	347.00	.....
1	Postage purchases	207.50	.....	207.50§
1	Harry Strauss & Sons, Supplies	19.75	.....	19.75†
1	Rutgers University	1,992.23	1,992.23	.....
1	Telephone Installation and Rental	759.05	759.05	.....
1	Clipping Service, Minimum Charge	30.00	30.00	.....
July 8	Installation of Soundscribers	600.00	.....	600.00†
8	Harry Strauss & Sons, Supplies	7.30	.....	7.30†
8	Multigraph Sales Agency, Ink	4.33	.....	4.33†
8	Stoll Blank Book Co., Files	9.00	.....	9.00†
8	M. G. Stickel, Train Fare	1.32	.....	1.32†
8	A. B. Ari, Meals	21.90	.....	21.90†
8	P. T. Venanzi, Meals	10.30	.....	10.30†
8	MacCrellish & Quigley, Printing	702.40	.....	702.40†
8	Soundscriber Co., Supplies	118.50	.....	118.50†
8	Rutgers University	527.96	527.96	.....
July 15	Rutgers University	646.43	646.43	.....
15	National Municipal League	20.00	.....	20.00†
July 22	MacCrellish & Quigley, Printing	576.29	.....	70.00‖ 506.29†
22	Committee on Public Relation and Information	25,000.00	24,375.00	625.00†
July 29	Parker Printing Co.	4.58	4.58	.....
29	Central Paper Co.	12.20	12.20	.....
29	Remington Rand Co.	15.36	15.36	.....
29	Prior Typewriter Co.	25.00	25.00	.....
29	Globe Printing Co.	23.00	23.00	.....
29	Globe Printing Co.	31.50	31.50	.....
July 31	Edward H. Taft, Supplies	3.50	3.50	.....
31	Edward H. Taft, Expenses	9.22	9.22	.....
31	Stoll Blank Book & Stationery Co.	45.00	45.00	.....
31	Prior Typewriter Co.	5.00	5.00	.....
31	Rutgers University	911.51	911.51	.....
				RECAP 4,818.09† 1,050.00‡ 207.50§ 70.00‖
	Total	$40,562.13	$34,416.54	$6,145.59

Reason: † Paid. ‡ Not used. § Certificate on way through. ‖ Error corrected.

MR. GEMBERLING: The committee will meet today at 2:15. Any questions?

PRESIDENT: Are there any questions?

(*Silence*)

PRESIDENT: All right, Mr. Gemberling, thank you. Mr. Kays, the Committee on Credentials, Printing and Authentication of Documents?

MR. HENRY T. KAYS: Mr. President, we have no report to make at this time, but there will be a meeting of the committee immediately on the adjournment of this session today.

PRESIDENT: Mr. Read?

MR. READ: I think I said that I expect a meeting of our committee in our old room—201, I presume, will be satisfactory—immediately following the adjournment of this session this morning to discuss the Supplemental Report.

I have been asked by many persons why we did not have a hearing following our Proposal. My answer to that is that we started out with the idea that we would give everybody a full hearing, and when we finally wound up—I think it was the 15th of July—Judge Rafferty, our secretary, announced that we had no further requests for hearings. We then went into executive conference to pass on those matters and we felt that nothing further could be done by another public hearing.

However, there might have been some matters considered there which people were not familiar with, and so for that reason President Clothier—I had him on the 'phone Saturday morning—and I arranged to have a public hearing on our Proposal at two o'clock today. Whether that will be in this room or not—I understand the Bill of Rights Committee are having a meeting, too—I don't know. I don't suppose there will be so many but what we can handle them in Room 201. So there will be a public hearing on our Proposal at two o'clock in Room 201 unless we adjourn to this room.

PRESIDENT: Mr. Paul, will you report for the Committee on Public Relations and Information?

MR. WINSTON PAUL: Mr. President, ladies and gentlemen:

You will recall that in the resolution creating the Committee on Public Relations and Information it was stated that its primary purpose was "to furnish to the citizens of New Jersey information on the discussions, debates and conclusions of this Convention through the medium of the press, radio and such other facilities as may be made available."

The committee has organized, has had several meetings, has recruited its operations' staff. I believe it is making progresss toward the above objective.

The committee has sought to ascertain how increased informa-

tional service may be provided for certain segments of the press, the radio and other channels of communication to the New Jersey public.

For the weekly newspapers of the State, few of which have direct representation at the Convention, a special information service has been established. This includes a weekly summary of the Convention's work, a digest of newspaper editorial comment on issues before this body, photographs in mat form, and various other releases. The reaction of editors to this service has been favorable. One editor writes to say, "It is good to learn that the weeklies of the State are to get some coverage at New Brunswick," adding his hope that a condensed summary of the week's highlights might be provided. Weekly summaries are being mailed to weekly editors.

Further enlargement and strengthening of this special service will be in accordance with the wishes of the weekly newspaper editors.

Another segment of the press which is receiving attention from the committee is the foreign language newspapers. The editors of these important newspapers have been invited to attend the Convention next Monday. Their needs for Convention coverage will be ascertained and steps taken to provide such service as may be desired.

With respect to the New Jersey daily newspapers and those of New York and Philadelphia which circulate freely in our State, I am sure it is apparent to all of the delegates that these newspapers are well represented here by their own excellent staff reporters and by press associations. Nevertheless, the committee is available to cooperate with the daily newspaper representatives as desired.

The committee's preliminary work with radio stations in New Jersey, New York and Philadelphia holds promise of substantially enlarging the radio coverage of the Convention. Personal conferences and correspondence with broadcasters reveal a strong interest on their part in this Convention. Some stations are planning special programs to be produced by their own staffs. Others have asked for a recording service, which will become operative today. Steps are being taken to enlist the cooperation of various radio personalities whose programs might appropriately call attention to the work of this Convention and in many instances include one or more delegates as guests. For Station WTTM of Trenton, the committee has arranged Convention broadcasts through August on the 30-minute "Trenton Talks It Over" program. As the schedule of Convention broadcasts takes more definite form, copies will be made available on advance notice to the delegates.

One final word about radio: In the days ahead, the committee and its staff will ask various delegates to participate in radio broadcasts. Some of these may require personal visits to radio studios. Others will be recorded here in the Gymnasium. My hope is that the delegates will give their full cooperation to this effort.

The committee is seeking to enlarge Convention coverage by general magazines, including picture magazines, as well as by publications directed to such groups as farmers, club women, union members, business groups, and others.

Plans are being developed for an "Editors', Publishers' and Broadcasters' Day" at the Convention in late August or early September. Numerous other plans are in the formative stage and these will be the subject of later reports by this committee.

Let me in conclusion, Mr. President, express appreciation for the cooperation in our efforts of those individual delegates who are writing columns for their local papers. A number of delegates are once a week writing a column for a weekly or local paper, and they are doing a very excellent job. I want to thank them for that cooperation in spreading the good word of the work of this Convention and urge that as many delegates as possible make such contacts with their local papers and arrange for such service to those papers. Thank you.

PRESIDENT: Are there any questions?

(*Silence*)

PRESIDENT: If not, this brings us to the item on the docket, "Motions and Resolutions." Mr. Dixon?

MR. AMOS F. DIXON: Mr. President, I have a resolution for the Secretary to read which I wish to introduce.

SECRETARY *(reading)*:

> "WHEREAS, the five committees which were assigned sections of the Constitution for study and revision are presenting to the Convention today their Committee Proposals and Reports, and
>
> WHEREAS, time for delegates to study Proposals before discussion, amendment and adoption is provided by Rule 53 (c) of the Convention, which requires that 'Four Convention days after the filing of said Report, the Report shall be placed on the general orders';
>
> THEREFORE, BE IT RESOLVED, that when today's session of the Convention adjourns, it be to meet on Wednesday, August 6, at 10:00 A.M., and that when it then adjourns it be to meet on Thursday, August 7, at 10:00 A.M., and that when it then adjourns it be to meet on Friday, August 8, at 10:00 A.M., and that when it then adjourns it be to meet on Monday, August 11, at 10:00 A.M., for the first consideration on that day of the aforesaid Committee Reports."

MR. DIXON: Mr. President, I move the adoption of the resolution.

MR. VAN ALSTYNE: I second the motion.

PRESIDENT: You have heard the resolution. Is there any further discussion?

MR. DIXON: Mr. President.

PRESIDENT: Mr. Dixon?

MR. DIXON: The chairmen of the committees, together with the President, gave very careful consideration as to how to best meet this four-day interval. It was decided to follow the method that is used in our own Legislature in order to meet the constitutional provision that the Legislature may not adjourn for more than a three-day period. Very often the Legislature wishes to adjourn for a week, or perhaps even more, and they cover it in this method.

Rule No. 11 of our own Convention provides that the Convention may be called to order by our President even though there is not a quorum there—as a matter of fact, having but one or two delegates before him—and that with that body of less than a quorum the Convention may be adjourned from day to day. This resolution covers that, so there will be no question but that we have given the lapse of four Convention days which is provided in Rule 53 (c).

I think this covers the matter very thoroughly, and that means that we will be ready next Monday with all of our delegates. In the meantime, we will not have a call for our delegates on Wednesday, Thursday and Friday. On next Monday, these Proposals which have been presented today will be ready for discussion and amendment.

PRESIDENT: Mr. Dixon, may I inquire personally whether the substance of your resolution carries, at least by implication, the thought that we shall meet daily after next Monday?

MR. DIXON: I did not cover that in this resolution, leaving it for further consideration. A resolution probably will be presented next Monday in regard to the number of days that we will meet.

PRESIDENT: Is there any further discussion of this resolution that Mr. Dixon has presented?

(Silence)

PRESIDENT: Are you ready for the—Mr. Paul?

MR. PAUL: I wonder if Mr. Dixon would agree to an amendment for next Monday to meet at 11:00 A.M., instead of 10:00 A.M. A number of delegates have told me that coming from extreme parts of the State it was very difficult, particularly on Monday morning, to get here at 10:00 A.M. Would you amend that to 11:00 A.M., next Monday?

MR. DIXON: Well, I would leave that up to the Convention, Mr. Paul. I would be very glad to accept that as an amendment to the resolution and have a vote taken on it.

MR. VAN ALSTYNE: I second the resolution as amended.

PRESIDENT: It has been moved and seconded, then, that the resolution be amended to provide for a meeting at eleven o'clock

instead of ten. All in favor of the amendment please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The amendment is adopted. Are you ready for the vote on the original resolution?

All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted.

MR. DIXON: Mr. President, I have another resolution which I wish to offer, please, for the Secretary to read.

SECRETARY *(reading)*:

> "RESOLVED, That the Convention fix the compensation of the Secretary of the Convention at the sum of Five Thousand Dollars ($5,000) for the period beginning June 12, 1947, and ending November 5, 1947, for the performance of the duties of the Secretary of the Convention and such other duties and services as may be required by this Convention and/or Committee on Rules, Organization and Business Affairs."

MR. DIXON: Mr. President, I move adoption of the resolution.

MR. VAN ALSTYNE: I second the motion.

PRESIDENT: Seconded. Is there any discussion?

MR. DIXON: Mr. President, I wish to say to the members of the Convention that the chairmen of the committees, together with the officials of the Convention—excluding the Secretary, I would like to emphasize—gave a great deal of consideration to the question of the proper remuneration. After considering the amount of work that the Secretary will have to perform from the beginning of the Convention until after the election on November 4, it was felt that this compensation was a very fair compensation.

PRESIDENT: Is there further discusssion on this resolution? Mr. Cowgill.

MR. JOSEPH W. COWGILL: Mr. Chairman and delegates:

First let me say that I support the resolution offered by Assemblyman Dixon. But there is something that I should like to call to the Convention's attention. I think all of us are familiar with the fact that the Secretary of this Convention is, and has been for a number of years, Secretary of the State Senate. The needs of this Convention have been such that a man of his ability and experience has been needed, and he is doing a good job and I have no quarrel with the amount that they propose to pay him.

But I would like to call to the attention of the members of the Convention that there are some 40 employees on the staff of the Convention. They have been loaned to this Convention by the

various state departments where they are normally employed. It is my understanding that they were selected primarily for their efficiency and their ability, and I think the wisdom of the selection has been demonstrated by their work. However, they receive nothing other than their normal state salary. They have come here at great sacrifice to themselves, and they have given up vacations in the period in which people normally like to take their vacations, and they have, thus far, a promise that something will be done about them. I would like to call to your attention that up till now they have worked some 3500 hours of overtime, and that does not include the supervisors, of whom I believe there are three. I feel, that in adopting this resolution, the Convention should be prepared to deal with equal liberality with the rest of the members of the staff.

PRESIDENT: Is there further discussion on this resolution? Mr. Schenk.

MR. SCHENK: I'd merely like to supplement the remarks of the last gentleman and say that at the twelfth meeting of the Committee on Rights and Privileges we passed a resolution unanimously recommending that the Convention take action to compensate all the employees for the great amount of overtime work which they have performed and are expected to perform in the future, and give extra compensation for that extra work.

PRESIDENT: Will it be agreeable to the delegates if we refer this proposal of Mr. Cowgill and Mr. Schenk to the Committee on Rules for consideration of appropriate action?

(Silence)

PRESIDENT: This brings us, then, to the original resolution which Mr. Dixon has presented and which has been seconded. If there is no further discussion we will call for a vote on the question. All in favor, say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. Are there any other motions or resolutions to be presented?

MR. J. FRANCIS MORONEY: I have a resolution I would like to introduce on behalf of the Committee on Submission and Address to the People. I believe the Secretary has a copy, if he will read it.

SECRETARY *(reading)*:

> "WHEREAS, Senate Bill No. 100 directs that the Constitutional Convention shall prepare an address to the people consisting of a summary and an explanation of the proposed Constitution or the part or parts agreed upon, such address to be distributed together with the sample

ballots for the general election; and

WHEREAS, under Senate Bill No. 100 the Constitutional Convention may make such directions to officials and others for submission to the people of the Constitution or the part or parts agreed upon and for notice and publication of the same and of the address, and for the distribution thereof to such persons, places and institutions through the office of the Secretary of State or other person and at such times and in such manner as it shall determine; now, therefore,

BE IT RESOLVED by the Consitutional Convention of the State of New Jersey:

The Governor and proper state officials of the State of New Jersey be asked to be prepared to print and mail to the people a copy of the Constitution or the part or parts agreed upon and an address to the people consisting of a summary and an explanation of the proposed Constitution or the part or parts agreed upon."

MR. SAUNDERS: Seconded.

MR. MORONEY: Mr. President, it was the thought of the committee that in view of the acute shortage of paper, that the proper State officials be apprised of this fact and be afforded every opportunity to secure an adequate supply to take care of the printing and the submission to the people.

PRESIDENT: Any further discussion on this resolution? Are you ready for the question? All in favor, please say "Aye."

MR. MORONEY: Mr. President, I don't believe the resolution was seconded, was it?

PRESIDENT: The chairman seconded it. Are you ready for the question? Will all in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. Are there any other motions or resolutions to be presented?

Is there any unfinished business to come before the Convention?

Any special orders of the day?

Under the general orders of the day, the Committee Reports and Proposals reported by committees.

SECRETARY: Mr. Schenk, Chairman of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions, offers for introduction Committee Proposal No. 1-1.

PRESIDENT: The title of the Proposal will be taken for its first reading and have a second reading.

SECRETARY: Mr. O'Mara, Chairman of the Committee on the Legislative, offers for introduction Committee Proposal No. 2-1.

PRESIDENT: The title of the Proposal will be taken for its first reading and have a second reading.

SECRETARY: Mr. O'Mara, Chairman of the Committee on the Legislative, offers for introduction Committee Proposal No. 2-2.

PRESIDENT: Same action.

SECRETARY: Mr. Van Alstyne, Chairman of the Committee on the Executive, Militia and Civil Officers, offers for introduction Committee Proposal No. 3-1.

PRESIDENT: Same action.

SECRETARY: Mr. Sommer, Chairman of the Committee on the Judiciary, offers for introduction Committee Proposal No. 4-1.

PRESIDENT: Same action.

SECRETARY: Mr. Read, Chairman of the Committee on Taxation and Finance, offers for introduction Committee Proposal No. 5-1.

PRESIDENT: Same action.

Is there anything else to come before the Convention before we adjourn? If not, I'd like to remind the members of the Convention of one or two smaller items here. A resolution has not yet been adopted, but probably will be adopted Monday, providing for fairly continuous sessions of the Convention beginning then. This may pose a personal problem for some of the delegates, especially those who come from a distance. They may have a special reason from now on to have rooms provided them for occupancy during that period. I would like to ask those who would like to have provision made for rooms for their occupancy to report that circumstance to the office, so that we can take steps to see that they are provided.

Next, I would like to ask the chairmen of the standing committees if they will, immediately upon adjournment here before we have our photograph taken outside—that is after the conclusion, after the photograph inside has been taken but before we recess to the steps—will they meet me for just a moment here at the platform?

This morning, as you know, we are having taken the official photograph of the Convention. The first one is inside, I believe, and the second, outside. Mr. Moreland has general charge of the operation. I will ask him to give us the necessary direction.

MR. WALLACE S. MORELAND[1]: We are going to make two official photographs at this time. The first one will be an interior view. I will ask that all the county signs be placed upright on the desk, please, and that all of you who smoke please refrain from smoking while the picture is being made. Our photographer is in the balcony at this end *(pointing left to balcony)*. It will be necessary, because of the scope of the picture, to turn and face the camera, if you will, please.

This will be a time exposure for five seconds. Mr. Higgins, the photographer, has a flashlight. When he shows the flashlight, that indicates that he is taking the picture. The camera will be open,

1. In charge of the staff and program of the Committee on Public Relations and Information.

and at that time will you please remain motionless in order that we may get a clear photograph?

Mrs. Katzenbach and Mr. Dixon—will they please come to the platform?

We are going to take two exposures. Immediately after the interiors are taken, will you assemble on the front steps for the exterior view, assembling on the three lower steps?

(Interior pictures of the Convention are taken)

PRESIDENT: Just a moment, please.

MR. MORELAND: Will you assemble now on the three lower steps at the front of the Gymnasium, to take an exterior picture there?

PRESIDENT: May I suggest that someone offer a motion to adjourn?

MR. FRANCIS D. MURPHY: I move the meeting be adjourned.

(Seconded from the floor)

PRESIDENT: You have heard the motion to adjourn. All in favor, say "Aye."

(Chorus of "Ayes")

PRESIDENT: The motion is carried.

(The session adjourned at 1:00 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Monday, August 11, 1947

(Morning Session)

(The session began at 11:00 A.M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and the spectators to rise while the Reverend Cordie Culp, Minister of the First Presbyterian Church of New Brunswick, pronounces the invocation.

REVEREND CORDIE CULP: Almighty God from Whom proceeds all wisdom, power and dominion, and by Whom our nation has been established in freedom and preserved in union, we turn to Thee in devout thanksgiving for all Thy gracious favors to our beloved country. We believe that Thou has been a silent Partner in all the worthwhile enterprises of our nation and State. We are grateful for our State, its resources and advantages; its religious, educational and scientific institutions; its busy ways of commerce; its farms, its workshops and its factories where hand joins hand in honest toil; and in our homes where heart joins with heart in rest and love.

Let Thy gracious favor rest upon the Governor of our State and all associated with him in the administration of order, law and justice.

Especially do we seek Thy guiding hand in this Constitutional Convention. Endow its officers and delegates with the spirit of wisdom, goodness and truth. Inspire them with the desire to establish a Constitution that will always minister to the economic, moral and spiritual welfare of all its citizens, regardless of race or conditions of life.

We are here to strengthen the foundation of our State and Commonwealth, and may this work be so well done that the future generations will be so benefited that they will arise and call us blessed.

May the spirit of understanding, good will and cooperation pervade this session of this Convention.

Grant us such a vision of our State, fair as she might be, a State of justice, where none shall prey on others; a State of plenty, where vice and poverty shall cease to be; a State of brotherhood, where all success shall be founded on service, and honor shall be given to nobleness alone. And unto Thee shall be all the praise, world without end. Amen.

PRESIDENT: The first item on the docket is the reading of the Journal. Is there a motion?

MR. WILLIAM J. ORCHARD: I move it be dispensed with

PRESIDENT: You have heard the motion that it be dispensed with. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP: *(the Secretary called the roll, and the following delegates answered "present"):* Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S. Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Stanger, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

A quorum is present, sir.

PRESIDENT: The Secretary reports that a quorum is present.

The next item on the docket is the presentation of petitions, memorials, and remonstrances. Is there any business under this item?

(Silence)

PRESIDENT: Are there any motions or resolutions? Mr. Dixon.

MR. AMOS F. DIXON: Mr. President, I have a motion that I would like to present to the Secretary for reading.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourns it be to meet on Tuesday, August 12th, at ten o'clock."

MR. DIXON: Mr. President, I move the adoption of the resolution.

PRESIDENT: You've heard the resolution which has been moved by Mr. Dixon. Is the resolution seconded?

MR. DOMINIC A. CAVICCHIA: I second the resolution.

PRESIDENT: Is there any discussion?

MR. DIXON: Mr. President, I might add, for those who are not members of the Legislature, that this is the usual legislative procedure, to set the date of the following meeting early on the day

when we are meeting, so that people can make their calendar to better advantage.

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted. Are there any other motions?

(Silence)

PRESIDENT: Is there any unfinished business?

(Silence)

PRESIDENT: I don't want to incur the displeasure of the delegates by harping on our timetable, but I share with all here the responsibility of keeping an eye on the time clock—and the clock is ticking on. We first assembled just two months ago, less one day, and we must complete our work in just one month, plus one day.

By their action last week, voting to meet five days a week beginning today, the delegates have left no doubt of the realization of the magnitude of the job to be done in the limited time which remains.

All the work of the past two months has been preliminary. If it is humanly possible, we should digest all this preliminary work in two weeks and reach our decisions, in order that the Committee on Arrangement and Form and the Committee on Submission and Address to the People may take our decisions and conclusions and complete their own task before September 12. This means that so far as it is humanly possible we should thrash out our differences in the five days of this week and the five days of next week. I believe we can do it if we do three things:

First, resolve to put into the Constitution those matters of principle which should go into it and leave out, for statutory consideration by the Legislature, those matters of lesser moment which don't belong in the Constitution. Let's remember that what we say and do here will be read and remembered not only by the folks back home, but by the citizens of New Jersey of future generations too, to whom some of these lesser things are going to be meaningless. Let's have them think as well as possible of us and our workmanship.

Second, state our arguments as succinctly and briefly as is consistent with effective presentation. Every unnecessary three-minute

speech is a waste of time, and time is one thing we don't have to waste. Senator Milton's resolution was adopted last week to insure that everyone who has something to say shall have time to say it, but I urge that speakers will not feel obligated to use all the time allowed them—only that which they need.

Third, bear in mind that those who differ with us do not have horns and hoofs. Let us try to reach our agreements with them on the basis of a mutual respect for their sincerity of purpose and our own. If now and then something creeps into the discussion akin to Mr. Read's discovery of Senator O'Mara as a Republican, no harm will be done; quite the reverse.

We shall not produce a perfect Constitution, I'm quite sure of that, for there is no such thing. If we should happen to produce a Constitution which one person might consider perfect, there would undoubtly be many who wouldn't think it perfect. Our over-all purpose is not to produce a perfect Constitution but one which is as great an improvement as possible over the old Constitution, correcting the old practices which may have been all right for the New Jersey of 1847 but which are anachronisms in the New Jersey of 1947. This should be our sole criterion. All of us, I suppose, have had letters from persons urging some specific provision and ending with the threat that if it is not incorporated, they will vote against the Constitution as a whole. However sincere such persons may be, they are not very good practicers of democracy. Democracy has no room for him who comes to a conference with preconceived conclusions.

I doubt if wisdom will die with any one of us. Many of us may change our views after listening to those with whom, previously, we have not been in full agreement. I think we might bear in mind that well known comment of Benjamin Franklin when the Federal Constitution was adopted in 1787. You will recall that more than once that convention seemed on the point of breaking up with an obligato of bitter quarrels and unreasoning arguments. At last, however, it finished its work and the Constitution was sent to the 13 states for ratification. Dr. Franklin said:

> "Mr. President, I confess there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right, but found to be otherwise. It is, therefore, that the older I grow, the more apt I am to doubt my own judgment and to pay more respect to the judgment of others. Though many private persons think highly of their own infallibility, few express it so naturally as a certain French lady who, in a dispute with her sister, said, 'I don't know how it happens, sister, but I meet with nobody but myself who is always in the right.'
>
> In these sentiments, sir, I agree to this Constitution because I think a general government necessary for us. I doubt, too, whether any other

convention may be able to make a better Constitution. For when you assemble a number of men to have advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It, therefore, astonishes me, sir, to find this system approaching so near to perfection as it does. Thus I consent, sir, to this Constitution because I expect no better and because I am not sure it is not the best. The opinions I have had of its errors I sacrifice to the public good. I hope, therefore, that for our own sakes as a part of the people and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution wherever our influence may extend.

On the whole, sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me on this occasion, doubt a little of his own infallibility and, to make manifest our unanimity, put his name to this instrument."

I stumbled on that recently, with a little help, in a recent account of the Convention which framed our Federal Constitution. It seemed to have a certain appropriateness to our present situation.

If there is no further unfinished business, we shall now proceed to the consideration by the Convention of Proposal 3-1 of the Committee on the Executive, Militia and Civil Officers, on second reading. The Secretary will read the Proposal by its title.

SECRETARY *(reading):*

"PROPOSAL No. 3-1

CONSTITUTIONAL CONVENTION OF NEW JERSEY

INTRODUCED.....

By DAVID VAN ALSTYNE, Jr.

Chairman, Committee on Executive, Militia and Civil Officers

A Proposal relating to the Governor, militia, State administrative organization, public officers and employees, adding new articles on the Executive and on Public Officers in lieu of Articles V and VII of the Constitution of 1884."

(Committee Proposal No. 3-1 is reproduced here for convenience.)

Resolved, That the following be agreed upon as part of the proposed new State Constitution:

ARTICLE IV

EXECUTIVE

SECTION I

1. The executive power shall be vested in a Governor.

2. The Governor shall not be less than thirty years of age, and shall have been for twenty years at least a citizen of the United States, and a resident of this State seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State.

3. No person holding any office or position, of profit, under the government of this State or of the United States may qualify for the office of Governor. If a Governor or person administering the office of Governor shall accept any other office or position, of profit, under the government of this State or of the United States, his office of Governor shall thereby be vacated. No Governor shall be elected by the Legislature to any office under the government of this State or of the United States during the term for which he shall have been elected Governor.

4. The Governor shall be elected by the legally qualified voters of this State. The person receiving the greatest number of votes shall be the Governor; but if two or more shall be equal and greatest in votes, one of them shall be elected Governor by the vote of the majority of the members of both houses in joint meeting at the regular legislative session next following the election for Governor by the people. Contested elections for the office of Governor shall be determined in such manner as may be provided by law.

5. The term of office of the Governor shall be four years, beginning at noon on the third Tuesday of January next following his election, and ending at noon on the third Tuesday of January four years thereafter. No person who has been elected for two successive terms (including unexpired terms) as Governor shall again be eligible for that office until the third Tuesday in January of the fourth year following the expiration of his second successive term in office.

6. In the event of a vacancy in the office of Governor, resulting from the death, resignation or removal of a Governor in office, or the death of a Governor-elect, or from any other cause, the functions, powers, duties and emoluments of the office shall devolve upon the President of the Senate, for the time being; and in the event of his death, resignation or removal, then, upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation or removal, then upon such officers and in such order of succession as may be provided by law; until a new Governor shall be elected and qualified.

7. In the event of the failure of a Governor-elect to qualify, or of the absence from the State, inability to discharge the duties of his office, or impeachment, of a Governor in office, the functions, powers, duties and emoluments of the office shall devolve upon the President of the Senate, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, then upon the Speaker of the General Assembly, for the time being; and in the event of his death, resignation, removal, absence, inability or impeachment, then upon such officers and in such order of succession as may be provided by law; until the Governor-elect shall qualify, or the Governor in office shall be acquitted, or shall return to the State, or shall no longer be unable to perform the duties of the office, as the case may be, or until a new Governor be elected and qualified.

8. When a Governor-elect shall have failed to qualify within six months after the beginning of his term of office, or whenever for a period of six months a Governor in office, or person administering the office, shall have remained continuously absent from the State or continuously unable to perform the duties of his office by reason of mental or physical disability, the office shall be deemed to be vacant. Such a vacancy shall be determined upon presentment, by a concurrent resolution adopted by a vote of two-thirds of the members of each house of the Legislature, to the court of last resort of this State, and finding and determination upon evidence by that court of such failure to qualify, absence or inability.

9. In the event of a vacancy in the office of Governor, a Governor shall be elected to fill the unexpired term at the next general election succeeding the occurrence of the vacancy unless the vacancy shall have occurred within sixty days immediately preceding a general election, in which case he shall be elected at the second succeeding general election; but no election to fill an unexpired term shall be held in any year in which a Governor is to be elected for a full term. A Governor elected for an unexpired term may assume his office as soon as his election has been determined.

10. The Governor shall, at stated times, receive for his services a salary, which shall be neither increased nor diminished during the period for which he shall have been elected.

11. The Governor shall take care that the laws be faithfully executed. To this end he shall have power, by appropriate action or proceeding brought in the name of the State or any of its political subdivisions, to enforce compliance with any constitutional or legislative mandate or to restrain violation of any constitutional or legislative power or duty by any officer, department or agency of the State or any of its political subdivisions.

12. The Governor shall communicate the condition of the State and recommend such measures as he may deem desirable by message to the Legislature at the opening of each regular session, and at such other times as he may deem necessary. He may convene the Legislature or the Senate alone whenever in his opinion public necessity requires, subject to the provisions of the Legislative Article hereof. He shall be the commander-in-chief of all the military and naval forces of the State. He shall grant commissions to all officers elected or appointed pursuant to this Constitution. He shall nominate and appoint, with the advice and consent of the Senate, all officers for whose election or appointment provision is not otherwise made by this Constitution or by law.

13. The Governor may fill any vacancy occurring during a recess of the Legislature in any office which is otherwise to be filled by his appointment with the advice and consent of the Senate, or by appointment of the Legislature in joint meeting. An ad interim appointment to fill such a vacancy shall expire, unless a successor shall be sooner appointed and qualified, at the end of the next regular session of the Senate. The Governor may not thereafter fill the same office or position by ad interim appointment unless he shall have made a nomination to the Senate during the regular session and the Senate shall have adjourned without either confirming or rejecting the nomination so made. Any person nominated for any office by the Governor who shall not have been confirmed by the Senate shall be ineligible for ad interim appointment to such office.

14. Every bill which shall have passed both houses shall be presented to the Governor; if he approves he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, upon reconsideration on or after the third day following the return of the bill, two-thirds of all the members of the house of origin shall agree to pass the bill, it shall be sent, together with the objections of the Governor, to the other house, by which it shall be reconsidered and if approved by two-thirds of all the members of that house, it shall become a law; and in all such cases the votes of each house shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days, Sundays excepted, after it shall have been presented to him, the same shall become a law on the tenth day unless the house of origin is in adjournment on said day. If, on said tenth day, the house of origin is in temporary adjournment in the course of a regular or special session, the bill shall become a law on the day on which the house of origin convenes after the temporary adjournment unless the Governor shall return the bill to that house on that day.

If, on said tenth day, the Legislature is in adjournment sine die, the bill shall become a law if the Governor shall sign it within forty-five days,

Sundays excepted, after such adjournment, but if he shall not sign it within that time it shall become a law on the forty-fifth day, Sundays excepted, after such adjournment unless he shall return it with his objections, on or before noon of that day, to the house in which it shall have originated, at a special session of the Legislature which shall meet on that day, without any petition or call, for the sole purpose of acting pursuant to this paragraph upon bills returned by the Governor. At such special session a bill may be reconsidered beginning on the first day in the manner provided in this paragraph for the reconsideration of bills and if approved by two-thirds of all the members of each house of the Legislature upon reconsideration it shall become a law. The Governor may, in returning a bill with his objections for reconsideration at any general or special session of the Legislature, recommend in his objections thereto that any amendment or amendments specified therein be made in the bill and the bill shall thereupon be before the Legislature and subject to amendment and re-enactment and may be amended and re-enacted instead of being reconsidered, and if amended and re-enacted it shall again be presented to the Governor and it shall become a law only if he shall sign it within ten days after presentation to him; and no bill shall be returned by the Governor a second time. A special session shall not be convened pursuant to this paragraph whenever the forty-fifth day, Sundays excepted, after adjournment of a regular or special session shall fall on or after the last day of the legislative year in which such adjournment shall have been taken.

15. If any bill presented to the Governor shall contain one or more items of appropriation of money, he may object in whole or in part to any such item or items while approving of the other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of each item or part thereof to which he objects, and each item or part thereof so objected to shall not take effect. A copy of such statement shall be transmitted by him to the house in which the bill originated, and each item or part thereof objected to shall be separately reconsidered. If, upon reconsideration on or after the third day following such transmittal, one or more of such items or parts thereof be approved by two-thirds of all the members of each house, the same shall become a part of the law, notwithstanding the objections of the Governor. All the provisions of the preceding paragraphs in relation to bills not approved by the Governor shall apply to cases in which he shall withhold his approval from any item or items or parts thereof contained in a bill appropriating money.

SECTION II

1. The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A board, commission, or other body may be established and constituted by law to aid and advise the Governor with respect to the exercise of executive clemency.

2. A system for the granting of parole shall be provided by law.

SECTION III

1. Provision for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to federal standards established for the armed forces of the United States of America.

2. The Governor shall appoint all general and flag officers of the militia, with the advice and consent of the Senate. All other commissioned officers of the militia shall be appointed and commissioned by the Governor according to law.

SECTION IV

1. All executive and administrative offices, departments, and instrumentalities of the State Government, and their respective functions, powers and duties, shall be allocated by law among and within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable. Temporary commissions for special purposes may, however, be established by law and such commissions need not be allocated within a principal department.

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executive shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve during his term of office and until their respective successors are appointed and qualified.

3. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be appointed by the Governor with the advice and consent of Senate, and may be removed in such manner as may be provided by law. Such a board, commission or other body may appoint a commissioner, director, administrator or other principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

4. The Governor may cause an investigation to be made of the conduct in office of any State officer or employee except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require any such State officer or employee to submit to him a written statement or statements under oath, of such information as he may require relating to the conduct of their respective offices or employments. After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer or employee for cause.

5. No rule or regulation made by any State department, officer, agency or authority, except such as relates to the organization or internal management of the State Government or a part thereof, shall take effect until it is filed with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations.

ARTICLE ——

PUBLIC OFFICERS AND EMPLOYEES

SECTION I

1. Every State officer shall, before entering upon the duties of his office, take and subscribe an oath or affirmation to support the Constitution of this State and of the United States and to perform the duties of his office faithfully, impartially and justly to the best of his ability.

2. Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law.

3. Any compensation for services or any fees received by any person by

virtue of an appointive State office or position, in addition to the annual salary provided therefor, shall be forthwith paid by such person into the State treasury, unless the compensation or fees be allowed or appropriated to him by law.

4. Any person before entering upon the duties of, or while holding, any public office, position or employment in this State may be required to give bond, as may be provided by law.

5. The term of office of all officers elected or appointed pursuant to the provisions of this Constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office.

6. The State Auditor shall be appointed by the Senate and General Assembly in joint meeting for a term of five years and until his successor shall be appointed and qualified. It shall be his duty to conduct post-audits of all transactions and accounts kept by or for all departments, offices and agencies of the State government, to report to the Legislature or to any committee thereof as shall be required by law, and to perform such other similar or related duties as shall, from time to time, be required of him by law.

SECTION II

1. County prosecutors shall be nominated and appointed by the Governor with the advice and consent of the Senate. Their term of office shall be five years, and until their respective successors shall be appointed and qualified.

2. County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years and of sheriffs shall be three years. Whenever a vacancy occurs in the office of county clerk, surrogate or sheriff in any county, it shall be filled in such manner as may be provided by law.

SECTION III

1. The Governor and all other State officers shall be liable to impeachment for misdemeanor committed during their continuance in office and for two years thereafter.

2. The General Assembly shall have the sole power of impeaching in such cases by a vote of a majority of all the members. All such impeachments shall be tried by the Senate, and members, when sitting for that purpose, shall be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence"; and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate.

3. Judgment in cases of impeachment shall not extend further than to removal from office, and to disqualification to hold and enjoy any public office of honor, profit or trust in this State; but the person convicted shall nevertheless be liable to indictment, trial and punishment according to law.

ARTICLE ——

SCHEDULE

1. A Governor shall be elected for a full term at the general election to be held in the year one thousand nine hundred and forty-nine and each fourth year thereafter.

2. The adoption of this Constitution, or the taking effect of any provision thereof, shall not of itself affect the tenure, term or compensation of any person holding any office or position in the executive branch of the State Government at the time of such adoption or taking effect, except as may

be provided in this Constitution. Upon the adoption of this Constitution, all officers of the militia shall retain their commissions subject to the provisions of Article IV, Section III.

3. On or before July first, one thousand nine hundred and forty-nine, legislation shall be enacted which shall complete the first allocation of executive and administrative offices, departments and instrumentalities of the State Government among and within principal departments as required by Article IV, Section IV, of this Constitution. If such allocation shall not have been completed within the time limited, the Governor shall call a special session of the Legislature to which he shall submit a plan or plans for consideration to complete such allocation; and no other matters shall be considered at such session.

PRESIDENT: Committee Proposal No. 3-1 of the Committee on the Executive, Militia and Civil Officers, on second reading is open for discussion and amendment. Senator Lance.

MR. WESLEY L. LANCE: I presume that this is the proper time to offer an amendment on any section, or do you propose to go Paragraph 1, Paragraph 2, etc.?

PRESIDENT: That's right.

MR. LANCE: I have an amendment to offer.[1]

SECRETARY *(reading):*

"PROPOSED AMENDMENT TO COMMITTEE PROPOSAL NO. 3-1.

RESOLVED, the following amendment to Paragraph 5 of Section 1 of Article IV be agreed upon:

Amend on page 2, Paragraph 5, lines 3 to 7 inclusive, by striking out the words:

'No person who has been elected for two successive terms (including unexpired terms) as Governor, shall be eligible for that office until the third Tuesday in January of the fourth year following the expiration of his second successive term in office,' and by inserting in lieu thereof the following:

'No person who has been elected for a full term as Governor shall again be eligible for that office until the third Tuesday in January of the fourth year following the expiration of such term in office.' "

PRESIDENT: Judge Lance, do you care to discuss that amendment?

MR. LANCE: I have another amendment to offer on the same Article, Mr. President. Should that also be presented at this time? *(Hands amendment to Secretary.)*

PRESIDENT: Judge Lance, with your approval we will defer discussion on this. It seems to deal with a different subject. May we proceed with your first amendment?

MR. LANCE: The second amendment is on a different subject. What procedure, Mr. President, would you like followed on the first amendment? An immediate debate, or a postponement until all amendments are in?

PRESIDENT: My thought was that we should proceed with the amendments *seriatim,* one after the other. If you feel that this has a bearing on the first amendment, of course we will read it.

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

MR. LANCE: No, it does not.

PRESIDENT: I think then, if it is agreeable to you, we had better proceed with the discussion on the first amendment.

MR. LANCE: I rise to oppose writing into the new Constitution, the principle of allowing the Governor to serve successive terms. I believe that many reasons could be advanced in support of this opposition. I shall set forth only a few of them.

The proposed new Constitution will make an already powerful Governor the beneficiary of considerable additional power.

In the first place, the new Constitution would extend the term of Governor from three to four years. In 23 of the American states, the term of Governor is only two years. I do not rise necessarily to oppose the extension of the Governor's term to four years. I do want to point out, however, that the extension of such term should be a factor in your determination when you vote on the matter of gubernatorial succession.

In the second place, the adoption of the principle of gubernatorial succession in a four-year state is contrary to the custom and practice of the American states. It has been said that there is no limit on immediate succession in the majority of the states. Why should there be one in New Jersey? The answer is that in approximately half of the American states the governor's term is for two years and, of course, the governor is allowed to succeed himself in this class of state. Two successive terms for a governor in those states is merely equivalent to the one full term that the Governor is about to receive in New Jersey. Only 12 states and I repeat, only 12 states, give their governor both a four-year term and the right of immediate succession.

In the third place, the new Constitution will vastly increase the *quantum* of the Governor's veto power. At present a majority of the members elected in each house is required to override a gubernatorial veto. The new Constitution as proposed, demands a two-thirds vote of all the members in each house. I have examined the constitutions of the 48 states and find that no American state demands more.

In the fourth place, the new Constitution, for all practical purposes, vests in the Governor a sole and exclusive appointing power over state officials. Time and time again in the past few years we have heard the claim that the Governor of New Jersey does not have an appointing power commensurate with that of the average state governor. Let's look at the record insofar as the appointment of state *administrative* officials is concerned.

The Governor of New Jersey now appoints the Secretary of State. In only six other states does the Governor make this appointment.

The Governor of New Jersey now appoints the Attorney-General. In only four other states does he make this appointment.

The new Constitution would place the appointment of the State Treasurer in the hands of the Governor. New York is the only state in the entire nation where the Governor now appoints the State Treasurer.

In New Jersey the Commissioner of Education is appointed by the Governor. In almost three-quarters of the states—34 to be exact—this official is selected apart from any influence of the chief executive.

I have analyzed the appointment methods used by each of the 48 states, for the selection of the heads of 19 typical, important state departments. These figures show that the Governor of New Jersey exercises a power of appointment at the present time over a greater percentage of state administrative officials than does the average American governor.

I do not necessarily oppose at this time the vesting of the appointing power in the Governor, but I merely wish to point out that my statistical research has led me to the conclusion that he now has a greater *quantum* of appointing power than the average governor; that the new Constitution proposes to give him a considerable amount of additional appointing power, and this is another factor you should consider when you will vote upon the principle of gubernatorial succession.

In the fifth place, the proposed Judicial Article would give to the Governor the appointing power over the members of the high court, the intermediate court and the inferior courts, such as the Common Pleas Courts. However, in 36 of the states the judges of the highest courts are elected by the people. Likewise, in the vast majority of the states, the judges of the intermediate courts are not appointed by the Governor. In approximately the same number of states—that is, about three-quarters of the total number—the judges of the county courts are likewise elected by the people.

In New Jersey, the prosecutor of the pleas is appointed by the Governor. As you all well know, district attorneys are elected by the people in New York, Pennsylvania and many other large-population states.

I do not necessarily dispute the proposition that judicial officers should be not appointed by the Governor, but I merely wish to make the point that the New Jersey Governor today under the old 1844 Constitution has a considerable appointing power over judicial officers that the governor does not enjoy elsewhere. This is another factor you should consider when you vote upon the principle of gubernatorial succession.

In the sixth place, the New Jersey Governor appoints many offi-

cers who would appear to be county officers in nature. I refer, for example, to such a class of officers as jury commissioners, members of the county tax board, and members of the county election board. Combined with his power to appoint the county judge and prosecutor, it must be admitted that the arm of the Governor extends into every nook and cranny of our 21 counties.

In the seventh place, the proposed Article concerning the amending process provides that a proposed constitutional amendment should first pass each house of the Legislature by a two-thirds vote and then go to the Governor for his approval or rejection. I know of no other constitution in the Anglo-American world of government where the governor is protruded into the amending process in this fashion.

A consideration of the seven points I have just presented leads me to the inescapable conclusion that the Governor of New Jersey now has considerable power and that the new Constitution will vastly increase that power. I predict that the next time you vote for a Governor of New Jersey you will no longer be electing a Governor for three years, as heretofore, but in effect you will be electing a man who will, if he wishes, be serving the equivalent of a single eight-year term. The obtaining of a second term with this increased power will not be difficult.

You would miss my point if you were to believe that I oppose the grant of many of the powers just outlined to the Governor. It may be, at some future time, it will develop that the new Constitution does not give the Governor as much power as a paper analysis would indicate. If so, there is time enough by constitutional amendment to permit the serving of successive terms. In the meantime, I strongly urge that the members of this Convention adopt a "watch and wait policy" and for the present, at least, deny the right of gubernatorial succession.

The amendment proposed by me would allow a Governor to fill an unexpired term and be elected to one full term thereafter. In other words, the limit on any occasion would be six years.

PRESIDENT: Senator Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: I would like, on behalf of the committee, to call on Commissioner Miller to speak.

PRESIDENT: Commissioner Miller.

MR. JOSEPH W. COWGILL: I rise to a point of order. I wonder if the Chair will outline the procedure which we are to follow. It was my impression that these amendments were to be offered and printed, so that the delegates would have them before them. I don't know if this discussion is to be followed by a vote or not, and it seems to me it would be well if we knew precisely what procedure we are supposed to follow.

PRESIDENT: Mr. Cowgill has raised a point as to procedure this morning—whether all the amendments should be presented and printed and distributed so that the delegates might have an opportunity to familiarize themselves with them before discussing them. The discussion we have had with the chairmen of the standing committees was to the effect that in view of the limitation of time we should proceed with the Executive Article at this time and entertain *seriatim* amendments to that Article. That is the procedure which has been proposed and which we have assumed. Is it the wish of the Convention that we should change that procedure?

MR. COWGILL: Mr. Chairman, is it your proposal that each of these amendments shall be voted on at the end of the discussion?

PRESIDENT: That's the proposal.

MR. COWGILL: Without the delegates having the proposed amendments before them, other than this reading by the Secretary?

PRESIDENT: That's the proposal. I don't know if there is any other practicable plan in view of the time limitation. Has anyone any observation to make in that connection? Senator O'Mara.

MR. EDWARD J. O'MARA: My understanding was, in line with what Mr. Cowgill has just announced, that these amendments were to be printed and on the desks of the delegates before action would be taken on them. Indeed, Rule 58, I think it is, requires that amendments be printed. Rule 67 it is. It reads:

> "Each amendment offered to a proposal before being read, shall be presented to the Secretary, in quadruplicate, either typewritten, with 1 original and 3 carbon copies thereof, or printed, and shall be entered in the Journal. The Secretary shall forward the original to the printer for printing and shall retain 1 copy until the original is returned to him, 1 copy shall be made available to the Press," and so forth.

I thought, Mr. Chairman, that the conference of the chairmen of the standing committees held with you last week had determined that before debate occurred on the proposed amendments, those amendments would be printed and would be circulated and would be on the desks of the delegates, so that they could follow them closely and know with accuracy just what they were voting upon.

Now, I can conceive of situations where that might not be necessary, but in the case of important amendments—and I don't know who is to determine whether or not an amendment is important, that's another difficulty—

PRESIDENT: The mover.

MR. O'MARA: But certainly in the case of lengthy amendments, it seems to me that the delegates are entitled to have those amendments in accurate and printed form on their desks.

May I suggest that we have a recess of the Convention for about five minutes, and that the chairmen of the committees confer with you, sir, in order to reach some solution of this difficulty?

PRESIDENT: We shall recess for ten minutes and I will ask

the chairmen of the standing committees to join me on the platform. . . . Mr. Cavicchia.

MR. CAVICCHIA: May I refer to Rule 67, which has been cited by the delegate from Hudson, to point out that while the Rule provides for the printing and the entry upon the Journal, it does not provide for printing before discussion and before vote upon the amendment? May I point that out so that it might be of aid to you in your considerations during the recess?

MR. FRANCIS A. STANGER, JR.: I arise for information. Will the President at the conclusion of the recess please outline the full procedure for amendments? I have not had the legislative experience that has been mentioned here, and I am at a loss to know just when amendments may be put in. My thought is that as we hear these matters discussed there may be amendments suggested to each of us, or to some of us, that we would like to submit to the Convention. I am at a loss, after reading the Rules, to know when a particular section or a particular proposal may be amended. May I ask for that information?

PRESIDENT: We shall undertake to do so, and now stand recessed for ten minutes.

(Recess . . . The delegates reconvened ten minutes later.)

PRESIDENT: The Convention will be in order, please.

The chairmen of the standing committees have met and have taken into consideration the questions that were raised just before we recessed. It seems to be the consensus of opinion of the chairmen—and I have two here with me as special advisers, as you will note—that we proceed now to receive all the amendments, which I think will take care of the point that has been raised by Mr. Cowgill.

These amendments will be received, preferably those on the Executive first in order that the amendments on Executive may at once be sent to the mimeographing department and returned here for our desks by the opening of the afternoon session at two o'clock.

We shall then proceed with the receiving of amendments to the other Proposals, so that they may be mimeographed and distributed to us just as promptly as possible, but after the Executive amendments.

We shall then proceed at once to the discussion of the amendments on the Executive.

It is further proposed, with the agreement and authority of the Convention, to keep all these Proposals on second reading at least through Wednesday, so that everybody will have an opportunity to read all the amendments and to reach any conclusions he may have with reference to them before he chooses to discuss them.

MR. ORCHARD: Question, Mr. Chairman.

PRESIDENT: Senator O'Mara reminds me to remind you, in turn, that the amendments must be in on second reading, and that after the proposal is passed on second reading amendments may not be presented except by unanimous consent of the Convention. Incidentally, I would like to request and remind you, too, that all amendments should be in quadruplicate—an original, if you will, and three carbons.

Mr. Orchard.

MR. ORCHARD: Did I understand you correctly, sir, that you desire all proposed amendments on all articles and all committee reports and recommendations to be presented today?

PRESIDENT: Those that are now ready, Mr. Orchard, but amendments may be presented at least through Wednesday. Are there any questions? Judge Hansen.

MR. LEWIS G. HANSEN: Mr. President. I don't know whether I correctly understood you or not, Mr. President, but I would like to know—and I have heard some of the other delegates talk along the same line—what is the procedure about voting, particularly with reference to the Executive Committee report? Do I understand that after the amendments, those amendments are going to be debated upon this afternoon and then voted on?

PRESIDENT: The proposal, Judge Hansen, is that each amendment shall be discussed as presented and shall be voted upon when the discussion has been concluded, and when all amendments have been received and acted on in that way, then the proposal itself will go to third reading.

MR. HANSEN: Thank you, Mr. President.

PRESIDENT: Mr. Cullimore.

MR. ALLAN R. CULLIMORE: Do I understand, then, that before we will be allowed to amend, for instance, Proposal 5-1, Finance Proposal, that we must clear Proposal 3-1 so far as amendments are concerned?

PRESIDENT: No.

MR. CULLIMORE: Mr. President, then I would like to offer an amendment, if it is in order.

PRESIDENT: It is not in order, Mr. Cullimore, I think, at this time. Mr. Cavicchia.

MR. CAVICCHIA: Mr. President, I understand that it is the proposal of the committee chairmen and yourself, as explained by you a moment ago, that at the conclusion of the consideration of amendments to a particular article or committee proposal, then the proposal will go to third reading, as amended?

PRESIDENT: Yes.

MR. CAVICCHIA: Well, that doesn't conform with the Rules, Mr. President, because under the Rules—

PRESIDENT: It goes to the Committee on Arrangement and Form, Mr. Cavicchia.

MR. CAVICCHIA: I see, and then can't go to third reading until after the report of that committee because—

PRESIDENT: After 48 hours.

MR. CAVICCHIA: The report of the committee is open to amendment merely as to form?

PRESIDENT: You are quite right. Is it the desire of the Convention that we shall proceed with the receiving of amendments?

MR. HENRY W. PETERSON: Mr. President, I would like the Chair to rule on what happens if an amendment to an amendment is made. An amendment is proposed, it has been given a great deal of thought, and possibly some other delegate may see where the insertion or the deletion of a word here or there may strengthen the amendment. Can an amendment be amended without it being reduced to writing?

PRESIDENT: Yes.

MR. WILBOUR E. SAUNDERS: I would like to rise to a point of order. We have not followed the procedure prescribed in our Rules in calling for committee reports. I don't care whether it is done now or elsewhere, but I do hope that before the session is over, our committee will have a chance to give a brief but important report which we had expected would be called for in the usual order.

PRESIDENT: I will call on you, Dr. Saunders.

MR. LAWRENCE N. PARK: I offer an amendment to Proposal 3-1.

MR. WALTER G. WINNE: Amendment to Proposal 3-1.

MR. SAUNDERS: Mr. Chairman, would it be possible for each man as he gives an amendment this way to give in two sentences a statement of its purpose? I think it would clarify all of our minds on the point.

SECRETARY: Amendment by Mr. Park *(reading):*

> "When the Governor is tried, the Chief Justice of the Supreme Court shall preside and the President of the Senate shall not participate in the trial."

MR. ORCHARD: Would you give us the article and the line?

SECRETARY: Section III, Paragraph 2.

MR. ORCHARD: Article IV?

SECRETARY: Article IV. . . . Amendment by Mr. Winne, in Article IV, Section IV, Paragraph 4, to read as follows *(reading):*

> "The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officer or employee to submit to him a written statement or statements under oath, of such information as he may require relating to the conduct of their respective offices or employ-

ments. After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer or employee for cause."

PRESIDENT: May I suggest, if it is the wish of the Convention—I think it was proposed—that instead of having the Secretary read the amendments word for word, the presenter of the amendment in just a sentence or two—two or three sentences—should outline what it is to do.

MR. RONALD D. GLASS: Mr. Chairman, I beg leave to present an amendment to Committee Proposal 3-1. Briefly, the Secretary of State and the Attorney-General shall be nominated by the Governor with the advice and consent of the Senate, to serve during the Governor's term of office.

DELEGATE: What section is that?

MR. GLASS *(reading):* "Resolved, that the following shall become new Paragraph 7, Section I of the article on public officers and employees in Proposal 3-1."

PRESIDENT: Is this a second amendment?

MR. GLASS: No. I was asked what section and what paragraph.

PRESIDENT: Are there other amendments to the Executive Proposal? Mr. Dixon.

MR. DIXON: I have an amendment which I wish to offer.

PRESIDENT: Mr. Dixon, do you care to outline in a sentence or two what this is?

MR. DIXON: Do you wish it read first, sir?

PRESIDENT: No. Just tell us in a sentence or so what it is.

MR. DIXON: This amendment merely calls for the entire elimination of any provision in the Constitution covering the subject of gambling. It is taken out entirely by this amendment.

PRESIDENT: At this time we would like to receive amendments to Proposal 3-1, Executive. Are there any other amendments to Proposal 3-1? Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President, I have an amendment.

SECRETARY: This is on Proposal 3-1, Page 7, Section IV, Paragraph 2, line 5, by inserting after the words "to serve" the words "at the pleasure of the Governor" . . .

MR. VAN ALSTYNE: Mr. President.

PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: I just want to say to the delegates that in the tentative draft proposal of the Executive Committee, that phrase was in that section, and in reprinting it in the final draft, it was inadvertently left out, so it represents no new idea from the original intention of the committee.

SECRETARY: Also on line 3, by changing the word "executive" to "executives."

PRESIDENT: Are there other amendments to Proposal 3-1? Mr. Lance.

MR. LANCE: Mr. President, I believe I offered a second amendment. I haven't heard it read, and I wondered if it was among those included.

PRESIDENT: Do you care to comment on it briefly, Judge?

MR. LANCE: It proposes that the *quantum* of the Governor's veto power should be three-fifths.

PRESIDENT: Are there other amendments to the Executive Proposal?

(*No response*)

PRESIDENT: May I ask, then, for amendments to Committee Proposal 1-1, Committee on Rights, Privileges, Amendments and Miscellaneous Provisions.

MR. JOHN MILTON: I have no amendments to offer to the proposals just opened by the President. My suggestion has to do with trying to reach an understanding with respect to procedure. I move now that the Convention adjourn until 1:45 so as to give the chairmen of the standing committees an opportunity to meet during the luncheon hour and return here with more or less of an orderly statement of procedure, so that we may understand what we are trying to do. I, for one, have no definite understanding as to the limitation upon the time when amendments may be offered to any particular article, nor do I have an understanding as to when we are to vote upon the amendment. I suggest that the committee men, the chairmen of the various committees, now retire and the Convention return at 1:45, in the hope that clarity can be produced in the interim.

PRESIDENT: You have heard the motion.

MR. ORCHARD: Second.

PRESIDENT: It is seconded. Is there any discussion?

MR. ORCHARD: In seconding Senator Milton's motion, might I suggest that the committee chairmen consider the desirability of accepting today, as you have, proposed amendments to Proposal 3-1, disposing of those amendments to what degree may be possible this afternoon, and have those amendments on our desks when we reconvene rather than to clutter our minds today by the introduction of amendments to other proposals. We all received a communication, I believe, to the effect that we were to go into a discussion of the Executive Proposal today.

PRESIDENT: I might say in reference to Senator Milton's motion and the discussion which followed, that our purpose has been to get in the Secretary's hands as promptly as possible all the amendments to all the proposals in order that they may be mimeographed and printed and distributed for the delegates' considera-

tion. It was our thought, too, that we should proceed at once with the discussions of the Executive amendments and that these various amendments would be kept on second reading at least through Wednesday.

Now, we have a motion on the floor by Senator Milton, seconded, I believe, by Mr. Orchard. Is there further discussion? The motion is, as I understand it, that we adjourn now and that the chairmen of the standing committees meet at luncheon, and that we reconvene at 1:45 with a clarification of procedure.

Are you ready for the question? All in favor, please say "Aye."

(A number of "Ayes")

PRESIDENT: Opposed?

(A number of "Noes")

PRESIDENT: Do you care for a roll call? May I call for hands? All in favor, please raise their hands.

(Majority of hands in favor)

PRESIDENT: Opposed?

(Minority of hands opposed)

PRESIDENT: Motion carried. We stand recessed until 1:45 P.M.

(The session recessed at 11:45 A. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Monday, August 11, 1947

(Afternoon Session)

(The session began at 2:00 P. M.)

DR. ROBERT C. CLOTHIER, PRESIDENT: The Convention will please come to order.

The Secretary will please call the roll.

SECRETARY OLIVER F. VAN CAMP (*the Secretary called the roll and the following delegates answered "present"*):

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Stanger, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: A quorum is present, Mr. President.

PRESIDENT: The Secretary reports that a quorum is present. I am going to ask Mr. Saunders, Chairman of the Committee on Submission and Address to the People, to report.

MR. WILBOUR E. SAUNDERS: Mr. Chairman, the report will take but a minute, but I think it is of some importance because as we look forward to the voting upon this issue, the form in which it is presented to the people must meet the legal requirements, for our work goes to the Secretary of the State, who checks to see if it conforms to the enabling act. The committee has, therefore, been discussing the form in which it can be presented and at last asked the Attorney-General for some opinions, in the belief that the probability was that the Secretary of State would turn to him for his opinions and that we might better have them in advance.

Consequently, we wish to say that it is the committee's present opinion that if the Constitution, as we submit it, contains any alternative choices, it cannot be presented as a whole—as we have, of course, hoped. We hoped, in the first place, that this body would produce a Constitution in which people could just vote "yes" or "no," on the whole Constitution. But if there are to be alterna-

tives, the wording of the enabling act seems to make it quite clear that the Constitution must be presented in parts. Just what a part is, is not quite clear, and our committee is asking again that, at the end of the afternoon session, the chairmen of all the committees involved meet with our committee and Mr. Van Riper, to attempt further to clarify the matter.

PRESIDENT: Are there any questions? Mr. O'Mara.

MR. EDWARD J. O'MARA: Will the delegate from Mercer submit to a question?

MR. SAUNDERS: I will submit to it, but I am not sure I can answer it.

MR. O'MARA: Will the delegate inform the Convention as to whether or not the Attorney-General has ruled as to what constitutes a part of a Constitution? In other words, if I can make myself clear, what I want to propound to you is this: Suppose that this Convention were unable to agree upon a tax clause, or upon an anti-gambling clause, and felt that either one or both of those clauses should be submitted in the alternative to the people? Would the Attorney-General rule that a Constitution which was complete except for a tax clause, or except for an anti-gambling clause, or except for both of those clauses, was a part of a Constitution?

MR. SAUNDERS: Mr. Chairman, we placed ten questions before the Attorney-General in writing, and asked for the answers in writing, and question No. 10 was this:

> "If the Convention should decide to submit the question to the people in parts, will you give us your opinion as to what constitutes a part?"

The answer is as follows:

> "A part in the sense referred to herein is a section, share, or portion of a constitution which, standing alone, is not a constitution, but which when inserted into a completed document, logically becomes a part thereof in lieu of some other part, or in addition to an existing part, or is entirely new matter."

PRESIDENT: All clear, Senator?

(Laughter)

MR. O'MARA: Mr. President, will the delegate from Mercer submit to a further question?

PRESIDENT: I am sure he will.

MR. SAUNDERS: Gladly.

MR. O'MARA: Is the Attorney-General coming to a conference this afternoon for the purpose of clarifying that ruling?

(Laughter)

MR. SAUNDERS: Mr. Chairman, through you, may I express this hope, that he is coming for exactly that purpose?

(Laughter)

MR. O'MARA: That's all I wanted to know, Mr. President.

PRESIDENT: Mr. Cowgill.

MR. JOSEPH W. COWGILL: Will the gentleman from Mercer submit to another question?

MR. SAUNDERS: Certainly.

MR. COWGILL: Is it the feeling of the committee that the Convention is bound by the interpretation of Attorney-General Van Riper?

MR. SAUNDERS: By no means, and the Attorney-General makes that quite clear. However, I tried to give our reason for asking him his opinion—which is no more binding on the Convention or on this committee than any other legal opinion—and that was the likelihood that the Secretary of State would turn to him with questions regarding legality when the Secretary of State has to certify as to whether we have followed the law or not.

May I say that the Attorney-General, in his written report to us, states that as regards one opinion he has expressed, Mr. Russell W. Watson, Counsel to the Governor, does not concur. That particular opinion was as to the submission of the whole Constitution with alternatives. But, after reading it as carefully as we know how, our Committee, with two people absent, was unanimous this morning in agreeing with the opinion of Mr. Van Riper, much as we dislike it. We wish that the act had been written differently.

MR. COWGILL: Thank you.

PRESIDENT: Are there any further questions?

(Silence)

PRESIDENT: If not, I shall read a memorandum which has been prepared pursuant to Senator Milton's resolution before luncheon. This memorandum was prepared at a meeting of the chairmen of the standing committees and will be mimeographed and presented to each of the delegates. I trust that it will serve to clarify any points which have remained confused. It is as follows *(reading)*:

> "The purpose of a second reading is to permit the offering of amendments to a Proposal in all its parts. After an amendment has been submitted and printed it will be considered and voted upon by the Convention. If the amendment is accepted it will become a part of the Proposal. If it is rejected, it will not. When all amendments have been acted upon, the Proposal, with any amendments which have been accepted by the Convention, will be referred to the Committee on Arrangement and Form and ordered to a third reading. Therefore, the only question which the Convention considers on second reading is that of amending the Proposal. The final adoption of a Proposal, either in its original form or as amended, occurs on third reading. Before a Proposal can be considered on third reading it must be referred, after completion of its second reading, to the Committee on Arrangement and Form. That Committee reports the Proposal within three days and its report is subject to discussion as to arrangement and phraseology only. When the report is accepted or amended, the Proposal is then reprinted and distributed among the delegates. Forty-eight hours' notice of the intention to move the Proposal on third reading is then given.
>
> All amendments to Proposals must be made while the Proposal is on second reading; no amendment may be made after a Proposal has passed to third reading, except by unanimous consent of the Convention.

A proposal remains on second reading until such time as all amendments offered to the Proposal have been adopted or rejected by the Convention, or otherwise disposed of.

For the convenience of the delegates, all Proposals will be continued on second reading at least through the session of Wednesday, August 13. This means that even though all amendments offered before that time have been acted upon by the Convention, the Proposal will remain on second reading to give the delegates an opportunity to propose additional amendments.

It is urged that all delegates who desire to offer amendments do so promptly, in order that they may be printed and distributed to the delegates before discussion on the amendment takes place.

Upon the conclusion of consideration of all proposed amendments, the Chair will ask the Convention if there are any further amendments to be proposed. If not, the Chair will then announce that the Proposal, having been twice read and considered by sections, is referred to the Committee on Arrangement and Form and upon the coming in of the report of that Committee, will be ordered to a third reading.

The Chair has ruled that the rule requiring a proposed amendment to be submitted in typewritten form, in quadruplicate, does not apply to amendments to amendments, and that a single written copy of a proposed amendment to an amendment will suffice."

That is the end of the memorandum. Are there any questions?

(Silence)

PRESIDENT: If there are no questions, we will proceed. This memorandum will be mimeographed and will be distributed to the delegates.

May I inquire if there are any further amendments to Proposal 3-1 on the Executive to be offered? Senator Pyne.

MR. H. RIVINGTON PYNE: May I offer an amendment to Proposal 3-1?[1]

PRESIDENT: Do you mind commenting on that in just a sentence or two?

MR. PYNE: That is a proposal having to do with the veto power of the Governor.

PRESIDENT: Are there other amendments to be offered to the Executive Proposal?

(Silence)

PRESIDENT: If not, I would suggest that we proceed with the amendments to the other Proposals. In normal sequence the Legislative would be next. May I ask if there are amendments to be offered to the Legislative Proposal No. 2-1?

(Silence)

PRESIDENT: Am I correct in my understanding, that the Legislative Proposal meets with unanimous approval?

(Laughter)

MR. AMOS F. DIXON: Mr. President.

PRESIDENT: Mr. Dixon.

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

MR. DIXON: The Secretary has on his desk the amendment that I submitted.

PRESIDENT: Are there any other amendments to the Legislative Proposal?

MR. JOHN J. RAFFERTY: Mr. President, as I understand the question: Are there any amendments presently ready for submission?

PRESIDENT: Yes.

MR. RAFFERTY: The time, just to emphasize again, is reserved until Wednesday for submitting any other amendments.

PRESIDENT: Quite right, Judge.

May I inquire, then, if the delegates wish at this time to offer amendments to the Judicial Article? Senator O'Mara.

MR. O'MARA: May I call the attention of the Chair to the fact that there were two Proposals from the Legislative Committee, Proposal No. 2-1 and 2-2.

PRESIDENT: Are there any additional amendments to the Judicial Proposal? Chief Justice Brogan.

MR. THOMAS J. BROGAN: Are you talking about Committee Proposal No. 4-1 now? You mean the Legislative, do you not?

PRESIDENT: Did I say "Judicial"?

MR. BROGAN: Yes.

PRESIDENT: I beg pardon, I mean the Legislative. Are there any additional amendments to be offered to the Legislative Proposal?

(Silence)

PRESIDENT: If not, then may we proceed to consideration of the Judicial Proposal? Are there amendments to be offered to the Judicial Proposal? Chief Justice Brogan.

MR. BROGAN: I desire to offer an amendment to Proposal No. 4-1, which is the title of the Committee Proposal. And additionally, I would like to make a suggestion. When this amendment which I offer is printed, as under the Rules it must be, I think it but fair to request that an additional 500 copies of the amendment be printed for the use of the members of the Bar of the State of New Jersey.

PRESIDENT: Chief Justice Brogan, do you offer that as a motion?

MR. BROGAN: Yes.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. Judge Rafferty.

MR. RAFFERTY: Mr. President, I propose an amendment to Proposal No. 4-1, Section III, Paragraph 3, setting up within that paragraph a matrimonial court as a part of the Equity Division of the General Court. In my view, and in the view of many of the delegates, this is an exceedingly important part of the judicial administration, and the purpose of the amendment is to have what might reasonably be called a separate court within the Equity Division handling matrimonial causes.

PRESIDENT: Are there any further amendments to be offered to the Judicial Article?

(Silence)

PRESIDENT: If not, with your approval, we will proceed to consideration of the Proposal offered by the Committee on Rights and Privileges. . . . Mr. Orchard.

MR. WILLIAM J. ORCHARD: I have an amendment to offer. The purpose of this amendment is to add to the end of Article I, Paragraph 19, the sentence: "Publicly employed labor and privately employed labor in public utilities, are prohibited from engaging in strikes or work stoppages."

PRESIDENT: Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President, I have here an amendment offered by Mr. Montgomery and myself, changing the voting age from 21 to 18.

PRESIDENT: Are there any additional amendments to be offered to the Rights and Privileges Proposal?

(Silence)

PRESIDENT: If not, shall we proceed to a consideration of the Proposal submitted on Taxation and Finance? . . . Judge Carey.

MR. ROBERT CAREY: Are you taking up now amendments to the Rights and Privileges Report? If so, I have two amendments to offer.

PRESIDENT: Yes, Judge Carey.

MR. CAREY: Mr. Chairman, I have here an amendment to Article IX of the Rights and Privileges Committee, which relates to the method of amending the proposed new Constitution. I offer an amendment which supplants the method suggested by the committee, by adopting the system now in the Constitution of the State with but one amendment, an amendment changing the date of election by the people from a special election to a general election. I offer that. I offer also an amendment to Article I, Paragraph 19, of the Report of the Rights and Privileges Committee. That paragraph repeats one of the provisions of the present Constitution, which reads as follows:

"The people have the right freely to assemble together, to consult for

the common good, to make known their opinions to their representatives, and to petition for redress of grievances."

Then the Report adds a general provision granting to organized labor and otherwise, the right to engage in bargaining contracts generally.

Now, my amendment is practically a motion to strike out all that part of the Report that follows the words "for redress of grievances." It leaves the labor program out of the Constitution entirely and leaves it to legislative action. I offer this amendment.

PRESIDENT: Are there additional amendments to the Proposal of the Committee on Rights and Privileges?

(Silence)

PRESIDENT: If not, shall we proceed to a consideration of amendments to the Proposal submitted on Taxation and Finance? . . . Mr. Cullimore.

MR. ALLAN R. CULLIMORE: I want to propose an amendment to Committee Proposal No. 5-1, to amend Section I, as follows:

In line 2, Paragraph 1, Section I, strike out the words "according to its true value" and insert, in place of the comma following the word "rules," a period.

The object of this is to compose some of the difficulty which exists in the taxing situation, by simplifying the sentence rather than complicating it.

PRESIDENT: Senator Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: Mr. President, I would like to offer an amendment to the section of Committee Proposal No. 5-1 which has to do with the creation by the Legislature of debts and liabilities of the State.

PRESIDENT: Colonel Walton.

MR. GEORGE H. WALTON: Mr. President, I wish to offer an amendment changing the certifying officer in the third paragraph of Section I, from the State Auditor to the Governor.

PRESIDENT: Mrs. Constantine.

MRS. MARION CONSTANTINE: Mr. President, I would like to offer an amendment to Committee Proposal No. 5-1 *(reading):*

"*Resolved,* that Committee Proposal No. 5-1 be amended, by striking out page 3, Section II, all of lines 14, 15 and 16."

PRESIDENT: Thank you, Mrs. Constantine. Are there any further amendments to the Proposal of the Committee on Taxation and Finance? . . . Senator Milton.

MR. JOHN MILTON: Mr. President, on behalf of Mayor Frank H. Eggers, of Jersey City, who is required to be in the city because of the sudden illness of his son, who was taken to the hospital this morning for an operation, I desire to offer, in his name, an amendment to the Committee's Proposal, which, in effect, provides

that second class railroad property as now defined by law, shall be taxed at the local rates, assessed or levied in the community in which the property is located, and that the proceeds thereof shall be paid to the community in which the property is located.

On my own behalf, and in a sense following the amendment proposed by Mayor Eggers, I have one which will come forth for consideration only in the event that the Convention, in the mistaken exercise of its wisdom, should defeat the Mayor's amendment—

(Laughter)

—and which proposes that the committee's recommendations, as contained in the first paragraph, and the basis of the Mayor's recommendation be submitted as an alternative on the ballot, contrary to the Attorney-General's views.

PRESIDENT: Are there any other amendments to be offered?

(Silence)

PRESIDENT: It is my understanding, consequently, that at this time the delegates present have no additional amendments to offer, though they may, of course, offer amendments until such time as the Proposals on second reading have been terminated.

I propose then, with your consent, that we proceed to a discussion of the amendments to the Executive Article. I would like to inquire of Judge Lance if he would like to present his argument?

MR. WESLEY L. LANCE: Mr. President, I use the legal device of incorporating by reference at this time everything I said this morning, with one additional correction. I believe I said that under my amendment[1] the longest period of time a Governor could have would be an unexpired term plus one full term, which would make it a total of six years. I should have said seven years. A Governor might have an unexpired term of three years and be reelected, under my amendment, for a full term, making seven years in all.

At this time I would like to ask the Senator from Bergen, Mr. Van Alstyne, a question, if he yields.

MR. VAN ALSTYNE: I yield.

MR. LANCE: Through you, Mr. President. The Senator from Bergen, Mr. Van Alstyne, has introduced Amendment No. 6, which in effect provides, as I understand it, that the chief executive officers and administrative officers of this State shall serve at the pleasure of the Governor. Is that correct?

MR. VAN ALSTYNE: That is correct.

MR. LANCE: I would like to ask the Senator a further question, —whether this was the majority report of the committee, and whether it was inadvertently left out of the printed draft, or is it an amendment?

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

MR. VAN ALSTYNE: Through you, Mr. President, I think that when I presented my amendment this morning I explained that the words were included in the tentative draft proposal, originally issued by the committee. Those words were inadvertently left out through stenographic error, and this is the report of the majority of the committee. We are simply rectifying that typographical error.

MR. LANCE: On the motion, Mr. President. This morning I set forth seven arguments against gubernatorial succession. I now add an eighth.

It apparently is the consensus of opinion of the Executive Committee that the chief department heads of this State should serve, not for a fixed term, but at the will of their creator. I want to point out to you that in my humble opinion that could be a very dangerous situation. Let us use a specific example. X is the Governor of the State of New Jersey and he appoints Y as State Highway Commissioner, which is a most important, powerful office. It is time for X to decide whether or not he wants to run again for office. The State Highway Commissioner serves at the will of the Governor, and I ask you gentlemen, is he or is he not, in many instances, going to be for succession? Now, multiply that 20 times, running right down the line for every chief executive officer, and I think you will argee with me that it would not be difficult for an ingenious Governor to succeed himself.

In making these remarks, I am not to be construed as casting any aspersions whatsoever upon the existing Governor or the existing State Highway Commissioner, but I just use those as examples.

PRESIDENT: Any further discussion? Senator Van Alstyne.

MR. VAN ALSTYNE: It just so happens that I would like to call on Commissioner Miller to speak on this subject.

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Constitutional Convention:

The Committee on Executive, Militia and Civil Officers has set forth in its final Report "A Proposal relating to the Governor, militia, State administrative organization, public officers and employees, adding new articles on the Executive and on public officers in lieu of Articles V and VII of the Constitution of 1844."

There is presently before the Convention an amendment to paragraph 5, Section I, Article IV, presented by Delegate Lance of Hunterdon County. This proposal would deny to the Governor the right to succeed himself after the completion of one term of four years. This presents squarely before the delegates to this Convention the issue of gubernatorial succession. It deserves to be considered on its merits.

The re-eligibility of the Governor to succeed himself may be described as the keystone of the arch to make the Governor of New

Jersey a responsible chief executive. For nearly three-quarters of a century, one of the principal defects in the executive department in State Government, which has been almost universally recognized is that the Governor is elected for a term of three years and is denied the right to succeed himself, a unique distinction shared today with no other state in the Union.

This proposal for limited succession as set forth in our Report received the most careful consideration by your committee. It is significant that every witness who appeared before your committee, including Governor Driscoll, Governor Moore, Governor Larson, Governor Hoffman—all of the living ex-Governors except one, who has been unable to be with us because of illness—together with some of the foremost authorities on government who testified, were, with one single exception, in complete agreement with the principle that the Governor shall succeed himself for at least one term. A brief submitted by Governor Edge opposed succession, while a communication written by Governor Edison approved it. Several other civic leaders in the State outlined their opposition to this principle in letters to the committee. After reviewing all these statements and arguments, giving them the consideration which they properly deserve, your committee unanimously approved the principle of gubernatorial succession for one term, or a period not in excess of eight years. Because your committee rested its conclusions on principles that are rooted in American constitutional procedure, it is proper that we should share with you our reasons and point out why, in our judgment, this amendment should not prevail.

Let me review briefly these reasons. In the first place, the ultimate decision of whether or not a Governor should succeed himself in office should rest with the people themselves. It is by their suffrage that he is elected; it is by their support that he is sustained in carrying forward his program. It is by their vote of confidence that he should be returned to office. A special responsibility devolves upon the Governor to report to the people for the administration of his office. For under the Constitution, he is the only official elected by the whole people.

In the second place, the accountability of the Governor to the people for his stewardship in the high office to which he has been elected by their suffrage is both the right and the duty of such a chief executive. This principle of accountability is in line with the best American tradition, first established for the President in the Federal Constitution of 1787. To accept this principle for lesser public officials at the state and local level, and for greater offices at the national level, and to deny it to the Governor is both inconsistent and unsound.

In the third place, to deprive the Governor of the right to succeed

himself at least once, is to deny him the opportunity to test against the public conscience the quality and the character of the services which he has performed. Such a testing would be salutary and further the cause of good government. Our constitutional liberties are more likely to be protected by giving power to our Chief Executive and holding him responsible than by holding him accountable where the power is diffused.

In the fourth place, to deny the Governor the right to succeed himself at least once is to limit, in fact, the people in the exercise of their popular sovereignty. That all political power is inherent in the people is one of the first articles of our political faith, which we affirm in the Bill of Rights. Now, faith without works is dead. The right to both commend and command public service should reside with the people.

In the fifth place, the fear that the Governor would become too strong and might become a dictator is at once a survival of the ancient fear about the power of the royal governors and is, in fact, an anachronism in the year of 1947. It fails to take into account not only the many devices to inform the public in our day as compared with a century ago, but also the power of an informed public opinion on public officials. The analogy sometimes drawn between the limited powers of a governor and the unlimited powers of the presidency is, in my judgment, not well taken. The President is not only the Commander-in-Chief of the Army and Navy, but he also has control over foreign affairs and vast parts of the public domain. The position and responsibilities of the President are incomparably greater than that of the chief executive of any state in the Union. And yet, with all of these vast powers of the presidency, it has been custom alone, and no constitutional clause, which has limited him to two terms. In one case alone has this custom not prevailed.

In the sixth place, the apprehension that if a Governor were permitted to succeed himself, he would build up a powerful political machine requires some fundamental consideration. Some of the most powerful political machines are built, not by regularly elected public officials, but by those who operate by remote control behind the scenes and are never responsible to a public plebiscite. The very principle of accountability to the people should serve rather as a restraint on such political manipulation. Those of you who are delegates to the Convention and have had the privilege of reading or reviewing the pages of the printed proceedings of the Constitution of 1844, will recall that this was one of the lively issues of that Convention. Mr. Hornblower, who played such an important role in 1844, said in support of the right of succession a hundred years ago,

> "If ineligible to succeed himself a governor would indulge his corrupt

> and vicious inclinations unrestrained by any regard for the good opinion of his fellow citizens."

Moreover, if the choice is between a political power that is responsible to public control at periodic intervals, and one which is not so subject, the people will inevitably choose the former. An examination of the political history of a few of the states where the right of succession is denied, such as Louisiana, does not demonstrate that non-succession is a bar to political domination. Said Governor Driscoll, in a communication to the chairman of our committee, "at a time when the Governor was prohibited from succeeding himself, a tyrant was enabled to seize and hold the reins of government." Indeed, that state is now preparing to revise its Constitution, in the hope of checking irresponsible executive power.

In the seventh place, the right of the Governor to succeed himself for one term preserves the valuable principle of continuity of administration. Every business, large or small, recognizes the value to the organization and to the consumer of continuity of an experienced executive. In the public service we provide tenure and pension to insure it. In the university world continuity is a basic tenet. If I may presume the opinion, I would assert that Rutgers University would not be one of the leading educational institutions in the nation today under the leadership of our illustrious President, if the trustees had been barred at the outset to command his services for a limited period of four years, or, at best, ask him to step aside for four years before resuming his leadership as the president of this great university. Alexander Hamilton, one of the architects of the Federal Constitution, wrote in the Federalist papers:

> "Nothing appears more plausible at first sight, nor more ill-founded upon close inspection, than a scheme which in relation to the present point has had some respectable advocates: I mean that of continuing the chief magistrate in office for a certain time, and then excluding him from it, either for a limited period or forever after. This exclusion, whether temporary or perpetual, would have nearly the same effect as these effects would be for the most part rather pernicious than salutary."

With great effectiveness, Hamilton then presents a series of reasons in support of executive succession, which are as valid today as they were then.

PRESIDENT: Commissioner Miller, might I interrupt just a moment. According to Rule 46 your time is up, unless you can borrow 15 minutes from somebody else in writing.

MR. JOHN L. MORRISSEY: Mr. President, I'd like to make a motion that Commissioner Miller be given additional time. I make such a motion, Mr. President.

PRESIDENT: According to the Rule, Senator, anybody can endow Commissioner Miller with another 15 minutes. That would keep it in accordance with the resolution.

MR. MORRISSEY: I understood the President to say when we

were voting on that Rule, that additional time could be allotted by the Chair or by the Floor.

PRESIDENT: I think the President was voted down on that. I don't think it is a matter of moment. If you will consent to give your time to Commissioner Miller, then that takes care of it.

MR. MORRISSEY: I do.

MR. MILLER: Thank you, Senator.

Continuity of administration has received an added importance in the total design of the Executive Article, which vests in the Governor the appointment of his chief administrative assistants to serve during his term of office and until their respective successors are appointed or qualified. In the case of the departments or agencies where professional competence is a prime requisite, the possibility of attracting career men into the public service would depend in part upon the prospect of continuous service of the chief executive.

In the eighth place, the re-eligibility of the Governor to succeed himself is recognized in the Constitution of 31 states in the Union; limited succession is permitted in five more. Of the 13 states which provide a four-year term and make the Governor ineligible to succeed himself, nine are south of the Mason and Dixon Line, where the dominance of one party in power has been the rule for generations. Two other states, Missouri and Oklahoma, might be presumed to be in the southern orbit. But two northern states, Indiana and Pennsylvania, provide a four-year term and bar gubernatorial succession. New York, on the other hand, which is the largest state in the Union (in population), not only increased the term of Governor from two to four years at their Constitutional Convention in 1938, but made possible unlimited succession. Indeed, all of the middle-Atlantic states provide for either limited or unlimited succession. Our neighboring and conservative State of Connecticut, is submitting to the people in 1948 a constitutional amendment providing for the extension of the Governor's term from two to four years without any bar to eligibility or re-eligibility. It is significant, moreover, that in none of the states where outstanding developments in state administration have taken place in recent years, does the principle of non-succession prevail.

In the ninth place, the limitation of succession to two terms combines the invaluable principle of the accountability of a Governor with the sound provision for rotation in office. To insure rotation after eight years is a reasonable proposal and insures the infusion of new ideas and new personalities into public administration, and offers to other qualified men and women the privilege to serve their State. If it be urged that the rate of rotation is doubled by a four-year limitation, the answer is that accountability

is a primary governmental principle which, when combined with rotation, provides both popular control and the privilege to serve.

In the tenth place, a responsible executive is essential both to the maintenance of representative government and the maintenance and vigor of legislative as well as judicial institutions. There is no conflict among a strong executive, a strong legislative, and a strong judicial department; rather they tend to balance each other. In their strength they enjoy an equality so essential under our American system, built as it is on the doctrines of the separation of powers and checks and balances.

In the eleventh place, the restoration of the states to the power which in recent decades has gradually seeped away, and has been concentrated in the Federal Government, depends in no small measure on strengthening state government. The weakness which has developed in state government has been the direct result of what Professor Ford of Princeton University some 40 years ago described as the "manacled state"—the restrictive prohibitions and limitations on the efficient functioning of state administration. The danger to state function has been what Elihu Root pointed out more than a generation ago, constitutional inability to act with sufficient promptness. In a word, what we must do, if we believe in states' rights, is to provide more in the way of executive responsibility—to give the states the right to govern.

These, then, are the broad affirmative principles of accountability, popular control, rotation in office, continuity in administration, equalizing of responsibility and the restoration of state power for effective government, which have been central in the considerations that led your committee to the reasonable conclusion in support of gubernatorial succession for two terms.

These are the sufficient answers to the arguments that have been advanced by those who have been opposed to succession. May I, Mr. President and delegates, ask the privilege of making specific reply to some of the statements which were made by Delegate Lance in support of his resolution. I do so with great respect, not only for his knowledge of government, but for his abilities as a lawyer and as a student of government. But to assert, as he has asserted, that the adoption of the principle of gubernatorial succession is contrary to custom and practice of American states, is so far from the fact that it astonishes me that he has permitted himself to make the assertion. The facts are that it is in conformity with the general practice. Thirty-one states of the Union provide for succession that is unlimited; five provide for a form of limited succession.

Moreover, when he speaks about the fact that there are some 23 other states that provide for a two-year term, it would be appropri-

ate, it seems to me, to remind the delegates who have, perhaps, not had the benefit of extensive research in the field, that the trend, the undeniable trend, in the field of state government is the extension of the term of the Governor from two to four years. No constitutional convention in this country within the last 20 years, when the matter of gubernatorial succession has come up, has provided for a term of less than four years. New York in 1938, in the adoption of its constitution, not only extended the term from two to four years, but provided for unlimited succession. Missouri, which redrafted its Constitution and adopted it by popular vote of the people, similarly provided for a four-year term. The State of Connecticut which, as I said a moment ago, is presently to act upon an amendment in 1948, will provide for an extension in time from two to four years, and provides similarly for the principle of reeligibility of the governor.

Delegate Lance's statement that the new Constitution will vastly increase the *quantum* of the Governor's veto power is quite true. But it is precisely at that point that the Chief Executive under the old Constitution found his power inadequate for his task. The facts are that 35 states in the Union provide a veto power of two-thirds; that but three provide a three-fifths vote; and that the Federal Government, itself, under the Federal Constitution, has set the pattern of a two-thirds vote.

The Senator has also suggested in his reflection, that the Constitution, for all practical purposes, vests in the Governor the sole and exclusive appointing power over state officials. May I point out again, delegates to the Convention, that it has been the meticulous concern on the part of the members of your committee to provide that in all executive appointments, with a single exception, the advice and consent of the Senate is an indispensable requirement. Only commissioned officers of the militia are appointed and commissioned by the Governor according to law.

Delegate Lance has made considerable point of the fact that the *quantum* of the Governor's appointment has been increased under the provisions of this Article. That is true. But it is important to remind you of the fact that when he says the Governor in New Jersey appoints both the Secretary of State and the Attorney-General, he ought merely to put the thing quite correctly: a Governor appoints the Attorney-General, and a Governor appoints the Secretary of State. It has been one of the confusing over-lappings of authority that whereas the Secretary of State and the Attorney-General have been constitutional officers, that where one may be appointed for a five-year term, the Governor serves for a three-year term, and you have, and have had repeatedly, the case of a Governor coming into power, having both a Secretary of State and an Attorney-General

whom he himself has not appointed.

These, then, are perhaps the sufficient answers to the arguments which have been advanced by the opponents to succession. They may all be summed up in the assertion contained in a brief presented to the Committee on the Executive:

> "With the increased powers it is proposed to give governors under the new Constitution, and which I assume will be given them, the governor of New Jersey will be by far the most powerful chief executive of any state in the Union."

That argument is deserving of the most serious consideration and was weighed most carefully by your committee. Now that we can examine the Executive Article within the larger framework of the proposed Constitution, we discover that the assertion is unsupported. The answer to the rhetorical question which has been posed, "How much power should a Governor have?"—the answer, I say, to that question might be found in the immortal words of Abraham Lincoln, "Strong enough to govern, but not too strong for the liberties of the people."

Moreover, the brief which was submitted was written prospectively and in advance of the preparation of the Report of the Committee on the Executive, and before the Reports of the other committees were prepared. What could be seen through a glass darkly a month ago, can now be seen in full daylight. The very precautions which these opponents raised have undoubtedly served their purpose of restraint. The result is, no doubt, a better balanced document. We should be grateful to them for their caution and their criticism.

As you trace the line of executive authority which is spelled out in the pages of this Report, you will detect an underlying purpose to make power responsible, to equate governmental power in each of the three branches of government.

PRESIDENT: Commissioner, may I interrupt again to say that Colonel Walton has agreed to give you his 15 minutes.

MR. MILLER: Thank you Colonel Walton and Senator. If I may say, Mr. President, I shall not need to trespass very much longer on the patience of the Convention.

The appointing power of the Governor has, in fact, been diminished over some administrative officers, while at the same time it has been provided that the single heads of the principal departments shall be appointed by the Governor and be responsible to him, and for terms concurrent with his. Surely, no one can cavil at this executive reform.

It is asserted that a Governor would in eight continuous years have appointed every judicial and state law enforcement officer of the State. This assertion was made well in advance of the appearance of the Judiciary Report. That is not true if the Judiciary

Article as prepared is adopted, which will enable the present Justices to complete their present terms, and gives life tenure to all members of the new Supreme Court, and provides life tenure for the members of the General Court after their first appointment.

As to the appointment of county prosecutors, it is true that terms as now provided run for five years "and until their respective successors shall be appointed and qualified." But as to that, all these gubernatorial appointments are shared with the Senate. If it were deemed wise to limit his power over the law enforcement officers, it could readily be provided that they should be appointed by the chief law enforcement officer himself.

But then, while there is respectable precedent for the election of judges and county prosecutors in our neighboring State of New York and there are equally sincere advocates for its establishment in New Jersey, we have followed the federal practice of executive appointment in this State. What should be made clear and asserted in the most unequivocal terms is that under the proposed Judiciary Article no one single Governor could make appointments of all of the members of the courts of the State of New Jersey.

An objective analysis of the powers of the Governor of New York State makes it abundantly clear that his powers of administrative appointment and removal are far more extensive than those in New Jersey. He has, by the Constitution of 1938, been given powers commensurate with his responsibilities. And yet, when their Constitution was amended, the term of Governor was extended from two to four years and no bar erected to re-eligibility for succession. One of the results is that men of distinguished ability of both parties, such as Whitman, Smith, Roosevelt, Lehman and Dewey, have not only been elected but also re-elected to the post of governor of that great state.

A century ago, the delegates to the Constitutional Convention meeting in Trenton took counsel of their fears about a strong Executive and both limited his term to three years and denied him the right to succession. With a longer span of time separating us from the tyrannical acts of royal governors, we have less excuse today for taking counsel of our fears and more positive reasons for taking counsel of our faith—our faith, not only in the people themselves, but faith in the discipline of responsible power. Responsibility alone fits men for responsibility. We may well believe that the Governors of New Jersey will measure up to the new responsibilities we propose to place on them. What then, delegates to the Convention, is the sum of the matter? It can be briefly and quickly put: What we have sought to do is to make the Executive the real Executive, as the Legislative Committee has sought to make the Legislature a real Legislature and the Judiciary Committee the

Judiciary a more integrated Judiciary. That seems to us to be sound constitution-making.

We have given positive recognition to the principle of the accountability of the Chief Executive for the administrative power vested in his hands by the will of the people, but we have limited that right to a period of eight years in order that the State itself might not be deprived of the services of other men and women of broad experience and training who can devote themselves and their skill and imagination to the public good.

The Federal Constitution, while silent on the subject of succession, has, with the single exception of one man, borne testimony to this tradition of the principle of accountability and of rotation in office. We can, I believe, in this State follow a long and honorable tradition in the nation and look forward to the development of the post of Governor, not only as the chief administrative officer of government but as one whose leadership and articulation of the public will can fulfill the hopes of a proud people.

In the provisions of this new article on gubernatorial succession we believe we have achieved that counsel of moderation and sound principle on which our American Commonwealth has flourished, and have fashioned a provision for executive power strong enough to govern but not too strong for the liberties of the people.

Thank you.

PRESIDENT: Is there any further discussion on this amendment?

MR. ARTHUR W. LEWIS: Mr. President and fellow delegates:

I rise to support the proposed amendment by the delegate from Hunterdon County. It is with some diffidence that I voice an objection to the Proposal by the Commitee on Executive, Militia and Civil Officers. We have heard it said at one of our committee meetings that "the mountain labored and produced a mouse." I wish to say that, in my opinion, this Executive Committee indeed labored, labored arduously. They produced a very constructive Proposal, one that recommends many advisable improvements over the Executive Article in the Constitution we now propose to revise. But the committee did not stop, in my opinion, at merely increasing the powers of the Executive; they went further. They provided for a means whereby there could be created a virtual Frankenstein power that some day may come back to haunt, if not us, the generation that may follow. This question, in my opinion, fellow delegates, is indeed an important one. I would like just briefly to call your attention to a few of the increased powers mentioned in this Proposal:

Section I, Paragraph 11, the Governor's power is implemented so that he may exert positive action in the enforcement of legislative and executive orders. This in itself is not objectionable.

Section I, Paragraph 14, increased veto power. In 1844 this was one of the most controversial issues before the Convention. It was argued then—why should one man have the power to veto the will of the majority? Is not the power to negate aristocratic and regal? But I will even go along with the theory of increasing the power of the Governor's veto. In itself, it is not objectionable. We pass along now to Section I, Paragraph 15, and we find that the Governor has the power to veto specific items in the Appropriations Bill. Do we realize that this gives to the Governor the power to control the purse strings of the State of New Jersey? He can then control the fiscal and economic affairs of the State. He can make the departments and agencies subject to his will. But this in itself, in my opinion, is not objectionable.

Section II. Under this section the Executive has the sole and only right or power with regard to executive clemency. There may be arguments for and against such a proposal, but this in itself is not objectionable.

Section IV. The Governor is the head of the administrative offices, departments and instrumentalities of the State. He has the appointing power, and it has been said this appointing power is by and with the consent of the Senate, but of what value may that be? Of what significance is that if the appointing power is merely to an office where the appointee holds office at the suffrance and pleasure of the Governor? But this provision in itself, I maintain, is not objectionable.

As to the Article relating to Public Officers, it has been pointed out that the Governor will have the power to appoint all prosecutors, all members of the judiciary, all of the chief law-enforcing officers of the State, and this power, in itself, is not, in my opinion, objectionable. Not any of these increased powers, separately and individually, in my opinion, are objectionable. I will even go further than that. All of these powers collectively, in my opinion, are not objectionable providing and on condition that we do not permit the Executive to take advantage of these powers in order to succeed himself, because, ladies and gentlemen, with these increased powers in the hands of one man for a period of eight years it would virtually put him in a position where he could build up a political machine that would dwarf into insignificance the political machines that we find in many of our big cities throughout the country today. George Bernard Shaw once said that everything is political. That may or may not be so. If so, we should make the most of it, provide for it and against it.

Now, delegates, with regard to this Executive Article we have been sent here to write an article that will give to the Governor the power to administer executive functions just as fully and completely

as any Governor should. I am for that power. We are also here exercising another responsibility, and that is to protect the people of this State from the possible exercise or abuse of excessive power. It has been said that an absolute monarchy is the best form of government, and I can subscribe to that theory. If you have a good monarch, an absolute monarchy would be the best form of government.

A few minutes ago Commissioner Miller referred to the Federalist Papers. Why did Hamilton, under the name of Publius, arouse the attention of the people in 1788? Why did he call their attention to Pericles, who was indeed a good governor? He wanted to bring out the fact that Pericles, although a good executive for 30 years in Greece, in a moment of weakness laid waste the City of the Samnium. Hamilton himself wanted to make it clear that even a good governor with too much power, in a moment of weakness and vengeance, may bring upon his state or country a blemish that time would never overcome.

Experience, someone has said, is knowing a lot of things that we should not do. Has not the experience of the last several years taught us anything? Has it not taught us that we should not be too hasty in the centralization and concentration of power?

Commissioner Miller also referred to one of the debates in 1844. I believe he quoted from Chief Justice Hornblower in a debate on this very question of succession—and by the way, Chief Justice Hornblower lost that debate. It was Mr. Schenk, the grandfather, I believe, of the delegate from Hunterdon County, who advanced the argument in that debate which was successful. Mr. Schenk said: "I know of no reason why we should assume that every governor will be pure, that every governor will be intelligent, that every governor will be patriotic."

Now suppose, under the increased power, we should get a Governor who does not meet those qualifications, a Governor who would negate the will of the Legislature and who used, for political gain, his power with regard to the financial affairs and the administrative agencies of the State. We are met with a dilemma for under those circumstances, if you wanted to amend the Constitution, we find a proposed provision in the Rights and Privileges Committee Report that the Governor even has the power to veto a proposed amendment to the Constitution.

Mr. Miller referred, or rather quoted, from Abraham Lincoln: What power should we give the Governor? We should give a Governor enough power to govern but not enough to encroach upon the liberties of the people.

I say, fellow delegates, if you give to the Governor all of these proposed increased powers, you are giving to the Governor enough

power to govern; but if you go further and, in the light of those powers, permit the Governor to succeed himself, not for a period of three years, ladies and gentlemen, but for a period of eight years —taking our present powers, adding all of the additional powers, and then almost multiplying that by three—if you go that far, in my opinion, ladies and gentlemen, you are enabling one man to encroach upon the liberty of the people. I urge the support of this amendment.

PRESIDENT: Judge Stanger.

MR. FRANCIS A. STANGER, JR.: Mr. President and delegates:

I rise in opposition to the amendment. I think we are concerning ourselves entirely with the appointive power of the Governor. We are not thinking of the great, broad, constructive things that the Governor may do.

I have no doubt at all that if the Governor surrounds himself with officers who shouldn't have been appointed, the people of New Jersey will see that he is not permitted to succeed himself in office. I have great faith in the people, sir. I oppose the amendment.

PRESIDENT: Any further discussion on this amendment?

MR. MILTON A. FELLER: Mr. Chairman and members of the Convention:

I want to say that the Committee on Executive, Militia and Civil Officers was unanimous on the question of whether or not the Governor should succeed himself. For a time the committee was divided on whether it should be for limited succession or unlimited succession, and this provision, permitting the Governor to succeed himself once, was eventually worked out.

Now, I agree with the previous speaker that the people should have the opportunity to decide whether they favor the policies or want to reject the policies of an incumbent who may be running for re-election. The increased power that is spoken of is simply increasing the power of the Governor as far as executive and administrative functions are concerned. We are not giving him any power over any other branch of the government. We think our proposal is in accord, as Commissioner Miller said, with the practice of other states, and also with the practice that is established in the nation by constitutional provision, and I ask rejection of this amendment.

PRESIDENT: Is there further discussion on this amendment?

MR. VAN ALSTYNE: Mr. President, I would like to ask Judge Hansen to speak on this amendment, please.

PRESIDENT: Judge Hansen.

MR. LEWIS G. HANSEN: Mr. President, ladies and gentlemen of the Convention:

At the outset, I want to say for your benefit that I shall not call upon any of the other delegates to assist me insofar as time is concerned. I speak here today in the capacity of a substitute for Judge Eggers, who had been assigned by our committee to team up with Commissioner Miller in the defense of the particular section that we are discussing just now.

I have read Judge Eggers' statement, and I shall read it to you; but before reading it to you, I have reached the conclusion that the crux of Judge Eggers' argument is that the people of our State can determine this question for themselves. In other words, that we can leave this matter to the good judgment of the people of our State, and I might say, Mr. President, strange as it may seem, that I still have confidence in the good judgment of the people of our State.

(Laughter and applause)

This is Judge Eggers' statement, ladies and gentlemen.

"It is my happy privilege to espouse before you this day, a proposal in the Executive Article of the proposed new Constitution which I sincerely believe is one of the most important and necessary changes to be made in the present Constitution of 1844.

It is most important because it will have a direct bearing upon the future welfare of our State and will, if adopted, enable New Jersey to retain in office for a period of eight years a Governor who, in the judgment of the people, is administering his office in a manner conducive to the best interests of all the people of our State.

This proposal which I am about to discuss will eliminate the archaic limitation on executive succession as now contained in our present Constitution, which only permits a Governor to serve for three years and then requires a lapse of three years before he can again serve the people of this State.

Instead of this outmoded provision, which has operated so long and so often to prevent previous Governors from carrying through the governmental program to which they were committed and which has deprived the State of New Jersey of the services of many outstanding executives because they were loathe to take up the burden again after a lapse of three years, your Executive Committee is proposing that a Governor henceforth shall be elected for a period of four years with the right to re-election for another four-year period, if the people so desire.

Naturally, such a change has aroused some controversy, but the fact nevertheless remains that in all the specious arguments which have been advanced against the proposal, not one of them has been to the effect that the people of this State cannot be trusted to exercise their good judgment in determining whether a Governor has performed the duties of the office in a manner entitling him to be rewarded by re-election. Any suggestion that the adoption of this proposal would result in the creation of a despot is an insult to the intelligence of the people of the State of New Jersey. The history of our State and nation proves that we can trust the collective judgment of the people to rise up and cast out of office anyone who would attempt to misuse the powers granted by attempting to perpetuate himself in office by improper means.

The nub of the whole argument in favor of this proposal is this: Are the people of New Jersey to be afforded the opportunity to exercise their judgment in a democratic way, or are we, the 81 delegates selected by the people, to decide that they, the people, cannot be trusted with this power? I cannot conceive this Convention determining in the negative and thus imposing upon the more than two million voters of this State an execu-

tive limitation which has not only been distasteful and unworkable, but is the direct antithesis to our democratic processes.

What have been the results of the present limitation contained in our Constitution on executive succession?

1. It has prevented the State of New Jersey from receiving the benefit of excellent government by almost all of our chief executives because the three-year period for which they had been elected was too short a time in which to carry their program to fruition.

2. It has decentralized responsibility for good government, because it has enabled Governors who were anxious to do so to stall on their platform pledges for a period of three years, and thus escape responsibility for their deception by pleading that there was not sufficient time to carry them out.

3. It has summarily removed, after a period of three years, Governors who were honestly and conscientiously endeavoring to carry out their pledges to the people.

4. It has rendered static the democratic processes of government, because it has put a constitutional handcuff on the people of this State, by depriving them of the opportunity to continue a good executive in office.

5. It has by constitutional mandate nullified the will of the people of New Jersey.

These are serious limitations to impose upon a people who take pride in our democracy. They are limitations which have no valid purpose except to hamstring our people and render them mute at a time when they should be vociferous for the retention of a good chief executive. We have no right, ladies and gentlemen, to continue the imposition of such an undemocratic constitutional mandate on the people of our State.

Our forefathers in conceiving the Federal Constitution wisely conceived that all of the powers of government were derived from the people. It is their government and we, as delegates, should have faith in their judgment. We most certainly will not be exhibiting such faith if we deny them the right to reward or continue in office a chief executive whose record in office has earned him the reward of re-election.

The cause of good government is on trial here today, ladies and gentlemen. Good government springs from the people. We can't hope to have good government if we throttle the people of this State. Let us then do our duty fearlessly and honestly as we were sent here to do. Let us adopt this proposal for executive continuance and by so doing broadcast throughout the State that we have an abiding faith in Democracy, that we believe the people are capable of making it work, and lastly, let us restore the power of government where it belongs—with the people."

Thank you.

PRESIDENT: Is there further discussion upon this amendment? Mrs. Barus?

MRS. JANE E. BARUS: Mr. President, I can't pretend at all to be an expert in the field of government, nor can I speak with the authority of Commissioner Miller or Senator Lance, but I do think that when you study the development of state constitutions you are struck, even a lay person is struck, by a certain outstanding trend. When the state constitutions were adopted, immediately after the Revolution, there was a very great fear of a strong power coming in and strong-arming the government, getting control and being extremely difficult to oust.

When we set up the basic theory of the American system, we wanted checks and balances between the three great branches of government. The state constitutions did not, in effect, do that and

they rendered the executive very weak. In the last 50 years there has been a great awakening of interest in the revision of state constitutions, and many states have held conventions similar to this. I think, without exception, the recognition has been clear that the executive was lagging behind the other two branches and should be brought up to a level with them.

It seems to me there are two main reasons why that is a valid principle. First, as someone very well said before our committee, in the growing complexity of government today, it becomes more than ever essential to make the lines of authority and responsibility very clear and very simple so that all people can understand it. It does not make for democracy to split up the government so that groups of people here and there share in the exercise of authority. That makes for a complex situation and such an interweaving and crisscrossing of lines of authority that the people are unable to understand it, and therefore they are unable to exercise their true powers of control over their government. In this Article I think we have corrected that failure in New Jersey. We have put the Governor in a position of great authority, it is true. But we have tried to limit that authority to the confines of the branch of government which he represents, to give him strong power and clear-cut authority over the administrative section of the State Government.

We have also tried to make responsibility go hand in hand with that authority. I think our idea in working this Article out was that the power we need to fear is irresponsible power. The power which is clear and simple and which obviously rests with responsibility on the shoulders of the Chief Executive will do us no harm. The power that we need to fear is the power that is underneath, behind the scenes, that is not accountable, that never comes out for election or stands up before the people clearly.

The second reason why I think this trend in all our state governments has real validity is that it seems to be a principle of administration, not only in actual political government but in the management of our great business corporations—the thing for which America has become so famed throughout the world. There, it seems to me, we manage our affairs by having a policy-making body which conforms to the legislature, and by vesting in the Executive a great deal of responsibility and authority. We say to him, in effect: "Here you are, appoint your sales manager, your production manager, your subordinates; line up your department in such a way as to do the most effective job, and while you are doing this effective job we will continue you in office and trust the authority to you."

Well, I believe most of the men here will recognize this principle of business. They would certainly never want to run a business of any kind where there was a man in a position of authority without

any real power to put it into effect; where he was responsible for the conduct of the business but had no backing and no real possibility of making his decisions effective. The whole effect of this responsibility and power, it seems to me, depends upon letting a man perform his duties in office and then letting him seek the approval or the rejection of the people on the basis of his record. If adopted, it will undoubtedly be a far more open and aboveboard, and a far more easily understood authority and position than our Governors have ever had before.

Along the lines of limiting the power of the Governor to his own proper sphere, I would like to point out to the delegates again that there have been a good many ways in which his power outside his legitimate field has been curbed. His pocket veto has been eliminated. The power of the Governor to make *ad interim* appointments indefinitely has been eliminated and, of course, his appointing power in the judicial section has been greatly reduced. I think the philosophy in back of this is to set up a man who has real strength in the sections which properly belong to him—a clear-cut authority, a clear-cut responsibility so that the people of the State may know and understand what kind of a public servant they have and accordingly reward or punish him.

PRESIDENT: Is there further discussion on this amendment? Are you ready for the question? . . . Do you want to be heard, Judge Carey?

MR. CAREY: I'm really interested, Mr. Chairman and friends, in the breadth of this argument, but there are some things about it that have me worried. The strongest argument I have heard was the statement by one of the committee that the committee is unanimously for the proposition. I got worried about that, so I looked over the names of the committee. They are all friends of mine and all capable men, but as far as I can see exactly nine of them are potential candidates for Governor. Nine of them. I've just been figuring up, nine times eight is 72. Members of the Convention, it can't be done! Not in one lifetime. I just mention that to you to make you think.

I got to thinking of another thing. I've lived in this State, Mr. Chairman and friends, more years than most of you. I was a candidate for Governor once, too, just as was the last speaker from Hudson, and I met with the same fate that he met with, except I was beaten by Hudson, he was beaten by the rest of the State.

(Laughter)

That was the only distinction. During the years of my activities in politics I voted for 17 Republican candidates for Governor. It's none of your business how I voted, but that is the way I voted. I didn't always pick the winning candidate, but somehow or other

up to the present time I've never worried an instant and never met anybody else who did, about the brevity of the term of the Governor. In 90 cases out of a hundred, everybody you talk to will say, "You are going to increase his term to four years? Cut it down to two! We get enough in two." That's what the average individual says.

Now, just another point—who it is that's trying now to make it possible to have a Governor for eight years? I heard the speaker from Hudson say, "Oh, democracy is screaming from the roots of the grass. Give us a chance, give us the right to say who shall be kept in the Governor's chair." Well, that all sounds pretty, but you and I who are here know that this democracy that he speaks of, under any arrangement that we make, will never name the Governor who is going to serve for eight years, or maybe 12—amendments are going to be easy!—maybe 12, maybe 16. We've seen funny things happen down in the Washington part of the world. You can't tell what's going to happen. But look, who do you think will name the successor of the incumbent Governor when his term expires? I've lived long enough, Mr. Chairman, and I'm practical enough to understand that the party organizations name the candidates as they see fit, and the public understands that thoroughly. Democracy that he speaks of has about as much to say in the selection of who shall succeed the gubernatorial candidate in either party as a boy lost out in the storm. Oh, it happens otherwise, once in a long, long while.

Now, they are going to give four years to our Governor. Don't give him eight. Eight years of what he'll have to handle in modern times, with our Legislature on his hands all the time, will drive him to the cemetery. Candidates don't have to worry about those things. If they feel themselves popular they can come back. My county elected one man as Governor three times, but not consecutively. Under the Constitution we have, democracy gets its chance when it wants it. He was a popular candidate. I've just been thinking, it will be sad if he became the candidate, maybe next year, and we should put this program through. Well, he might serve for eight more years. You never can tell. But not with *my* vote, for I'm against any man having more than one term as Governor of this State. I don't want to see a man as Governor always busy preparing to find some way of safeguarding his renomination and reelection. We see a picture of that in Washington right now. And do we want it reverberated here in the State of New Jersey?

Oh, let's be simple! Our fathers knew what they were doing. They gave us a Constitution which lasted 103 years so far, and who ever suffered by the regular changes in the office of Governor? Who? No one but the Governor who didn't succeed himself.

I'll tell you another thing. I have seen some Governors who should never have succeeded themselves. I voted for a couple of those, too. One year was long enough for either one of them, yet some of them came near getting back in the firing line again. But, outside of that, I was just thinking—let's not fool ourselves. We didn't come down here to put halos on any particular individual. Do you know, any of you, a man you could pick out for Governor for eight years commencing tomorrow? I am leaving myself out of the calculation. Do you know of anybody?

I haven't tried to be facetious. I'm talking seriously. The one-term system has been good enough for me for 75 years; it can be good enough for the rest of us for a little while anyhow. Let's not make this mistake. I didn't come here from Hudson County as a delegate to please any man or any collection of men. Thank God I have an appreciation sufficient to mean this. I came here to be a delegate from my county, to give it the best kind of a Constitution that I can give it, and I'm going to forget all my political relationships when I cast my vote here. I want you to understand that because I'm getting older and I won't have many more votes like this to cast. I'm for one term of four years, committee or no committee.

This has been a great Convention for me. It's so open, so free. Let's keep it open, let's keep it free. Keep your mind on one thing, a simple Constitution and simple politics in its development. Very, very simple. Let's beat the proposition to give an extended term to any Governor. That's my view.

PRESIDENT: Is there further discussion on this amendment? . . . Mr. Randolph.

MR. OLIVER RANDOLPH: Mr. Chairman, delegates to the Constitutional Convention:

I think my appearance in support of the amendment will at least show the freedom of thought here in the Convention. Mrs. Barus, who sits right by me, has just spoken in favor of the Committee Report. Mr. Miller, the able delegate from Essex County who made the opening argument for the adoption of the Committee Report, is also from Essex County. I speak in favor of the amendment against the successive terms for the Governor. I have not prepared any argument and I shall confine my remarks mostly to answering some of the arguments that have been made.

One of the arguments that has been made is that the people should decide. I construe it that we, the delegates to this Convention, represent the people. If we do not, then I am sadly mistaken. I think when we decide such a question we are speaking for the people. And I do not know whether, after a Governor has two successive terms and after he has—as we all know who have

been identified with political action for a great many years—after he has a great deal of power which would naturally accrue to him, whether the people actually would decide. I think that he would practically have the power, if he were a clever and able Governor and knew how to control political manipulations, to renominate himself. I don't think the question as to whether the people would decide should be the question there.

I want to say right here that I pay great deference to the ability of the persons who have spoken in favor of adopting the Committee Report. And I know, too, what a disadvantage it is to speak against the adoption of a committee report. The Committee Report was no doubt arrived at after mature deliberation, but I think, on the other hand, that the very purpose of this Convention is that we should come here and express our thoughts freely on every subject that comes before the Convention.

Argument has been made that the amendment would limit the people's political sovereignty. I say in answer to that, fellow delegates, that every act of a Constitutional Convention in some way limits the people in the exercise of their political sovereignty. It is the very prerogative of a Constitutional Convention. That's just what we are sent here for.

Argument has also been made discounting the argument that a Governor would build up a political machine in an eight-year term of office. We began the consideration of this question with the idea of extending the governorship to four years. To that, I daresay, we all subscribe. And we are ending it up, according to the committee's recommendation, with an extension of his term from three years to eight years. I think that at the beginning and throughout the discussions of the extension of the Governor's term throughout the State we were almost confined in our discussion to the idea of extending the Governor's term to a period of four years.

I might say, too, that under the Lance amendment the Governor is not precluded from succeeding himself, but he is precluded from immediately succeeding himself. Even under the Lance amendment a Governor could come back after the lapse of four years and succeed himself.

Argument has been made that the Committee Proposal combines the sound principle of rotation in office. I doubt that. I think, on the other hand, that it would not combine the sound principle of rotation in office because our experience has been that a Governor who serves eight years can name his successor. He not only can renominate himself at the expiration of his term, but he would have the opportunity, the privilege, of naming his successor.

I think we are all here to discuss this question from our own viewpoints. The argument has been made that a responsible execu-

tive is essential. My answer to that is a one-term Governor. He could be responsible in the performance of his duties.

Another argument made is the weakness of the State Government —a great many of the powers of the State Government have been taken away by the Federal Government. I do not think that that argument would apply to this proposition that we have before us now. It seems to me that that weakness would have to be remedied by Congress and not by a Constitutional Convention.

Now, another argument has been made about how many states allow succession. I don't think that argument is applicable. A great many of our states do allow it, but I would pose the question, how many of our states allow the vast appointive power of the Governor? Take New York. It has been pointed out—it's hardly necessary for me to reiterate it—that there the Governor was allowed to succeed himself from time to time, but the judiciary, the Supreme Court justices, are elected by the people; district attorneys are elected by the people. I don't think you'd have any argument; if you want to elect those officers in this State I don't think there would be any opposition to the extension of the term of the Governor to eight years.

Now, we have precedent—the makers of the 1844 Constitution. We have continued under the three-year term system down to today, and I don't think that we haved suffered by it.

As to the power of a Governor to reappoint his able executive officers, I point to the Honorable Spencer Miller himself to show that there is no abuse of power—a man who has so admirably filled the position which he occupies, and he has continued thus far under three Governors. So, we do not need to fear that abuse of so-called limitation of power.

I think that that about concludes the argument I have, and I certainly feel, as has so excellently been pointed out, that we are on dangerous ground, that we here as delegates to this Convention should not take dangerous chances. I believe that if we limit the term of the Governor to four years, with an opportunity to come back in office if the people so desire at the expiration of four years, we will be performing our duty for the people and we will be performing our duty towards the State.

PRESIDENT: Further discussion on this amendment? Are you ready for the question? The question is for the adoption of the amendment to Committee Proposal No. 3-1. All those in favor of the adoption of the amendment will signify by saying "Aye."

(Chorus of "Ayes")

PRESIDENT: Those opposed—"Nay."

(Larger chorus of "Nays")

PRESIDENT: Mr. Lance.

MR. LANCE: I ask for a roll call on the motion.

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls roll):*

AYES: Berry, Camp, Carey, Cavicchia, Clapp, Hacker, Kays, Lance, Lewis, Lightner, Moroney, Orchard, Proctor, Pursel, Pyne, Randolph, Read, Schenk, Streeter, Taylor, Young—21.

NAYS: Barton, Barus, Brogan, Cafiero, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hadley, Hansen, Hutchinson, Jacobs, Jorgensen, Katzenbach, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Milton, Montgomery, Morrissey, Murphy, Murray, Naame, O'Mara, Park, Paul, Peterson, H. W., Peterson, P. H., Rafferty, Sanford, Saunders, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Van Alstyne, Walton, Wene, Winne —53

SECRETARY: 21 in the affirmative, 53 in the negative.

PRESIDENT: The amendment is defeated. The delegates, please, will proceed with the consideration of the second amendment which was introduced by Senator Lance. Will you present it, Senator?

MR. LANCE: Mr. President. Senator Pyne, of Somerset County, has introduced Amendment No. 7[1], which is on the same subject matter, namely, the veto power of the Governor, and Senator Pyne would desire—and if it is the desire of this Convention, I believe that it would be more orderly—to take up his amendment first, because his amendment also concerns the veto power and concerns the mere majority, whereas mine concerns a three-fifths vote.

PRESIDENT: Senator Pyne.

MR. PYNE: Mr. President and members of this Constitutional Convention:

My amendment, as Senator Lance has just told you, deals with the same subject matter as does the one he introduced this morning, namely, the veto power of the Governor. I realize that the committee which had this subject matter in hand has given great consideration to it and has followed the President's authority, as set by the Federal Constitution, by requiring two-thirds majority to override the veto of the Governor. Whether or not that is too high seems to me to be quite a question, as Senator Lance has introduced an amendment reducing the necessary vote to a three-fifths vote of both houses.

It is my thought in presenting this proposed amendment that we retain the set-up that we have under the present Constitution. The question of the veto power, as we all know, has been under-

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

going a good deal of scrutiny of late, not only in state matters but in federal matters. It is a question here, it seems to me, whether in extending the Governor's power to this extent we are not interfering somewhat with the power of the Legislature and confusing the various branches of our State Government. It is a noteworthy fact, I think we all realize, that the veto power has been used more and more in latter years in federal affairs, and in less and less important matters. As you are probably aware, and as noted in recent magazine articles, the original President never exercised the veto power at all and considered it only to be brought into play where there was a question of constitutionality. Of late, it has been used more and more, and we have seen how difficult it is to override a presidential veto where a two-thirds vote of both houses is necessary.

For 103 years New Jersey has gotten along with the simple rule that a simple majority could override a Governor's veto. I don't know of any case where that has been abused or where it resulted in any hardship. It seems to me that the strong veto power is much more susceptible to abuse by the Executive than the weaker power is to abuse by the Legislature. I might point out that if the two-thirds rule is adopted it would be in the power of two large counties, or perhaps three of the smaller ones, to make it impossible to pass any legislation which the Governor opposes. I submit the amendment, Mr. President.

SECRETARY *(reads proposed amendment):*

> "Proposed amendment to Committee Proposal No. 3-1.
>
> *Resolved,* that the following amendment to paragraph 14 of section I, of Article IV be agreed upon:
>
> Amend page 4, paragraph 14, line 6, by striking out the words 'two-thirds' and inserting in lieu thereof the words 'a majority.'
>
> Amend in paragraph 14 on page 4, line 8, and on page 5, line 1, by striking out the words 'two-thirds' and inserting in lieu thereof the words 'a majority.'
>
> Amend on page 5, paragraph 14, lines 29 and 30, by striking out the words 'two-thirds' and inserting in lieu thereof the words 'a majority.' "

PRESIDENT: Is there discussion on this amendment?

MR. VAN ALSTYNE: Yes. I would like to ask Judge Feller to speak on this amendment, please.

PRESIDENT: Judge Feller.

MR. FELLER: Mr. Chairman and members of the Convention:

For your information, I have been designated to speak also on the next amendment which will be offered, so I will be very brief in order to avoid any unnecessary repetition. For a number of years one of the reasons advanced for constitutional revision has been that the Governor's veto power should be strengthened. Even up to the present time that has been an acknowledged fact. The Committee on the Executive were also unanimously of the opinion that the Governor's veto power should be strengthened. There was some

difference of opinion as to whether it should be two-thirds or three-fifths.

The Governor is elected by all of the people of the State, and if he vetoes a bill it should be made just a little more difficult to pass it than by requiring the same number of votes to pass it over his veto as originally. It is the consensus that this present provision has not worked out very well and that the Governor's veto power should be strengthened. I therefore ask for the rejection of this amendment.

PRESIDENT: Is there further discussion on this amendment? Mrs. Barus.

MRS. BARUS: I would like to speak against the amendment. It seems to me that in a State like New Jersey, where we have only one official elected by all the people, we have to look to that official to represent the interests of the State as a whole, as opposed to the people in the Legislature who naturally and rightly represent only the counties from which they come. It seems to me that this is in line with the federal and with the great mass of state procedures, and that it has logic and worth.

I would like also to call the attention of the delegates to the fact that while the committee decided to give the Governor this increased veto power, they also took great pains to eliminate the pocket veto, where a Governor can simply hold a bill and take no action upon it. Under these provisions, as you will see, the Governor must declare his reasons publicly, and if he does not do so the bill becomes a law. And there is even a provision that when bills are vetoed the Legislature shall automatically reconvene to consider those vetoes. We feel that in regard to the veto power we have strengthened the Legislature legitimately in its field, as well as the Governor legitimately in his field.

I would like to add just one more point, on the question of whether there really was a demand for some of these reforms. I would like to say that at the committee hearings we had a really very remarkable procession of representatives of business, of labor, of civic organizations and of organized women. The State Chamber, the Taxpayers' Association, both large labor groups, the Federated Women's Clubs, the League of Women Voters and many businessmen came to say that they approved of this veto power along with the other major provisions of the Article.

PRESIDENT: Any further discussion on this amendment? Are you ready for the question? . . . Judge Rafferty.

MR. RAFFERTY: I desire to speak in favor of the amendment proposed by Senator Pyne. I have no objection to increasing the administrative powers of the Governor. I think they should be increased. But I think we should not also diminish the powers of

the Legislature.

The majority principle has been the rule not only in this State but in our system of government. Under our present arrangement, a majority in the House and a majority in the Senate enact legislation, and it is sent to the Governor for consideration and approval. If the Governor vetoes, he returns it to the Legislature with his reasons for veto. I think it is ample that the Governor should have the opportunity to express his reasons for veto, but I think by the same token that the Legislature, representing all the people—even though legislators may be elected from the counties, nevertheless they speak as the lawmaking body of the State—should have the right and the power to again pass that item of legislation on a majority principle.

PRESIDENT: Further discussion on this amendment? Are you ready for the question? . . . All those in favor of the amendment, please say "Aye."

(Scattering of "Ayes")

PRESIDENT: All opposed please say "Nay."

(Chorus of "Nays")

PRESIDENT: Do you ask for a roll call, Senator Pyne?

MR. PYNE: I do not like to hold up the procedure, Mr. President, but I think we should have a roll call.

SECRETARY *(calls roll):*

AYES: Berry, Camp, Carey, Clapp, Lance, Pyne, Rafferty, Young—8

NAYS: Barton, Barus, Brogan, Cafiero, Cavicchia, Constantine, Cowgill, Cullimore, Drenk, Drewen, Dwyer, W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lewis, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne—64

SECRETARY: 8 in the affirmative, 64 in the negative.

PRESIDENT: The amendment is not adopted.

Senator Lance, do you care to present Amendment No. 2?[1] Will you read it?

MR. LANCE: Mr. President. Under the present Constitution a gubernatorial veto can be nullified by a majority of all of the members of each house. It is proposed in the Executive Article that two-thirds of all the members of each house be required to pass a bill over a Governor's veto. If the two-thirds rule for overriding

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

a veto is adopted, 21 Assemblymen can block the passage of all bills vetoed by the Executive. Two counties, namely, Essex and Hudson, could furnish these 21 votes. The practices and precedents of a State should be considered in writing a new Constitution, as well as the theory of political scientists found in textbooks.

I want to bring to your attention two matters in this connection. First, in New Jersey we do not have Assembly districts. As a result, all the delegates from Essex County are invariably of the same political complexion and all the representatives from Hudson County are invariably members of the same political party. This has been the history of these two counties since the time when the memory of man here living runneth not to the contrary.

Second, the Assembly delegation of Hudson over a long period of years has in effect voted in a block or unit on legislation. The same thing has happened substantially in Essex. I invite the delegates to inspect the Assembly minutes over the past ten years and check the accuracy of this statement. This is not a matter of party politics. Today the Essex Assembly delegation is Republican. Tomorrow it may be Democratic. Today the Hudson Assembly delegation is Democratic. Tomorrow it may be Republican. Now, that may seem fantastic, Mr. President, but I was a Democrat myself once until I received a vision. Until such time as Assembly districts are created in New Jersey, and until such time as the practice of members of counties voting substantially as a unit or block is abolished, I oppose the requirement that the stiffest test—a two-thirds test—be used.

PRESIDENT: Is there any discussion on this amendment? Are you ready for the question? . . . Judge Feller.

MR. FELLER: Mr. Chairman and members of the Convention:

I am very grateful to Judge Lance for not saying anything about Union County. The remark that Delegate Lance made that 21 Assemblymen coming from two counties could block overriding the Governor's veto in the Assembly is true. But remember, we are dealing with the Assembly. Members of the Assembly represent the people according to population, and those 21 delegates from Hudson and Essex represent 35 per cent of the membership of the Assembly. They represent 1,489,380 people, or 35.8 per cent of the population of this State. Consequently, we are not talking about two counties; in effect, we are talking about the number of people that they represent, and 35.8 per cent of the population of this State is a very substantial part of the total population. Furthermore, the question of Assembly districts, in my opinion, doesn't seem to have any connection as to whether we should have three-fifths or two-thirds.

We talk about controlled votes. Maybe the votes are controlled,

maybe they're not. But again, it would be up to the people of those respective counties to decide whether they want the Assembly units to vote that way or not. That depends upon the people on election day. Besides, I would just like to make a passing comment that it is easier to control a few votes than it is to control more votes. That seems to be self-evident.

The Executive Committee was not unanimous on this question. I believe the vote was approximately seven to four. But before the committee started its sessions, as I said before, it was unanimous that the gubernatorial veto power should be strengthened. The committee was open-minded as to how much that should be strengthened. So, we proceeded to deliberate and we first secured the opinion of the best available experts on the Executive Branch of the government. We had before us the present Governor, and we had before us several former Governors, such as former Governor Hoffman, former Governor Moore, former Governor Edison and former Govenor Larson. Only one of these, former Governor Larson favored a three-fifths vote to override the Governor's veto. Present Governor Driscoll recommended a two-thirds vote. Former Governor Hoffman recommended a two-thirds vote. Former Governor Moore recommended a two-thirds vote and former Governor Edison recommended a similar vote. Former Governor Edge, who submitted a brief to the committee, did not touch this subject at all.

We tried to find out what the standard practice was in the nation as a whole. Since the very beginnings of our Federal Constitution, there has been a provision in that Constitution that a two-thirds vote be required to override the President's veto. That apparently has not disturbed anybody because no serious attempt has ever been made to amend the provision. If it did work a hardship on any particular group, the people certainly would have changed that by means of an amendment.

Former Governor A. Harry Moore, when he appeared before us, was authority for the statement that 34 states in the Union have a constitutional provision requiring a two-thirds vote. Only five states have a provision requiring a three-fifths vote, and the remaining eight, of which New Jersey is one, require a majority vote.

In addition to that, we requested representatives to come before us either in an individual capacity or in a representative capacity, representing various organizations or a cross-section of public opinion in this State, and everyone of them invariably recommended that we put a two-thirds provision in the Constitution before the Governor's veto could be overridden. It seems to me that the overwhelming weight of authority is with that provision.

And even after the tentative Executive Article was drawn and another public hearing held on the finished product, not one person

appeared before us and asked us to reduce that two-thirds majority to three-fifths. In fact, we were very pleasantly surprised when most of the people came here and commended the committee for the work on the Executive Article, and almost all of them mentioned the fact, as part of their commendation, that we provided for a two-thirds majority to override the Governor's veto.

It is possible for two counties to block this, but they represent a large part of our population. It is also possible for a certain group of small counties to get together 22 votes to block this, representing 1,406,365 people, or 33.8 per cent of the population. Now, it may be necessary and to the best interests of some of the smaller counties to be in the position to block the passage of a bill that has been vetoed by the Governor, and this occasion may arise just as often as the other occasion. Twenty-one votes are necessary to do so under the two-thirds rule. These small counties can do this without calling for aid from any of the larger counties, but if it is changed to three-fifths, 25 votes would be necessary—four more—and it might be necessary for a group of small counties to call upon members of the Assembly from some of the larger counties for assistance. In other words, if they want to block a bill, it is going to be just a little more difficult.

Now, unless we are going to ignore the overwhelming weight of authority, as evidenced by the present Governor and most of the former Governors who appeared before us, unless we are going to ignore the almost unanimous statements of those who appeared before our committee representing a cross-section of public opinion in this State, I request that this amendment be rejected.

PRESIDENT: Is there any discussion on this amendment?

(Silence)

PRESIDENT: Are you ready for the question?

DELEGATES: Yes!

PRESIDENT: All in favor of the amendment, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Chorus of "Nays")

PRESIDENT: All those in favor, please hold up their hands.

(Hands raised)

PRESIDENT: All those opposed, please hold up their hands.

(More hands raised)

PRESIDENT: Senator Lance.

MR. LANCE: Mr. President, it would take only a short time to have a roll call.

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls roll):*

AYES: Barton, Berry, Cafiero, Camp, Clapp, Drenk, Farley, Glass, Holland, Lance, Lewis, Lloyd, Moroney, Naame, Park, Proctor, Pyne, Rafferty, Read, Schenck, Smalley, Streeter, Walton, Wene, Young—25

NAYS: Barus, Brogan, Carey, Cavicchia, Constantine, Cowgill, Cullimore, Dixon, Drewen, Dwyer, W. J., Emerson, Feller, Ferry, Gemberling, Hadley, Hansen, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Milton, Montgomery, Morrissey, Murphy, Murray, O'Mara, Orchard, Paul, Peterson, H. W., Peterson, P. H., Pursel, Randolph, Sanford, Saunders, Schlosser, Smith, G. F., Sommer, Stanger, Taylor, Van Alstyne, Winne—48

SECRETARY: 25 in the affirmative and 48 in the negative.

PRESIDENT: The amendment is not adopted.

I will ask the Secretary to read Amendment Number 3.

SECRETARY: Amendment[1] to Section III, Paragraph 2, of the Article, "Public Officers and Employees," of Committee Proposal No. 3-1, proposed by Mr. Park *(reading):*

> "When the Governor is tried, the Chief Justice of the Supreme Court shall preside and the President of the Senate shall not participate in the trial."

PRESIDENT: Mr. Park.

MR. LAWRENCE N. PARK: Mr. President and fellow delegates:

The proposal offered by myself is connected with power and the problem of impeaching a Governor. You will observe from the Committee Proposal No. 3-1 that the impeachment of a Governor comes about first through an action of the House of Assembly and the trial is then held in the Senate. As we all know, the President of the Senate may well be the presiding officer. I will not take too much time because I think the problem is not too difficult.

Over on page two, Paragraphs 6 and 7, the Committee Proposal provides that the President of the Senate shall take over the powers, duties and functions, etc., of the Governor when he has been impeached and shall hold that responsibility up until the time of acquittal. As the law presently stands I deem it to be unsatisfactory, and I think it was probably an oversight on the part of the committee in the drafting of this particular section. So far we have been fortunate in having no Governors impeached. So far, at least as far as my memory goes, we have been fortunate in having men of high standing who occupied the post of President of the Senate.

My proposal is simply this: That when the Governor is to be tried, the Chief Justice of the Supreme Court shall preside and the

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

President of the Senate shall not participate in the trial.

I think it must be very obvious to all what is behind this proposal. In the first place, if we continue our present method of doing business we may have a situation where the President of the Senate must preside in a trial in which he is very vitally interested in the outcome. The outcome might lead to the removal of a Governor and might lead to this President of the Senate taking over the powers of the Governor. We thus violate one of the elemental principles of law, which is the very essence of due process, that a man should not sit at a trial wherein he will ultimately benefit personally. It seems to me that the proposal which I offer eliminates that possibility.

Secondly, as the provision now stands, it is a temptation to a dishonest man. We hope there will be no dishonest men—and again, as one of our speakers said, I have no allusion to any persons now existing. It offers a matter of embarrassment to an honest man. We have 21 Senators, and the vote may be even and the President of the Senate may be placed in an embarrassing situation. In any event, regardless of the outcome of the trial, and especially if the Governor is impeached and removed from office, the man who moves up is always subject to political criticism that he either controlled the trial openly or by methods indirectly, and thereby he personally benefitted.

I therefore see that the proposal prepared by the committee offers many objections, and I think the proposal which I have submitted corrects it.

I have drawn basically from the practice of the United States Constitution. There, of course, the Vice-President of the United States is the President of the Senate, and naturally when the President is impeached or removed from office he would become the President. Under those circumstances our forefathers reasoned wisely that such was not desirable that the Senate President preside at an impeachment, and they provided that the Chief Justice shall preside.

Now, possibly I was presumptive in assuming that we would have a Chief Justice of the Supreme Court in our new judicial setup. I have no particular ballot for that officer, but we must start off somewhere. What I had in mind was that at least some judge would preside, and I assume that we will have a Supreme Court and it ought to be its highest man. The same reasons that prevail for preventing the President of the Senate from presiding apply to his taking no part in the proceedings.

In summary, the proposal I offer has the precedent of the United States Constitution. It corrects a situation which might result in the embarrassment of having a man act in his own case or of being faced with political accusations regardless of the outcome. I there-

fore urge upon you seriously the adoption of this additional sentence.

PRESIDENT: Is there a discussion on this amendment? Senator Van Alstyne?

MR. VAN ALSTYNE: Mr. President and delegates to the Convention:

This question was discussed at considerable length in committee and many points were raised *pro* and *con*. I can't say that in speaking, as I am going to speak, against the amendment I am speaking for all the members of the committee. I want to make that clear. Probably I am not, so let's assume that I am speaking only for myself.

It seems to me that this amendment is a definite usurpation of the prerogatives of the Legislative Branch by the Judiciary. As we have approached the problems of the Constitution here, we have definitely said that we will keep the three branches absolutely separate. By what right does the Chief Justice come down and sit as chairman or as president *pro-tem* of any proceedings of our Senate? I don't pretend to be a lawyer, but if I understand it correctly, the Senate does in effect, I admit, sit as a judicial body in a sense, but it can make its own rules and not be bound by any method of legal procedure whatsoever. It can decide whatever it will accept or whatever it will reject. I insist, therefore, that in this particular function of government this is a check by the Legislative Branch on the Executive Branch for high crimes and misdemeanors. The Assembly brings in a bill of impeachment by a vote of two-thirds; then it comes to trial before the Senate.

I would like respectfully to call your attention to the fact that if this amendment passes you would in effect disenfranchise one of the senators from voting on a very important matter simply because he has been elevated to the high position of President of the Senate. He becomes the second ranking executive officer in the State simply because he is elevated to that office, and when you disenfranchise that man then the number of votes you have is reduced from 21 to 20, and two-thirds of 20 is 13 1/3. So, in effect, it isn't by a two-thirds vote that you confirm the bill of impeachment but it is by 70 per cent because you have to have then 14 votes, and 14 is 70 per cent of 20. That makes it very difficult.

I think that at some point along the line of government we have got to assume that men in the main are decent. As a matter of fact, it would be my feeling, judging by every President of the Senate that I have known, that were he in such a position, he would be more inclined to lean over backwards in giving the then Governor due consideration than vote in favor of something that would further his interests, pushing him forward politically. But in any

event, I certainly think we ought to consider this very seriously before we allow the judiciary to come in and invade what I claim is prerogative of the Legislative Branch, and before we disenfranchise a senator from his just vote on one of the most vitally important matters that might ever come before the Senate.

I strongly urge the defeat of this amendment.

PRESIDENT: Any further discussion on this amendment? . . . Senator Barton.

MR. CHARLES K. BARTON: Mr. President, delegates of the Convention:

I am not rising in my own defense. One point has been advanced on this motion, and that is the reason I speak, and very, very briefly —the point of the frailties, human frailties of a President of the Senate, or the members of the Senate. They have them, of course, and we in the Senate like to think that we don't have too many of them. I just want to say this one thing: The Chief Justice who would preside under this amendment will probably be selected by the Governor, and it is just as easy for a Chief Justice to be embarrassed as it is for a senator to be embarrassed.

Thank you.

PRESIDENT: Mr. Schlosser.

MR. FRANK G. SCHLOSSER: I would like to support the amending resolution of the delegate from Gloucester County. One of the cardinal principles of our law is that a man can't be a judge in his own cause. The President of the Senate would be a judge, as I see it, in his own cause. Our present Constitution calls the Senate, when it sits trying impeachments, a high court of impeachment, and no court, the presiding officer of which will succeed to the office of the subject of the trial, can dispense justice as justice has come down to us under the English law.

Under the Constitution of the State of New York, as I recall it, the Chief Justice of the New York Court of Appeals presides. I think a similar practice should be adopted in this State, so that when the Senate does sit as a high court of impeachment, justice will always be meted out to the occupant of the office of Governor.

Would the sponsor of the resolution accept an amendment reading: "The Chief Justice of the court of last resort?"

MR. PARK: I will.

MR. SCHLOSSER: I would like to move then, that the resolution be amended to read "The Chief Justice of the court of last resort," and as amended I recommend its passage.

PRESIDENT: Justice Brogan, did you want to be recognized?

MR. BROGAN: That's all right.

PRESIDENT: Taken care of?

Is there any further discussion on this amendment? Are you

ready for the question? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: All opposed, please say "Nay."

(Chorus of "Nays")

PRESIDENT: All in favor, please raise their hand.

(Hands raised)

PRESIDENT: All opposed, please raise their hand.

(Hands raised)

PRESIDENT: The Secretary will call the roll.

MR. ORCHARD: What are we voting on? The amendment to the amendment?

PRESIDENT: On the original amendment.

MR. O'MARA: Mr. President, are we not voting on the question of the amendment to the amendment which has been put?

PRESIDENT: I thought Mr. Park accepted that amendment.

MR. PARK: I did, sir.

MR. O'MARA: He did? All right.

PRESIDENT: Mr. Brogan?

MR. BROGAN: The change was accepted by Mr. Park.

MR. ORCHARD: Then we are voting on the amendment as amended?

PRESIDENT: Yes. We are voting on the amendment as amended.

SECRETARY *(calls the roll):*

AYES: Berry, Brogan, Camp, Cavicchia, Clapp, Cowgill, Cullimore, Dwyer, W. J., Emerson, Gemberling, Hutchinson, Jacobs, Jorgensen, Lance, Lightner, Lord, McMurray, Miller, G. W., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Orchard, Park, Paul, Pursel, Rafferty, Randolph, Read, Sanford, Saunders, Schlosser, Sommer, Stanger, Taylor—37

NAYS: Barton, Barus, Cafiero, Constantine, Dixon, Drenk, Drewen, Farley, Feller, Ferry, Glass, Hacker, Hadley, Hansen, Holland, Katzenbach, Kays, Lewis, Lloyd, McGrath, Miller, S., Naame, O'Mara, Peterson, H. W., Peterson, P. H., Proctor, Schenck, Smalley, Streeter, Van Alstyne, Walton, Wene, Winne, Young—34

SECRETARY: 37 in the affirmative; 34 in the negative.

PRESIDENT: The amendment is adopted, 37 to 34.

May I, without formalizing, ascertain the wishes of the delegates in reference to going ahead with Amendment No. 4 or holding it over until tomorrow morning? May I ask those who wish to go ahead to hold up their hands?

(Show of hands)

PRESIDENT: And those opposed?

(Show of hands)

PRESIDENT: We shall go ahead. Will the Secretary read Amendment No. 4?

SECRETARY: Amendment proposed by Mr. Winne. Article IV, Section IV, Paragraph 4 to read as follows: . . .

MR. WALTER G. WINNE: Doesn't it require 41 votes to adopt an amendment in this Convention?

PRESIDENT: I believe, Mr. Winne, it's the majority of those present voting.

MR. WINNE: Well, I don't see how. The Rules specifically say that any proposal must have 41 votes. Now, it would seem to me inconsistent to have a majority of a quorum carry the amendment to a proposal when 41 votes are necessary for the proposal itself.

PRESIDENT: Mr. Winne, if the Chair rules, would you like to appeal from it?

MR. WINNE: If the Chair rules that less than 41 carries a proposal, I would certainly appeal from the ruling of the Chair.

PRESIDENT: This is an amendment to a proposal.

MR. WINNE: The proposal that was before the house, call it an amendment to the Committee Proposal. It is my contention, as I read the Rules, that it requires 41 votes to carry anything in this Constitution that goes before the people. A majority of the full Convention.

PRESIDENT: I certainly don't want to appear arbitrary in this, but I would like to ascertain the wishes of those who are informed as to the interpretation of these Rules. I wonder if Senator O'Mara and you, Senator Van Alstyne, would again advise me on this.

(Discussion on the platform between the President and Delegates O'Mara and Van Alstyne)

PRESIDENT: The ruling is to stand on this amendment. The amendment is adopted by the vote of 37 to 34. . . . Senator O'Mara?

MR. O'MARA: I move that we adjourn until 10 o'clock tomorrow morning.

(Seconded from the floor)

PRESIDENT: You have heard the motion to adjourn. All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

(The session adjourned at 4:40 P.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Tuesday, August 12, 1947

(Morning Session)

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates to rise, while Father Thomas O'Day, of St. Peter's Church in New Brunswick, pronounces the invocation.

FATHER THOMAS O'DAY: O Heavenly Father, we ask Thee today to deign to bless and bring to a successful issue all conventions and gatherings, and especially the deliberations of this Constitutional Convention. Be Thou the inspiration of their labors, resolutions and decisions. Accept graciously the solemn homage there rendered to Thee. Enkindle the hearts of delegates and representatives, citizens and residents of this State of New Jersey, so that as a result of the deliberations here taking place, Christianity will rightfully benefit and true justice will be administered. We ask Thee particularly, O God, Who didst teach the hearts of Thy faithful people by sending them the light of Thy Holy Spirit, grant us by the same Spirit to have a right judgment in all things and ever more to rejoice in His holy conquest, through Christ, our Lord. Amen.

PRESIDENT: I want to avoid the appearance of discourtesy to any speaker in interrupting his presentation, but I would like to remind the delegates of the resolution adopted last week to the effect that each speaker shall have 15 minutes of his own and may have, in addition, additional 15-minute periods of other delegates up to three, but that such permission in each case should be given in writing in advance. This means that a delegate who is to speak and has planned his presentation in such a way that he knows he will take more than 15 minutes, should, if it is convenient, hand the Secretary a memorandum which gives him the right to use someone else's time. If this resolution is followed, it will spare the Chairman the embarrassment of interrupting the delegate in the middle of his presentation.

The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP (*The Secretary called the roll and the following delegates answered "present"*):

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon,

Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Leonard, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Winne, Young.

SECRETARY: A quorum is present, sir.

PRESIDENT: The Secretary reports that a quorum is present.

Are there any petitions, memorials or remonstrances to be presented?

(Silence)

PRESIDENT: Are there any motions or resolutions?

(Silence)

PRESIDENT: Is there any unfinished business?

(Silence)

PRESIDENT: We will proceed, then, with the discussion of amendments to the Executive Article. I will ask the Secretary if he will read Amendment No. 4 by Mr. Winne.

SECRETARY: Amendment[1] proposed by Mr. Winne to amend Article IV, Section IV, Paragraph 4, to read as follows:

> "The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officer or employee to submit to him a written statement or statements under oath, of such information as he may require relating to the conduct of their respective offices or employments. After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer or employee for cause."

PRESIDENT: Senator Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: With the permission of Mr. Winne, who is willing to waive the time for the moment—as I recall it, the committee in discussing this matter suggested that we amend the Rules so that it require 41 to pass an amendment, and, with your permission, sir, I would respectfully request that we hear from Vice-President Amos Dixon on that subject at this time.

PRESIDENT: Is that agreeable to you, Mr. Winne?

MR. WALTER G. WINNE: Yes, sir.

PRESIDENT: Mr. Dixon.

---

[1] The full text of this and other amendments appears in the Appendix in Vol. 2.

MR. AMOS F. DIXON: Mr. President, I have a resolution which I wish to offer, please.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "*Resolved,* that Rule 67 of the Official Rules of the Constitutional Convention be amended to read as follows:
>
> 'Each amendment offered to a proposal, before being read, shall be presented to the Secretary in quadruplicate, either typewritten, with 1 original and 3 carbon copies thereof, or printed, and shall be entered in the Journal. The Secretary shall retain one copy; one copy shall be available to the press; one copy shall be delivered to the Chairman of the General Standing Committee in charge of the proposal intended to be amended. Amendments to each committee proposal shall be presented to the Convention by the Chair for a discussion and vote, except that upon the request of five delegates, an amendment shall be laid over before being discussed and a copy shall be laid on each delegate's desk the following Convention day. On the next Convention day thereafter, the Chair shall present the amendment to the Convention for discussion and vote.
>
> 'An amendment to an amendment may be presented to the Secretary in a single copy either typewritten or longhand, and, if adopted, a copy shall be attached by him to each copy of the amendment which it amends. The original of each amendment shall be retained in the Secretary's office and filed, and the copy retained by him shall be delivered to the Bureau of Archives and History in the State Department of Education.
>
> 'No amendment shall be declared adopted unless at least 41 delegates to the Convention shall have voted in favor of the adoption of the same.' "

PRESIDENT: Mr. Dixon.

MR. DIXON: Mr. President, this resolution is presented in order to clear up some of the difficulty that appeared yesterday, and I ask the unanimous consent of the Convention to move its adoption today rather than lay it over. If there is no objection—

MR. HENRY W. PETERSON: I second the motion.

PRESIDENT: Mr. Read.

MR. WILLIAM T. READ: Mr. Chairman, I am sorry to object. I may not object officially. I just want to speak on this motion for a moment and get Mr. Dixon's reaction.

When this matter came up yesterday, I went through the Rules and I found that the Rules provide in two or three cases that 41 votes are required to adopt certain things—minority reports and some other items—but it is silent on this. When I voted yesterday, I remarked to Senator Wene that it took 11 votes in the Senate to pass a bill on third reading, when it was to become a law, perhaps—unless the House dissented and the Governor vetoed it—but that a majority of the Senators, 11 in fact, made a quorum, and in considering amendments to bills in the Senate, six votes can pass an amendment. Now, I presume that the people who drew these Rules intentionally left that out; otherwise, you would have to keep a very high working majority here in order to get 41 votes. Yesterday we had on the one amendment in question, 37 for and 34 against, a total of 71, and there were ten not voting. Those

ten might very readily have comprised four in favor and six against, in which case you would have had your 41 votes. It seems to me we are going to use up a lot of time if we do adopt this amendment to the Rules, requiring 41 votes on every amendment, and it is contrary to the general procedure of legislative bodies.

Now, having had my say, I don't object to the unanimous consent requested, but I reserve my right to vote against the resolution because I think you are violating all of the regular parliamentary tactics of legislative bodies.

PRESIDENT: Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: I call attention to the fact that unanimous consent of this body is not necessary for the adoption of this Rule at this time. Rule 38 in effect provides, among other things, that any Rule of the Convention may be suspended, and so on. The Rule itself does provide that any amendment offered to a Rule shall lie on the table one day before being voted upon, but a motion to suspend this Rule (which calls for the holding of the proposed amendment to the Rules for one day) can be carried by a vote of 41 delegates. Therefore, the gentleman does not need to ask for unanimous consent to suspend the Rules for the purpose of adopting the amendment to the Rules which he now proposes.

Now, Mr. President, I should like to speak to the substance. It is true, as the previous speaker has just said, that under legislative practice an amendment to a bill may carry, or does carry, by a majority of those present, a quorum being present. But I should like to call attention to the difference between the subject matter of a legislative enactment and the subject matter of constitutional provisions. I think that when we are dealing with the making of a Constitution, it is folly to expect that a mere majority of those present, a quorum being present, will be all that will be necessary to pass an amendment to a Proposal when, upon third reading and final passage, 41 votes will be necessary under the act under which we are met.

In a legislative enactment, perforce under the existing Constitution, the subject matter of that act must relate to a single object. Here, we are dealing not with a single object, but we are dealing with subject matter to which there is no limit. For instance, under a Proposal we may put 50 provisions in, we may put only three provisions in. The Legislative Article in itself might be complete with the three provisions or it might be complete with the 50 provisions or more, but I can conceive that should we proceed under present Rules, we may have a majority of those present in every instance voting for an amendment to a Proposal, and yet, upon third reading and final passage, we may find ourselves in a position

where we do not get 41 votes because, in the process of amendments, there have not been 41 votes to adopt a particular amendment. So, I think there is essentially a distinction between the legislative practice and the practice here when we are making a Constitution.

PRESIDENT: Senator O'Mara.

MR. EDWARD J. O'MARA: Mr. President, I am constrained to agree with the fundamental proposition that whatever goes to the people as a part of this Constitution should do so because it received a majority of the votes of the delegates of the Convention. It might well be that an amendment passed in the manner in which one of the amendments was passed yesterday would become incorporated in the Article, and when the Article as a whole was presented to the Convention it would receive the necessary 41 votes. That, however, might be because the delegates considered that the Article as a whole was satisfactory, in spite of the amendment which had not carried by 41 votes. In other words, they might not consider the amendment of sufficient importance to sway them in their vote on the Article as a whole. I think, however, that it would be most unfortunate if any amendment were incorporated in an Article as a result of a vote of less than 41 delegates, and then perforce be submitted to the people because the Convention as a whole did not consider that amendment of sufficient importance to sway them in their votes on the Article as a whole. I support the resolution offered by Mr. Dixon.

PRESIDENT: Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. President, the Proposals which have been submitted are each submitted by 11 individual members. If we require 41 votes to amend those Proposals, it would defeat any amendment by a majority of those present. If the original Proposal had been adopted by 41, then I think an amendment should be required by the same number of votes; but where you have a Proposal submitted by 11 delegates and it can't be amended by a majority of those present, I think it would result in a situation which might require us to adopt the Proposal of 11 individuals rather than the Proposal of a majority of those present.

PRESIDENT: Mr. Dixon.

MR. DIXON: Mr. President, I would like to have a ruling of the Chair as to whether this amendment has to lay over. I don't know whether we have a unanimous consent or not.

MR. READ: Mr. President, I thought I made it clear that I withdrew any objection after having had my say. Now, let me say further, after hearing the other speakers, that if you want to differentiate between a constitutional body and a legislative body, you can make that difference, as Senator O'Mara has said.

But in that case I think the Convention should be apprised of the fact, because it is going to make us sit in our seats a little more closely.

Yesterday there were 71 members who voted on the amendment, and there were ten absent. In deference to the delegate who is proposing an amendment, if the vote is very, very close—if the vote is clearly decisive that would be different—I think he should have the right to call for absentees and get them in here, and, if not, we should at least give him the courtesy of letting the matter lie over until he can get enough delegates here to assure himself of, not necessarily sufficient votes for the 41, but to assure himself that if they were favorable he could get them. I don't think a bill should be defeated because there are ten absentees, some four of whom might vote for it.

I find no objection to the consideration of this resolution now, and I have no objection to voting for it if it is the understanding that where there is a very close vote—if a man gets only 23 or 24 votes on an amendment, that is one matter, but when he gets a very, very close vote, so that the absentees are sufficient to give him the right to think he might pass it, we then ought either to lay it over until the next day when you can have those men here, or call for absentees.

MR. DIXON: Mr. President, may I answer Mr. Read and say that that was exactly our plan, as expressed by Mr. O'Mara? He pointed out the fundamental reason for making this change in the Rules.

PRESIDENT: In view of Mr. Cavicchia's interpretation, and in view of Rule 12, the Chair will rule that a majority vote will prevail in this instance. Are you ready for the question?

MR. DIXON: I move the adoption of the resolution.

DELEGATE: Second.

PRESIDENT: Mr. Cowgill.

MR. JOSEPH W. COWGILL: Has the Chair ruled on whether or not unanimous consent is necessary for the consideration of this proposal?

PRESIDENT: Yes. According to Rule 12, the Chair is ruling a majority vote will prevail.

MR. COWGILL: I am asking you if you have ruled that there must be unanimous consent of everyone to consider the proposal? I realize that possibly a majority will pass it, but I am not clear yet as to whether or not any delegate has the right to object to the present consideration of this proposal. Now, it is my understanding that any amendment to the Rules will be required to lay over one day.

PRESIDENT: Rule 38 reads:

"Any rule of the Convention may be suspended or repealed, altered or amended by a vote of at least 41 delegates and any amendment offered shall lie on the table one day before being voted upon."

MR. COWGILL: That is the point I make.

PRESIDENT: Mr. Read.

MR. READ: Mr. President, you brought up another point. I thought that the argument of Mr. Cavicchia was as to the matter of the unanimous consent, which, of course, I would gladly give after having my thoughts before the Convention. However, I must regretfully disagree with the President when he says that we can adopt an amendment to the Rules by less than a majority, because your Rule 38 says that an amendment to the Rules must receive 41 votes. Now, you have several cases here where 41 votes are required. One is a minority committee report, and there are some other things.

I think this resolution requires 41 votes, but I have no objection to its going to a vote. I may vote for it, but I think it ought to have 41 votes because you can't suspend that part of it.

MR. CAVICCHIA: Mr. President, I understood your ruling to be, by using the words "majority vote," 41 votes of the whole—

PRESIDENT: I meant a majority of the entire Convention, or 41 votes.

MR. CAVICCHIA: Now, Mr. President, I suggest to the gentleman who is offering this resolution to amend the Rules that he preface his resolution to this effect—that the Rules be suspended for the purpose of this motion, and then go on with the substance of his resolution.

PRESIDENT: Mr. Dixon.

MR. DIXON: I will make such a motion, Mr. Chairman, that the Rules be suspended and that this resolution be passed upon by the Convention today, instead of being laid over a day.

PRESIDENT: Is Mr. Dixon's motion seconded?

MR. CAVICCHIA: Second.

PRESIDENT: Any discussion?

(Silence)

PRESIDENT: Are you ready for the question? All in favor, please say "Aye."

(A number of "Ayes")

PRESIDENT: Opposed?

(A number of "Noes")

PRESIDENT: All in favor, please raise their hands.

(A majority of hands raised)

PRESIDENT: Opposed?

(A minority of hands raised)

PRESIDENT: The motion is carried. . . . Mr. Dixon.

MR. DIXON: I move the adoption of the resolution as read.
PRESIDENT: Is the resolution seconded?
DELEGATE: Seconded.
PRESIDENT: Discussion?

(Silence)

PRESIDENT: Are you ready for the question? . . . Mr. Berry.

MR. FRANKLIN H. BERRY: Do I understand that the motion which was just adopted was a motion to suspend the Rules, and that that may carry by a majority vote?

PRESIDENT: According to Rule 38.

MR. BERRY: As I read Rule 38, the amendment offered shall lie on the table one day before being voted upon. Now, may the Rules be suspended by a majority of those present and voting?

PRESIDENT: Mr. Cavicchia, will you speak to that?

MR. CAVICCHIA: My interpretation of Rule 38, Mr. President, is that the Rules may be suspended by a vote of at least 41 delegates, which I understood to be your ruling—

PRESIDENT: Yes.

MR. CAVICCHIA: Although you, yourself, said it in another way. You said a majority of the whole number of delegates, which means 41 votes.

PRESIDENT: Yes.

MR. CAVICCHIA: Then I suggested to Mr. Dixon that he preface his motion to amend Rule 67 so that it would comprise one motion and that the motion begin:

> "*Resolved*, that for the purpose of this motion, Rule 38 be suspended with respect to the lying over of the proposed amendment for one day, and that Rule 67 be amended as follows:"

Then, I conceive that upon that motion or resolution receiving 41 votes, the amendment, if passed as offered by Mr. Dixon, will be incorporated as part of our Rules.

PRESIDENT: The resolution has been made and seconded. Is there any further discussion?

(Silence)

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(A few "Nays")

PRESIDENT: All in favor, please raise their hands.

(A number of hands raised)

MR. READ: I would like a roll call on this, Mr. President.

PRESIDENT: The Secretary will please call the roll.

SECRETARY *(calls roll)*:

AYES: Barton, Barus, Brogan, Cafiero, Cavicchia, Clapp, Constantine, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Katzenbach, Lance, Lewis, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Milton, Montgomery, Moroney, Murphy, Murray, O'Mara, Paul, Peterson, H. W., Peterson, P. H., Pursel, Rafferty, Randolph, Sanford, Saunders, Schenk, Schlosser, Smith, G. F., Sommer, Streeter, Struble, Taylor, Van Alstyne, Walton, Winne, Young—54.

NAYS: Berry, Camp, Cowgill, Dwyer, W. A., Emerson, Jorgensen, Kays, Park, Pyne, Read, Smalley, Stanger—12

SECRETARY: 54 in the affirmative and 12 in the negative.

PRESIDENT: The resolution is adopted.

Is there business to come before the Convention at this time?

MR. DIXON: I have a resolution to offer, if you please, Mr. President.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "*Resolved*, that when this session of the Convention adjourns, it will be to meet at 10:00 A.M. on Wednesday, August 13, 1947."

PRESIDENT: Is the resolution seconded?

MR. VAN ALSTYNE: I move the adoption of the resolution.

MR. WILLIAM L. HADLEY: I second the motion.

PRESIDENT All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted.

Is there any other business to come before the Convention at this time?

(Silence)

PRESIDENT: If not, we will proceed with the consideration of the amendments to the Executive Article. The Secretary will read the next amendment.

MR. NATHAN L. JACOBS: Mr. President, should we not reconsider the amendment which was carried by less than 41 yesterday? As one of those who moved the amendment and voted for the amendment, I move that it be reconsidered. That is Amendment 3 to the Executive Article.

PRESIDENT: You move for its reconsideration, Mr. Jacobs?

MR. JACOBS: Yes, Mr. President.

PRESIDENT: Is the motion seconded?

MRS. JANE E. BARUS: I second the motion.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: The Secretary will please call the roll.

DELEGATE: I would like to speak on this motion just a moment. We have a lot of absentees here today, and I think because of the importance of the particular resolution, we should defer it until we have a greater attendance, as we probably will have in another half-hour or so.

PRESIDENT: Is there any further discussion on this motion?

MR. JACOBS: I agree with the suggestion, Mr. President, and if need be, it could be held over until tomorrow. I think that on all of these Proposals every effort should be made to have the entire Convention present, or as near as may be.

I don't agree with the statement made before that it will be difficult to get the entire Convention, or substantially the entire Convention, together. I think that if the President exerts much effort during the next week or two, we should have substantially the entire Convention present on every issue. I would like this particular amendment held over possibly until tomorrow morning, so that we may have better attendance than we have this morning.

PRESIDENT: Then there is a motion providing that it not be voted on at this time, but be held over until tomorrow?

MR. JACOBS: That's correct.

MR. VAN ALSTYNE: I second the motion.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The Secretary will read Amendment No. 4.

SECRETARY: To amend Article IV, Section IV, Paragraph 4 to read as follows *(reading):*

> "The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require such officer or employee to submit to him a written statement or statements under oath, of such information as he may require relating to the conduct of their respective offices or employments. After notice, service of charges and an opportunity to be heard at a public hearing, the Governor may remove any such officer or employee for cause."

PRESIDENT: Mr. Winne, will you speak for this?

MR. WINNE: Yes, Mr. President. Mr. President, and ladies and gentlemen of the Convention:

In the printed Report, page 19, Article IV, Section IV, Paragraph

4, and in the new draft Proposal, page 7, Article IV, Section IV, Paragraph 4, there is a provision that

> "The Governor may cause an investigation to be made of the conduct in office of any State officer or employee, except a member of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer, . . . and (upon proper notice, charges and hearing) may remove any such officer or employee for cause."

The only change in the amendment is the change of language from "State officer or employee" to "officer or employee who receives his compensation from the State of New Jersey." It was my intention in drawing the amendment to carry out what I believe to be the wishes of the committee. I have no personal feeling about it. I speak with some diffidence about the subject because I am a state officer, but I do not believe that it was the committee's intention to include "state officers." I think the language was used without, perhaps, thorough consideration of what a state officer was.

In my experience in the practice of law, I have found that the courts of this State have referred to many community officials as state officers. My belief is that this Convention would not like to subject them to removal on charges by the Governor.

For instance, in the *Gabriel* case where the Mayor of Garfield entered the army, there was an effort to remove him from office. The court in that case did not decide because the question was not before the court, but it said in language that the mayor of a municipality is a state officer.

In a case in which the recorder of the City of Atlantic City was involved in litigation, the court referred to the recorder as a state officer.

In *Martini* vs. *Civil Service Commission, 129 N. J. Law 599,* a clerk in a criminal district court was said to be a state officer.

In *Paddock* vs. *Hudson County Board of Taxation, 82 N. J. Law 360,* a clerk of the county board of taxation was said to be a state officer.

A county clerk was said to be a state officer in *Crater* vs. *Somerset County, 17 N. J. Mis. R. 133,* affirmed *123 N. J. Law 407,* and in *Rogers* vs. *Taggert, 118 N. J. Law 542,* a recorder was said to be a state officer.

There is no doubt that a prosecutor is a state officer. Every assistant prosecutor is a state officer; a county detective is a state officer. I take it that every clerk in the employ of the county, in a county court where the judge who presides is a state officer, is likewise a state officer. Upon consideration, more examples could be given of what constitutes being a state officer.

As I understand the cases in New Jersey, a state officer is a person whose functions require him to carry out the laws of the State, as contrasted with purely municipal matters, and that raises a

question as to whether a mayor and a recorder and a sheriff and a surrogate and county clerk are not state officers. The question is not clearly decided by the courts of this State, but there is ground to say, in all seriousness, that if the proposal of the committee is passed, the Governor may be empowered to remove not only prosecutors—there is no question about that—but surrogates, sheriffs, under-sheriffs, deputy sheriffs, county clerks, deputy county clerks, and all such officers in the State.

I do not think that that was the intention of the committee. Of course, if that is the intention of the committee and the desire of the Convention, I subscribe to it because it makes no personal difference to me. I want to say that most emphatically—that the fact that I happen to be a state officer does not compel me to make this amendment. I submitted the amendment because, after talking to some members of the committee and some members of the Convention, they agreed with me that that was intended for the officers who were generally considered as officers of the State of New Jersey, such as the Attorney-General, the State Treasurer, the Secretary of State, and the Superintendent of the State Police. I, therefore, drew the amendment, describing the persons intended as persons who receive their compensation from the State of New Jersey. That, of course, would eliminate the class of persons to whom I have previously referred, and would include such persons as get their pay check from the State of New Jersey, as against the county or the municipality. I think that was the intention of the committee. I might be wrong.

It seems to me that it was important to bring before the Convention the differentiation between state officers, as legally interpreted, and the general conception of a state officer.

PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

As chairman of the Executive Committee I just want to say that there is no question that we discussed this at some length in committee, and I am sure I speak for all members of the committee when I say that it was definitely our intention that the Governor should have the power to investigate and to remove for cause what we understood as state officers. There is no intention at all that the Governor should have the power to go down and delve into the county organizations, etc.

I, for one, think that this is a very good clarification of the words "state officer," and frankly, I am in favor of this amendment.

PRESIDENT: Is there any further discussion? . . . Mr. Emerson.

MR. EMERSON: I believe there have been in the past, and perhaps there are at the present time—and there will be in the future —strictly state officers who receive no compensation.

I favor the amendment as made, but I am wondering if it is

broad enough to cover persons who receive no compensation. I don't think they should enjoy any immunity from this investigation, if there are or should be such officers in the future.

I think it ought to be amended to include *any* strictly State officer—I don't know what language should be used—so that in the event that a person is serving in any capacity without compensation, the Governor would have the same right to make a similar investigation of his department.

PRESIDENT: Dean Sommer,—

MR. WILLIAM J. DWYER *(interrupting):* Mr. Chairman.

PRESIDENT: Mr. Dwyer.

MR. DWYER: I wonder if I may have this clarified? There are certain instances where the Legislature imposes a mandatory appropriation upon a county, which sets up a payroll under the direction of the Legislature. Would this be affected by this amendment? Or, would the Governor have the right to remove a man who was really getting his pay at the direction of the State, although the obligation was imposed on the county?

PRESIDENT: Mr. Winne, would you care to reply to that?

MR. WINNE: I had better, perhaps, comment on the remark by the gentlemen from Union, by saying that Section IV purports to provide for the method of removing the honorary persons who constitute members of a commission appointed by the Governor. I do not know any such person as he might have in mind, a person who is a state officer and receiving no compensation, except members of these honorary commissions who are covered in the Article.

Now, I cannot say what the answer to the question by the gentleman from Hudson would be. I would have no difficulty myself in answering it—that that man received his compensation from the county, inasmuch as the county made the appropriation. That would seem to me to be clear. I might be wrong about that, but that is the sort of thing people differ about.

I proposed the amendment in an effort to describe the class of people intended by the committee, and I have done it as well as could be done. I certainly think the amendment is a great improvement upon the language of the committee. I think it was the comittee's desire not to have this power extended to county officers, because I say without hesitation that the courts of New Jersey have described many county officers as state officers. We refer to them in our own language from day to day as county officers, but legally the courts refer to them as state officers.

PRESIDENT: Is there any further discussion on this? . . . Senator Lance.

MR. WESLEY L. LANCE: I would like to ask Delegate Winne a question.

MR. WINNE: Certainly.

MR. LANCE: Does the state officer or employee removed by the Governor have the right to appeal to any court?

MR. WINNE: My conception of that would be that a court would review the action and would determine whether there was any evidence before the removing body—the Governor in this case —to warrant the action. The court would not say that under the same circumstances we would have done this, or we would have done that, but would look at the action of the Governor and determine whether it was supported by any evidence, and in that event would sustain it. If it happened to be obviously capricious or malicious or corrupt, it certainly would be reversed. But don't think that a review of a discretionary act like that is much of a review.

MR. LANCE: I would like to ask a second question, please, Mr. President.

Would the answer of Delegate Winne be the same even though the employee were under Civil Service?

MR. WINNE: That is a difficult question to answer. If the employee be under Civil Service and there is anything in the Constitution about Civil Service—and I am sure there is—I say that the employee would have a right to the remedy that the Civil Service Act provides, namely, a hearing before the appointing officer who appointed him, and a review by the Civil Service Commission, and a review from that by the court. Now, it is pretty difficult to be sure you are right about a thing like that, but I should think that if the Civil Service is protected in the Constitution and the Governor removes a Civil Service employee, you have a conflict of jurisdiction, and my offhand opinion would be that you could have your review in the Civil Service as well as your review before the court.

MR. LANCE: Mr. President, I concede I am proceeding out of order on this because the amendment goes merely to changing an existing section on which there is no amendment. However, we are here to write the best Constitution we can, and I just want to say two sentences in comment.

First, it appears to me that under the section in question the Governor is the prosecutor, judge and jury, because (1) there is no right of appeal set up in this Constitution, and (2) in the case of *State* vs. *Governor, 25 N. J. Law,* with which Mr. Cavicchia is very familiar, the courts have decided that they will not interfere with the Governor's exercise of discretion in a matter of this kind, in the absence of a constitutional provision.

I also respectfully suggest that the delegates turn to page 8 of the proposed Executive Article and refer to Paragraph 2 of Section I, "Public Officers and Employees," where the apparent intent was to

write into the new Constitution the principle of Civil Service. It seems to me that with these two sections standing side by side, one of them is going to have to give some place along the line. This affects our 13,000 state employees.

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

Senator Lance has brought up a very interesting subject. I am sure he will not be surprised when I tell him that the points which he has raised were thoroughly discussed; in fact, I should say, discussed for a matter of days in committee.

If you will turn, fellow delegates, to page 18 in our small printed pamphlet, or to page 7 in the large printed Proposal No. 3-1, you will note that we have specified three different classifications of removal.

In Paragraph 2, Section IV, as a result of the amendment which we have proposed and which will come up soon, we specify that the persons who are department heads appointed by the Governor by and with the consent of the Senate—the single head of each principal department—shall serve at the pleasure of the Governor. You will recall that I introduced such an amendment yesterday, and I stated that it was in the original tentative draft, but that inadvertently, through stenographic mistake, it was left out.

Again, will you follow on to Paragraph 3? Where the head of a principal department is a board or a commission, in that instance the acting executive head is appointed by the board or commission, subject to the approval of the Governor. In such a case, the Governor, if he wants to remove such a person, must do it upon notice and an opportunity to be heard. That is the second step.

The third step comes in Paragraph 4, where, in the last sentence, it applies to the state officers which the amendment of Prosecutor Winne defines. After notice, service of charges, and an opportunity to be heard at a public hearing, the Governor may remove any such state officer or employee for cause.

Now, we originally added the word "for cause" to Section 3, for removal. Upon advice and consultation with many lawyers and judges, it was understood that those two words "for cause" had a definite judicial sense and implied that in such case, the Governor's ruling, the whole procedure, could be reviewed by the courts in a completely judicial manner. At least, that was the intention of the committee, and that is the belief of the committee as to what this means. In other words, we believe that by putting in the words "for cause" we are protecting these people from any rash action on the part of the Governor, and that they have the right of appeal to the courts.

To change the subject and speak on what Mr. Emerson men-

tioned, and I think he made a very good point, there may be some exceptions. But if you will think it over and then again review the Executive Article, I think you will find it sets forth that the type of officers, state officers, you speak of, who might be non-salaried, can be removed by impeachment or as may be provided by law. I think that is in there quite frequently. And in the future, any non-salaried boards that might be created by the Legislature—the law always specifies how they may be removed. So I think that we have provided for that by allowing the Legislature to provide the means.

PRESIDENT: Mr. Orchard.

MR. WILLIAM J. ORCHARD: Could I ask, through you, sir, if Mr. Winne would explain how a sheriff of a county, who is not satisfactorily performing his duties, would now be removed from office?

MR. WINNE: I know of no way he would now be removed from office unless he were indicted, and I think upon indictment he would cease to exercise the duties of his office. That is the present law, if I am correct.

MR. ORCHARD: What objection is there, Mr. Winne, if I may ask, to the authority that the committee draft vests in the Governor in the case of a sheriff who was derelict in his duties and nothing is done about it at the county level?

MR. WINNE: I might say, Mr. Delegate, that that is the question before the Convention. If the Convention wants to give the Governor power to remove sheriffs, county clerks and prosecutors, I certainly have no objection. I am not arguing that there is any objection to it. I state my belief that it is preferable not to have it in the Governor, and I take it that each delegate has an idea about that. That was the purpose of the amendment. If the delegates, or even the committee, say that it is their intention to do what the delegate who has just spoken suggests should be done, it is a matter of entire indifference to me. I just don't think that that should be done.

PRESIDENT: Justice Brogan.

MR. THOMAS J. BROGAN: Mr. President, this discussion has been very interesting. I do not think, however, that this particular phase of the Article should be left in the condition in which we now find it. I believe thoroughly in the principle that the Governor should have a certain superintendency over state officers, and that they should be answerable to him for the discharge of their duties. I do not have the confidence in the phrase "for cause" that the chairman of the committee seems to have. If a state official is to be tried before the Governor and to be removed from office, it should be so clear that he who runs may read that such person is to

have a review of that conviction and removal, if we may call it that, before a court of competent jurisdiction. And if the court is to judge both the law and the facts of the case, it should be so stated in the Constitution. After all, this goes to the fundamental rights of the individual, and this is a fundamental document that covers the rights of all people and each individual. So, if it is the intention of the committee that there should be a review, it should be clearly stated.

I might add, sir, that nothing is more clearly stated in the case law of this State than is the proposition that one branch of the government, which may mean the Judiciary, shall not interfere with prerogatives and the exercise thereof of the Chief Executive, or of the Legislature.

PRESIDENT: Is there any further discussion on this amendment? Senator Van Alstyne, have you anything further to add?

(Silence)

PRESIDENT: Mr. Jorgensen.

MR. CHRISTIAN J. JORGENSEN: Mr. Chairman, I wonder whether or not the proponent here would not accept an amendment to the provision such as the Chief Justice mentioned? I am certain that it will certainly clarify the minds of the delegates regarding the right of review, as well as guarantee that the committee's thoughts would be carried into the fundamental law.

MR. VAN ALSTYNE: Mr. President, I think Chief Justice Brogan made a very interesting point. I don't think that the point that he made, and the suggestion that Mr. Jorgensen made, directly apply to Prosecutor Winne's amendment. I think it would be better to vote on the amendment that is before us. Then I certainly would be delighted to sit down with our committee and with Chief Justice Brogan and any other particularly interested parties to see if we can't agree on some wording and some thinking along those lines, instead of doing it just on the spur of the moment on the floor of the Convention.

PRESIDENT: Is there any final discussion on this amendment?

(Silence)

PRESIDENT: Are you, then, ready for the question?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The amendment is adopted. The Secretary will read Amendment No. 5.

SECRETARY: Amendment No. 5—

MR. WINSTON PAUL: Mr. President, I thought the motion just put was for the question. I did not know that we were voting on the amendment. I think the amendment requires 41 votes, under the Rule we just passed.

PRESIDENT: The Secretary will call the roll on that amendment.

SECRETARY *(calls roll):*

AYES: Barton, Barus, Berry, Brogan, Cafiero, Camp, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Milton, Montgomery, Moroney, Murphy, Murray, Naame, O'Mara, Orchard, Park, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Winne, Young—61.

NAYS: None.

SECRETARY: 69 votes in the affirmative, none in the negative.

PRESIDENT: The resolution is adopted.

MR. VAN ALSTYNE: Mr. President.

PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: It has been suggested that I make this statement. As an individual, as a chairman, not speaking for the committee, I feel that there is a great deal in what Chief Justice Brogan said. I would therefore like to ask that we have a meeting of our committee with him and Prosecutor Winne and any other persons who might be interested, right after the morning session, to discuss the matter.

PRESIDENT: Where will you have your meeting?

MR. VAN ALSTYNE: In our committee room, Room 109.

PRESIDENT: The Secretary will read Amendment No. 5, by Mr. Glass.

SECRETARY: Amendment[1] proposed by Mr. Glass *(reading):*

> "*Resolved*, that the following shall become new Paragraph 7, Section I, of the Article on Public Officers and Employees, in Proposal No. 3-1 ***:
> 'The Secretary of State and the Attorney General shall be nominated by the Governor with the advice and consent of the Senate to serve during the Governor's term of office.' "

PRESIDENT: Mr. Glass?

MR. RONALD D. GLASS: Traditionally, the Secretary of State and the Attorney-General are two of the oldest constitutional offi-

[1] The full text of this and other amendments appears in the Appendix in Vol. 2.

cers in the State Government. I feel that it is a grave mistake for our Convention to remove them from the status of constitutional officers.

In connection with the office of Secretary of State, I have made a careful study of the constitutions of all of the 48 states and not one, I repeat, not one state in our entire land, fails to give this important office constitutional status. This particular office has a long constitutional history. Before the adoption of the Constitution in 1776, we had a Provincial Secretary under the Crown. When the Constitution of 1776 was adopted it provided that the Provincial Secretary should continue in office in the capacity of Secretary of State. Article VII, Section II, Paragraph 3 of the Constitution of 1844 provides for the appointment of a Secretary of State. The Constitution of the United States also gives constitutional status to this office. I feel it would be a grave mistake for this Convention to give constitutional status to such officers as the State Auditor, county clerks, prosecutors, surrogates and sheriffs, and fail to include such a traditionally important officer as the Secretary of State. The Rights and Privileges Committee concurs in this viewpoint by a vote of ten to one. The committee included one of the many duties of the Secretary of State in its tentative draft, and in its covering letter to all delegates recommended that the office be given constitutional status.

The office of Attorney-General also comes down to us from the earliest days of the English common law. It is an office which has had constitutional recognition in this State for over a hundred years. Today it is a constitutional office in the constitution of every state in the Union. The office of Attorney-General is much more significant than merely being counsel to the Legislature and to the state officers and departments. In addition to this, the Attorney-General is what the name implies, a general attorney, not for state officials only, but far more important, an attorney for the people. The Attorney-General, in many cases, is the only official who can act on behalf of the people in declaring certain laws unconstitutional. In the past, the Attorney-General has acted as representative of the people in questioning the constitutionality of laws which are not in the best interest of all the people. If the Attorney-General does not have constitutional status, with the attendant right of exercising all of the common law privileges and constitutional powers of that office, then the same Legislature which might pass unconstitutional laws could curb his powers, vastly decreasing his effectiveness as a spokesman for the people.

Certainly, when every state in the Union, many of which have recently revised their state constitutions, retain the Secretary of State and the Attorney-General as constitutional officers, then New

Jersey should do likewise.

I propose to add a new paragraph to Section I of the Article on Public Officers and Employees, to become new Paragraph 7. It is merely a new, additional paragraph which reads:

> "The Secretary of State and the Attorney General shall be nominated by the Governor with the advice and consent of the Senate and shall serve during the Governor's term of office."

PRESIDENT: Senator Van Alstyne?

MR. VAN ALSTYNE: Mr. President and fellow delegates:

The committee discussed this matter, and if I remember correctly I don't think that as a unit we were very strongly one way or the other. Therefore, I am not recommending, or asking that any particular member of the committee speak on this point. Frankly, I am speaking now for myself alone. I'm glad that this question has come up before the Convention, for the Convention to decide for itself.

PRESIDENT: Judge Carey?

MR. ROBERT CAREY: Mr. Chairman and ladies and gentlemen of the Convention:

I heartily endorse every word said by my associate from Passaic County in behalf of the adoption of this amendment. I think, myself, it would be a tremendous blunder for this Convention to modify our constitutional picture by taking out the prerogatives that have always been a part of the lives of our Attorney-General and Secretary of State. With reference to the question of the offices —it can't be of the personnel; Attorneys-General, they come and they go; Secretaries of State, they come and they go—but the great offices of Secretary of State and Attorney-General, both of them carry with them tremendous power exercised always in the interest of the public in every department of public life in the State. Both offices are tied up in innumerable ways with the state service. They don't respond merely to the call of one man, or one department, but they represent the necessities of every department of the State. Even this Convention has had to call on the Secretary of State and the Attorney-General for their services, and so does almost every department in the government of the State.

Now, with the gentlemen from Passaic I point to this as the history of the picture—every state in this Union today, including New Jersey, recognizes the distinction that should be accorded to these two offices. In some states they go even further than we do. In some states they make the offices of Secretary of State and Attorney-General elective by the people of the state. We in New Jersey never want to see that day come. We want to see the power of appointment, as of judicial officers, always vested in the Governor of our State. We want to see the men who fill those places protected by all the powers that constitutional status will give them.

So I say, Mr. Chairman, this amendment should be adopted without any hesitation. It will be the mistake of this Convention to adopt this Article as otherwise reported by the committee. I don't know of a demand for this from any part of the State of New Jersey. I don't believe that anybody in the entire State but we who are in this Convention is even thinking about it right now. Let's do our duty. Let's keep this Constitution of ours, in this respect, as it has been for 100 or more years. Let us stand up and be counted, not for any individual purpose, but for the purpose of giving the best service we know how, giving a Constitution to the people of the State that the State can almost unanimously endorse when it is presented on the next election day.

PRESIDENT: Any further discussion? . . . Mr. Miller.

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Convention:

I rise, not to oppose the proposal which has been submitted by the delegate from Passaic County, but to ask a question which I think is in the minds of at least some of us who have been studying the whole status of these constitutional officers. Delegate Glass is quite correct in saying that both the post of Secretary of State and the post of Attorney-General are to be found in the constitutions of all of the 48 states. They have a long and honorable record as constitutional officers. It is quite true, as Judge Carey has just observed, that in some of the states, indeed in 39 of the states, the Secretary of State is elected by the people; in six he is appointed by the Governor; and in three he is appointed by joint session.

My concern, perhaps, is as to the modesty of the suggestion that these posts of Secretary of State and Attorney-General should be put in Paragraph 7 of the Article on Public Officers and Employees. These two constitutional officers would follow that of the State Auditor, who is now to be elected by joint session, but also would appear at the end of that particular section of our Constitution. I'm wondering whether the mover of the motion, Delegate Glass, would consider the possibility that they be put either before the post of State Auditor, or, preferably, be included among the principal departments? There is a possibility that they could be included, and would be included, as constitutional officers simply by inserting in Section IV, Paragraph 2, of the Article on the Executive, that the head of each principal department, including the Secretary of State and Attorney-General, shall be a single executive unless otherwise provided by law. The rest of that paragraph is almost identical with the wording in this proposed amendment.

I'm sure that Delegate Glass would have informed you, if he had extended his researches, that it is the almost universal practice in

state constitutions to provide that the posts of Secretary of State and Attorney-General shall be, and are found, in the Executive Department. I read, for example, from the clause of the Illinois Constitution, which is characteristic of most of the states:

> "The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor of the Public Accounts, Treasurer, . . ."

and so forth and so on.

That, delegates to the Convention, is the almost universal practice of placing the post of Secretary of State either in the executive or in the administrative branch of state government. It would seem to me, indeed, I think I am correct, my researches would conclude that the State of New Jersey is almost the only state which, in its Constitution of 1844, put the posts of Secretary of State and Attorney-General, as constitutional officers, among the civil officers, rather than in the executive or administrative department, where, it seems to me, they properly belong. I would, therefore, raise the question with the mover of this motion and the sponsor of this resolution, Delegate Glass from Passaic County, whether or not he would consider—perhaps referring it the Committee on Arrangement and Form—a more appropriate location for these constitutional officers than the position at the end of the Article on Public Officers and Employees.

PRESIDENT: Mr. Glass?

MR. GLASS: In all deference to Delegate Miller, I would like to remind him that that is the function, anyhow, of the Committee on Arrangement and Form. My only concern is this: Those two officers shall retain their constitutional status, and their constitutional status shall in no way be impaired. Where they are in the Constitution is, I think, a matter for the Committee on Arrangement and Form, provided that their constitutional status shall not be impaired in any way.

PRESIDENT: Judge Stanger.

MR. FRANCIS A. STANGER, JR.: Mr. President and delegates:

I do not think this provision should be put in a section which has in it the words, "until otherwise provided by law." I think that our vote should be that they should be constitutional officers.

I'm somewhat concerned, Mr. President, with this provision that the appointments be made by and with the advice of the Senate. I think that is entirely proper so far as the Secretary of State is concerned. But the duties of the Attorney-General are so closely identified with the Governor that I think he should be free to make his choice of an Attorney-General, and I would like to see that provision, although I heartily support Delegate Glass' amendment.

Our Committee on Rights and Privileges went into this matter in connection with another section which was in our hands to con-

sider. We determined that the Secretary of State should be continued as a constitutional officer, and so provided in one of our provisions. But I would like to see the section provide that the Governor may appoint the Attorney-General—comma after "Attorney-General"—and the Secretary of State by and with the advice of the Senate.

PRESIDENT: Judge Stanger, do you offer that as an amendment to the amendment?

MR. STANGER: I'm wondering how Delegate Glass would feel about that.

MR. GLASS: Will you repeat it?

MR. STANGER: That the Governor may appoint the Attorney-General, comma, and the Secretary of State by and with the advice of the Senate. In other words, my thought is to keep the Governor free in the selection of the Attorney-General, but that the Secretary of State should be by and with the advice of the Senate. I do not think that we should have an Attorney-General *ad interim*. I think it ought to be the prerogative of the Governor himself to select his own Attorney-General.

MR. GLASS: I would prefer to leave the clause as it is now stated.

PRESIDENT: Is there further discussion on this amendment? . . . Senator Barton?

MR. CHARLES K. BARTON: Mr. President and members of the delegation:

I'm very sorry that I had not spoken to my Passaic County confrere before in this matter. His resolution not only deals with the constitutionality of the offices, but, in my opinion, it deals with another section of the Executive Committee's report in the Schedule which provides for the continuance of the holding of the offices until the present terms expire. Now, this resolution provides that they shall serve during the Governor's term of office, period. I think there should be added a clause, "except as otherwise provided in this Constitution," because these two provisions seem to me to be repugnant, as to how long they should stay there, under what conditions. It is not a question of whether they are constitutional officers or not. I'd ask Mr. Glass to add that, if the committee feels it is necessary. Personally, I do. I'd like to have an expression from someone else on that committee.

MR. GLASS: I would be very happy to accept that amendment to the resolution.

PRESIDENT: Mr. Park?

MR. LAWRENCE N. PARK: Mr. President, I support the amendment offered by Mr. Glass, and I'm conscious of Senator Barton's concern. I feel, however, that the difficulties which Senator

Barton has presented should be taken care of in the Schedule.

It is the text of the Constitution itself which, of course, we hope will outlast any particular officer now serving. I think this whole problem should be cleared up in the Schedule rather than tacking on an amendment to this proposal by Mr. Glass. It is going to make the Constitution look very unwieldly.

PRESIDENT: I understand, Mr. Park, that this amendment has already been accepted by the mover. Am I right, Mr. Glass?

MR. GLASS: Yes.

MR. VAN ALSTYNE: Mr. President.

PRESIDENT. Mr. Van Alstyne.

MR. VAN ALSTYNE: I would respectfully like to ask Mr. Glass and Senator Barton if they wouldn't reconsider their method of approach. It is simply this: It is difficult enough to get the exact wording tied unto the various sections and Articles, without doing it on the floor. I have no objection at all to Senator Barton's amendment to the amendment, not the slightest. In fact, I'm in favor of it, but I think it would be much clearer to the delegates, I think they would be much better satisfied, if we voted now on Delegate Glass' amendment. Then, Senator Barton, I would appreciate, sir, if you would sit down with our technician, Mr. Miller, who originally transcribed this text, and then present your amendment. I think it might come out more clearly.

MR. BARTON: I yield.

PRESIDENT: Your thought, Senator Van Alstyne, is that we now take a vote on the original amendment?

MR. VAN ALSTYNE: Yes, sir.

PRESIDENT: Is there any further discussion? Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President, in the interest of conserving time, I'll state my position by saying that I agree with the principle expressed by Judge Carey and Mr. Glass from Passaic. I'm in favor of this amendment.

PRESIDENT: Mr. Schlosser?

MR. FRANK G. SCHLOSSER: We'll be considering Amendment No. 6, proposed by Senator Van Alstyne, concerning the words "at the pleasure of the Governor." Does this wording in No. 5 contemplate that these two important officers of the State shall serve during the Governor's term of office, as stated by Mr. Glass, or at the pleasure of the Governor, as proposed in the amendment which I presume we next will discuss.

PRESIDENT: Senator Van Alstyne?

MR. VAN ALSTYNE: Do you want to answer that, Mr. Glass, through the President?

MR. GLASS: I think that serving "at the pleasure of the Governor" would decimate the original intent of the proposal to make

them constitutional officers.

MR. VAN ALSTYNE: Thank you.

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: We are voting on this amendment, I understand, as originally presented by Mr. Glass. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: To confirm it, however, we will have the Secretary call the roll.

SECRETARY *(calls roll):*

AYES: Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Montgomery, Moroney, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Young—70

NAYS: None.

SECRETARY: 70 votes in the affirmative and none in the negative.

PRESIDENT: The amendment is adopted.

PRESIDENT: The Secretary will read Amendment No. 6.

SECRETARY: Amendment proposed by Mr. Van Alstyne *(reading):*

> "Amend Page 7, Section IV, Paragraph 2, Line 5: by inserting after the words 'to serve' the words 'at the pleasure of the Governor.'
>
> Amend same page and paragraph, line 3: by changing the word 'executive' to 'executives.'"

MR. VAN ALSTYNE: Mr. President and fellow delegates:

As I explained yesterday when I introduced this amendment, this same wording originally existed in our tentative draft Proposal which was published and distributed around the State in the middle part of July. It was inadvertently left out when we made up our final Proposal.

I just want to explain that the thinking of the committee is briefly this: That those heads of departments who are single heads of departments and not constitutional officers, who are appointed by the Governor, by and with the consent of the Senate, definitely should serve at his pleasure. In effect, they constitute his cabinet,

and if they don't feel and think the way he does, then rightfully he should have the power to force them to leave and appoint somebody else. That is the way it is in the Federal Government. I urge the support of this amendment.

PRESIDENT: Is there any discussion on this amendment?

MR. LANCE: Mr. President, I rise to oppose this amendment. It requires no extended discussion on my part. Involved here is a conflict of basic philosophy as to the *quantum* of power you wish to confer upon the Governor. My personal view is that the gubernatorial cup already runneth over, plus the table upon which the cup sits, and maybe the floor upon which the table rests.

This amendment means several things. First, able men may hesitate to leave their private vocations to accept a post so transitory and ephemeral. Second, this amendment, coupled with the privilege of gubernatorial succession, will make it substantially easier for a mediocre Governor to succeed himself. Third, the main concern of the chief administrative officers of this State may well be the whims and the desires of the Governor, rather than their efficiency in office. They no longer have any independent judgment; they become puppets. He can put their heads upon the gubernatorial chopping block at any time and without giving rhyme or reason. Fourth, this amendment creates just one more factor in upsetting our traditional system of checks and balances by creating executive domination and legislative insignificance.

In closing, I just want to give one example of what I mean by that. A member of the Legislature, let's say a senator, desires a certain course of action from an important state official, let us say the Highway Commissioner, about something in his county involving roads. He goes to the Highway Commissioner, who has considerable discretion, and if the Governor is not in accord with the senator or assemblyman, as it may well be in some cases—not in the existing cases to be sure, but in some cases—the Highway Commissioner, who serves at will, will bend to the gubernatorial will. And that is just another factor in making the Governor dominant over the Legislature.

PRESIDENT: Is there any further discussion on this amendment?

MR. VAN ALSTYNE: Mr. President, I would like to point out the fact that the thinking of the Executive Committee was that responsibility and authority should run hand in hand. The Governor of a state the size of New Jersey is the head of an enormous corporation, a corporation that expends vast sums of money. He has tremendous responsibilty, and I would like to know how you would expect a man to function and handle his responsibilities if you don't give him the authority. Can you conceive of the president of an

enormous corporation being tied down with a head of a department, a vice-president, a sales manager, or a production manager, and whether the man is efficient or not, he has to have him no matter what happens. That is my idea of the height of inefficiency.

One of the things that will do more to bring efficient government to this State than anything else is that the head of this corporation of the State of New Jersey will have control over the executives of his principal departments. If that isn't sound business and government, I don't know what the word means.

MR. LANCE: Mr. President, I think there is a substantial difference between running a State of 4,200,000 persons and being president of a corporation. In the first place, most presidents of any corporations I know serve for a term of one year. Second, if a president of a corporation is not running that corporation properly, there are all sorts of court proceedings whereby there may be receiverships or other checks to see that he does run it properly.

PRESIDENT: Any further discussion? Are you ready for the question? . . . The Secretary will call the roll.

SECRETARY *(calls roll):*

AYES: Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lewis, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Milton, Montgomery, Moroney, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Rafferty, Randolph, Sanford, Saunders, Schenk, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Winne, Young—66

NAYS: Lance, Pyne, Schlosser—3

SECRETARY: 66 votes in the affirmative and 3 in the negative.

PRESIDENT: The amendment is adopted.

The Secretary will read Amendment No. 8 by Senator Barton.[1]

MR. BARTON: Mr. President, I would like to withhold that.

PRESIDENT: Proceed with Amendment No. 9.[1]

SECRETARY *(reading):*

> "Amend Paragraph 2 of Section II of Proposal No. 3-1 by adding a new sentence after the word 'years' so that the said paragraph will read as follows:
>
> 'No person shall be elected to immediately succeed himself in the office of sheriff.' "

MR. STANGER: Mr. President, first let me apologize for the grammatical construction. However, I have many friends on the Arrangement and Form Committee and I know they will take care of me there. I split an infinitive. I did this hastily this morning,

[1] The full text of this and other amendments appears in the Appendix in Vol. 2.

and I would like to have the proposed amendment redrawn so as to put correct grammatical construction in it.

The proposal is to amend Paragraph 2 of Section II of the Article "Public Officers and Employees" by providing against immediate sucession in office by the sheriffs of our counties. I guess we all know the very important part that the sheriff plays in the drawing of juries. I'm speaking now so that we may keep the jury system, at all times, above all suspicion and particularly above all favoritism. While there is a jury commissioner who cooperates, nevertheless I think that any attorney knows, certainly any former judge knows, the very vast power that the sheriff has in this connection. I feel that the jurors should not be drawn either from any motive or in order to favor any particular class, or even the sheriff's friends where there could be no class designation. I feel that it would be a very great help to have in the Constitution a provision such as I propose, that the sheriff shall not immediately succeed himself in office.

PRESIDENT: Is there discussion on this amendment?

MR. COWGILL: I may be mistaken, but it seems to me that the present state of the law is that the sheriff is no longer a jury commissioner by virtue of being sheriff, but that the Governor appoints two jury commissioners in each county. He might happen to be a sheriff but he is not a jury commissioner by virtue of being sheriff. If I'm wrong they have amended the law very recently.

MR. WINNE: As I understand it historically, when the sheriff was a fee officer, the office of sheriff was a very remunerative office in the State of New Jersey. I've heard people say that the sheriff's office in a county was worth forty or fifty thousand dollars when it was a fee office. In those days the sheriff used to feed the prisoners and receive compensation for it, and he made a profit on the feeding of the prisoners.

I never knew why a sheriff couldn't succeed himself. I've known some counties where they would alternate; where a sheriff would run every six years and some member of his family perhaps, or some friend, would run an alternate six years. There didn't seem to be much sense in that. I don't think there was much sense in it, then or now. I don't know why a sheriff should be different from any other elective officer.

So far as the drawing of juries is concerned, I don't know what the gentlemen who proposes the amendment has to fear. Certainly, in the counties I'm familiar with there is no suggestion that when the sheriff did draw a jury there was anything corrupt or sinister about the matter. Now it has been corrected, as has just been stated. Juries of today are drawn by jury commissioners appointed by the Governor. I cannot believe that there is any merit in this sugges-

tion that the sheriff should run only three years and be undersheriff for three years, and then run three years later. I oppose the amendment.

MR. BARTON: Mr. President and delegates:

The office of high sheriff was at one time the most important office in any county. He could do just what he pleased with anybody and whipped them politically to such an extent that he could keep himself in office because they framed the Constitution that way. That's elementary. Today, the sheriff is an ordinary administrative officer. He should be included with the others. He should succeed himself.

PRESIDENT: Are you ready for the question?

(Silence)

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls roll):*

AYES: Berry, Gemberling, Park, Paul, Read, Stanger—6

NAYS: Barton, Barus, Brogan, Cafiero, Camp, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Ferry, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, Miller, G. W., Miller, S., Milton, Montgomery, Moroney, Murphy, Murray, Naame, O'Mara, Orchard, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Streeter, Struble, Taylor, Van Alstyne, Walton, Winne, Young—65

SECRETARY: 6 in the affirmative and 65 in the negative.

PRESIDENT: The amendment is not adopted.

MRS. BARUS: Mr. President, I wish to propose an amendment to the Executive Article. Is this the proper time to do it, or submit it?

PRESIDENT: Yes.

MR. CAVICCHIA: Mr. President, I don't think I'm out of order in rising now. I think perhaps I rise on a question of personal privilege, broadly interpreted, on the theory that it is the privilege of all the members of this Convention to know, at this stage, since we are nearing the end of amendments to this Article, what the committee may have had in mind with respect to a particular provision. I don't want to offer an amendment to delete or revise a provision. I shall ask the gentleman from Bergen, the chairman of the Committee on Executive, to explain the meaning of a particular provision.

I wonder if the committee reasoned out what appears on Page 2, Paragraph 7, line 8 of that paragraph, in fact, the very last line on

that page, or the line before that: "and in the event of his death"—referring to the Speaker of the General Assembly—"in the event of his death, resignation, removal, absence, inability or impeachment, then upon such officers and in such order of succession as may be provided by law." I mean this, Mr. President. The Speaker of the General Assembly does not become acting Governor unless, generally speaking, there is a vacancy in the office of President of the Senate. Now then, from this point we proceed on the theory that there is no Speaker of the General Assembly who is capable of acting as Governor. But let us suppose that situation. A law is passed providing that X officer in the State Government shall become acting Governor where there is no President of the Senate and no Speaker of the House. But what did the committee have in mind, if it thought that far, as to this situation? Suppose, in the meantime, after that X officer in the government, as provided by law, becomes acting Governor, you do have a President of the Senate because, in the meantime, the Senate may have been called back for confirmations, and, therefore, they might have filled the vacancy existing in the Presidency of the Senate. Would that preclude the constitutional right of the President of the Senate to become acting Governor by virtue of his office? Or does the power imposed upon the Legislature here to provide a method of succession, overcome what appears to be the prior right of the President of the Senate to become Acting Governor—or that may apply to the Speaker of the House, as the case may be? I'm just wondering whether confusion might not arise here, and I'm asking the chairman of that committee whether he might enlighten us on it.

MR. VAN ALSTYNE: I rise to speak on this subject with great temerity. It seems to me we are going into the rounds of legal sophistry and fee lawyer[1] business that I don't understand. It does seem to me it's clear, however, that the present Constitution doesn't provide any further succession. We don't think it is possible, we don't think there are enough people in the State who have enough intelligence, to foresee all the possible contingencies, the things that might arise in years to come. Therefore, we have provided for two successions and have left it up to the Legislature to meet the various contingencies as the years go by. We think the Legislature in the future can better face those contingencies than we can with such foresight as we might have at the present time. It seems to me that that is the best answer, and that, I am sure, is what was in the thoughts of the committee.

MR. READ: Fellow delegates. I have not read fully all the Reports of the committees. I would like to ask Senator O'Mara if his Report on the Legislative provides for either one or both houses

[1] See page 346, and footnote.

calling themselves back automatically, rather than by a call from the Governor.

MR. O'MARA: It does.

MR. READ: In that case, then, there would never be a vacancy in the office of either President of the Senate or Speaker of the Assembly.

MR. GEORGE H. WALTON: Mr. President and fellow delegates:

I recall the discussion that took place in the Executive Committee at the time that this particular phrase, now questioned, was added. The thought in the mind of the committee was, of course, that the President of the Senate, if there should be a President, should be the acting Governor. In the event that there should not be a President of the Senate, then the Speaker of the Assembly should become the acting Governor. Finally, it occurred to the committee that in this atomic age, or as a matter of fact, in any age, it was conceivable that there might be a catastrophe when, for a relatively short space of time, there would be no President of the Senate and no Speaker of the Assembly. Accordingly, it might be deemed wise for the Legislature, anticipating such a contingency, to set up a line of succession which should continue in the event some horrible catastrophe should hit the State.

PRESIDENT: Any further discussion or further questions on this point? . . . Mr. Cavicchia.

MR. CAVICCHIA: No, I don't think the matter has been clarified. I'll have to think it over. I think you're trying to borrow too much from the federal system now as modified by the legislation, where you can never have a President of the Senate because the Vice-President of the United States is the President of the Senate, so to speak, and you can't have a Vice-President elected in the interim. You must await the presidential election, as I understand it, before you get a Vice-President. I think the question is even more complicated than perhaps I can explain. Perhaps I'll admit being unable to make clear my point. I'll have to give it some thought.

PRESIDENT: May I suggest that you talk it over with Senator Van Alstyne?

MR. DWYER: I think this discussion this morning can be summed up in an ambition that is expressed in a few words of poetry:

"Little fleas have lesser fleas
Upon their backs to bite 'em;
And lesser fleas have smaller fleas,
And so *ad infinitum.*"

(Laughter)

MR. FRANK S. FARLEY: Not to carry on any controversy relative to the inquiry by Delegate Cavicchia, but may I call his

attention to the fact that there has been a precedent established in our court system? The court ruled that in the case of a vacancy by virtue of the death of the Governor, and in the event the President of the Senate should die, the office would then naturally, by virtue of our present Constitution, and under our proposed Constitution, go to the Speaker of the House. I don't think there is any inherent right of the Senate to call itself back for the purpose of electing a new officer for the purpose of filling a vacancy. The interpretation laid down by the Supreme Court has been that it attaches to the office and not the individual. By way of illustration, or demonstration, let us assume that John Jones is President of the Senate, and there is a vacancy by virtue of the death of the Governor within 20 days prior to election. Then it would carry over to the ensuing election, that is, the second election. It means that when the Senate convened the following January, which would be the second Tuesday, the new President would be acting Governor to replace the then acting Governor who was elected the previous year. I don't know whether I can help Mr. Cavicchia in any fashion, but may I say to him, that the office and not the person who occupies the office, is the person in succession.

PRESIDENT: Is there further discussion on this point? May I inquire whether any delegates care to present further amendments to the Executive Article?

MR. A. J. CAFIERO: Yes, Mr. President.

PRESIDENT: Mr. Cafiero.

MR. CAFIERO: I have one in the process of preparation, suggested to me by the amendment proposed by former Judge Stanger, and it has to do with the term of office of the sheriff. I note that all other officers, the county clerk and the surrogate, are elected for a term of five years, but the term of office of the sheriff is for three years. I intend to propose an amendment making the term of office of the sheriff five years. The amendment is now being typed.

PRESIDENT: I propose a five-minute recess, and then we will proceed with the amendments to the Legislative Article which are now being distributed.

(Recess for five minutes)

PRESIDENT: The delegates will kindly take their seats. We shall proceed to consider the amendments to the Legislative Article. I will ask the Secretary to read Amendment No. 1, introduced by Mr. Dixon.[1]

SECRETARY *(reading):*

"Amend the preamble to Committee Proposal No. 2-1 on page 1 by

[1] The full text of this and other amendments appears in the Appendix in Vol. 2.

substituting a period for the comma after the word 'Constitution' ending on the 4th line and strike out the remainder of the paragraph which reads, 'to which shall be added Alternative "A" or Alternative "B" of Committee on the Legislative Proposal No. 2, whichever shall be adopted by the people, as Section VII, Paragraph 2, of the Legislative Article.'

Amend Committee Proposal, No. 2-1 on page 6, Section VII, paragraph 2 by striking it out entirely.

Amend supplementary Proposal No. 2-2 by striking it out entirely."

PRESIDENT: Mr. Dixon, will you present this amendment?

MR. DIXON: Mr. Chairman, I would like to let that amendment lay over until tomorrow. I understand that the Proposal will be kept open for amendments until after tomorrow. I would appreciate it very much to let that lay over until tomorrow for discussion.

MR. BROGAN: Mr. President.

PRESIDENT: Justice Brogan.

MR. BROGAN: I rise to ask a question of personal privilege to which I hope the Chair will give a very liberal construction. I intervene at this time before we get into any further business to say that since submitting the amendment to Committee Proposal No. 4-1, I have received suggestions which I think are very salutary and which I would like to consider. I, therefore, announce that I withdraw the amendment that I sent in and reserve the privilege to resubmit the amendment at any time before shutting-down time tomorrow evening.

PRESIDENT: The Secretary will read Amendment No. 2 to the Legislative Article.

SECRETARY: Amendment proposed by Mr. Lance *(reading)*:

"Amend on page 5, paragraph 1, lines 1 and 2, by striking out the whole of paragraph 1."

PRESIDENT: Senator Lance, will you present that?

MR. LANCE: Mr. President, the purpose of this amendment would be to allow a revenue measure to originate in either house. The principle of granting to the lower house the exclusive privilege of originating revenue measures has a historical background of about 850 years. Under the Norman kings of England, the right to tax to obtain money for public uses was vested in the king and was exercised by him at his own will. The expenses of foreign wars increased the burden of taxation upon the English people and taxes became so onerous there was resistance; and by force the power of taxation was renounced by the Crown and conceded to the English people. This result was accomplished by several charters granted by the Crown, such as the Great Charter granted by King John. Thus, the right of taxation was conferred upon the people . . .

PRESIDENT: Go right ahead, Senator.

MR. LANCE: Even though the people had the right of taxation, a legislative power was essential for a grant of money and

for providing the means of raising the revenue needed. The House of Commons claimed the exclusive right to raise money bills, and reduced the House of Lords to the alternative of passing or rejecting such bills sent up to it by the House of Commons. The House of Commons prevailed in its claim. Our own New Jersey Colonial Assembly, as early as 1748, asserted this exclusive prerogative.

For four years, between 1748 and 1752, the two houses of the Legislature fought over this proposition and finally, by royal decree, it was decided by the King of England that the lower house of the Colonial Legislature had the exclusive privilege. That distinction was made in 1752 and it has been in our present Constitution up to the present time.

This is not a matter of life and death as far as I am concerned. There are arguments on both sides. In favor of the amendment, you might say the following: that many times in the history of our State is has been necessary for a Governor to veto a bill which originated in the Senate, a good bill, but it had some phase which that Governor thought dealt with revenue. We had the 1947 Legislature pass a bill which might, incidentally, raise revenues to the extent of $60,000. It originated in the Senate and the Governor vetoed it because he thought perhaps it violated this constitutional restriction.

On the other hand, it might be argued that the Senate has the exclusive right of confirming gubernatorial appointments, and since it has something of an exclusive nature, the power to originate money bills, under our system of checks and balances, should be exclusively given to the House of Assembly.

There are arguments on both sides.

PRESIDENT: Senator O'Mara, would you care to comment on that?

MR. O'MARA: Mr. President and ladies and gentlemen of the Convention:

The subject matter of this proposed amendment was brought to the attention of the committee in its deliberations, received careful consideration and was rejected by, not a unanimous vote, but as I recall it, a very large majority of the committee. It was felt that the provision that all bills for raising revenue shall originate in the House of Assembly was one of such long standing and one of such historical background—coming down to us, as Judge Lance has said in his presentation, from the law of England—that it should not be disturbed. In addition, the lower house of the Legislature, being forced to stand for election more frequently than the upper house, and being larger in number and perhaps considered more representative of the people, it was felt that a matter which touched the interests of the people so closely as a bill for the raising of revenue

should, by constitutional enactment, be restricted to the lower house. I feel that that is a salutary constitutional provision, one which has worked no hardship, and one which, in view of its historical background, should not be deleted from the Constitution.

PRESIDENT: Is there further discussion on this amendment? . . . Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President and fellow delegates: I rise once again to support an amendment proposed by the delegate from Hunterdon County. He mentioned in his presentation, that this idea of permitting bills of revenue, so-called money bills, to originate only in the Assembly, was borrowed from the English parliamentary system. During the Convention of 1844, so far as I have been able to learn, this question was not debated or discussed. As a matter of fact, as early as 1821 New York State adopted a constitutional provision that any bill could originate in either house of the Legislature. Now, why?

In the early days of New Jersey we had a Council and an Assembly. The Council represented the Crown. The Assembly represented the people. So, naturally, bills relating to revenue should originate in the Assembly. New York recognized that historical background when it changed its Constitution in 1821. No longer do we have a senatorial representation appointed by the Crown. The members of the Senate represent the people of the State of New Jersey just as much as members of the Assembly.

As a matter of fact, it would seem to me that by adopting this amendment you eliminate many opportunities for confusion. I have in mind a particular bill relating to the regulation of fishing, and incidental thereto there was some sort of a license fee, and the bill was vetoed because it originated in the Senate. There is confusion with the legislators, there may be confusion with the Governor, there may be confusion with the courts as to whether or not a bill does have a material, money-raising element and must therefore, of necessity, originate in the lower house.

It is an archaic provision. I see no reason for it. There is no reason, no logical reason, that today, in 1947 we should adhere to the barnacles of a tradition which date way back, prior to 1844. It seems to me that we can eliminate confusion, we can bring our Constitution in this respect up to date, current. Certainly New York's experience is a precedent to justify our considering this proposed amendment.

PRESIDENT: Is there further discussion? . . . Are you ready for the question? The Secretary will call the roll.

SECRETARY *(calls roll):*

AYES: Barton, Barus, Berry, Cafiero, Camp, Constantine, Cowgill, Drenk, Glass, Jacobs, Lance, Lewis, McMurray, Miller, G. W.,

Miller, S., Park, Saunders, Schenk, Sommer, Stanger, Taylor—21

NAYS: Brogan, Carey, Cavicchia, Clapp, Cullimore, Delaney, Dixon, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Ferry, Gemberling, Hacker, Hadley, Hansen, Holland, Hutchinson, Jorgensen, Katzenbach, Kays, Lightner, Lord, McGrath, Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Paul, Peterson, W. H., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Schlosser, Smalley, Smith, G. F., Streeter, Struble, Van Alstyne, Walton, Winne, Young—54

SECRETARY: 21 in the affirmative, 54 in the negative.

PRESIDENT: The amendment is not adopted.

With the consent of the delegates, I propose that we recess for luncheon. By the time we return, and I suggest 1:45 P. M., we will have the new amendments on the desks of the delegates for consideration. We shall stand recessed, then, until 1:45.

(The session recessed at 12:20 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Tuesday, August 12, 1947

(Afternoon Session)

(The session began at 2:00 P. M.)

PRESIDENT ROBERT C. CLOTHIER:I don't want to interfere with the important things for posterity[1] but I think perhaps we had better convene the Convention.

It has been suggested once again that the gentlemen feel free to take off their coats—but I don't think it is necessary to announce that now.

I will ask the Secretary to call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pync, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

PRESIDENT: I would like to ask all the delegates who have amendments to present to any of the several Articles that they will be good enough to see that they are handed to the Secretary as promptly as possible in order that they may be mimeographed and distributed to the delegates at least by tomorrow morning.

Mr. Schenk.

MR. JOHN F. SCHENK: A few delegates contacted me concerning amendments they wish to submit to the Rights and Privileges Proposal, and I told them I thought it would stay on second reading for considerable time, and that they probably would have until next Monday to get them in. Now, it seems to me that the Convention is moving along with considerably more dispatch than that statement contemplated and I would, therefore, urge that if possible these amendments be gotten in by tomorrow night, or

[1] The reference is to pictures that were being taken of delegates.

as soon thereafter as possible, in order that the amendments can be printed and on the desks of all the delegates so that they can get thorough study and examination. Thank you.

PRESIDENT: Will all those, then, who have amendments to offer to the Rights and Privileges Article, as well as to the other Articles, hand them in as promptly as possible.

May I ask whether any delegates have amendments they would like to present at this time? . . . Dean Sommer.

MR. FRANK H. SOMMER: I have an amendment[1] to offer to Proposal No. 3-1. It simply restores the original provision in the present Constitution relating to the Governor's duty to carry out the law.

(Amendment handed to Secretary)

MR. SOMMER: I offer another amendment to Proposal No. 3-1, which strikes out on page 7, Paragraph 3 of Section IV, these words: "Any principal executive officer so appointed"—that is to say, appointed under a board—"shall be removable by the Governor, upon notice and an opportunity to be heard."

(Amendment handed to Secretary)

PRESIDENT: Mr. Winne .

MR. WALTER G. WINNE: I have an amendment which is substantially a committee amendment to Paragraph 4 of Section IV of the Executive Article which provides in substance that a removed officer or employee shall have the right of judicial review, on the law and on the facts, in such manner as may be provided by law.

I offer the amendment.

(Amendment handed to Secretary)

PRESIDENT: Are there other amendments to be offered at this time?

(Silence)

PRESIDENT: Senator Milton.

MR. JOHN MILTON: Mr. President, may I make a suggestion which I hope will meet with the approval of the Convention. It is intended to save time in the taking of what seems to me to be unnecessary roll calls. This morning we had three, if not four, roll calls which, to my mind, were wholly unnecessary. I recognize that under the amended Rule 67, 41 votes are necessary to the passage of an amendment as well as a proposal.

My suggestion is this: That the President shall call for a voice vote. If the mover of the amendment or the proposal signifies his desire for a roll call, he shall be given an opportunity to state that. If he does not desire a roll call, the President shall thereupon

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

announce that the amendment or proposal, having received at least 41 votes, is declared carried.

I think we wasted about 30 minutes this morning taking unnecessary roll calls.

PRESIDENT: Senator, there was one consideration back of the roll calls this morning, and that was the feeling on the part of some that the record would be more complete if it contained the names of those who voted for and against each proposal. Of course, that is absolutely unnecessary in the case of a unanimous vote.

MR. MILTON: However, you had a unanimous vote this morning, twice.

PRESIDENT: I know. That was unnecessary.

MR. MILTON: How important is the record if the proposal or amendment is carried?

PRESIDENT: Unless there is a dissenting voice, I will be very glad to be governed by Senator Milton's suggestion.

(Silence)

PRESIDENT: Is there other business to come before the Convention at this time?

(Silence)

PRESIDENT: If not, I suggest that we proceed with the consideration of Amendment No. 10 to Proposal No. 3-1, presented by Mrs. Barus.

SECRETARY *(reading):*

> "Amend page 3, Section I, Paragraph 11, line 6, by inserting at the end thereof, a semi-colon followed by the words 'provided that this power shall not be construed to authorize any action or proceeding against the Legislature.' "

MRS. JANE BARUS: Mr. Chairman, may I speak for my amendment?

PRESIDENT: Please do.

MRS. BARUS: The purpose of this paragraph is to provide a method of implementing the first sentence, which is the same as it now stands in the present Constitution: "The Governor shall take care that the laws be faithfully executed." To this end we have given him the power, not of himself to reach down into the agencies and departments of the government, but to seek before the courts by some proper proceedings either to enforce compliance with the law or the Constitution, or to prevent a violation of the law or the Constitution.

This does not go nearly so far as the power given to the governor in New York State, for instance. I quote from Article X, Section I of the New York Constitution: "The Governor may remove any officer hereinbefore in this section mentioned"—and

those officers are sheriffs, county clerks, district attorneys, registers, and so on—"except in New York City, within the term for which he shall have been elected, giving to such officer a copy of the charges against him and an opportunity to be heard in his defense."

In my opinion, that would be too strong a power to give the Governor, but it did seem appropriate that since the court cannot of itself—the court which is the final judge of what the law is—since the court itself cannot initiate action, that the Governor, as the chief officer of the State and the one official elected by all the people, should have this power.

After this proposal was drawn by me, it was brought to my attention that the wording might possibly be interpreted to include some proceedings against the Legislature. That was not the intent of the proposal as originally made by me. I have some good legal opinions to the effect that the courts would never so rule, and that that would be a fundamental violation of the separation of powers. However, since that point was raised, I would like to make it perfectly clear that that is not the intent of the paragraph, and I therefore move to amend by adding these words: "provided that this power shall not be construed to authorize any action or proceeding against the Legislature."

I move the adoption of the amendment.

PRESIDENT: You have heard the presentation. Is there any discussion on this amendment? . . . Senator Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: Mr. President, I just want to say that there is no question but what the intention of the committee was expressed in Section I, paragraph 11. On the other hand, this amendment suggested by Mrs. Barus clarifies it, and as chairman of the committee it is entirely agreeable to me.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: Are you ready for the question? . . . All in favor of the amendment, please say "Aye."

(Chorus of "Ayes.")

PRESIDENT: All opposed say "No."

(Silence)

PRESIDENT: The amendment is adopted unanimously.

I would like to ask Senator Barton if he would like to present Amendment No. 8 at this time.

MR. CHARLES K. BARTON: Mr. President and delegates: I would like to propose it, sir, but it has been slightly changed. I think it could be understood very quickly, if I could have a minute to explain it.

PRESIDENT: We have the original draft[1] before us, Senator, and possibly with your amendment it will be perfectly clear.

MR. BARTON: Instead of striking out the first sentence of Paragraph 2, of the Schedule in Proposal No. 3-1, the committee has concluded it would be better to add this phrase to the whole paragraph. And so after the words "Section III," the last words of the paragraph, add the clause that has been put on the desks of the delegates *(reading):*

> "Unless otherwise specifically provided for in this Constitution, all constitutional officers in office at the time of the adoption of this Constitution shall continue to exercise the authority of their respective offices during the term for which they have been elected or appointed and until their successors have been appointed and qualified."

The necessity of this, sir, is quite apparent, because the amendment which was made this morning makes the Secretary of State and the Attorney-General constitutional officers. That is the only reason for this; otherwise they, with their great offices, would be excluded and principal officers would be included in the Schedule.

I move the adoption of the amendment for that reason.

PRESIDENT: Senator Barton, will you be good enough to repeat for the Secretary's benefit the clause which you wish inserted?

SECRETARY: The section you wish it inserted in, please.

MR. BARTON: At the end of paragraph 2, of the Schedule, which reads "Section III," in Roman numerals, a new sentence:

> "Unless otherwise specifically provided for in this Constitution, all constitutional officers in office at the time of the adoption of this Constitution shall continue to exercise the authority of their respective offices during the term for which they have been elected or"—

SECRETARY: Okeh.

MR. BARTON: . . . "appointed and until their successors have been appointed and qualified."

SECRETARY: Simply add "elected or."

MR. BARTON: Yes, "elected or."

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: Mr. President, I just want to say that immediately after the Convention adjourned this morning we had a committee meeting to discuss this matter, and the committee approved it. This is really Senator Barton's amendment, approved by the committee.

PRESIDENT: Is there any further discussion on this amendment?

MR. A. J. CAFIERO: Dr. Clothier.

PRESIDENT: Mr. Cafiero.

MR. CAFIERO: It would seem from the reading that although the words "elected or" have been inserted on the third line from the bottom, not to insert them on the second line from the bottom would tend toward confusion. Would it not be better, Senator Barton, if

[1] The text of the original amendment appears in the Appendix in Vol. 2.

the words "been appointed and," which are in the last line, be stricken?

It would then read:

> "Unless otherwise specifically provided for in this Constitution, all constitutional officers in office at the time of the adoption of this Constitution shall continue to exercise the authority of their respective offices during the term for which they have been elected or appointed and until their successors have qualified."

Striking out the words "been appointed and."

MR. BARTON: I accept that.

PRESIDENT: Is there further discussion?

(Silence)

PRESIDENT: All in favor of this amendment please say "Aye."

(Chorus of "Ayes.")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The amendment is unanimously adopted. . . . Mr. Dixon.

MR. AMOS F. DIXON: Mr. President and ladies and gentlemen, delegates to the Convention:

I am speaking on the amendment to the Constitution, Amendment No. 1 to Legislative Committee Proposals Nos. 2-1 and 2-2, which I asked this morning be laid over until tomorrow.[1] I did so at the request of a delegate who wished to give it some further consideration. And he has returned to me the courtesy I extended to him by telling me that it was all right to go ahead with it this afternoon.

The amendment which came on your desk, Amendment No. 1 to Legislative Committee Proposals Nos. 2-1 and 2-2, seems a little complicated. It concerns the question of gambling in the present Legislative Committee's Proposals. And the reason it is in three parts, and perhaps somewhat complicated, is purely because references to gambling occur in three places in those Proposals. But what it means, as set up, is that there shall be no provision whatsoever in the Constitution concerning gambling. That will not affect the present laws—the laws on our books at the present time which outline the matter of racing in our State.

While the present provision in the Constitution provides for the allowance of gambling, that is permissive;—the legislation followed that permissive provision, and the elimination of that provision does not affect, at the present time, the racing statutes of our State.

The Committee on the Legislative states in its Report that many members felt that logically gambling should not be mentioned in

[1] See pages 257-258, *supra*, and the full text of this amendment in the Appendix in Vol. 2.

the Constitution and that it was a problem for the Legislature. And with those members I very strongly agree.

The Report of the committee also says that, in their opinion, leaving it out will cause a vote against the Constitution as a whole and they, therefore, present Alternatives A and B, each of which provides for gambling; one the limited gambling we now have in the Constitution, and the other a more liberalized provision for gambling. How liberalized, apparently no one knows, from the discussion we have heard. No one can tell at the present time. And with this last opinion, that it will cause more votes against the Constitution if we leave it out than if we put in A and B, I heartily disagree.

One reason that gambling is put in there, as discussed in the committee, I understand, is that it is traditionally in the Constitution. But, ladies and gentlemen, we are here today to break traditions that are in the Constitution. We are in a moving civilization. We are in a moving society, and we must break away from certain traditions when they are bad and hold to those traditions when they are good. We are breaking other traditions in our various Articles, and just as important traditions as this.

After speaking to many people and to leaders of some very large, influential organizations, I find that they feel a provision concerning gambling is not a subject to be included in our fundamental law, the Constitution. And they definitely want any mention of it left out. I speak particularly for the State Federation of Churches, with whose leaders I have conferred. They came to me, incidentally, with their proposals. I speak for the New Jersey Dairymen's Council, the Farm Bureau, and the New Jersey State Grange, with whom I have consulted within the last week; and I find that they want it definitely left out.

The people in these organizations represent a tremendously large and intelligent body of public opinion in our State, and they fiercely resent being presented with a proposal to vote for alternatives either of which will force them to record themselves as favoring gambling. And I am convinced that this resentment is so strong that it will go further toward causing adverse votes and defeating the whole Constitution than will be caused by omitting all mention of gambling and leaving the entire question for determination by the Legislature.

This will be no departure from principles followed with other similar questions, such as the handling of the liquor traffic—that's an important social question. The marriage and divorce questions are important social questions, the same type as gambling, and both are handled by statute in detail. No one, so far as I know, has ever suggested that we put into our Constitution any sort of a code con-

cerning the handling of these important questions.

Attorney-General Van Riper, in his testimony before the committee, which I happened to be fortunate enough to hear at the public hearing, pointed out the very serious legal question involved in handling alternatives. And ladies and gentlemen, if you delegates will refer to that testimony, you will find that in 24 pages of the recorded testimony the whole record is concerned with the difficulty and the danger to the whole Constitution of handling these alternative questions.

That is a practical side of the proposal.

Now it has been intimated that the Legislature cannot be trusted to handle gambling. The people trust them with things that are much more important than gambling, things which are much more important to the welfare of our State, and I think the record of the Legislature shows that on the whole they handled these well. The Legislature is responsive to the people, closely so, and I am quite sure that if the Legislature fails in the trust that the people has placed in them, we would very soon have a Legislature which would not fail in their trust to the people.

Let me emphasize again that it is fundamentally wrong to freeze such a thing as a code for gambling in our Constitution, instead of controlling it by legislation, which can be improved from year to year to meet the demands of the people.

Fellow delegates, ladies and gentlemen, I urge you very strongly to support this amendment. I not only urge you but I plead with you to support this amendment, because I feel that I can assure you that if these alternative proposals go into our Constitution they will constitute a very, very imminent danger to the passage of the Constitution as a whole.

Thank you.

PRESIDENT: Is there discussion on this amendment? . . . Senator O'Mara.

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

I think that Mr. Dixon has confused the issue which this amendment presents to the Convention. The question before the Convention now is not whether the alternative provisions that are set forth in Proposal No. 2-2 of the committee shall be submitted in that form. That question will be before the Convention at the proper time. But this amendment is addresed to the proposition that all reference to gambling be stricken from the Constitution, and that the Constitution which we propose to adopt should be silent on that question.

The Report of the committee says that members of the committee felt that on the basis of pure logic, or from an academic standpoint

if you will, there was much to be said in favor of that position. But as I recall it, not one member of the committee was willing to vote for such a proposition, and the reason for it is very obvious. We are not dealing in abstractions; we are not dealing with academic propositions; but we are dealing with cold, hard facts, and we want in this Constitution the provision which, in the judgment of this Convention, will bring about the utmost safety to the people of the State of New Jersey with respect to the gambling question.

Now, I ask you ladies and gentlemen of the Convention to reflect for a moment on what the effect of the adoption of this resolution would be. I might preface my remarks by saying that from the time of the adoption of the present Constitution 103 years ago, it has always contained an anti-gambling clause. The original clause in the 1844 Constitution prohibited the authorization of lotteries by the State. That clause remained unchanged until 1897, when an amendment was carried at a referendum election, which in addition to prohibiting lotteries prohibited all forms of gambling. And that was the constitutional provision until 1939, when an amendment was adopted permitting pari-mutuel betting on the result of horse racing. So that we have a history of more than a hundred and three years of constitutional restriction upon the right of the Legislature to deal with the question of gambling.

It is true, as Mr. Dixon said, that one group of churches advocated taking the anti-gambling clause out of the Constitution entirely. Another, and very vociferous group, advocated that there be no enlargement of the legislative right to deal with this question.

This amendment would leave the door wide open to the Legislature to legalize any form and any type of gambling. It could legalize commercial gambling of any kind. It could authorize the conduct of lotteries by the State, by sub-divisions of the State, by individuals, or by organizations. It could legalize any type of gambling without any restriction whatever. Are the people of this State ready to take such a step? I don't think they are. And I most heartily disagree with Mr. Dixon when he says that he thinks the people of the State are ready for that step.

I said before, that perhaps on the basis of pure logic, gambling has no place in the Constitution. The argument that has been made in that regard is that there is nothing in the Constitution about murder, there is nothing in the Constitution about robbery, so why should there be any constitutional provision about gambling? Well, of course, gambling is quite different. A great many people see no moral wrong in gambling *per se*. A great many people feel that they violate no law, moral or otherwise, if they bet two dollars on the result of a horse race. But everyone concedes, I think, that unrestricted and unregulated gambling can become a great social and

a great economic evil. And it is because many people see no moral wrong in it, it is because the gambling instinct is so strong in most people that the framers of the Constitution of 1844, and the people of the State ever since, down through the years felt that there should be some restrictions on the right of the Legislature to legalize gambling. Remember we are writing this Constitution not for today, not for ten years, but I hope for generations. If the Legislature were left with unrestricted control of gambling, it would be subjected, year in and year out, to all kinds of pressure, and there would be nothing to prevent some Legislature 20 years from now or 30 years from now from making of the State of New Jersey an American Monte Carlo.

Now, as I said, Mr. President, the question of whether or not certain alternatives should be presented to the people is not before the Convention at this time. That will come either with an amendment offered to Proposal No. 2-2 on the second reading, or on the third reading of that Proposal. But the question with which the Convention is now concerned is: Shall this Constitution give a blank check to the Legislature and allow it to legislate in any way it sees fit, to legalize any kind of gambling that might appeal to it, in any way that it desires? In my judgment, if any such power is granted to the Legislature, it will cause the defeat of the Constitution at the hands of the people.

My time is up. I earnestly submit that this amendment should be defeated.

PRESIDENT: Mr. Orchard.

MR. WILLIAM J. ORCHARD: President Clothier, I don't want to stand under the microphone and look up as though I were asking for wisdom from the Almighty or addressing angels,[1] as I rise to second Mr. Dixon's amendment. As I read Mr. Dixon's amendment, we are now considering Committee Proposal No. 2-2, because a part of his amendment moves to strike out Proposal No. 2-2, and I respectfully call that to Senator O'Mara's attention.

Senator O'Mara has observed that we are not writing a Constitution for today, but for 10 or for 20 years from now, and that possibly 20 years from now some Legislature would make New Jersey a Monte Carlo. If any Legislature did that, it would only be because the people of this State wanted it that way. Senator O'Mara agreed in his remarks that the cold logic of the situation was such that gambling, *per se,* deserves no mention in the text of this Constitution. Judge Hansen, speaking for Mayor Eggers yesterday, emphasized that it was the will of the people of this State that was going to control future legislation and the future destinies of this State.

[1] The reference is to the microphones suspended just above speakers' height from the ceiling of the Rutgers Gymnasium.

If we omit all mention of gambling in the Constitution, such a distinguished authority as Senator O'Mara has pointed out that the logic of the situation could well call for the omission of all reference to gambling and leaving the matter in the hands of the Legislature. We are closer to the people. We do not have the omniscience today to see the development of the future in this regard. I can well fancy that a hundred years ago the Convention might well, had it been brought to their attention, have written in something about women smoking and the smoking of cigarettes, but it wasn't then even contemplated.

I have no fear of any future Legislature permitting any degree of gambling or any degree of carrying on anything whatsoever that is not wanted by the overwhelming majority of the people of this State. If the people of this State do not want practices authorized by the Legislature to continue, they have the power of changing the Legislature at the next election.

I see no reason for mentioning gambling in the Constitution and I urge that Mr. Dixon's amendment prevail.

PRESIDENT: Is there further discussion on this amendment? . . . Judge Carey?

MR. ROBERT CAREY: First, I would like to ask as a matter of information whether what we do here now will close the discussion of this gambling problem? The reason I ask that is that I understood yesterday that the discussion of the gambling program, as set forth in the Committee Proposal, was to open tomorrow. I haven't prepared myself to meet the situation, but if it is to be an open fight right now, well, I am ready to be heard. But I don't want to take the Convention's time unless I know it is going to be an open fight.

I have two delegates who have given me their authorization to use their time, if it is required. If I am to speak on the full subject now, I am ready to file these two certificates so that my time limit will be protected. And then I will be ready to take up the proposition laid down by the Senator from Hudson and also by the introducer of this resolution, because I have on file here objections to this proposal suggested by the committee. I have filed a proposition in the nature of an amendment, and it has for its purpose elimination absolutely, ultimately, of gambling in our State Constitution, as I believe it has no place there. That is one matter. But in the amendment that I propose, I include a substitute to be adopted as a part of the Constitution.

The substitute itself will eventually take gambling out of the Constitution, but it will preserve the rights of the present gambling associations to operate race tracks in this State for a reasonable length of time under the direction and supervision of the Legisla-

ture, to enable them to work out the situation that they entered into with the State of New Jersey. New Jersey has given them certain rights, has caused them to make very substantial investments, and I believe—I am not against gambling and I am not speaking for gambling—but I believe that when the State enters into a moral obligation on behalf of the people, we have got to find some way, whatever we do with the problem, of satisfying that moral obligation decently and honorably. My amendment is intended to meet that situation.

Now, I ask, shall I talk on my amendment as well?

PRESIDENT: Senator O'Mara, have you any comment to make?

MR. O'MARA: Ladies and gentlemen, I have this comment to make. The amendment offered by Mr. Dixon, if adopted, would have the effect of striking out any reference to gambling in the Constitution. It would also eliminate entirely Proposal No. 2-2 for alternative submission to the people. The result would be that there would be nothing in the Constitution relative to gambling. If Mr. Dixon's proposal is lost, Proposal No. 2-2 of the committee, requiring the submission of two Alternatives, is still on second reading. Amendments to it may be offered until tomorrow night, or longer indeed, if the Proposal remains on second reading beyond that time. Then it must go to third reading. Therefore, the disposition of this motion does not close out the debate on the subject of gambling at all. The result of the adoption of this resolution would be to eliminate any reference whatever to gambling in the Constitution. If the resolution is defeated, the question of submission of Alternatives is still open to the Convention. Any amendment which Judge Carey or any other delegate wishes to submit is still open, because this motion, Judge Carey, does not dispose of the gambling question.

MR. CAREY: It may, as far as this gathering is concerned, and it would seem to me that if that is the problem that is in the mind of the chairman of the committee that makes this proposition, it might be a very wise and proper thing to lay the whole matter over, to be finished up in one transaction, as it should be. We can hear everybody and everything, right to a definite conclusion, and we can think overnight of what we have heard as well. I would suggest, then, if it isn't out of order, that further discussion of this matter be laid over until tomorrow, or Thursday, whichever the chairman of the committee prefers, but if amendments are to be offered here tomorrow morning, it probably should be right after those amendments are offered.

I move, then, that the whole discussion from this moment on be laid over, to be continued tomorrow at 11 o'clock.

PRESIDENT: Mr. Dixon, do you agree to that proposal?

MR. DIXON: Mr. President, I will be very glad to extend that courtesy to Judge Carey. I would very much prefer to see the discussion go on at the present time. I think we should take the courage of our convictions in our hands. We either want this in the Constitution or we don't want it in the Constitution. I have made it quite plain, I think, that there is no intention whatsoever, in passing this amendment, and no intention so far as I know on the part of the people who are sponsoring it and who have talked to me, to eliminate the present horse racing. The thing that they are against particularly is putting this thing in the Constitution—putting a thing of this type in where we don't put things of similar type. We don't put the liquor business in the Constitution, we don't put marriage and divorce in the Constitution, and they don't want this in the Constitution. They are particularly resentful of the way this has been put in, with only two Alternatives, both making them record themselves on gambling.

These people are willing to take the chance of the Legislature; they trust the Legislature, even if we don't. And again I would like to emphasize that there has been no proposal to cut out horse racing. The Legislature can do that today if they wish. The matter of horse racing, the matter of the disposition of the money, is entirely in the hands of the Legislature. So far as I personally am concerned, I would not turn my hand to change those laws that are on the books now. So, I feel that those who have their money invested today in horse racing will not be affected at all by this.

As a matter of fact, I feel very strongly that with the legislation on the books, the State of New Jersey has a moral obligation to the people who have invested their money in these tracks, right or wrong. There have been millions of dollars put in these tracks, and they have been put in the tracks because the Legislature passed laws, because the people voted for an amendment permitting the Legislature to do it, and the Legislature did it. Personally, I feel and feel strongly that the State of New Jersey has a moral responsibility to the people who have put their money into these tracks, to let them operate in accordance with the law, which was a contract with them when they started operations.

Even though the State has the power—and it has got the power—I think it must be more jealous of that power in confiscating property, and that is exactly what that would be.

PRESIDENT: Mr. Dixon, I think Judge Carey has in mind presenting his own amendment for the consideration of the delegates, at a time when it can be considered by the delegates in connection with your own resolution. With that in mind, he has asked whether it would be agreeable to you if we defer this discussion until tomorrow, in order that he may have the time, incidentally,

to introduce his own amendment, which I understand he has not yet done. Would that be agreeable to you?

MR. DIXON: I wonder if I may ask through you, Mr. President —what is your amendment, Judge Carey? Does it cover this same subject?

MR. CAREY: I have filed my amendments. They are on file with the Secretary of the Convention. They were filed this morning, in order to be in time. They are before the Convention. They are before the Convention now just as much so as the one that has been made.

PRESIDENT: If they have not been mimeographed as yet, they will be as soon as possible.

MR. DIXON: May I ask through you, Mr. President—suppose that this amendment is passed. Will that affect your amendment any? I don't want in any way, Judge Carey, to be unfair and prevent you from getting full consideration for any amendment you have. If this amendment is lost, then unquestionably you will have an opportunity to present your amendment. If this is carried, will you still have an opportunity to present your amendment?

PRESIDENT: Yes.

MR. DIXON: That is what I thought. But I rather gathered from what you said that maybe he would not.

PRESIDENT: I take it then, Mr. Dixon, you would prefer to go ahead with the discussion?

MR. DIXON: I think that I would prefer to go ahead with the discussion.

PRESIDENT: Then, Judge Carey, there is nothing in this discussion or in the action taken this afternoon that would in any way impair your right tomorrow to present and argue your own amendment.

MR. CAREY: I don't know what the effect would be of action today. I don't even know what the effect would be upon moral obligation to vote on this motion today. I might be heartily in favor of eliminating gambling from the Constitution, but I have, I think, a better scheme for doing it right now—that would be more satisfactory to the entire State if it were embraced in the resolution that is before the Convention now—and to discuss it properly it would take some time. It seems to me that we are going to take four or five bites out of a problem that we can settle as one problem right at one time. The chairman of the committee can present his picture tomorrow morning; the other side can present their amendment, and I will present mine, and we can present them all together, save everybody's time, and I know what the result would be.

PRESIDENT: Mrs. Barus?

MRS. BARUS: Mr. Chairman, I may be alone in being confused on this very difficult and controversial question, but it would be very helpful to me before voting on any amendment to the Committee Proposal if we could finally know whether the Convention is or is not empowered to present these Alternatives. While that question is hanging over us, I, at least, find it very difficult to know what is the wise decision to make. Is it possible for us to get a final and authoritative ruling by which we must be guided?

PRESIDENT: Senator O'Mara, will you comment on that?

MR. O'MARA: Well, on a hot afternoon that is a large task. I can only say that the Attorney-General has submitted an opinion in which he said that alternatives might not be submitted to the people unless the proposed Constitution were submitted in parts. With that opinion I am in disagreement, and with that opinion Mr. Russell Watson, so the Attorney-General has said, is also in disagreement.

The Attorney-General did say, however, that if the Constitution were presented to the people in parts, alternatives could be submitted in a referendum. When he was requested to define what a part was, he said in substance that a part was, of course, less than the whole, and that a part was such part as could be inserted into or superimposed upon the existing Constitution. When I asked him to clarify that, he took for an example—and this is my recollection of his oral testimony—the clause "No divorce shall be granted by the Legislature." He took that as the shortest clause he could think of. It is his opinion that if that clause were left standing as the only remaining clause of the present Constitution, and there was submitted a whole Constitution, less that clause, so that the whole new Constitution could be superimposed upon that existing clause, that would constitute submission of a part of the Constitution, and under those circumstances alternatives could be submitted to the people.

That is the ruling of the Attorney-General as I understand it. I would like to be heard further at the proper time and before the proper committee, or on the floor of the Convention, as to whether or not the language in the Act setting up this Convention, dealing with the manner in which the work of the Convention may be submitted to the people, is a restriction upon the Convention at all, or was intended by the Legislature to be a restriction upon the Convention. I do not think that it was. Even if it was, the question immediately arises, is it a valid restriction?

I recognize, Mrs. Barus, that that might not be very helpful at the moment, but it is the best that I could do.

MRS. BARUS: Mr. Chairman, I would still respectfully suggest that if we could clarify that point first and decide what we are going to do on this broad, general plan, it would be very helpful.

However, I won't labor the point. It does seem to me, though—and I'm speaking not at all as a lawyer or an expert—that the question of whether the restriction is valid or not may be an open one, but since we have this deadline and are bound by the action of the Secretary of State, we really are a little hamstrung in attempting to argue the point, in my opinion. In other words, it seems to me that we must accept the ruling of the Attorney-General and the approval of the Secretary of State; otherwise, we must embark upon the very difficult procedure of getting a judgment, I presume from the courts, as to whether it does or does not bind the Convention, or whether the Convention can supersede the action of the Legislature. So it seems to me that we must, as a practical matter, rely on the opinion of those two men, and let's hope they'll agree.

PRESIDENT: Perhaps I have inadvertently permitted the discussion to go a little bit away from the original amendment, which was Mr. Dixon's amendment. . . . Mr. Van Alstyne.

MR. VAN ALSTYNE: I move that Mr. Dixon's amendment to the Legislative Proposal lie over until Thursday morning. The purpose of making the motion is, that I think it will give time for Judge Carey's proposed amendment to be printed, or any other amendments that might be offered on this subject to be printed, so that they will all be in front of us. We'd have more time to really consider the subject. I, for one, as a delegate will be much better able to make up my mind to vote on Thursday morning.

DELEGATE: Second.

PRESIDENT: You've heard the motion, as seconded.

MR. DIXON: I'm very glad to accept the decision of the Convention on that. I agree, in connection particularly with the representation that Judge Carey has made, the fact that other amendments are coming along, and Mr. O'Mara's statement that there is going to be some change—I am very glad indeed to have it lay over, and I recommend to the delegates that they approve the motion.

PRESIDENT: And you request it to be laid over?

MR. DIXON: Yes, sir.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes.")

PRESIDENT: Opposed?

(Chorus of "Nos")

PRESIDENT: All in favor, please raise their hand?

(Hands raised)

PRESIDENT: Opposed?

(Fewer hands raised)

PRESIDENT: The motion is carried.

MR. VAN ALSTYNE: Mr. President.

PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: I'd like to make another motion. I move that you be authorized to appoint a committee to study with the greatest care the point raised by Mrs. Barus, and to report back as soon as possible to the Convention, with specific recommendations.

MR. FRANCIS D. MURPHY: Dr. Clothier.

PRESIDENT: Mr. Murphy.

MR. MURPHY: I think that question should properly be for the committee.

MR. VAN ALSTYNE: I think you'll pardon me; I wish to apologize to the committee. What I really meant to say was, to request that the committee come to the Convention with the matter in hand and report to us as soon as possible. I think we should have a specific report on this which we have not got.

DELEGATE: Second the motion.

PRESIDENT: You have heard the motion seconded. All in favor please say "Aye."

(Chorus of "Ayes.")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. . . . Dr. Saunders.

MR. WILBOUR E. SAUNDERS: A meeting of the committee will then be called at the conclusion of this session.

PRESIDENT: I'd like to declare, if I may, a five-minute recess and consult with the chairmen of the standing committees on the platform. Five-minute recess.

(Recess for five minutes)

PRESIDENT: The Convention will please come to order. The chair will recognize Mr. Dixon.

MR. DIXON: We find that the amendments which were expected to be ready for discussion are not ready for distribution to the desks of the delegates, and consequently we are going to move for adjournment until one o'clock tomorrow. The Convention will meet at one o'clock tomorrow. But lunch will be served at 12 o'clock in the usual place, so that the delegates will be able to get on their way here, get their lunches and come to the Convention at one o'clock. I move we adjourn, Mr. President.

DELEGATE: Second the motion.

PRESIDENT: You've heard the motion as seconded? All in favor say "Aye."

MR. WILLIAM L. HADLEY: I wonder if Mr. Dixon had in mind the affair that we are scheduled to attend at your home tomorrow?

PRESIDENT: I think he had that in mind, in part.

MR. HADLEY: If so, he didn't let us know.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes.")

PRESIDENT: Opposed?

(Chorus of "Nos")

PRESIDENT: All in favor, please raise their hand?

(Hands raised)

PRESIDENT: May I have the attention of the delegates for just a moment? Mr. Dixon has announced that is has been physically impossible, because of certain supplies, to have the amendments mimeographed and in the hands of the delegates this afternoon. The circumstances being such, it is going to be impossible to have them ready before tomorrow morning. With that in mind, Mr. Dixon has moved that we adjourn this afternoon to meet tomorrow at one o'clock, as we shall be unable to continue our discussion on amendments which we have in hand until that time. He also announced that luncheon is available at 12 o'clock in the usual place. He made that motion and the motion was seconded. I believe the motion permits no discussion. So, I call the question again, now that all have had a chance to understand it.

Will all in favor of the motion please say "Aye."

(Chorus of "Ayes.")

PRESIDENT: Those opposed?

(Chorus of "Nos")

PRESIDENT: Will the Secretary call the roll?

SECRETARY *(calls roll):*

AYES: Cafiero, Clapp, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Montgomery, Moroney, Morrissey, Murphy, Naame, O'Mara, Peterson, H. W., Peterson, P. H., Pyne, Rafferty, Read, Saunders, Schenck, Schlosser, Smalley, Smith, G. F., Sommer, Streeter, Struble, Van Alstyne, Walton, Young—52

NAYS: Barus, Camp, Constantine, Delaney, Orchard, Park, Paul, Proctor, Randolph, Sanford, Stanger, Taylor—12

SECRETARY: 52 in the affirmative, 12 in the negative.

PRESIDENT: The motion is carried and we are adjourned until one o'clock tomorrow.

(The session adjourned at 4:00 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Wednesday, August 13, 1947

(The session began at 1:20 P. M.)

FIRST VICE-PRESIDENT AMOS F. DIXON *(presiding):* Will the delegates please take their seats?

The Convention will come to order. It is with great reluctance that we start this afternoon's session later than the hour to which we adjourned, but there was a serious wreck on the Pennsylvania Railroad which delayed the commuters coming from Newark. Quite a group of them arrived in the past few moments. That accounts for our starting late.

I would also add, in order to quiet the fears of the delegates that Dr. Clothier is incapacitated, that he was called out of town on an emergency business problem early this afternoon. He will come in later; in the meantime, he has asked me to take the gavel and request the Convention to proceed with its normal business.

We will open the Convention with prayer. I am very glad to introduce Mr. Saunders. Will the delegates please stand?

MR. WILBOUR E. SAUNDERS: Almighty God, before we begin our contemplation of the business of this day we seek Thy guidance and in humility would bow before Thee to ask that we may have no self-confidence beyond our desire to seek sincerely the leading of Thy truth. May truth prevail over everything that may be of self-interest and each decision made be in accordance with the best interest of the State and its people. We ask this in Thy name. Amen.

FIRST VICE-PRESIDENT: Thank you, Dr. Saunders. The next order of business is the reading of the Journal.

MR. WILLIAM L. HADLEY: I move that it be dispensed with.

(Seconded from the floor)

FIRST VICE-PRESIDENT: It has been moved and seconded that we dispense with the reading of the Journal. All those in favor answer "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed?

(Silence)

FIRST VICE-PRESIDENT: The motion is carried. The next order of business is roll call. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(The Secretary called*

the roll and the following delegates answered "present"):

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, Murray, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne.

SECRETARY: A quorum is present, sir.

FIRST VICE-PRESIDENT: The Secretary advises me that a quorum is present. We will therefore proceed with the order of business.

The next order of business is the presentation of petitions, memorials, and remonstrances. Are there any?

(Silence)

FIRST VICE-PRESIDENT: Reports of Standing Committees. Are there any standing committees to report? Mr. Saunders?

MR. SAUNDERS: Yesterday the Convention asked our committee to make a very definite report in regard to the method of submission, since it would seem to make some difference in our observations. There is something in the Scriptures about swallowing or screening out gnats and swallowing camels. I haven't seen any camels around, but our committee has certainly been swallowing lots of gnats, and if I may be permitted—there is a story abroad of a certain biblical scholar who was attempting to discover the difference between certain manuscript versions of the Old Testament by the number of *dagesh*—these are the spots within the Jewish figures that show what the vowel is—which differed in the different manuscripts. He was found to have committed suicide when a microscopic examination of a manuscript in the British Museum disclosed that one of these *dagesh* was a fly speck.

The committee has been examining semicolons and commas, and if the chairman is discovered to have committed suicide, it will be because of commas in the wrong places. At any rate, what we are going to do is this: the committee, after consulting several legal authorities, and since it is loaded with lawyers, is going to place its reliance on the vote of the people and on the preamble for that vote, which is paragraph 13 of the law. All members of the committee were present at this meeting and the vote was 5 to 1. The committee reports as follows:

"*Whereas,* this committee has had several meetings and has thoroughly and conscientiously explored the question of the manner of submission of the proposed Constitution; and,

Whereas, in our opinion, the powers and the limitations of this Convention are those contained in, and thereby granted to this Convention by vote of the people, specifically paragraph 13 of Public Laws, chapter 8, and approved February 17, 1947; and

Whereas, the Secretary of State, under said chapter 8, is required to find and determine whether the Convention 'has complied with its instructions as voted by the people'; and

Whereas, in the opinion of this committee, the instructions as voted by the people are those specified in the aforesaid paragraph 13;

Therefore, this committee recommends to the Convention, and states that in its opinion this Convention has the broad power of submitting to the people a Constitution in whole or in part and *in such manner as the Convention may determine,* subject, however, only to the limitations contained in said paragraph 13, namely, prohibiting any change in the present territorial limits of the respective counties and prohibiting any change in legislative representation, other than the provision for the Senate and Assembly, as presently constituted.

Therefore, it is within the scope of the power granted to this Convention by vote of the people that this Convention may submit a Constitution in whole or in parts, and with or without alternatives either to the whole or to the parts."

(Applause)

FIRST VICE-PRESIDENT: Are there any questions to be asked of the delegate making the report?

(Silence)

FIRST VICE-PRESIDENT: Mr. Orchard?

MR. WILLIAM J. ORCHARD: If I understand that report correctly, it is contrary to the opinion of the Attorney-General.

FIRST VICE-PRESIDENT: I will ask the chairman of the committee to answer. Mr. Saunders?

MR. SAUNDERS: That report is contrary to the opinion expressed by the Attorney-General to the committee. The implications, I think, are understood by almost everybody within the Convention—that in case the Secretary of State should ask the Attorney-General for an opinion, the opinion would be contrary to this on the one matter, on the right of the Convention to submit the Constitution as a whole with alternatives. If that should be so, it would be up to the decision of the Secretary of State, if we do it that way, as to whether the Constitution would be put on the ballot or not.

FIRST VICE-PRESIDENT: Mr. Paul?

MR. WINSTON PAUL: Mr. President, the report of this committee is a very important one, in my opinion. Since a number of delegates are not here today on account of the transportation difficulties, I suggest that the report be laid on the table for consideration later, when all of the delegates are here.

I think all of the delegates should have a chance to read the conclusions of the committee, and have a chance to consider them. I

think that hasty action should not be taken on the report, and I suggest that it be laid over for another day.

FIRST VICE-PRESIDENT: There will be no action taken on that report at this time, Mr. Paul. It will be made available. The Secretary tells me that he can have a copy mimeographed for every member and perhaps get it in their hands today, or at least by tomorrow. The report will then be open for general discussion sometime during the business session tomorrow, or later.

Are there any other questions?

(Silence)

FIRST VICE-PRESIDENT: If not, we will proceed to unfinished business . . . Mr. Brogan?

MR. THOMAS J. BROGAN: Mr. President, I was given leave to withdraw my amendment to make some structural or formal changes, and I now desire to re-introduce it.

FIRST VICE-PRESIDENT: The Secretary will acknowledge receipt of it and it will be mimeographed at once. The chair recognizes Mr. Hadley.

MR. HADLEY: Just a moment, sir.

FIRST VICE-PRESIDENT: In the meantime, Mr. Hadley, I will recognize Mr. Orchard.

MR. ORCHARD: I have an amendment to offer, a further amendment to paragraph 19, Committee Proposal No. 1-1, under the Article Rights and Privileges, which proposes to strike out the words "shall not be impaired" and substitute the words "are recognized." I submit this amendment.[1]

FIRST VICE-PRESIDENT: Mr. Orchard, if you will please hand it to the Secretary, it will be handled in the usual manner . . . Mr. Hadley?

MR. HADLEY: Mr. Chairman, to carry on the business of the Convention in regular order,

> "*Resolved,* that when today's session of this Convention adjourns, it be to meet at 10:00 A. M., Thursday, August 14th, 1947."

(Seconded from the floor)

FIRST VICE-PRESIDENT: It has been moved and seconded that the Convention, when it adjourns, it will be to meet tomorrow, Thursday morning, 10:00 A. M. All those in favor, signify by saying "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed?

(Silence)

FIRST VICE-PRESIDENT: The motion is carried.

MR. HADLEY: I take it there are no questions.

---

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

FIRST VICE-PRESIDENT: That's right. Are there any other motions to offer? . . . Mr. Schlosser.

MR. FRANK G. SCHLOSSER: I offer three amendments[1] to Committee Proposal No. 1-1 and ask that they be received.

FIRST VICE-PRESIDENT: All right, Mr. Schlosser, if you will hand them to the Secretary, they will be handled in the usual manner.

MR. ARTHUR W. LEWIS: Mr. President.

FIRST VICE-PRESIDENT: Mr. Lewis.

MR. LEWIS: Mr. President, I beg leave to offer two amendments. The first one proposes to amend the Committee Proposal No. 2-2 by striking out the Committee Proposal in its entirety. The second amendment is an amendment to Committee Proposal No. 2-1, and has for its purpose the striking out of part of the Committee Proposal and substituting for the part stricken out, this language *(reading):*

> "No gambling of any kind shall be authorized by the Legislature unless the specific kind and nature thereof shall have been or shall hereafter be submitted to and authorized by a majority of the votes cast by the people at a general or special election."

FIRST VICE-PRESIDENT: Mr. Lewis, if you will hand them to the Secretary, they will be handled in the usual manner . . . Mr. Rafferty?

MR. JOHN J. RAFFERTY: I offer an amendment to Committee Proposal No. 2-1, authorizing the Legislature to enact legislation in certain cases.[1]

FIRST VICE-PRESIDENT: If you will hand it to the Secretary, please, it will be handled in the usual manner . . . Mr. Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: I offer an amendment to Committee Proposal No. 3-1, made necessary because yesterday we passed an amendment which brought back into the Constitution the Attorney-General and Secretary of State. This is a more or less clarifying amendment which ties that fact into another section of the proposal.[1]

FIRST VICE-PRESIDENT: If you will present it to the Secretary, it will be handled in the usual manner, Mr. Van Alstyne.

Are there any other amendments or motions? . . . Mrs. Barus.

MRS. JANE E. BARUS: Mr. Chairman, I would like to submit an amendment to Committee Proposal No. 2-1, a new paragraph to be added to section VI of the Legislative Article, having to do with the redevelopment of urban areas.[1]

FIRST VICE-PRESIDENT: If you will pass it to the Secretary, Mrs. Barus, it will be handled in the usual manner.

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

Any more amendments to be offered? . . . Commissioner Miller.

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Convention: I should like to submit three amendments to various sections of the Legislative Article, the first dealing with the subject of zoning; the second, an amendment to section VI of the Legislative Article, dealing with a declaration of policy with reference to the patrimony of the people; and the third amendment dealing with the question of lobbying.[1]

FIRST VICE-PRESIDENT: If you will hand them to the Secretary, they will be handled in the usual manner, Mr. Miller.

Are there any more amendments?

(Silence)

FIRST VICE-PRESIDENT: If not, we will proceed to the discussion of the amendments to the Executive Article which have been placed before the delegates, starting with Amendment No. 11. The Secretary will read Amendment No. 11.

SECRETARY: Amendment No. 11, by Mr. Van Alstyne *(reading):*

> "Amend page 7, section IV, paragraph 1, line 2, by inserting after the word 'Government,' the words 'including the Secretary of State and the Attorney-General.'
>
> Amend same page and section, paragraph 2, line 6, by inserting after the word 'qualified' the words 'except as herein otherwise provided with respect to the Secretary of State and the Attorney-General.' "

FIRST VICE-PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates: As I stated just a few minutes ago, this amendment, or at least half of it, is required because of the fact that yesterday we passed an amendment which brought the Attorney-General and the Secretary of State back into the proposed Constitution as constitutional officers. In the first portion of this amendment relating to section IV, paragraph 1, we have for the purpose included the Secretary of State, his department, and the Attorney-General's department as two of the 20 principal departments. That was the intention of the committee anyway, and this simply spells it out.

With respect to the second half of this amendment, which adds to the end of section IV, paragraph 2, the last sentence, "except as otherwise provided with respect to the Secretary of State and the Attorney-General," we feel that the Secretary of State and Attorney-General as constitutional officers are in a different category from the heads of other departments who are not specifically named in the Constitution. We feel that the latter type of department head, primarily policy-making heads and also part of the Governor's cabinet, should serve only at the pleasure of the Governor. We feel that the

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

constitutional offices of Attorney-General and Secretary of State have additional state-wide functions and that they should be excepted from that clause, "at the pleasure of the Governor."

FIRST VICE-PRESIDENT: Are there any other comments on this amendment? . . . Commissioner Miller.

MR. MILLER: Mr. Chairman and members of the Convention: In view of the fact that part of the discussion which I participated in yesterday looked in the direction of this amendment that has just been submitted by Delegate Van Alstyne in behalf of the committee, I should like to say that it seems to me to conform completely to the broad purposes of Delegate Glass' proposal and carries out what is the intention of his motion yesterday. I move that we adopt it unanimously.

FIRST VICE-PRESIDENT: Any other comments? . . . If there are no objections—

MR. RONALD D. GLASS: Mr. Chairman, I have a question.

FIRST VICE-PRESIDENT: I beg your pardon.

MR. GLASS: Just for the purpose of clarification, I would like to ask Senator Van Alstyne a question through you, Mr. Chairman.

FIRST VICE-PRESIDENT: Senator, will you submit?

MR. VAN ALSTYNE: I will submit.

MR. GLASS: The original intent of the amendment yesterday was to give the Secretary of State and the Attorney-General constitutional status. In other words, that they should not serve at the pleasure of the Governor.

I would like to ask if this amendment in any way changes the fact that they are constitutional officers—not serving at the pleasure of the Governor, but having constitutional status?

MR. VAN ALSTYNE: The answer to your question, Mr. Glass, is that not only does it not change it, but it explicitly clarifies it for that purpose.

MR. GLASS: Thank you very much.

FIRST VICE-PRESIDENT: If there is no objection on the part of the delegates, I will put this motion to a voice vote. All those in favor signify by saying "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed, "No."

(Silence)

FIRST VICE-PRESIDENT: It is very apparent that more than 41 delegates voted yes. The motion is carried.

Amendment No. 12 by Dean Sommer, who speaks on the amendment.[1]

MR. FRANK H. SOMMER: Mr. President and delegates: I

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

offer this amendment in order that we may scrutinize closely the various provisions that are submitted to us enlarging the powers of the Governor, so that we may not unwittingly confer upon the Governor powers which we do not design to clothe him with. The present Constitution simply provides: "The Governor shall take care that the laws be faithfully executed." It is now proposed to add a provision to this effect:

> "To this end he shall have power, by appropriate action or proceeding brought in the name of the State or any of its political subdivisions, to enforce compliance with any constitutional or legislative mandate or to restrain violation of any constitutional or legislative power or duty by any officer, department or agency of the State or any of its political subdivisions."

I assume that the words "appropriate action or proceeding" are confined to actions or proceedings in the courts, although that, in the language of this proposal, is not clear. On that assumption, this proposal will operate on the state level to take from the Attorney-General of the State and transfer to the Governor of the State, at the Governor's will, the functions of the Attorney-General to a given extent.

Now, I am told the purpose of this provision is to avoid the controversies between an Attorney-General and a Governor, such as we have seen arise during recent years. No such provision is necessary in order to prevent such controversies arising hereafter, if the proposals now before this Convention are adopted, because you have specifically provided that the Attorney-General shall be appointed by and with the advice and consent of the Senate by the Governor and that his term shall be coincident with the Governor. And you have also provided, wittingly or unwittingly, that a Governor may investigate the office of Attorney-General, prefer charges, have a hearing and remove him. In that situation it would seem as though it was wholly unnecessary, wholly unjustified, to confer upon the Governor the powers normally belonging to the Attorney-General.

But I know you must notice that this provision extends beyond the state level. It extends to every political subdivision of the State, and it places in the hands of the Governor power, in the name of any political subdivision of the State—county, city, municipality of any form—to intermeddle with the local affairs of that political subdivision. Under this provision the Governor might proceed, since we still have a Vice and Immorality Act forbidding the sale of tobacco on Sunday, to institute an action or proceeding against the chief of police in any municipality for failure to, and to compel him to, enforce that clause.

I submit that this is a dangerous provision.

FIRST VICE-PRESIDENT: Any others? . . . Senator Van Al-

styne.

MR. VAN ALSTYNE: I would like to ask Mrs. Barus to speak on this amendment, please.

FIRST VICE-PRESIDENT: The Chair recognizes Mrs. Barus.

MRS. BARUS: Mr. Chairman and fellow delegates: I am sure you all must be wondering at my rashness and termerity in advancing to speak for this proposal, against my distinguished colleague. I can only hope that you didn't actually hear my knees rattling together as I walked forward. But the very high regard and respect which I have for Dean Sommer makes me realize more keenly then ever how very rash I seem to be.

I think that only three factors give me courage to speak at all. One is, that there really are some respectable expert opinions in favor of this clause; the second is, that the committee of which I am a member passed it without objection, though I should say it was not a meeting at which all members of the committee were present; and in the third place, when I told Dean Sommer, yesterday, that I was scared to death to talk in opposition to him, he said: "Oh, go ahead, go ahead, it's all right." So, armed with these three factors, I would like to speak on this clause.

The original Constitution says, "The governor shall take care that the laws be faithfully executed," but there is no implementation by which he may carry that mandate into effect. The courts themselves, as I understand it, cannot initiate action; they can only judge action. As someone has said, this clause about executing the laws faithfully simply expresses a pious hope, inasmuch as there is no machinery set up by which it may be done. At present, the Governor has no means by which he can insist upon the performance of an act regarded as a duty to the public and which would expedite the public business.

The fact that the order would be derived from the court, the Governor only initiating the proceeding, provides a safeguard to possible executive tyranny. No Governor would be anxious to make improper use of the remedy, inasmuch as the proceedings would entail publicity and too many adverse decisions would make the people look askance at him. Moreover, an order would make the cumbersone process of investigations unnecessary in a number of cases and would provide a speedy determination of a question which might otherwise drag along for years.

Nor is there much danger that in the use of this process a whole appellate court could be corrupted. Even if one judge were willing to lend himself to the dictates of a particular Governor, the process itself would be safeguarded by rules and usages of the common law system as well as those of the courts.

It is my understanding too, that the Attorney-General would act

for the Governor, in all probability, in such a case.

I referred, in proposing an amendment[1] to this section yesterday which passed, to make it perfectly clear that this gives the Governor no authority over the Legislature. I mentioned some of the provisions in the New York Constitution where the governor may actually go in (except in the case of New York City), and remove county and local officers, including the sheriff, county clerk, district attorneys and registers, only giving to such officer a copy of the charges against him and an opportunity to be heard in his defense. This power is not something out of the blue; it is in respectable use in a neighboring state. However, I myself feel that that would be giving far too great power to the Governor.

It was my thought in proposing the language now in paragraph 11 that in many cases not only could the law be enforced, or the violation of the law be prevented, but in many cases a friendly advisory opinion as to the exact legal limits of an officer's duty could be had through court decision. And I submit that, since it has to be through the court, it safeguards the right of the political subdivisions of the State.

FIRST VICE-PRESIDENT: Thank you, Mrs. Barus. Are there any other comments? . . . Mr. Schenk.

MR. JOHN F. SCHENK: I enter this discussion with a considerable degree of humility, not being an attorney. A few minutes ago I asked Mr. Van Alstyne a question on this very paragraph and I am still worried about it.

Suppose you read it this way: "The Governor shall, by appropriate action, enforce compliance with any constitutional mandate." And suppose you have something in the Rights and Privileges Article about discrimination, for instance, or collective bargaining, and the Legislature hasn't implemented it sufficiently to suit a Governor, be he of any political belief or shade of opinion. Does that mean, by a strained interpretation, that the Governor can step around the action of the Legislature and go directly to the Constitution and promulgate a set of rules and regulations without some legislative authority?

Now, I have been told no, but I am still concerned about it. I think the language still might permit it.

FIRST VICE-PRESIDENT: Mrs. Barus.

MRS. BARUS: Mr. Chairman, may I speak in answer to that?

FIRST VICE-PRESIDENT: Yes, Mrs. Barus.

MRS. BARUS: That was the purpose of the clause which I moved to add to this paragraph, yesterday. And it specifically says that: "nothing in this shall be construed,"—I am not quoting it exactly right—"to give the Governor any power whatever to

[1] Amendment 10 to Committee Proposal No. 3-1.

mandate the legislature or take proceeding against it." They are not the exact words but it is the sense. Before I put that in I consulted with several lawyers and they told me that it was really unnecessary because it was a fundamental, basic fact of law in this country that the Governor could not mandate the Legislature, and the courts would never permit it. However, it seemed as if it were wiser to remove all possible doubt, and these words were added by action of the Convention yesterday: "Provided that this power shall not be construed to authorize any action or proceeding against the Legislature."

MR. SCHENK: Another question, then. Suppose we have a board of freeholders in a political subdivision, or some legal officer? They aren't in the Legislature, they aren't protected by that saving clause. What about them?

MRS. BARUS: May I—I don't want to—

FIRST VICE-PRESIDENT: There's no objection, Mrs. Barus. The Chair will allow you to speak again.

MRS. BARUS: I think it is true that this would apply to an administrative or executive officer in any branch in the government, in any of the political subdivisions.

I would like to reiterate again that I think it would be most unwise if the Governor had the power to go in of himself and remove such a man, in spite of the fact that the New York Constitution does give that right, the New York Governor being very much more powerful in many respects than the New Jersey Governor, even under these proposals. But this would only empower him to seek action in the court.

MR. SCHENK: I will close my remarks, then, by saying that I second the amendment of Dean Sommer. I think this provision is dangerous; it doesn't have enough saving clauses in it and we should strike it out by voting for the amendment.

FIRST VICE-PRESIDENT: Any other comments? Mr. Chairman, do you wish to rebut?

MR. VAN ALSTYNE: Mr. President and fellow delegates: I fail to follow the reasoning of the opposition. They are perfectly contented to leave the first sentence of that paragraph in: "The Governor shall take care that the laws be faithfully executed." Then in the next breath they want to deny him the ability to carry out the first sentence. It seems to me that the one follows the other, just as breathing follows living, and I mean it very sincerely.

There is no automatic way by which the Governor at the present time can enforce the laws of the State. This gives him the right through the courts, and only through the courts— and I don't think we need to worry about the integrity of the courts—to compel the enforcement of the laws faithfully and properly. I don't see any

reason why that shouldn't go from the top to the bottom in any division of the State. And I don't know why anybody who is carrying out the laws of the State faithfully should have any worry or fear of any kind.

I repeat again—if you are willing to accept the first sentence, how can you fail to accept the rest of the paragraph?

FIRST VICE-PRESIDENT: Any other comments?

(Silence)

FIRST VICE-PRESIDENT: If not, the Chair will ask for a show of hands, this being somewhat controversial. All those in favor of the adoption of the amendment please raise their hands.

(A majority of the delegates raised their hands)

FIRST VICE-PRESIDENT: Those opposed?

(A minority of the delegates raised their hands)

FIRST VICE-PRESIDENT: The amendment is adopted. The Chair will permit a roll call if requested.

(Roll call requested by several delegates)

FIRST VICE-PRESIDENT: The Secretary will call the roll. All those in favor answer by saying "Aye," and opposed, "No."

SECRETARY *(calls roll):*

AYES: Barton, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Ferry, Glass, Holland, Hutchinson, Jorgensen, Katzenbach, Kays, Lance, Lewis, Milton, Montgomery, Moroney, Murphy, Peterson, H. W., Pyne, Read, Sanford, Schenk, Schlosser, Smalley, Sommer, Taylor, Walton—38.

NAYS: Barus, Clapp, Constantine, Feller, Hadley, Jacobs, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Murray, Orchard, Park, Paul, Peterson, P. H., Proctor, Pursel, Rafferty, Smith, G. F., Smith, J. S., Stanger, Streeter, Van Alstyne, Wene, Winne—28.

SECRETARY: 38 in the affirmative, 28 in the negative.

FIRST VICE-PRESIDENT: The amendment, not having received the majority vote of the delegates, which is 41, is declared lost.

We will proceed to the consideration of Amendment No. 13. The Secretary will read the Amendment.

SECRETARY: By Frank H. Sommer *(reading):*

> "On page 7, paragraph 3 (paragraph 3 of section IV) strike out the last sentence of said paragraph which begins on line 7 and ends on line 9 and reads as follows:
>
> 'Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.' "

FIRST VICE-PRESIDENT: Who speaks on the amendment? Dean Sommer?

MR. SOMMER: I am making a simple plea for equal treatment of those who may be appointed as executive officers under a board. You notice that so far as they are concerned, the provision is this: they may be removed "by the Governor, upon notice and an opportunity to be heard." Whereas, with respect to other officers of the State and employees, the provision is to the effect that they may be removed "after notice, service of charges and an opportunity to be heard at a public hearing."

As it stands now, all of those who are in the civil service are protected. They cannot be removed except on the basis of charges preferred against them, a public hearing, and an adverse finding.

So far as provision is here made for investigation by the Governor, separately, and the power of removal is conferred upon him, the provision again is that notice be given, that service of charges be effected, and that an opportunity to be heard at a public hearing be granted.

This is a single body of officers, not holding office at the pleasure of the Governor, denied the opportunity to meet these charges at a public hearing.

FIRST VICE-PRESIDENT: Any comments? Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates: I constantly find myself confronted by the overwhelming weight of the wisdom of legal talent. As Mrs. Barus said, as a layman I feel that I am very much at a loss when so many of these things hinge on legal points.

I think here we again have the same line of thinking that I advanced, either yesterday or the day before, when I described the three categories of removal for three different types of state officers.

I would like to call your attention to the fact that the principal reason why this sentence came into existence was because the Executive Committee recognized the excellent manner in which the Department of Institutions and Agencies and the Department of Agriculture had been functioning for many years. Therefore, in order to allow them to carry on, in order to allow them to have their boards or commissions as the heads of their respective departments, we had to bring into existence paragraph 3, in which we stated that the Legislature has the right to make a board or commission the head of a department. And, when such board or commission came into existence, it would then appoint its own active executive officer with the approval of the Governor. We then said that in such an instance we did not feel that the executive officer appointed by such board or commission as the head of a department should serve just at the pleasure of the Governor. We thought there should be one

step removed.

In the case of the single heads of departments appointed by the Governor, by and with the consent of the Senate, we have by amendment provided that they will serve at the pleasure of the Governor.

Now, we have taken one further step. Certainly if the principle is right with respect to this first category, it is right with respect to the second category once removed. I can't see how there can be any argument there.

I would also like to call your attention to the fact that if the Governor steps in and takes advantage of this sentence in paragraph 3, the successor executive officer is in turn again appointed by the board or commission, not by the Governor. To be sure the appointment will be with the approval of the Governor, but the board or commission will make the appointments.

It seems to me that if this sentence is removed you cut out a great deal of the spirit and the thinking behind this whole matter of the executive power.

MR. SOMMER: May I ask the Senator a question?

FIRST VICE-PRESIDENT: Will the Senator submit to a question?

MR. VAN ALSTYNE: Yes.

FIRST VICE-PRESIDENT: You may, Dean.

MR. SOMMER: Does the board in this situation have any power of removal without the approval of the Governor?

MR. VAN ALSTYNE: I would think that the board would not have the power of removal except with the approval of the Governor.

MR. SOMMER: And if it happens, as in the case of the Board of Public Utility Commissioners, that the executive officer is within the civil service, may he be removed without reference to the provisions of the Civil Service Act?

MR. VAN ALSTYNE: I think that is true, but that is only a single instance where the executive head of a particular board comes under that category. It is the only instance I know of.

FIRST VICE-PRESIDENT: Mrs. Barus?

MRS. BARUS: Mr. Chairman, may I second Senator Van Alstyne's remarks. The committee, as we have said many times, tried to follow the principle of executive authority and responsibility, giving the Governor a clear-cut authority to carry on the business of his own branch of the government with a clear line of responsibility which the people could easily follow. You have heard us say this was a good principle of government as well as of business.

However, in the case of the departments under discussion we made an exception; it really represents a compromise. Speaking entirely for myself—for in this matter I followed the opinion of the

committee—I feel that there should be no exceptions made. Although we have two outstanding examples, as the Senator has said, of excellent administration under this board system, nevertheless it does in effect actually remove the administration of any such department from control by the Governor and therefore from control by the people.

If there is a board which stands completely between the Governor and the executive, there is absolutely no responsibility to the people. We could have a very, very bad executive and, if he were backed by his board, he could continue indefinitely in office and there would be no way in which to reach him. Now, since this compromise has been made—and I recognize it is a necessary and reasonable compromise—it seemed to us that the Governor should exert power over such an executive at least to some extent even though the board intervened between him and the executive.

I would like to make one more point: Section IV says that the powers and functions and duties of these major departments shall be allocated by law. This gives the Legislature a very wide power indeed to set up as many of these boards as it wishes. In fact, there is nothing in the section which specifically prevents the Legislature from creating all major departments with boards as heads. It can also make the executive's power very weak, if it chooses to do so.

In some constitutions, notably the 1944 draft, the Governor was given the power to allocate functions by executive order. We left that out, feeling it was more properly a legislative function. Since that power is left in the hands of the Legislature, it is, I submit, wise that the Governor have this measure of control over the executive when a board intervenes. Presumably if the present section passes, the law that creates the department would also have to specify whether or not such an executive could be removed, and how. The proposed section is silent on that point.

FIRST VICE-PRESIDENT: Any other comments?

MR. GEORGE H. WALTON: Mr. President.

FIRST VICE-PRESIDENT: The gentleman from Camden.

MR. WALTON: Mr. President and fellow delegates:

As Mrs. Barus has said, this paragraph represents a compromise. I agreed with Mrs. Barus in the committee, but I think all of us recognize the great work which the Department of Institutions and Agencies and the Department of Agriculture have accomplished under the present set-up. I do want to point out, however, that in this situation the Governor is charged with a responsibility for the work of the department; and under the decision this Convention made he is accountable to the people at an election. Therefore, the Governor should have some power over the department, and that is exactly what your committee endeavored to do.

FIRST VICE-PRESIDENT: Any other comments?

MR. WAYNE D. McMURRAY: Mr. President.

FIRST VICE-PRESIDENT: Mr. McMurray.

MR. McMURRAY: May I ask that this amendment be read. The way I have it printed here does not, as I recall it, agree with the way Dean Sommer read it. I thought I heard him suggest something about being removed upon notice and an opportunity to be heard at public hearing. I may not have caught his remarks, but the copy I have before me is not worded in that way at all. I was wondering if the Secretary would read it for the information of the delegates.

FIRST VICE-PRESIDENT: Will the Secretary please read the amendment?

SECRETARY *(reading):*

> "Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard."

FIRST VICE-PRESIDENT: And the amendment is to strike it, is that right?

SECRETARY: That's right, strike it out.

FIRST VICE-PRESIDENT: Does that answer your question, Mr. McMurray?

MR. McMURRAY: Yes.

FIRST VICE-PRESIDENT: Are there any other comments?

(Silence)

FIRST VICE-PRESIDENT: We will call for the question on Amendment No. 13. I will ask for a show of hands. All those in favor, signify by raising their hands.

(A minority of the delegates raised their hands)

FIRST VICE-PRESIDENT: Opposed?

(A majority of the delegates raised their hands)

FIRST VICE-PRESIDENT: The amendment is lost.

We will now proceed with Amendment No. 14, to Committee Proposal No. 3-1.

SECRETARY: Amendment proposed by Mr. Brogan *(reading):*

> "Amend page 8, Section IV, par. 4, line 9, by adding at the end thereof a new sentence to read as follows:
> 'Such officer or employee shall have the right of judicial review, on both the law and the facts, in such a manner as shall be provided by law.' "

FIRST VICE-PRESIDENT: Who speaks on the amendment? Justice Brogan.

MR. BROGAN: I move the amendment. It is short and self-explanatory, and as I recollect it the committee itself, unanimously I think, accepted the amendment. There isn't any use talking about it. It is merely a step in the preservation of the democratic processes.

FIRST VICE-PRESIDENT: Any other comments?

MR. VAN ALSTYNE: Mr. President.

FIRST VICE-PRESIDENT: Senator Van Alstyne?

MR. VAN ALSTYNE: As chairman of the committee, I would just like to inform the Convention that in accordance with our statement of yesterday morning we called a meeting of our committee when the Convention adjourned. Our committee went over this wording, and we endorsed this amendment heartily because we think it clarifies the intent of that paragraph.

FIRST VICE-PRESIDENT: If there is no objection, the chair will call for a voice vote. All those in favor, signify by saying "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed?

(Silence)

FIRST VICE-PRESIDENT: The "Ayes" have it, there apparently being more than 41 votes. Amendment No. 14 is adopted as a part of Committee Proposal No. 3-1.

We will now proceed to a consideration of Amendment No. 15.[1] The Secretary will read the Amendment.

SECRETARY: The sponsor is not in his seat, Mr. President.

FIRST VICE-PRESIDENT: In view of the fact that the sponsor is not in his seat, we will pass to Amendment No. 16, and lay No. 15 over. Judge Cafiero is the sponsor of this amendment.

SECRETARY: Amendment No. 16, by Mr. Cafiero *(reading):*

> "On page 9, amend the second sentence of paragraph 2, Section II of Proposal No. 3-1, to read:
> 'The term of office of county clerks, surrogates and sheriffs shall be five years.' "

FIRST VICE-PRESIDENT: Judge Cafiero.

MR. A. J. CAFIERO: Mr. Chairman and fellow delegates:

The amendment merely seeks to place the term of office of the sheriff on a parity with that of the county clerk and the surrogate. I think it was admitted yesterday that the office of sheriff is not the high and mighty office which it may have been in the past, and that today it is a mere ministerial office. As such, I see no reason why there should be any distinction in the term of the office such as that which is made by the proposed section in its present form. Furthermore, the office is an integral part of the court and its term should be consistent with that of other court officials, such as the county clerk, surrogate, prosecutor and, yes, even county judges.

In addition, I think we should, as we go along, remove inconsistencies where possible and attempt to submit a document which will not cause the people to wonder why a distinction is drawn in

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

a matter which is relatively similar. As stated, the proposed amendment will make the term of sheriff five years, the same as provided for county clerks and surrogates. It is to be noted that in the first sentence county clerks, surrogates and sheriffs are to be elected by the people, and that in the second sentence the term of county clerks and surrogates shall be for five years but that of the sheriff for merely three. I think that any such inconsistency should be removed. I move for the adoption of the amendment and respectfully ask the delegates for their support.

FIRST VICE-PRESIDENT: Any other comments? Mr. Winne?

MR. WALTER G. WINNE: Mr. Van Alstyne has asked me to speak—we have just been discussing this hastily—and I am speaking in his stead, but not for his committee.

Yesterday we permitted sheriffs to succeed themselves, taking out of the old Constitution the provision that a sheriff cannot succeed himself. It was quite a concession to the sheriffs of this State. The sheriff of my county, who is a very dear, personal friend of mine, gets $10,000 a year and full maintenance; he and his family live at the expense of the county in the jail building, and he has a car. He has a very, very lucrative position.

From time immemorial in this State the sheriff's term has been three years. It is a position very much sought after. The sheriff has a great opportunity to help himself, so that at the end of his term he can now succeed himself. Let him take that chance at the end of three years, and let someone else have a chance at the end of three years.

There may not be any logic in having a county clerk and surrogate serve five years and the sheriff three years, except the one point I do indicate—that the sheriff's position has much more patronage and, as a matter of fact, carries a very much larger remuneration by reason of the fact that in my county and in many counties the sheriff gets full maintenance in addition to his salary. I think a term of three years is adequate for a sheriff.

FIRST VICE-PRESIDENT: Any other comments? Mr. Park.

MR. LAWRENCE N. PARK: Mr. Dixon: I come from one of the small counties, a county very similar to the county of Delegate Cafiero, and it is the opinion of the delegates from Gloucester County that three years is enough.

FIRST VICE-PRESIDENT: Any other comments?

MR. HADLEY: Mr. Chairman, I don't come from either one of those counties, but down in our county we don't put our sheriffs in jail. We allow them to get around like other citizens, and I would like to second Mr. Cafiero's amendment.

FIRST VICE-PRESIDENT: Any other comments?

(Silence)

FIRST VICE-PRESIDENT: If there is no objection, I will ask for a voice vote. All those in favor, signify by saying "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed, "No."

(Chorus of "Noes")

FIRST VICE-PRESIDENT: I will ask for a show of hands. All those in favor, signify by raising their hands.

(A minority of the delegates raised their hands)

FIRST VICE-PRESIDENT: Opposed?

(A majority of the delegates raised their hands)

FIRST VICE-PRESIDENT: It apears to the chair that the amendment is lost. Does anybody ask for a roll call?

(Silence)

FIRST VICE-PRESIDENT: If not, the chair will declare the amendment lost, because there are not 41 votes in favor of it.

Has the Secretary any further amendments to Committee Proposal No. 3-1? Mr. Jacobs.

MR. NATHAN L. JACOBS: Mr. Chairman, you may recall that we carried over the reconsideration of Amendment No. 3 which had been offered by Delegate Park and which provided that

> "When the Governor is tried, the Chief Justice of the Supreme Court shall preside and the President of the Senate shall not participate in the trial."

That was passed by a vote of less than 41. There were 37, as I recall, for the amendment and 34 against. I was one of the 37 who voted for the amendment and I am still in favor of the amendment and will vote for it. However, in the light of the fact that subsequent to the passage of that amendment we adopted a rule requiring 41 votes, I think that the Convention should vote on the issue again so that the proponents of the amendment may seek the 41 votes now required to pass an amendment. I don't think we should submit any proposal to the people unless 41 delegates have voted for it.

FIRST VICE-PRESIDENT: Will you make a motion, Mr. Jacobs, that we do now reconsider?

MR. JACOBS: I have so moved.

FIRST VICE-PRESIDENT: Is that seconded?

(Motion seconded from the floor)

FIRST VICE-PRESIDENT: It is moved and seconded that we do now reconsider the vote by which Amendment No. 3 was adopted. Any comments?

(Silence)

FIRST VICE-PRESIDENT: If not, we will proceed to a reconsideration, and I think the chair will ask for a roll call. Forty-one votes in favor must be had for adoption.

Will you read the amendment again, Mr. Secretary.

SECRETARY *(reading):*

> *"Resolved,* That the following be agreed upon as part of the proposed new State Constitution:
>
> 'When the Governor is tried, the Chief Justice of the Supreme Court shall preside and the President of the Senate shall not participate in the trial.' "

FIRST VICE-PRESIDENT: Any comments?

MR. ORCHARD: Mr. Chairman, are we voting on the motion to reconsider?

FIRST VICE-PRESIDENT: The motion to reconsider?

MR. ORCHARD: I understood such a motion was made.

FIRST VICE-PRESIDENT: That's right; I'm sorry. I will now put the motion to reconsider. Are there any comments on the motion to reconsider? That is what we are talking about now. All those in favor of reconsideration will say "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed?

(A few delegates answered "No")

FIRST VICE-PRESIDENT: The "Ayes" have it, being more than 41 votes on the motion.

MR. ORCHARD: Is the question now up for further discussion?

FIRST VICE-PRESIDENT: The motion for reconsideration having carried, the amendment is now on the floor again for further discussion. It is now before the Convention for further discussion.

MR. BROGAN: I would like to speak for the amendment, speaking now from recollection.

FIRST VICE-PRESIDENT: Do you wish it read again?

MR. BROGAN: Yes.

FIRST VICE-PRESIDENT: Will you read it again, Mr. Secretary, if you please? An amendment was made on this to change "Chief Justice" to "chief judicial officer."

MR. BROGAN: "Chief Justice of the court of last resort."

FIRST VICE-PRESIDENT: All right; if there is no objection, we will discuss the amendment with that amendment of "Chief Justice of the court of last resort."

MR. BROGAN: I am reminded that that change was suggested by the sponsor of the amendment.

Mr. President, ladies and gentlemen of the Convention:

When this amendment was moved by its sponsor, Mr. Park, I thought the matter was so inherently right that the amendment

would be adopted on its merits. I was amazed that there was any opposition to it. The only possible opposition that could come would be from those who thought it would be a violation of the prerogatives of the President of the Senate, who normally, except in the case of Governor, would preside at that kind of a hearing, namely, an impeachment.

But it is a cardinal rule, it is a rule of common sense, it is a rule of good morals and generally accepted ethics, that no man should have a vote or voice as a judge in a proceeding in which he might be benefited, or have any interest. Manifestly, the interest or the benefit that might come in the case of a judgment of guilty in an impeachment proceedings against a Governor is manifest. The President of the Senate would immediately become Governor, at least for a term that would extend to the next election; that is, in that year. So, it seems to me, the matter is hardly debatable.

The President of the Senate, if he be of a sensitive nature, a very conscientious person, might lean backward against self-interest. And yet, it isn't difficult to visualize a President of the Senate (happily, that is not so at the present time) who would be callous enough to vote in his own interest.

Therefore, in accordance with the generally accepted principle and on the side of safety, a man who has an interest in the judgment, who has a benefit that he may enjoy by reason of the way he votes, should not be permitted to vote for or against the person under impeachment.

FIRST VICE-PRESIDENT: Is there further discussion on the amendment? We are considering the amendment. Is there further discussion?

(Silence)

FIRST VICE-PRESIDENT: If not, the Chair will ask for a roll call. All those in favor of the adoption of the amendment will signify by saying "Aye" as their names are called, and those opposed, "No." The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Feller, Gemberling, Glass, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Milton, Montgomery, Moroney, Murphy, Murray, Orchard, Park, Paul, Peterson, P. H., Pursel, Rafferty, Read, Sanford, Saunders, Schenk, Schlosser, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Winne —55.

NAYS: Barton, Hacker, Hadley, Kays, O'Mara, Peterson, H. W., Proctor, Pyne, Smalley, Van Alstyne, Walton, Wene—12.

FIRST VICE-PRESIDENT: Amendment No. 3 to Committee Proposal No. 3-1, having received 55 votes in the affirmative and 12 in the negative, is declared adopted and part of Committee Proposal No. 3-1.

Are there any other amendments to Committee Proposal 3-1, Mr. Secretary?

SECRETARY: No.

MR. SIGURD A. EMERSON: May I offer an amendment?

FIRST VICE-PRESIDENT: Mr. Emerson.

MR. EMERSON: Committee Proposal No. 4-1 . . . I offer two amendments. They deal with the same subject matter and I will read them. They are very brief. *(Reading):*

> "Amend page 3, Section V, par. 1, line 4, by inserting after the word 'municipality' the following:
>
> 'Judges of the General Court shall be appointed to the respective divisions thereof and shall not be transferred to any other division except as herein otherwise provided.'
>
> Amend page 4, Section VI, par. 2, lines 1 to 5, by striking out said lines and inserting in lieu thereof the following:
>
> 'The Chief Justice of the Supreme Court may assign judges of the General Court to the Appellate Division from time to time as need appears, for such time as may be fixed by the rules of the Supreme Court, and may reassign such judges to the division of the General Court to which they were appointed.' "

FIRST VICE-PRESIDENT: If you will hand those to the Secretary, Mr. Emerson, they will be handled in the usual manner.

Are there any other amendments at this time? If not, we have before us Amendment No. 15 by Mr. Randolph. As far as I can see, Mr. Randolph is not on the floor, and we will hold that over until he appears.

We have amendments to the Proposal on Rights and Privileges, No. 1-1, and Mr. Schenk has approved our considering these amendments at this time, in order to utilize the afternoon.

MR. EDWARD J. O'MARA: Mr. President, are the amendments which we are about to consider on the desks?

SECRETARY: They are about to be.

MR. SCHENK: May we have a short recess until the amendments are distributed?

FIRST VICE-PRESIDENT: Mr. Schenk, is there anything else to bring before the Convention while these amendments are being distributed? If not, the chair will declare a five-minute recess.

(The Convention reconvened at 2:45 P. M., following a five-minute recess.)

FIRST VICE-PRESIDENT: The delegates will please take their seats. The Convention will come to order. President Clothier has an announcement that he would like to make. He has asked me to continue as chairman for the afternoon, but he wishes to make an announcement.

PRESIDENT ROBERT C. CLOTHIER: My announcement, Mr. Chairman, is a very simple one and is not in the line of business. This is one of the hottest days we have had this year, and I know from experience that this can be one the hottest rooms. It just occurred to me that some of the younger men present might like to take a dip in the pool at the conclusion of the afternoon session. I would like to suggest that those who wish to do so should inquire at the Office of the Department of Physical Education, which is immediately next to the office now occupied by the Committee on Rules. I am sorry I can't make a similar offer to the ladies, but we'll have to arrange that for another time, Mrs. Barus.

MRS. BARUS: How about the older women? I see it's a man's world.

(Laughter)

MR. DOMINIC A. CAVICCHIA: Mr. President.

FIRST VICE-PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: I would like to offer an amendment[1] to Committee Proposal No. 2-1, to strike out paragraph 11 of Section VII.

FIRST VICE-PRESIDENT: Hand it to the Secretary and it will be handled in the usual form.

FIRST VICE-PRESIDENT: Mr. Miller.

MR. MILLER: I would like to submit an amendment[1] to Committee Proposal No. 1-1 dealing with the question of the status of public utility employees whose plants may be taken over during the course of a strike.

FIRST VICE-PRESIDENT: The Secretary will handle it in the usual manner.

I would like to say in regard to amendments, that if there are any amendments at all to the Proposal on Executive, Militia and Civil Officers, we would like very much to get them in today. If you remember, we agreed to carry all of these Committee Proposals over through the day so that amendments could be offered. If we have all of the amendments which will be offered to a particular Proposal, we may be able to get it to the Committee on Arrangement and Form and back to third reading and final consideration by at least during this week.

MR. MILTON A. FELLER: Mr. Chairman.

FIRST VICE-PRESIDENT: Mr. Feller.

MR. FELLER: I would like to offer an amendment to Committee Proposal No. 5-1 *(reading)*:

> "Amend page 1, Section I, paragraph 1, lines 1 and 2, by striking out the first sentence of the paragraph and writing in lieu thereof the following:

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

'Taxes shall be assessed under general laws and by uniform rules. All real property taxable for local purposes shall be assessed and taxed at uniform rates within each taxing district.' "

FIRST VICE-PRESIDENT: The Secretary will handle that in the usual manner.

MR. FRANK H. EGGERS: I would like to offer an amendment to—

FIRST VICE-PRESIDENT: The gentleman from Hudson. Will you please take the microphone?

MR. EGGERS: I would like to offer an amendment to Committee Proposal No. 3-1, Committee on the Executive *(reading):*

"On page 3, paragraph 11, line 2, after the word 'proceeding' insert the words 'in the courts';

Same page and paragraph, line 3, strike out the words 'or any of its political subdivisions';

Same page and paragraph, line 6, strike out the words 'or any of its political subdivisions.' "

I offer the amendment.

FIRST VICE-PRESIDENT: Thank you. The Secretary will handle it in the usual manner.

Are there any other amendments? I would again like to emphasize, if you please, that we get in all amendments to the Executive Proposal so that we can get it to the Committee on Arrangement and Form, who have three days in which to consider it. We hope, however, that they will be able to shorten their time and that we will, therefore, have the 48-hour notice which is required by the Rules before we get it on third reading. The time allowed to the Committee on Arrangement and Form, as well as the 48-hour notice, will bring us to third reading of that Proposal at just the earliest date possible. Not apparently this week, but at the very beginning of next week.

Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President, do you think it would be possible to have Mayor Eggers' amendment printed up immediately so that we could vote on it this afternoon?

FIRST VICE-PRESIDENT: It is on its way over now.

MR. VAN ALSTYNE: Thank you. We could then get rid of all amendments to the Executive Proposal and so move it on to the Committee on Arrangement and Form this afternoon.

FIRST VICE-PRESIDENT: We will do everything we can. We will attempt to do that . . . Mrs. Barus.

MRS. BARUS: I respectfully call your attention to the fact that Amendment No. 15, by Mr. Randolph, is laid over because of his absence.

FIRST VICE-PRESIDENT: There are two amendments, Mrs. Barus.

MRS. BARUS: This is the second, is it not?

FIRST VICE-PRESIDENT: Yes . . . Mr. Van Alstyne.

MR. VAN ALSTYNE: With all due respect to Mr. Randolph, shall we hold up the whole business of the Convention until he comes to speak on his amendment? I want to give every delegate full consideration, but I think that we have a tremendous amount of work ahead of us—

FIRST VICE-PRESIDENT: Might I ask this: I would like to have the amendment read and perhaps then the Convention can draw some conclusion in regard to your suggestion.

What I think Mr. Van Alstyne has in mind is, that if it appears to the Convention that the thing is pretty nearly unanimous, one side or the other, and the Convention agrees with not a single objection, we will go ahead and consider it, even in Mr. Randolph's absence.

The Secretary will read Amendment No. 15 by Mr. Randolph.

SECRETARY: Amendment No. 15 to Committee Proposal No. 3-1, Executive, Militia and Civil Officers, by Mr. Randolph *(reading):*

> "*Resolved,* that the following amendment to the above proposal for a new Constitution be agreed upon:
>
> Amend Section III, paragraph 1, as follows: after the period in line 3 on page 6 insert the following:
>
> 'Discrimination on account of race, color, religion, or national origin is prohibited.' "

FIRST VICE-PRESIDENT: Does any one care to speak in his absence?

MR. LEWIS: Mr. President.

FIRST VICE-PRESIDENT: Pardon me, Mr Lewis. I would like to say that I am going to put it up to the Convention, after we hear this discussion, as to whether we will go ahead without Mr. Randolph present to speak on it. We will have the discussion and a decision made on that by the Convention . . . Mr. Lewis.

MR. LEWIS: Mr. President and fellow delegates:

It seems to me that the answer to this proposed amendment finds itself in Committee Proposal No. 1-1, Rights, Privileges and Amendments, particularly page 2 thereof, section 5, which reads as follows:

> "No person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin."

It seems to me that that is sufficient.

FIRST VICE-PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President: Senator Lewis has expressed my opinion, and I just want to tell the Convention that this matter was very thoroughly discussed in the committee.

As a matter of fact, we felt and decided in the committee that the principles enunciated by this amendment should be in the Constitu-

tion. I, as chairman of the committee, was specifically delegated by my committee to ask the Committee on Rights and Privileges if they were going to put the so-called anti-discrimination clause in the Rights and Privileges Proposal. Upon being told that they were and had done so, our committee felt that it was wrong to have it in our Proposal.

It is my personal opinion—although, again, I'm not a lawyer—it seems to me that if the anti-discrimination clause were put in this militia section, that unless it was put in every other section in the Constitution that mentions a name or person or a kind of person, then automatically you must say by inference that where it is mentioned twice and not mentioned in the other places discrimination might be permitted where it was left out. It seems to me that it's stronger being mentioned once, to be all-inclusive, than to be mentioned twice.

FIRST VICE-PRESIDENT: Any other comments? Judge Stanger.

MR. FRANCIS A. STANGER, JR.: Mr. Chairman, may I address a question to Senator Van Alstyne, chairman of the committee that prepared this Proposal?

FIRST VICE-CHAIRMAN: Senator Van Alstyne will submit.

MR. STANGER: Senator, do you consider that the anti-discrimination clause as to civil rights will cover this provision as to militia, the thought being that civil rights include military rights?

MR. VAN ALSTYNE: Judge Stanger, that point was raised in committee and I can tell you that the committe unanimously felt—there are a number of lawyers on our committee—that the right to bear arms was a civil right. That is very definitely one of the rights of citizens. We therefore did fully cover the situation.

FIRST VICE-PRESIDENT: Any other comments?

MR. VAN ALSTYNE: I would like Colonel Walton to talk on this subject, please.

MR. WALTON: Mr. Chairman and fellow delegates: I can only second what Chairman Van Alstyne has already said. The matter was thoroughly gone into by the members of the committee, and we discussed it from all angles. It was felt by your committee that the inclusion of this phrase should be in the Bill of Rights rather than in the militia clause. We felt that should we put it in the militia clause, then it might be thought advisable that it should be included throughout the entire Constitution—for example, in the section dealing with civil officers. Accordingly, while the committee was quite sympathetic with the intent of the proponents of this provision, they nevertheless felt it should not be included under the militia section.

MR. CAVICCHIA: Mr. President.

FIRST VICE-PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: I don't think that on a matter of this kind, in view of all the circumstances and the nature of the proposal, we ought to proceed to a vote without having the sponsor here. At least, let's wait until the final minute before we adjourn, in the event he comes.

I understand there has been a wreck on the Pennsylvania Railroad. I know that Mr. Randolph does not come here by car, but I think that we ought at least to hear his side of it. It may well be that the answer to this is found in the limitation that the provision for organization and so on shall conform to federal standards. Now, can anyone here enlighten us—and perhaps Mr. Randolph, if he were here, could be enlightened—as to the federal standards which provide against discrimination? In that way he might be persuaded to withdraw his amendment.

MR. VAN ALSTYNE: I would like to ask Colonel Walton to answer that point. I think he could explain that very thoroughly.

FIRST VICE-PRESIDENT: Colonel Walton. The chair recognizes Colonel Walton.

MR. WALTON: Mr. Chairman and fellow delegates: I do not believe that the reference to federal standards includes that. On the other hand, I still believe that if it is to be included in the Constitution, it should be included under the Bill of Rights section of the Constitution.

FIRST VICE-PRESIDENT: Mr. Miller.

MR. MILLER: Mr. Chairman and delegates: I completely associate myself with what Chairman Van Alstyne has said in behalf of all of us. I am sure all of us who served on his committee will agree with what he has stated. However, I think that Delegate Cavicchia has presented a point which we, in all fairness, should take into consideration. It seems to me that not only should we permit Mr. Randolph to have until the end of this afternoon session, but we ought to permit him to have until at least tomorrow morning to appear in behalf of this resolution. I think the Convention will certainly want to show that degree of fairness to an absentee delegate who, I am sure, is absent for no reason over which he has control.

I should like, therefore, to move that this matter be laid over for consideration. May I add to that motion that an effort be made to notify Mr. Randolph that his matter will come up the first thing tomorrow morning.

MR. RALPH J. SMALLEY: I second the motion.

FIRST VICE-PRESIDENT: It has been moved and seconded that Amendment No. 15, which has been proposed to Committee Proposal No. 3-1, by Mr. Randolph, be laid over until tomorrow

morning due to his absence. All those in favor signify by saying . . . Any comments?

MR. ORCHARD: May I offer an amendment?

FIRST VICE-PRESIDENT: Yes, sir.

MR. ORCHARD: And to be taken up tomorrow morning as the first order of business.

FIRST VICE-PRESIDENT *(addressing Mr. Miller):* Will you accept the amendment?

MR. MILLER: I do.

FIRST VICE-PRESIDENT: I will add that to it. Are there any other comments? All those in favor will signify by saying "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed, "No."

(Silence)

FIRST VICE-PRESIDENT: The motion is carried. We will hold the amendment by Mr. Randolph.

Are there any other amendments to be proposed? To any article whatsoever?

I wish particularly, as long as we have Mr. Randolph's amendment to take up, that you please see to it that everything or anything that may refer to this Executive, Militia and Civil Officers Proposal is in, so that we can close it and really get going on the next subject.

Mr. Van Alstyne.

MR. VAN ALSTYNE: Will you explain that Amendment No. 11 and No. 17 are one and the same? No. 17 is superfluous and was passed around by mistake.

SECRETARY: There has been one substituted for No. 17, Senator.

FIRST VICE-PRESIDENT: The Secretary advises me, Mr. Van Alstyne, that the one being printed now is a substitute for this No. 17.

We will now proceed to the consideration of Amendment No. 7 to the Proposal by the Committee on Rights and Privileges, Commitee Proposal No. 1-1. The Secretary will read the amendment.

SECRETARY: Proposal No. 1-1, by Mr. Lewis *(reading):*

> "Amend Committee Proposal No. 1-1, page 2, paragraph 8, line 5, by inserting a semi-colon after the word "jury" and adding the following: 'the Legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of jury in any civil case.' "

FIRST VICE-PRESIDENT: Who speaks on the amendment? . . . Mr. Lewis.

MR. LEWIS: I would like to request that this proposed amendment be laid over until tomorrow. One of our fellow delegates has volunteered to make available additional information on this

subject. I think it would be advisable to have that information available when it is discussed.

FIRST VICE-PRESIDENT: If there is no objection, the chair will so decide. No. 7 will be laid over . . . Mr. Schenk.

MR. SCHENK: In the interest of saving time, I discussed this schedule with the various sponsors, Mr. Orchard, Mr. Taylor and Judge Carey. It calls for Amendment No. 1 and Amendment No. 5, and Amendments Nos. 3 and 6.[1] Now, Amendments No. 3 and No. 6 relate to the broad principles; in other words, shall we have in Rights and Privileges any reference at all to the principle of collective bargaining? If we took up No. 3 and No. 6 first, we would be discussing the broad question rather than the particular changes or amendments which Mr. Orchard proposes in No. 1 and the one he submitted today, and which Mr. Miller proposes and, also, I think in some part the proposal of Delegate Taylor, who wishes to make an entirely different approach to the Article as it is now worded. In other words, I would recommend at this time that, with Judge Carey's consent, we call on him and discuss his Amendment No. 3 and his amendment No. 6.

FIRST VICE-PRESIDENT: Mr. Schenk, may I ask as a matter of information—I haven't the amendments before me—if No. 3 and No. 6 can be separated, so that they can be voted on separately without invalidating either one or the other? Can they?

MR. SCHENK: No. 3 and No. 6 provide for the same result. One is to delete the last sentence and leave the old clause standing as it is, and the other one says we shall leave the old clause standing as it is. They are exactly the same in effect, I believe.

FIRST VICE-PRESIDENT: I shall be very glad to accede to your request. We will proceed now to the discussion of Amendments No. 3 and No. 6. The Secretary will read Amendment No. 3.

SECRETARY: Amendment No. 3, by Mr. Carey *(reading):*

> "I wish to amend Section 19 of the proposal under title of Rights and Privileges (submitted by the Committee on Rights), to read as follows: '19. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.'"

FIRST VICE-PRESIDENT: I will ask the Secretary to read Amendment No. 6. Our first consideration will definitely be Amendment No. 3. Although we can discuss the two at the same time, we will have to consider them separately.

SECRETARY: Amendment No. 6 by Mr. Carey *(reading):*

> "A motion is hereby made to amend Article 19 above referred to by striking out all of said Article commencing with the words 'the right of privately employed labor . . . ,' leaving Section 19 concluded with the word 'grievances.' The effectiveness of this is to strike out all references to

[1] The text of this and other amendments is set out in the Appendix in Vol. 2.

labor's right to organize and bargain collectively. This is all matter that belongs to the realm of legislation."

FIRST VICE-PRESIDENT: Who speaks on the Amendment? Mr. Carey?

MR. ROBERT CAREY: Amendments No. 3 and No. 6 are practically the same in their operation, so that, as a matter of fact, the discussion of No. 3 will practically conclude the discussion of No. 6. Now, the picture presented is just this: The section involved is the nineteenth section of the Bill of Rights. In the preparation of this Bill of Rights the committee has endeavored to follow the instructions of the Governor given at the outset of this Convention, to make this a streamlined, perfect Constitution. We tackled the preparation of the Bill of Rights in that spirit. We devoted a long number of days to it. We finally reached conclusions which left practically unchanged the Bill of Rights as it has existed and been recognized in this land from the time of adoption of the Constitution of the United States right down to this date. We have been pretty careful about it.

The nineteenth paragraph which is involved here begins as follows: "The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances." This is an exact copy of the Bill of Rights of the country and of the State as it has existed for over 100 years. We concluded after long conferences that no addition should be made to it except in one respect, and in our committee we had wide conflict in that discussion. I think the vote finally was six to five to put the privilege provision in the Report that is now before you.

Now, if we had stopped with the word "grievances," we would have agreed unanimously. From "grievances" on, our troubles began. A recommendation was made to us that we recognize collective bargaining and agree that whatever the rights were that are involved in it, they should never be impaired. That began the battle, and we could not agree. Finally, when the wording was somewhat changed on the proposition, there was a sufficient number, as I suggested, to agree to make a report, six to five, and it stands as it's set forth in the Report.

Now, to my mind—and I speak not only for myself but for other members of our committee—the sole object and purpose of the addition to that paragraph in the Report of our committee was to be a declaration by this Convention that we believed there should be placed in our Constitution a ratification of the principle of collective bargaining, as practiced by the labor organizations. I voted against it, and I don't hesitate to say so, frankly and gruffly; and I speak against it now. I file this protest, and there are others similar to it that could be and have been filed.

I say this: paragraph 19 should be amended to read as follows:

> "The people have the right freely to assemble together, to consult for the common good, and to make known their opinions to their representatives, and to petition for redress of grievances."

I say, stop right there, and I move to strike out all of the matter subsequent to that in the Report relating to this principle of labor which it is now intended to draft into the Constitution of our State. And there were none of us in our committee having the disposition to be untoward toward the interests of labor. One of the happiest members of our committee is a representative of labor. We have the highest regard and respect and affection for him and what he endeavors to present, but we say this—at least I say this now—that the portion of that resolution returned and reported by our committee has no proper place in the Constitution of our State. If it has a place anywhere, it is in the legislative program of the State.

Now, dare I go further—there is absolutely nothing in that paragraph which by right is not enjoyed as far as it should be by labor today. We have had a lot of experience in the nation in the last few years with problems like this. There is no such provision in the Constitution of the United States, and as far as we can learn, nobody has even attempted to get such a proposition in the Constitution of the United States; and yet we all know that the American Congress and the United States courts have handled all of the problems of labor and are doing it today, without any restriction or limitation in their proper sphere.

In the State of New Jersey today the labor laws are so written that there is comparatively no complaint from any of the labor interests of the land. Witness after witness who appeared before our committee, when asked, "Is there any right in the world that labor ought to have that it does not get under the laws of New Jersey today?", invariably answered, "Well, the New Jersey laws treat us pretty well." Now, we ought to leave it right there. What are we doing? We are doing a dangerous thing. In the first place, we are using language in our Constitution that no man really understands. We will not know just what it means until some day some judge in some court somewhere in our State will tell us what we meant by this paragraph in our Constitution. It will be argued that it must have been put in for some vital purpose, to give us some rights that we haven't got today. It must be that, but who will answer the query then?

Labor, anyhow, is a class problem in itself. No, you wouldn't think of putting a provision in the Constitution giving lawyers special favors as a class, would you? Nobody would stand for that for ten minutes. And we wouldn't think of putting any individual religious organization in our Constitution, to be specially classified and protected in any way, shape or manner.

Here we have this problem, but where does it come from? Does it come from the people? It comes to us in circulars by the dozens from different organizations, most of them stereotyped—all copied and taken from the same place. We have been deluged with that stuff. On the other hand, since this matter was proposed in this Convention, I have received literally hundreds of letters and communications saying that this subject has no place in the Constitution. I received those statements from the most dignified bodies of men and women in this State.

I can't see an argument in favor of putting a picture like this in our Constitution. What is it to be? Does it mean anything, or is it put in to be an entering wedge, a very easy method of amending the Constitution? If it means the latter, you will be deluged in the Legislature with suggested amendments. One of the strongest arguments in favor of the proposal that has come to me has come from the American Federation of Labor itself. They say, we want this in this Constitution, and then they go on to tell in their circular what they mean by collective bargaining. It means the right to strike, the right peacefully to picket. If there is anybody on God's earth who can give me a definition of peaceful picketing, he can give me something I don't understand right now. Our courts don't understand it. There was peaceful picketing in Michigan yesterday, and there were only 12 heads pounded by baseball bats when the first session of peaceful picketing adjourned.

Now, I am not battling labor. Labor is getting all its rights. There were 18 other provisions—18—in the Bill of Rights that we returned, giving labor and every man in labor and every man that worked in anything, giving every professional man and every citizen of our State, all the same rights in everything. There is no right that any laborer has or ever should have that is not fully protected in a general way, the same as all others are protected in the terms, the phrases and the declarations of the Bill of Rights that we propose, all of which have been construed by the courts and are accepted everywhere.

There are only two states in this union—New York and Missouri —that have any such clause in their constitutions today, and you and I know there are still 48 states, I think, in this Union. New York is having so much trouble with that little paragraph they put in their constitution that the courts haven't been able to find their way out of the deep waters yet. Oh, let's not be silly! We will give labor everything it needs. After all, we are all laborers of one sort or another. I myself work as hard as any laborer or labor member in this entire land. We are all the same, but let's have a Constitution that we can understand and that is in accord with what we call constitutional structure.

Let me suggest this—I did not come down here to be a legislator; I did not come down here to frame all the little laws of this State, to look after this and that, the liberties of this, that or the other kind. I came here for a Constitution, streamlined, full of principle, that every one of us can stand on, and which nobody can find any justification to stand against.

I hope that this amendment I propose is adopted, and I move it be adopted in the place of that part of the Report to which I have referred. I make that motion as a member of the committee who had part and parcel in the preparation of this Report, one of the five who voted the way I am talking right now.

I want to thank you for listening to me.

FIRST VICE-PRESIDENT: Any other comments? Mr. Paul.

MR. PAUL: The effect of the proposal of the gentleman from Hudson would be to eliminate from the proposed Constitution any reference whatsoever to the right of labor to organize and bargain collectively. The gentleman says that we should go back to the 1844 Constitution and remain silent on this question. My answer to that is that the problems of this country, its economic and social problems, have changed a great deal in the past 103 years. We had no labor problem before. The argument that lawyers are not given the right by the Constitution to organize and bargain collectively is a bit beside the point. They need no such protection.

Whether the wording of the committee's proposal is correct or not is not the question for discussion or debate. The question is: Should the Constitution be silent on this point or should it have some statement? And the reason for having some statement is a very simple one. The right of labor to organize and to bargain collectively is established practice for interstate commerce; it is not established practice for intrastate. So far as the right of labor is concerned within this State, there is no right of that kind unless we grant it by the Constitution.

There may be many excesses of labor, and I am not here to defend labor. I am not a labor man. I am simply stating that I think this Constitution, in all fairness, in all equity, should contain a statement that labor has the right to organize and to bargain collectively, and I do not think the Constitution should be silent. Whether the wording of the committee's proposal is advantageous or not, or the best possible wording, is not the subject for debate now. That will be taken up later, but to throw out the committee's proposal and to be silent would, I think, be a step backwards and not a step forward.

I oppose the amendment of the gentleman from Hudson.

FIRST VICE-PRESIDENT: Any further remarks? Mr. Schenck.

MR. SCHENCK: Mr. Dixon, I would like to call on Mr. Park

who wishes to be heard on this matter. I would like to say for the benefit of the delegates that I signed the Committee Report, although I was one of the minority that voted with Judge Carey to send the matter to the Legislature. It is a matter of record, and I want everyone to know it. With complete fairness to the majority viewpoint of the committee, several members of the committee would like to be heard early in the debate on this question. I suggest that Mr. Park be called on at this time, to be followed by Judge Stanger.

FIRST VICE-PRESIDENT: The chair recognizes Mr. Park.

MR. PARK: Mr. President, fellow delegates: From me you will get no treat of oratory. I am not a labor lawyer; I am not a capitalist's lawyer; I am just a country lawyer. I was a member of the committee which had this very difficult problem, and I assure you that there were many ramifications.

First, I think that I should state that Judge Carey's recollection is in error. The vote of the committee was seven to four. I was the secretary of the committee, and I am pretty sure that the vote was seven to four.

Mr. Paul has very correctly stated the position. The issue now before this Convention is not whether we have drawn a good labor clause, whether a labor clause could not be improved, but whether a labor clause should be included in the Constitution or excluded. We have no great pride of authorship. We did the best that we could between the very much conflicting ideas which had been submitted to us.

There has been a statement made by our good friend, Judge Carey, in asking the question from where does this proposal come; but frankly, if my recollection is correct, it came from every place except the New Jersey State Chamber of Commerce. We had before us the representatives of the Joint Committee on Constitutional Revision. I am not going to enumerate all of the organizations associated with that group. All of you have heard of them in your own committees. It would be undue repetition to list them, but I would state that the representatives from organizations which you would not ordinarily expect to be labor-minded advocated the inclusion of a provision guaranteeing collective bargaining.

I will not talk on the question of the merit of collective bargaining as such, because there have been other proposals submitted which may modify the draftsmanship involved. What I do say to you is simply this: This great problem of collective bargaining is much confused with the incident of striking. One of the labor organizations submitted proposals dealing with this problem of labor in which they asked, in addition to the right to organize and bargain collectively, that there should expressly be incorporated pro-

visions pertaining to peaceful picketing and the right to strike. Now, the fact that those organizations saw fit to differentiate between collective bargaining and striking and picketing shows there is a difference. I say to you, ladies and gentlemen of the Convention, before we get into the issue of whether our particular clause is the best clause that can be drawn, let us recognize, as Mr. Paul has said, that we live in a new life, we live in a new world. The problem of organization of labor is a current problem—some people say it is a hot potato. I don't think that it is.

When we look at our Constitution we find in it the right to trial by jury, the right of the writ of habeas corpus, and many other particular privileges which we have had so long now that most of us cannot help but wonder when there was a time that those rights were not recognized. I say this: If this is put in our Constitution, or a clause of a similar nature, it is my belief that people 150 years hence will wonder why, in 1947, there was any doubt as to whether this right should be recognized. I say that labor has fought long and hard to obtain recognition. They very definitely have a need to have a constitutional protection. It is a newly acquired right, but I say it is a right that is just as important in the origin and development of law as the right to trial by jury, the writ of habeas corpus, and so forth. I say that we are not progressing, but that we are making a very great mistake, if we adopt the resolution of Mr. Carey.

On the question of the merits of our own proposal as compared with suggested amendments, I should like to reserve the time, and therefore I say to you fellow delegates: Do not make this mistake. We did not put this in the Constitution because we wanted to get votes. The majority of us put it in our draft because we thought it was the right thing to do.

FIRST VICE-PRESIDENT: The chair recognizes Judge Stanger, if he wishes to speak on the matter.

MR. STANGER: Mr. Chairman and fellow delegates: I am not speaking officially for all the members of the Rights and Privileges Committee. I am speaking as one who voted in favor of including this clause in our proposal. I am well aware, Mr. Chairman, that the Rules of this Convention are opposed to any personal references, but I take it that that means disparaging references. I cannot speak without first paying my respects to the personality and the honesty and the ability of Judge Carey who presents this amendment, and I might add, if you will permit me, that there is no man in this Convention with whom I fear more to cross swords than with Judge Carey.

Reference has been made here also to Mr. Taylor as a member of our committee being associated with some labor organizations.

I think I should say to the delegates that in all the committee deliberations there was no effort on the part of Mr. Taylor to force his ideas on this committee. The thought that appears here in this proposal is the thought of the majority, I believe Mr. Park said seven members of the Committee on Rights and Privileges.

Mr. Chairman, we have come here, as I take it, to write a Constitution for present-day conditions. The fact that a clause has been or has not been in a constitution for a great many years is not dispositive of our duties in that regard. We are here, as I take it, to meet present-day conditions and to do those things that we think best meet those conditions. I must say to you, Mr. Chairman, and to my fellow delegates that I have had some associations as a lawyer with labor problems, and in every case thus far I have been on the side of the employers, so that I am not speaking because of the influence of a retainer of any kind whatsoever. I have come here under solemn oath to do my duty as a citizen, giving this Convention my best thoughts and, I hope, giving to the State of New Jersey matters of which they will be proud insofar as my votes are concerned. So I speak dispassionately, but I speak, I believe, sir, having my words resound in justice, and that is what I am trying to do here as a delegate to this Convention.

Judge Carey says that he has received numerous letters. So have I, not only on this problem but on all the various problems that we had for consideration. They were considered; witnesses were heard and given full opportunity to express themselves, and after that our committee sat down as 11 individuals to frame what they thought was best fitted to be included in this document. So I can say that every word in our proposal comes here encased in integrity.

Mention has been made about class privileges. I don't know what class privilege means. I have a proposal before this Convention which is scheduled to be heard this afternon, asking that you continue the authorities and powers of masters in Chancery and special masters in Chancery, and Supreme Court commissioners and Supreme Court examiners. I did not offer that amendment in any wise thinking it was asking for a class privilege. Neither do I approach this subject or speak on this subject with any thought that we are dealing with a class privilege.

Mr. Chairman, as you know and as the delegates know, a vast majority of the people of the State of New Jersey are interested in this proposition. We are not trying to favor a few. We are not asking political preferment, for I, as one, seek no political preferment; but the question is: What is the right thing to do by the man who earns his weekly or daily stipend with the sweat of his brow and the efforts of his hands? More than that, I am not so much concerned with him as I am concerned with his children. I want, Mr.

Chairman, that every boy and every girl in our State shall have equal opportunities with my boy and my girl. If it so chances that I have been in a more remunerative occupation than some, I still don't want to deny the other youngster his full privileges with mine. I say to you, sir, that if my neighbor's child is without shoes, I conceive it a part of my code that I am responsible to do something about it. I think we have a great weight of responsibility upon us, Mr. Chairman, and therefore I speak to you so sincerely about this matter.

The question of labor has become, sir, a very great social and economic question in the State of New Jersey. The laborer is worthy of his hire. While I do not want to touch at all upon labor disputes of any kind, I want to say to you, sir, that in justice, as one of the great considerable class of this State, I believe they are entitled to have us put in such protection as would seem to be in accord with present-day and future demands. I am referring, sir, to the Article itself, and calling the attention of the delegates to the fact that we say in here "the right of privately employed labor to organize and bargain collectively." We don't put in here anything about striking. We don't put in here anything about private picketing. They are subjects foreign to what we are talking about; but the right of labor to organize and bargain collectively, if privately employed, and the right of publicly employed labor to organize and present to and make known to the State or any of its political subdivisions its grievances and requests to representatives of its own choosing, shall not be impaired.

I am concerned, on a restudy of the document, about the use of the words "shall not be impaired," but that is a matter, as has been said here before, that shall be considered when we take a vote on the proposal itself, if we do.

Now, Mr. Chairman and fellow delegates, without consuming further time but with all the heartbeat that I can command, I am asking you, and all of you, to consider the rights of labor and let us protect those rights to the extent we have gone in the proposal submitted. I, of course, am speaking wholeheartedly against the amendment with all due deference to my very good friend, Judge Carey.

FIRST VICE-PRESIDENT: Any other discussion? . . . Commissioner Miller.

MR. MILLER: Mr. Chairman and fellow delegates to the Convention:

It was just two years before the Constitutional Convention of 1844 was convened in the City of Trenton, that there was decided the famous case of *Commonwealth* vs. *Hunt,* in the State of Massachusetts. Mr. Chief Justice Shaw, speaking in behalf of the court,

laid down the principle giving the right to workers to organize. As I said, that was just two years before the Constitutional Convention of 1844 drafted our document.

For a period of nearly a hundred years in this country workers have had the substantive right to organize, but have been denied all too frequently, as any student of labor history knows, any remedies at law when that right was invaded. The proposal to include a clause on collective bargaining in our draft of the new Constitution is part of the developing concept. We should express what in our times has become the considered judgment of men and women and citizens generally with reference to the right of working men, not only to belong to but to function through their democratically organized trade unions.

It was one of the significant turning points in the whole development of that concept of collective bargaining that there was written into the provisions of the War Labor Board of 1917, a specific provision guaranteeing to labor the right to organize and bargain collectively. Indeed, that phrase itself, now presently written with some modification into this clause, derives from that proposal.

But it remained for Chief Justice Taft, the distinguished Chief Justice of the United States, in the very celebrated decision in the case of *American Steel Founders* vs. *Tri-City Central Trades Council* to give further constitutional support to this right of labor to organize. Said he:

> "They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and his family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give labor an opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value, to make him pay them what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court."

Subsequently the Railways Labor Act extended this principle of self-organization to railroad workers. It remained for the Wagner Act to make this principle of the right of labor to organize and bargain collectively through representatives of their own choosing, the national labor policy. The Supreme Court decision made it the law of the land.

It is now our privilege to set a standard by which future generations can judge, not only the wisdom of our labors, but our recognition of those rights that have developed over the years.

Mr. Park has pointed out with great correctness the manner in which these civil rights developed. There would be no question of the assertion of this right now had it not been denied in the past.

There would be no question before us if it were not the considered opinion of students of labor problems and the whole development of our economy that organized labor has a vital role to play.

And so, Mr. Chairman, in arising to oppose this resolution by my friend and the distinguished delegate from Hudson County, Judge Carey, I should like to observe this in response to his question: "Why is this matter in only two state constitutions?" I would remind him of the historical coincidence that the last two state constitutions adopted subsequent to the decision of the Supreme Court of the United States on this question, have been those of the States of New York and Missouri. Both states took into consideration what were the realities of the present situation. Both have set forth these principles in clear and unmistakable terms. It is for that reason that it seems to me that we, as we embark upon this task of writing the framework of the new charter for this State, should take into consideration what are the realities of the present and what are likely to be the needs and the requirements of the future.

We are dealing, ladies and gentlemen of the Convention, not with a question which is sometimes confusedly brought into the discussion, namely, the right to strike. We are considering, in this discussion of the right of men to bargain collectively through their chosen representatives, the application of the principle of democracy to the great area of our industrial and economic life. And it is my hope and my prayer that this great Convention will have the temerity to place into the basic charter of this State a provision which will guarantee this right and make it so explicit and so clear that not only those who run may read, but that we may be judged by our awareness of the importance of this new provision in a charter which looks not to the past, but to the future.

FIRST VICE-PRESIDENT: Any other comments? . . . Judge Rafferty.

MR. RAFFERTY: Mr. President and delegates of the Convention:

The argument thus far on this question has proceded along the line that we are considering writing into our Constitution some new or debatable principle, that is, the right of labor to organize and bargain collectively.

I respectfully submit that that is not really the question before us. The right of labor to organize and bargain collectively is not a new right. It is not a right that has been bestowed by legislation or court decision. The right to organize and bargain collectively is a natural right. It befits the dignity of labor itself. It has always been a right, but it has been denied to the laboring man through the centuries

because of the improvidence and the unfortunate situation in which he found himself economically.

It has only been for the past century and a half that courts have approached the recognition of that right. Commissioner Miller referred to the Massachusetts decision of 1844. But even before that, in England and in the earlier days in this country, men were imprisoned because they sought to assert this natural right, on the theory that they were conspiring against property.

Again, we have the terrible situation that came into existence with the promulgation of the so-called "yellow dog contract," where assault was again made upon this natural right. And only recently, too recently, we have the situation in the coal mines, of the company stores and all of the other domination against this natural right of labor.

The right is recognized, recognized too clearly for debate, but the thing that I find in this, which is of great importance, are the last four words, touched on only lightly by Mr. Stanger but which I regard as of the essence: this right "shall not be impaired." That is the important feature of this provision, and I urge upon you, ladies and gentlemen of this Convention—rise to your high dignity, not alone as delegates, but as individuals, and say that this right, which has not been won, but which has been vindicated by years of imprisonment and torture and suffering, this right shall not be impaired. Say this by the adoption of this provision in the Constitution and the rejection of the amendment of Judge Carey.

FIRST VICE-PRESIDENT: Anything further? . . . Commissioner Smith.

MR. J. SPENCER SMITH: Mr. Chairman and ladies and gentlemen of the Convention:

I want to associate myself with everything that Judge Carey had to say in favor of his amendment.

Ever since boyhood my only passion has been that of government. Sports have never interested me. In fact, nothing interested me except government. I cannot tell you why, but I am telling you what is a fact.

I have made a study of government. I have made a study of the effect of laws on the people. I have occupied public offices for over 40 years, although they have not carried any compensation, simply because they gave a convenient outlet for my soul and what was within my heart. And one of the things that has always been uppermost in my mind was a constitution and what it should contain. It has always seemed to me that a Constitution was meant to protect us, to protect us against what we might call any group, if you do not like the word "class."

I cannot understand the definition of the word "labor." I am a laborer. I think we all are laborers. I know of no one who puts in more hours than I do. I have lived quite a few years.

It was my privilege to study government not only in this country but abroad. I remember talking with the former Chancellor of Germany, just prior to Hitler coming into power, and I asked him this question: "What do you think will happen if Mr. Hitler becomes Chancellor?" "Why," he said, "he will be like all the rest. Nothing will happen in particular." We know what did happen.

I have had to pass upon treaties between the States of New York and New Jersey. I have helped to frame the language that would protect the states, our State in particular, but I have seen how language can be twisted. And I can say this from my studies—as I told you, that has been my sole happiness in life, outside of my family life—as I witnessed things, I haven't been able to find anything that would detract or take away from us what has been said in the ten commandments and the teachings of Christ. I haven't seen these changes that have been referred to here. The conditions of life, as far as I can see, have been the same all down the years of my life and my practicing the business of government.

We can talk about changes all we want to, but the fundamentals remain the same. They do not change, and a constitution is fundamental in protecting the rights of all of the people, and should not include that which pertains to a certain group called by the name of labor.

Then comes the question of defining "labor." I like to be practical about these things. I have to be practical. And I say to you with all possible conviction, that you will find—I hope we will not live to see it, but I'm sure that unless Judge Carey's amendment is adopted it will happen—that you are going to weaken constitutional government, and those of you who are younger than I am may live to see the day when you will rue it. I can say to you, ladies and gentlemen of this Convention, that there is nothing more important than carrying out Judge Carey's amendment.

When I was asked to serve as a delegate to this Convention, one of the vows that I took upon myself was that I would fight the best I could against anything that savored of privilege for any group. I didn't care what or who they might be. And so I close and simply say that I do hope Judge Carey's amendment will carry, because if it does, then we are serving all the people of New Jersey.

FIRST VICE-PRESIDENT: Mr. Pyne.

MR. H. RIVINGTON PYNE: Mr. President, ladies and gentlemen of this Convention:

I do not wish at this time to debate the question of the privileges of labor, or even whether such a clause as this should be included

in some part of the Constitution. I am not ready to announce my own decision on that as yet.

I want to make a point, however, which I hope you will not consider irrelevant, and that is, that I think if this clause is to be included, it's in the wrong place. I think that the Bill of Rights, so-called, has always been considered by all of the people as the most sacred part of the Constitution. I think the reason for that is peculiarly and particularly because everything in it so far applies to all the people, without reference to any particular kind of persons. This provision, if you put it in here, in the Bill of Rights, will be the first time that a special privilege, if we can call it that, is granted to one particular group, no matter how worthy they may be of that privilege.

I am, therefore, supporting Judge Carey's amendment in the hope that if some such clause as this is to be included, it will go in some other section of the Constitution.

FIRST VICE-PRESIDENT: Mr. Berry.

MR. FRANKLIN H. BERRY: Mr. Chairman and fellow delegates:

I want to state very briefly my support of Judge Carey's amendment. I have heard a lot of protestations here this afternoon about the sincerity of the delegates who have spoken in opposition to this amendment. Mr. Chairman, I make no such protestation for myself, because I think it may be assumed that every delegate to this Convention is here with the most sincere motive, and that he speaks only with honesty of purpose. Personally, I have been in the minority on most of the roll calls which have been taken in this Convention, but I still am not afraid to stand up and be counted on the side which I believe to be right.

First, I should like respectfully to suggest that Mr. Paul was in error when he said that labor does not have the right to bargain collectively in the State of New Jersey unless it has to do with interstate commerce. It has been correctly stated by other speakers that that right does exist. It has definitely been established under the Constitution of the Federal Government and under the Constitution of this State. It can no longer be questioned. The language in the present Constitution, and the language which would be in paragraph 19 of the Bill of Rights of the new Constitution, should this amendment be adopted, is adequate to protect the rights of all the people. And as the last speaker said, there is no reason on earth, no real reason, why any group within the population of this State, should be singled out for special mention in the Bill of Rights. The rights of all the people are there protected.

My remarks, I hope, will be considered as an appeal to reason. I think that is the basis on which this question should be deter-

mined. I cannot give you either volume or eloquence, and I certainly am not going to attempt to make any appeal to the emotions. The sole question is this: Is this statement which the amendment seeks to eliminate a proper and necessary provision in the basic law of the State? I say to you that it is not necessary and that it is not proper, because it singles out one particular group of our population by name, and that is not and should not be the function of the Bill of Rights of a state constitution.

FIRST VICE-PRESIDENT: Any further comments? . . . Mr. Schenk.

MR. SCHENK: I will be very brief, sir. I realize we have reached our 4:00 o'clock deadline.

With reference to Mr. Pyne's criticism of the classification, I feel I should let you know that the committee felt that if that sentence or clause were inserted, it does logically belong in section 19, because it was an extension in language of the right to assemble and to do the other things that that clause does provide. I merely wish to make that statement for the record at this time. I am not now discussing the merits of the question, *pro* or *con*.

I also, in closing, would like to say just this—that three of the members who voted in the minority also voted to memorialize the Legislature to pass an enabling act to give labor all of these things through legislation. That is in the record also.

I believe Mr. Glass wishes to be heard against Judge Carey's motion, and there are perhaps others.

FIRST VICE-PRESIDENT: I would like to say to the Convention now that Dr. Clothier advised me that if the Convention continued until 4:30, it would not discommode him. Then he added, rather reluctantly I thought, that we might go on until 5:00 o'clock. I would propose that we at least split the difference and do not run any later than 4:45. Would that be acceptable to you, Dr. Clothier?

DR. CLOTHIER: Mr. Chairman, I don't think that the Convention should pay any attention whatever to time limit out of consideration for anything that I may have said or planned for this afternoon. This is the most important work to be done.

FIRST VICE-PRESIDENT: Then I take it 4:45 will be all right with everyone?

(Silence)

FIRST VICE-PRESIDENT: Mr. Glass.

MR. GLASS: Mr. Chairman and fellow delegates:

I do not plan any long, impassioned speech on this subject, but I would like to make a very simple statement. I was a member of the Rights and Privileges Committee which labored long over this

problem, which heard many witnesses *pro* and *con,* and I would like to make this statement,—that this right which we are giving if we pass the original proposal and turn down Judge Carey's amendment, this right which we will give labor, is no special privilege to a class. I say that it is a deep-seated, inalienable right in this world in which we live today, and I feel that I would like to oppose the Carey amendment and accept the Committee Proposal as it stands now.

FIRST VICE-PRESIDENT: Mr. Read.

MR. WILLIAM T. READ: Mr. Chairman and fellow delegates:

I rise, not to debate the question, but to explain my vote, which I believe we have the right to do under the Rules.

I am mindful of what our Governor said just two months ago yesterday, when he stood on the platform and said he hoped that this delegation, the constitutional delegates, would give us a Constitution which would contain nothing but basic law and nothing legislative. I listened to the first two or three speakers, including Judge Carey, and I was constrained to ask the question whether this right given in the Constitution can now be given by law without being put in the Constitution?

Delegate Miller, speaking against the Carey resolution, gave me all the answers that I needed. I am inclined to his remarks that labor has been in trouble in the courts, and a lot of other people have, too. It has been in the courts and has always received due consideration. Even Chief Justice Taft, whose son has been giving labor a little trouble lately in the Senate of the United States, himself said that the right of labor to bargain, etc., is perfectly proper under our present Constitution. Therefore, I am constrained to vote for Judge Carey's resolution on the ground that this matter is purely legislative.

I am also inclined to this,—that it is solely in the hands of the Legislature, because a corporation is not a person at all and therefore has no constitutional right, practically. It is a creature of the Legislature. The Legislature created corporations. They became so powerful and arrogant that we had to pass anti-trust laws to curb them in behalf of the common man.

I am wondering why this is in the Constitution? Is it that they feared that if this right were given to them by legislation only, that they might become so arrogant that legislation would again take away the privilege or power because it had been abused? They would have a greater and easier time with it in the Constitution. I am, therefore, voting for Judge Carey's motion, because I believe the matter is purely legislative and should remain so in order to control the rights, not for one set of men, but for all men and women.

FIRST VICE-PRESIDENT: Mr. Emerson.

MR. EMERSON: With reference to this question before the Convention, Mr. Chairman, it is not a question of the right of labor to organize and to bargain collectively. The only question is: Does it belong in the Constitution?

I think we are all sympathetic to labor. I for one am, and I think most of us are. I think we are sympathetic toward the children of labor. We think they should have a fair deal. We think they should have the right to organize and bargain collectively. But when we come to insert in the Constitution, which is the basic law of our State, a provision which gives labor something—I don't know what it is. I think we all have some idea of what is meant by "organizing and bargaining collectively," but our guess is not the last guess. The courts will guess what is meant by it. Does it mean that labor should enjoy all the rights and privileges that it now has? Does it mean that labor shall enjoy all privileges which may hereafter be granted to it? And if once granted, can they be taken away by the Legislature? I think we are short-sighted in incorporating in our Constitution a provision for a specific group of people, regardless of what our sympathies are.

One of the speakers mentioned the trial by jury. I don't think that has anything to do with the present subject matter. That is something we all enjoy, not labor only. Even lawyers enjoy that. The other rights that are in the Constitution and the Bill of Rights we all enjoy. Should we single out any group and say "We dub thee—we give you certain rights," whatever they are? I don't know what they are. I don't know what this paragraph means. I can guess. I can tell you what I think it means. But in the final analysis the courts are going to tell us what it means. And it may not mean what I think it means, or what you think it means. I think we are making a mistake by putting this provision in the Constitution, and I favor Judge Carey's amendment.

FIRST VICE-PRESIDENT: Second Vice-President, Mrs. Katzenbach.

MRS. MARIE H. KATZENBACH: Members of the Convention:

I would not for a moment attempt to make more than a few remarks after hearing the splendid presentations you have listened to, but I would like to make just one statement, in particular in answer to Mr. Pyne, to whose comments Mr. Schenk addressed himself. I, myself, was the person responsible for suggesting that that clause should immediately follow the first clause in paragraph 19. I didn't do it quickly, or without due thought, but I felt that it logically expressed, in this day and in this time, the thought that our forefathers had 103 years ago, when they said that the people

could assemble and discuss things and present their grievances. They didn't mean all of the people, but they knew there would be some that might desire to do it. And, therefore, as a member of the committee, I want particularly to say that there was a vision in the thought that I presented there, and a logical conclusion of what has gone before us, to meet the needs of today.

FIRST VICE-PRESIDENT: Thank you, Mrs. Katzenbach. Mr. Eggers?

MR. EGGERS: Mr. President, ladies and gentlemen of the Convention:

I had not at first intended to take part in this debate, although I had fully made up my mind what my convictions were. But the debate has developed such a confusion of issues that I believe we should all take time out to consider this matter exactly in the manner that it is stated in this Article.

A great deal has been said here about us being sympathetic to labor; and a great deal has been said here as to labor's right to organize, and whether or not it should be contained in the Constitution. It has been made to appear here by those who advocate this amendment, that labor is seeking something special from this Convention, something to which it is not entitled. Yet the language is clear and distinct. It is merely declarative of the inherent right of labor to organize and bargain collectively.

It has been said here by the advocates of this amendment that labor can depend upon the courts and the Legislature, and that its rights to organize will never be impaired. Yet, I ask you who say you are sympathetic to labor, I ask you who want labor's right to organize never to be impaired, to look at recent history and judge for yourselves as to how much labor can trust the legislative body. Labor is merely asking this Convention to guarantee to it for the future the inherent right to organize and bargain collectively, so that during emotional crises, during times when public opinion might be swayed against labor, that a Legislature amenable to such emotional public opinion will not deprive labor of the inherent right that it has always had.

We, in this Convention, should not be afraid to state distinctly in the Constitution what we say we have the courage to memorialize the Legislature to do. If we believe in labor's right to organize, if we believe that it should never be impaired, then let us have the courage of our convictions and place it in the Constitution where it belongs.

FIRST VICE-PRESIDENT: Thank you, Mr. Eggers. Senator Lewis?

MR. LEWIS: Mr. President and fellow delegates:

I join with those who advocate the right of labor to organize

and the right of labor to bargain collectively. Are not these rights civil rights? Granting that they are civil rights, we find in Paragraph 5 of this proposed Article the provision that no person shall be denied the enjoyment of any civil right. Therefore, it seems to me that it is not necessary to include this guarantee in the Constitution.

But if it should be, if there be any doubt, let us convert an uncertainty into a certainty. I have no objections to including in the constitutional provision that labor shall have the right to organize and to bargain collectively, but I object, and object strenuously, to the last four words of the first paragraph, page 4, the words, "shall not be impaired." What shall not be impaired? What contracts? What laws? What statutes? What case decisions? Do we know what we are guaranteeing when we use those words, "shall not be impaired"? If we insert those words in our Constitution, we are literally opening the door.

Now, if the proponents of this Article will submit to an amendment which in effect will provide that labor shall have the right to organize and to bargain collectively, omitting the words "shall not be impaired," I can support the proposal. Otherwise, I shall be obliged to vote in favor of the amendment.

FIRST VICE-PRESIDENT: Mr. Taylor has been trying to get the floor. Mr. Taylor, will you yield to Mr. Schenk?

MR. WESLEY A. TAYLOR: Yes.

MR. SCHENK: In the interest of clarification and saving time—at least I hope that will be the result—we are now discussing whether we shall delete entirely this language and not really in fact have the principle of collective bargaining in the Constitution. Now, Mr. Lewis has raised a point which I think we may discuss later, perhaps even next week, because tomorrow we are going to return to other subjects—he has raised this question about the language of this particular sentence. An amendment has been introduced to change the language and now a further amendment has been introduced to change the language. The latter relates only to this sentence if it stays in.

I think we have discussed the matter pretty well now. I hope every delegate keeps in mind that you are voting either for the principle of the right of labor to organize and bargain collectively to be in the Constitution or not be in the Constitution. That is really the main subject before us. If the Carey amendment should lose, then this language will stay in as proposed, except as it may be modified or amended or substitution made for it. I suppose, even if the Carey amendment should pass, the proposal of Delegate Taylor will still be before the Convention, which will raise the whole subject again anyway.

FIRST VICE-PRESIDENT: Mr. Taylor, do you wish the floor?

MR. TAYLOR: There is one thing I'd like to say to Mr. Lewis: I believe that the committee as a whole will change the wording in which he is interested. I think the subject now is whether we shall take out from the proposal of the committee the whole subject of the right to bargain and organize collectively. I think later on that is going to be worded to Mr. Lewis' satisfaction, because I think there are two amendments to that in already.

FIRST VICE-PRESIDENT: Are there any other comments? Mrs. Streeter?

MRS. RUTH C. STREETER: Mr. President, I think it would help many of the delegates, if they are about to vote on this proposal, to know exactly what the intent of the committee was when it submitted it. One of the committee members said that the right to organize and bargain collectively was different from the right to strike. Another member of the committee indicated that he did not think it was the intention of the committee to put in the right to strike in this amendment. Yet the committee must have had something in its mind, because it distinguishes between the rights of private employees and the rights of public employees. I think we should really know what it had in mind.

There has also been a great deal of talk about how whatever it is the committee has in mind is an inalienable right. Now, if it is an inalienable right, why should the public employees be deprived of it? That point has not been made clear. If what the committee has in mind is the right to strike, I think it should also be brought out that there is a difference between involuntary servitude, which no one in this country at the present time would be in favor of, and the so-called right to strike. Involuntary servitude means that a man can't quit his job. That would naturally only be invoked in time of war, or of great national emergency, such as exists in England at the present time. We are not even discussing that. The right to strike is something else. That involves, if it is a right, the right to walk off your job and stay off as long as you please until you get your own way and then to return to the same job. That is an entirely different thing from involuntary servitude. Now, if it is the committee's intention to put into the Constitution the so-called right to strike, I think we should also know whether or not the committee has any intention of limiting the so-called right to strike, except in the case of public employees. I would appreciate hearing from the committee on these points.

FIRST VICE-PRESIDENT: Mr. Schenk, do you wish to answer that?

MR. SCHENK: I will make an explanation, and if further explanation is wanted I'll ask Delegate Park to speak. As a member

of the committee, I participated quite extensively in helping to draw this language. The minutes so show it. May I read it this way: The right shall not be impaired of privately employed labor to organize and bargain collectively. The right shall not be impaired. It does not refer, in my opinion, to any regulatory process or any implementing legislation. The right shall not be impaired of publicly employed labor to organize and present to and make known to the State or any of its political subdivisions its grievances and requests through representatives of its own choosing. I see no confusion in that language. We merely say that labor has a right that shall not be impaired, just as you have a right to go to church, to worship in any religion, and it shall not be impaired. Any religion of your choice, I mean.

I see no confusion in that language, I see no relation to the question of striking, picketing, or anything. It is so far removed from it, in my opinion, that it's not necessary to discuss it. The right shall not be impaired, that is all, and I think the point has been brought out by Judge Eggers and Mr. Rafferty in their discussion.

MRS. STREETER: Do you consider it necessary to make a distinction between public and private employees?

MR. SCHENK: I hope I can make it clear. I do not have any notes with me. The records show, in our hearings and others, that the committee had this philosophy: That when public employees bargain with the representatives of the State, when you ask the representatives of the State to sit down with the representatives of the public employees, you reduce the state representative to an equal bargaining partner because only equals can bargain. The committee had this in mind, in my opinion—that the representative of the public authority, representing in effect the vast majority of the people, should not be reduced to the level of an equal bargaining partner with a small segment of the body politic, namely the particular group of public employees which is seeking the redress of a grievance or a request. Does that answer the question?

MRS. STREETER: *(Nods in the affirmative).*

FIRST VICE-PRESIDENT: Any other comments? Mr. Orchard.

MR. ORCHARD: I should like briefly to comment to my fellow delegates, from the standpoint of an industrialist who has been working with thousands of employees under various union auspices for many years and who fails to see the horns or the tail in this labor problem that many industrialists claim they see. If it were not for the clarity with which the chairman of the Committee on Rights has stated that we are not now passing on the final language of Paragraph 19, I should vigorously oppose the paragraph because I do

feel that its wording must be changed. I agree with the point brought out by Delegate Lewis, that the right "shall not be impaired," is altogether too strong. I feel that there must be restrictions against strikes by public employees, policemen, firemen, and the like; that there must be some regulation for strikes in public utilities.

I take it that there will be ample opportunity to discuss those matters should Judge Carey's motion not prevail. I will vote against Judge Carey's motion because my own experience, if I may be pardoned the personal reference, of more than 30 years as the active managing operator of a group of industries without a single hour lost because of labor disputes, makes me feel that collective bargaining properly carried on is an asset to industry. I have no objection to recognizing that right in this Constitution, but I shall vigorously propose restrictions in language in the paragraph as drawn.

FIRST VICE-PRESIDENT: Any other comments? Mr. Lightner.

MR. MILTON C. LIGHTNER: I feel that I have to vote in favor of Judge Carey's motion, although I am an advocate of collective bargaining and I believe in collective bargaining. It has been asserted on this floor that the only question which we are about to vote on is as to whether or not we favor collective bargaining. I respectfully disagree. We are about to vote as to whether or not to strike from this Committee Proposal certain specific language which, if it is struck from the proposal, allows ample opportunity to every delegate to present his own proposal as to appropriate language.

Personally, I think that the language of this Committee Proposal is some of the worst that I have seen in any proposal with respect to collective bargaining. Speeches have been made on this floor by members of the committee in which they have hopelessly disagreed with each other as to what is meant by the right given here, or the long existing right really protected here, whichever you choose to call it. There have been those who have held that the words "shall not be impaired" are of tremendous importance and absolutely bar the Legislature from regulating or controlling abuses. And there have been other members of the committee who have held that those words are of slight importance and that the Legislature presumptively has some regulatory authority which it certainly does not have with comparable language in the Bill of Rights with respect to the right of trial by jury and other ancient rights which are preserved in this Article. I propose to vote on behalf of Judge Carey's motion although I believe in collective bargaining.

FIRST VICE-PRESIDENT: Mr. Schenk.

MR. SCHENK: One clarifying statement. I must disagree with the distinguished delegate who has just spoken. I noticed no confusion in the philosophy of the members of the committee who agreed on the basic principle. Obviously, members of the Commit-

tee on Rights and Privileges are speaking on both sides of this question because we have a majority and a minority report. But, in my opinion, those who favor the majority report have consistently defended the position properly and have interpreted the language properly; and vice versa, those who agree with Judge Carey, I feel, have done the same. I think we should now vote on the question.

FIRST VICE-PRESIDENT: Are you ready for the question? Those voting "Aye"--let's make this very clear—are voting to eliminate all reference to collective bargaining from this proposal.

MR. CAREY: Mr. Chairman, may I close the argument?

FIRST VICE-PRESIDENT: The chair recognizes Judge Carey.

MR. CAREY: I have listened most attentively to everything that's been said *pro* and *con*. I won't define which was which but I've listened to everything and I haven't changed my mind one iota as to my duty. My duty is to urge the passage and adoption of this amendment. I personally haven't heard a single argument advanced which demonstrated the value of placing this paragraph in the Constitution of our State. I make just one suggestion: I want to read the last section of our Bill of Rights. Nothing is taken from anybody and here's what it says:

> "This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people."

I think that's the complete argument for the proposition that this particular paragraph should not be in our Bill of Rights today.

FIRST VICE-PRESIDENT: The question, ladies and gentlemen is, shall the Amendment No. 3 to the Proposal on Rights and Privileges be adopted. Those voting "Aye" are voting to eliminate from the Constitution all reference to collective bargaining; those voting "No" leave the statement as it is. The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Berry, Camp, Carey, Clothier, Emerson, Gemberling, Hacker, Hadley, Holland, Lightner, Miller, G. W., Pursel, Pyne, Read, Smalley, Smith, J. S., Streeter, Winne—18.

NAYS: Barton, Barus, Brogan, Cafiero, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Feller, Ferry, Glass, Hansen, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lloyd, Lord, McGrath, McMurray, Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, Murray, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Rafferty, Randolph, Sanford, Saunders, Schlosser, Smith, G. F., Sommer, Stanger, Taylor, Van Alstyne, Walton, Wene—54.

SECRETARY: 18 in the affirmative, 54 in the negative.

FIRST VICE-PRESIDENT: Inasmuch as the amendment has failed to receive the necessary 41 votes, it is declared lost.

MR. SCHENK: Mr. Dixon, under the Rules if a delegate passes, does he have to give an explanation? Do you feel that the delegates wish an explanation of why I passed?

FIRST VICE-PRESIDENT: I would only call for that providing someone requested it, Mr. Schenk. It was the unanimous consent of the Convention that you don't need to explain if the chairman doesn't ask it.

MR. SCHENK: I want only to say this. I was on the committee. I supported Judge Carey in committee. I signed the majority report. I did not sign Judge Carey's minority report. I felt that I should pass, in all fairness to both viewpoints, and I tried in my conduct of the floor today to be equally fair to everyone.

FIRST VICE-PRESIDENT: Now, Amendment No. 6, you will find, is something that will take quite some discussion. In order to get the Executive Proposal to the Committee on Arrangement and Form we have two amendments which I would like to take the time to discuss. Amendment No. 15, by Mr. Randolph, was discussed to some extent before you arrived, Mr. Randolph, and it was laid over in order to give you an opportunity to discuss it. I would ask those who are speaking—not Mr. Randolph who has not had his chance—but the others who are speaking, to be as brief as possible, as brief as you can without in any way shortening up the matters which you want to present. Just present them as briefly as possible. We want to give everyone a fair chance to debate on it. Mr. Randolph, the chair recognizes you for presentation of your amendment. Will the Secretary read the amendment?

SECRETARY: Amendment No. 15 to Proposal No. 3-1, Committee on Executive, Militia and Civil Officers, Mr. Randolph *(reading):*

> "Amend Section III, paragraph 1, as follows:
> After the period in line 3, on page 6 insert the following:
> 'Discrimination on account of race, color, religion, or national origin is prohibited.' "

FIRST VICE-PRESIDENT: Mr. Randolph, pardon me a moment. May I say to the Convention that we will go to Amendment No. 18 which, I take it, is on your desk? I call your attention to this so you can take a look at it and be ready to discuss it as promptly as possible. Mr. Randolph.

MR. OLIVER RANDOLPH: Mr. President, I express to the Convention my gratitude for waiting until I arrived for the discussion of this amendment. I might explain that my lateness was due to the train wreck at Elizabeth. I came as far as Elizabeth by bus and then waited there and was informed later that we had to come the rest of the distance by bus.

The amendment proposed by me refers to Page 6 of Committee Proposal 3-1 and it would read—I want at this time, with the consent of the Convention, to amend it in the following way, if the

Secretary will get this: "Discrimination on account of race, color, religion or national origin," and then, "in organizing, inducting, training, arming, disciplining and regulating the militia is prohibited." There was some error in drafting it, it was intended to repeat the words in line 1 and part of line 2. Then the amendment would read as follows:

> "Provision for organizing, inducting, training, arming, disciplining and regulating a militia shall be made by law, which shall conform to applicable standards established for the armed forces of the United States."

Then will follow the sentence:

> "Discrimination on account of race, color, religion or national origin in organizing, inducting, training, arming, disciplining and regulating the militia is prohibited."

I think, Mr. President and delegates to the Convention, that it is very clear what this amendment is intended to do and I hardly think it is necessary to make any extended remarks. We are meeting here in 1947 in a great Constitutional Convention. We are making a great many statements about democracy and about representative government and about fair play. I think that the amendment which I have suggested will have the effect of determining whether our professions concerning democracy are merely vocal or whether they are sincere. My impression is that they are sincere. I think it is a very slight amendment and it is intended to prevent discrimination along the lines suggested. I urgently hope that the delegates to the Convention will vote unanimously for this amendment.

FIRST VICE-PRESIDENT: In accordance with our Rules we should discuss the amendment to the amendment and pass on that. But if there are no objections from the Convention, in view of the fact that the sponsor of the original amendment is changing by an amendment, I will, if there is no objection, declare that we will consider the amendment as amended and discuss the entire amendment and vote on it as if we have passed the amendment and it was a part of this. Are there any objections? If not the declaration of the chair stands . . . Mr. Walton.

MR. WALTON: Mr. Chairman and fellow delegates:

In fairness to Mr. Randolph I think I should briefly go over what was mentioned this morning on this subject. The matter was thoroughly discussed by your committee. The members were entirely, and as I recall, unanimously, of the belief or hope that something could be done that would result in what Mr. Randolph desires by his amendment. However, after considerable discussion they were of the opinion that this was not the proper way to accomplish the objective Mr. Randolph desires to achieve. Furthermore, it was suggested—and I know some of us felt that there was grave danger of harming that objective by including it in this clause—

that the question might arise in the future as to why the clause had been put in the militia section and had, for example, been left out of the civil officers section or many other sections of the Constitution. Accordingly, we unanimously instructed our chairman to take up this subject with the Rights and Privileges Committee, with the request that they take sufficient action and make a section of their portion strong enough to take care of this.

Mr. Van Alstyne, as he reported this morning, took this up with the Rights and Privileges Committee, and I believe that they reported back that it was taken care of in one of their sections. This morning Mr. Cavicchia raised the point as to whether the wording, "which shall conform to applicable standards established by the armed forces of the United States" would apply and take care of the problem. I regret very much that it does not take care of the problem. That applies only to physical standards, standards for promotion, standards for training, and does not apply to the question of segregation. The committee accordingly, after considerable discussion and consideration, did not include this wording in the militia section of the Constitution.

FIRST VICE-PRESIDENT: Any other discussion? Judge Stanger.

MR. STANGER: I would just like to address to the proponent of this amendment the question that I previously asked, and that is: Will not the provision in the Bill of Rights against discrimination apply equally to this Article of the Constitution and therefore protect the persons sought to be protected in their rights? I'd like to have the opinion of the proponent on that subject.

FIRST VICE-PRESIDENT: Mr. Randolph, will you answer?

MR. RANDOLPH: Through you, Mr. Chairman, I'll answer Judge Stanger by saying that I do not believe that it would protect them. The section of the Bill of Rights referred to by Judge Stanger says that "no person"—it's Paragraph 5—"shall be denied the enjoyment of any civil rights, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin." Now, in Committee Proposal 3-1, the militia section provides for organizing a militia, a state militia. I dare say that the state militia could be organized under that provision without denying to certain persons their civil rights on account of race, color, ancestry or national origin. But, at the same time, there could be what we might call separation according to races. As to whether that would be a denial of a civil right has been a question, a legal question which has been passed on by the courts, and some courts have said that separation is not a denial of civil rights. I think that answers Judge Stanger's question.

MR. STANGER: Your answer is that the civil rights clause would not protect the races in this particular clause?

MR. RANDOLPH: That's right.

FIRST VICE-PRESIDENT: Any other comments? Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President. I am going to speak very briefly. I think that Mr. Randolph has presented his case very well indeed, and I hope he'll believe me when I say in all sincerity that I think there should be a separate anti-discrimination clause in this Constitution that will protect people against discrimination as to race, creed, color and national origin. But I believe absolutely that in trying to push that clause into this section he is doing more harm to what he wants to accomplish than good. I am actually convinced that unless a clause of this kind is included in practically every other section of the Constitution, as I made the point this morning, by inference you might assume that you have acceded to discrimination in all clauses of the Constitution where it was not distinctly mentioned. So, in all sincerity, I think this clause included here will do the cause more harm than good.

FIRST VICE-PRESIDENT: Any other comments?

MR. SCHENK: We discussed this question very thoroughly in the Rights and Privileges Committee, including the phrase "including militia service." It was our considered judgment, after many hours of examination and debate, that the matter was covered without those particular words, and that if we put them in, we were then getting specific about one particular form of civil rights. There are hundreds of them and thousands of them, I guess. We felt that if we stated the broad general principle, the Legislature and the courts would then implement and interpret it. One of the criticisms of this clause at our hearings was that it was too broad and too general. We rather thought that because of that it was a compliment.

FIRST VICE-PRESIDENT: Judge Rafferty?

MR. RAFFERTY: I appreciate the desire to close this section if possible today, but I also feel that it is better to be late and to be right, than to be early and to be wrong. I had anticipated introducing an amendment to paragraph 5 of Article 1, Rights and Privileges, which refers to the denial of any civil right as follows:

> "No citizen shall because of his race, religion, color or national origin be deprived of any right, service or other thing of value, etc."

My view at the time was that the phrase "civil right," while its meaning is definitely understood in the law, may not perhaps cover the field as it should. I had decided, however, that the recommendation of the committee was ample. But in view of the amendment of Mr. Randolph, and my discussion of it with him in which

he said that paragraph 5 does not cover the matter, I would prefer to have a little more time to consider it. I have in mind the danger pointed out by Senator Van Alstyne, about putting it in one section or paragraph and omitting it in others. Hence, it might be desirable to change paragraph 5 so that there will be no question whatsoever, because I am definitely of the mind that this Constitution must protect every citizen regardless of his personal affiliation and regardless of his color or his standing or his national origin, or whatever it may be. He should definitely be protected as a citizen in these matters which have been discussed so much of late. Therefore, if we are to proceed to vote this afternoon I'm going to vote in favor of Mr. Randolph's amendment, although I have in mind the danger pointed out by Senator Van Alstyne.

FIRST VICE-PRESIDENT: Gentlemen, are you ready for the question? . . . Mr. Randolph.

MR. RANDOLPH: Do I have the right to close the debate?

FIRST VICE-PRESIDENT: You have that right, Mr. Randolph.

MR. RANDOLPH: Mr. Chairman, ladies and gentlemen of the Convention:

I think the purpose of my amendment should be very clear and I think the Convention here, through its delegates, should go on record as to whether past practices with respect to the state militia are to be continued under the new Constitution or whether they are not. Under our present system of organizing the state militia, the militia is segregated as to race. I cannot point out to you, ladies and gentlemen, the effect it has on young men of the segregated class who are forced to go and who desire to go into the militia, and who, if they go in, must accept a segregated status. I don't know whether you realize just what mental status it creates among those who are segregated; or whether you want to continue that mental status which breeds hatred, which breeds a great deal of danger in that members of a whole class of citizens begin to think that they are to be segregated on account of race, color, or something else. Here in the 1947 Constitutional Convention of the State of New Jersey, our State in which we take so much pride, it is our hope that we will take an advanced stand on the subject.

I do not fear, as Senator Van Alstyne has pointed out, that it would do more harm than good. What harm can it possibly do? If we're sincere in our vocal utterances about democracy, what harm can it do? I'm at a loss to know. I think, Mr. Chairman, that if we are to write a Constitution with which we expect to make a profound impression for democracy on the people of our State and on the people of this nation and on the people of this world, that it is incumbent upon us to include such a proposition as I have included in the amendment.

FIRST VICE-PRESIDENT: Are you ready for the question?

MR. CHRISTIAN J. JORGENSON: I would like to speak for the purpose of explaining my vote in opposition to Mr. Randolph's amendment. In the first instance, the whole problem seems to arise out of the use of one word in the Bill of Rights, and that is the word "civil." If that word is creating the problem, all that needs to be done is to amend paragraph 5 and eliminate the word. There isn't the slightest reason in the world to any thinking person here, I believe, for the adoption of this amendment and incorporating therein this phrase when we have it in the main body of our draft. Now, I say, contrary to my colleague from Middlesex, that anybody who takes the position here today and votes for this because of doubt, is doing an injustice to the very people whom we are trying to protect from discrimination. For that reason I am in opposition to Brother Randolph's amendment.

FIRST VICE-PRESIDENT: Are you ready for the question?

(Silence)

The vote is on Amendment No. 15 by Mr. Randolph. Those favoring it will call "Aye" and those opposed will call "No." The Secretary will call the roll.

SECRETARY *(calls the roll)*:

AYES: Barton, Barus, Brogan, Carey, Cavicchia, Clapp, Constantine, Cullimore, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Ferry, Gemberling, Glass, Hadley, Hansen, Jacobs, Katzenbach, Lord, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, Murray, O'Mara, Orchard, Peterson, P. H., Proctor, Pursel, Rafferty, Randolph, Sanford, Saunders, Schlosser, Smalley, Sommer, Stanger, Taylor, Wene, Winne—45.

NAYS: Berry, Cafiero, Camp, Cowgill, Dixon, Feller, Hacker, Holland, Hutchinson, Jorgensen, Kays, Lance, Lewis, Lightner, Lloyd, McGrath, Park, Paul, Peterson, H. W., Pyne, Schenk, Smith, G. F., Smith, J. S., Streeter, Van Alstyne, Walton—26.

SECRETARY: 45 in the affirmative and 26 in the negative.

FIRST VICE-PRESIDENT: The amendment having received 45 votes in the affirmative to 26 in the negative is hereby declared adopted.

Now, ladies and gentlemen of the Convention, we are way overtime, but there is one more amendment which has been proposed to this Executive Proposal and which I understand will take but a short time. The reason we are doing that this afternoon instead of tomorrow morning is because it will mean the shortening up of one day in the time required for the Committee on Arrangement and Form to act on it, because the Rules provide that they have to act within three days. I trust President Clothier will offer no objection, and unless there is some chorus of "Noes" from the mem-

bers of the Convention, then I would suggest that we take the additional time to take care of this one amendment. In such case, I will refer this Proposal to the Committee on Arrangement and Form in accordance with Rule 53 (e), and that would dispose of it as far as amendments are concerned until it comes back on third reading, when an amendment can be made only by unanimous consent of the Convention.

Do I hear any "Noes."

(Silence)

FIRST VICE-PRESIDENT: Then we will proceed.

MR. CAVICCHIA: When it comes back from the Committee on Arrangement and Form it is still open to amendment, but only as to phraseology.

FIRST VICE-PRESIDENT: Only as to arrangement and phraseology,—yes, when it comes back from there. But when it goes on third reading, it is subject to amendment of the substance by unanimous consent only.

("Go ahead" calls from the delegates)

FIRST VICE-PRESIDENT: We shall proceed. Amendment No. 17. The Secretary will read the amendment.

SECRETARY: By Mr. Eggers *(reading)*:

> "On page 3, paragraph 11, line 2, after the word 'proceeding,' insert the words 'in the courts.'
>
> Same page and paragraph, line 3, strike out the words 'or any of its political sudivisions.'
>
> Same page and paragraph, line 6, strike out the words 'or any of its political subdivisions.'"

FIRST VICE-PRESIDENT: Who speaks on the amendment? . . . Mr. Eggers.

MR. EGGERS: Mr. President and ladies and gentlemen of the Convention:

This is an amendment to the Executive Proposal which, I might explain, I consented to in committee, along with the other committee members. But after due reflection I have come to the conclusion that while I was one of the most zealous advocates of a strong executive in this State, I feel I cannot go along with the proposal such as is contained in this language. It not only makes a strong executive in the sense that we want it, but makes a strong executive who will have the right to infringe upon the legislative power of the State and who will have the right to infringe upon the judicial power of this State.

The language of the original paragraph adopted by the Executive Committee permitted the Governor the right to enforce the laws and to have the power, "by appropriate action or proceeding brought in the name of the State or of any of its political sub-

divisions, to enforce compliance with any constitutional or legislative mandate or to restrain violation of any constitutional or legislative power or duty by any officer, department or agency of the State or any of its political subdivisions." This was amended by Mrs. Barus yesterday in the following manner: "provided that this power shall not be construed to authorize any action or proceeding against the Legislature."

I submit to this Convention that the Governor of this State, no matter who he might be, should not have a constitutional power to infringe upon the legislative authority of this State or the judicial authority. As for political subdivisions of this State, our municipalities and our counties are creatures of the Legislature, and being such, the Legislature has endowed the Governor with sufficient statutory authority to come in without a violation of home rule, to any county or municipality that he desires, under the proper legislative investigatory power. Under the power granted by this paragraph, without this amendment, any Governor could come into the political subdivisions and by some sort of proceedings, the like of which we don't know—although it has been said it would probably be in the courts, and of that we have no assurance—he could come in and enforce compliance with any constitutional act or authority that was to be performed by any of the officials in the counties or municipalities.

Ladies and gentlemen of the Convention, I'm quite certain that all of us who desire a strong executive in New Jersey desire that he have those executive powers only within the limitations of the three branches of our government. It was never conceived by those who drafted the 1844 Constitution, or by those who drafted the Federal Constitution, that any executive should have the right to infringe upon the other branches of our government. By adopting this amendment, this Constitutional Convention is merely imposing upon the Governor those lawful limitations which he should have imposed upon him without affecting his right as a strong executive. I urge its adoption.

FIRST VICE-PRESIDENT: Any other comments?

MRS. BARUS: May I ask Mayor Eggers if he would consent to divide his motion? I see no objection—I certainly have none myself—to the first clause, adding "proceedings in the courts," or whatever the phrase was in bringing in the courts. That, of course, was implied in the wording, according to my understanding, and that obviously would be the place where the proceeding would be sought. I would accept that, and I think we could save time by a forced vote perhaps on that clause.

FIRST VICE-PRESIDENT: Mayor Eggers.

MR. EGGERS: I am very sorry, but I would like to have the amendment considered as a whole, in its entirety.

MR. SOMMER: While this amendment does not go as far as the amendment upon the same subject that I offered today, I shall support it.

FIRST VICE-PRESIDENT: Any other comments? . . . Mr. Schenk.

MR. SCHENK: I spoke with Dean Sommer in support of his position and I agree with his viewpoint.

FIRST VICE-PRESIDENT: Mrs. Barus.

MRS. BARUS: I am very reluctant to take time at this late hour, and I am not going to labor the point to any great extent. I would simply like to say that it seems to me that some of Mayor Eggers' statements are unjustified. I do not think that this provision, if it is maintained, would give the Governor the power to infringe upon either the Legislature or the courts in any way. I think that it only allows him to seek compliance with a constitutional mandate as written in this Constitution, or legal mandate as passed by the Legislature. He has absolutely no power to go beyond what is written in the law or what is stated in the Constitution. He cannot even take action himself to enforce such compliance or to prevent such violation. He must simply seek the authority of the court to do so.

In my opinion, these powers are only those which reasonably go with the chief executive officer of the State. I think there is a double safeguard there protecting the Legislature and also protecting any officer of any subdivision of the State, because the Governor can only go to the courts. I assume, of course, it would be done through the Attorney-General and that it could be done, not in any mysterious way, but by the ordinary judicial procedure such as a writ of mandamus or a writ of review or an injunction, or often by even an advisory opinion from the court. I urge that this amendment be defeated.

FIRST VICE-PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President, I would just like to make three points briefly. First, I think the first half of Mayor Eggers' amendment is excellent—where he puts in the words, "in the courts." That very definitely was the intention of the committee but he is defining it more accurately in his amendment.

Second, I don't think this paragraph infringes upon the powers of the judiciary or the Legislature in the slightest degree. In that I disagree with him, but I won't labor the point. It seems to me that is obviously the case.

Third, I think it's entirely up to this Convention. The Convention now has this decision before it—does the Convention think that the Governor of the State of New Jersey, who is the only per-

son who is elected by all the people, shall have only the right to force state officers and state employees to obey the law, or shall he have the right to force the officials of the political subdivisions to obey the law? That's your choice, clean-cut. Shall he be asked to enforce only the law at the state level, or can he go down to the counties and municipalities? That is the decision that you have before you right now, and I cannot, for the life of me, understand why it isn't fitting and proper that the chief executive of this State should not through the courts, as Mrs. Barus has so definitely pointed out, point out to any erring official that he is not faithfully obeying the laws of the State. I strongly urge the defeat of this amendment.

FIRST VICE-PRESIDENT: Any other comments? Mr. Lightner.

MR. LIGHTNER: May I rise for a point of order? Is there any way in which this Convention can vote separately, so as to give us an opportunity to accept the portions of this amendment which the chairman of the committee endorses and to vote "yes" or "no" on the rest of it?

FIRST VICE-PRESIDENT: Only by amending the amendment. If you amend the amendment so that you have it in two parts, then you can vote on the two parts, but it cannot be split under the Rule.

MR. LIGHTNER: Is it in order to offer an amendment from the floor? If so, I'd like to do it.

FIRST VICE-PRESIDENT: It is always in order, if you can prepare or state such an amendment clearly so that our Secretary can get it. As I understand it, the difficulty is that the time for the submission of an amendment is coming to a close tonight. Now, if we vote this in or out as a whole, it deprives the Convention of the opportunity of voting separately on the addition of the words "in the courts." However, we will not deprive you of the opportunity to amend this amendment if you wish.

MR. LIGHTNER: I offer such an amendment. Strike out the second two paragraphs of the proposed amendment.

MR. EGGERS: I understand that the amendment must be submitted in writing.

FIRST VICE-PRESIDENT: Due to the lateness of the hour, Mr. Eggers, the Secretary is copying that amendment. . . . That is right. According to the Rules it ought to be either in longhand or—and if you insist we will ask Mr. Lightner to so write it. But in view of the fact that we are trying to save time, our Secretary has written it down. Do you have it, Mr. Secretary?

SECRETARY: Yes. Strike out paragraph 2 and—

MR. EGGERS: I'll waive the writing of it. It's all right.

MR. LIGHTNER: Why not give us an opportunity of voting in favor of the addition of the words "in the courts."

FIRST VICE-PRESIDENT: We'll discuss the amendment to the amendment. Is there any discussion on the amendment to the amendment?

MR. EGGERS: Have I the floor, Mr. President?

FIRST VICE-PRESIDENT: You have the floor, yes.

MR. EGGERS: In reference to the remarks of Chairman Van Alstyne and the subsequent amendment which was made to my proposal—to my amendment—the Chairman made it appear to this Convention that by so voting upon my amendment we were depriving the Governor of this State of the right to enforce the law regarding the political subdivisions of the State.

I want to assure every member of this Convention that there was never such an intention. But, under the language of this paragraph the Governor is infringing upon the right of the Legislature, because municipalities and counties are creatures of the Legislature, and the Legislature has already empowered the Governor of this State, a few years ago, to investigate and enforce the law in any municipality or any political subdivision in this State. But when our committee was meeting and conceiving the idea of a strong executive, we conceived the idea of a strong executive with regard to the welfare and the regulation of this State and not of all its municipalities, except as such power would be conferred upon the Governor by the Legislature.

If the Legislature sees fit at any time in the future to enlarge upon the powers which they have already given the Governor, he then has the right to go in and exercise those powers. But this is merely a limitation upon his rights to invade the judiciary and invade the legislative power of this State. And that will be my closing argument.

FIRST VICE-PRESIDENT: Are you ready for the question of voting on the amendment? And is it clear what we are voting on?

(Chorus of "Noes")

FIRST VICE-PRESIDENT: The amendment to the amendment. Is it clear? Does anybody want to raise a question?

MR. ORCHARD: I understand that we are now voting on the first paragraph.

FIRST VICE-PRESIDENT: Will the Secretary read the amendment to the amendment and tell us what it does?

SECRETARY: Strike out paragraph 2 and strike out paragraph 3.

FIRST VICE-PRESIDENT: The question is on the amendment to the amendment.

MR. EGGERS: Will the Secretary or the President state the effect of the amendment upon the original amendment?

SECRETARY: It strikes out paragraph 2 which reads:—"Same page and paragraph, line 3, strike out the words 'or any of its political subdivisions.' " And it strikes out paragraph 3: "Same page and paragraph, line 6, strike out the words 'or any of its political subdivisions.' "

MR. EGGERS: As I understand it, if the amendment to the amendment is adopted by this Convention, the original language would prevail except the words "in the courts" would be incorporated in it. Is that so?

FIRST VICE-PRESIDENT: No. Then we would vote on it. We will vote first on the amendment as it was put in.

MRS. BARUS: Mr. Chairman: If this passes, the effect of it is simply to vote on the two main points separately, is it not?

FIRST VICE-PRESIDENT: We are voting on the amendment to the amendment, Mrs. Barus. An amendment has been offered to the amendment.

MRS. BARUS: Well, then, isn't Mr. Eggers' statement correct? If this amendment to the amendment passes, the language stands, except for adding "in the courts." Is that right?

SECRETARY: Let me read all that remains.

MRS. BARUS: I thought you said "no" to that.

FIRST VICE-PRESIDENT: It's the amendment to the amendment.

SECRETARY: If the amendment to the amendment is adopted here's what is left:—

MR. ORCHARD: I don't think what we are doing is in the interest of saving time. It has been suggested that possibly we could vote first on Judge Eggers' suggestion to include the words "in the courts," and then immediately thereafter vote upon his other two proposals.

FIRST VICE-PRESIDENT: There has been an amendment offered, Mr. Orchard, and the Rules require that any number of amendments can be offered to an amendment. So we are trying to follow the Rules and get Mr. Lightner's question settled now.

SECRETARY: Let me read what will be left.

FIRST VICE-PRESIDENT: All right. Read what will be left if Mr. Lightner's amendment to the amendment is adopted.

SECRETARY: Here's what's left: "On page 3, paragraph 11, line 2, after the word 'proceeding' insert the words 'in the courts.' " That's what is left if that motion prevails.

FIRST VICE-PRESIDENT: Now, you are voting on the amendment to the amendment. Are you ready for the question?

(Silence)

Are you satisfied, Mr. Eggers?

MR. EGGERS: Then, as I understand it, we revert back to the original language.

FIRST VICE-PRESIDENT: That's right. If this is lost it will go right back to your original language.

MR. EGGERS: Then you vote on my original proposal.

FIRST VICE-PRESIDENT: Then we vote on your original proposal. If this is carried, then we vote on your original proposal as modified by this.

Now, we are voting on the amendment, and I will ask for a vote by voice, if that's agreeable. All those in favor of the amendment to the amendment please say "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed, "No."

(Chorus of "Noes")

FIRST VICE-PRESIDENT: Hands, please? Those in favor?

(A minority of the delegates raised their hands)

FIRST VICE-PRESIDENT: Those opposed?

(A majority of the delegates raised their hands)

FIRST VICE-PRESIDENT: The motion is lost.

MR. VAN ALSTYNE: May we have a roll call?

FIRST VICE-PRESIDENT: We will have a roll call on the amendment to the amendment.

SECRETARY *(calls the roll):*

AYES: Barus, Carey, Cavicchia, Clapp, Constantine, Emerson, Feller, Jacobs, Lewis, Lightner, Miller, G. W., Miller, S., Jr., Moroney, Murray, Orchard, Paul, Peterson, H. W., Peterson, P. H., Pursel, Randolph, Saunders, Smith, G. F., Smith, J. S., Stanger, Van Alstyne, Winne—26.

NAYS: Barton, Berry, Brogan, Cafiero, Camp, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Ferry, Glass, Hadley, Hansen, Holland, Hutchinson, Jorgensen, Katzenbach, Kays, Lance, Lloyd, Lord, McGrath, McMurray, Milton, Montgomery, Murphy, O'Mara, Proctor, Pyne, Rafferty, Sanford, Schenk, Schlosser, Smalley, Sommer, Streeter, Taylor, Walton, Wene—42.

SECRETARY: 26 in the affirmative, 42 in the negative.

FIRST VICE-PRESIDENT: The amendment to the amendment, failing to receive the necessary 41 votes, is hereby declared lost.

Now, if it's your pleasure, we will vote on the amendment to the main question, as proposed by Mr. Eggers. Are you ready for the question?

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: All those in favor—I will take a voice vote to start with—all those in favor signify by saying "Aye."

(A Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed, "No."

(Chorus of "Noes")

FIRST VICE-PRESIDENT: Hands, please. All those in favor raise their hands.

(A majority of the delegates raised their hands)

FIRST VICE-PRESIDENT: Opposed.

(A minority of the delegates raised their hands)

FIRST VICE-PRESIDENT: The motion is declared carried. The amendment is approved.

(Several delegates made a motion to adjourn)

FIRST VICE-PRESIDENT: May I make an announcement, please?

I wish to recognize Senator Van Alstyne, and he is going to set up a milestone very quickly.

MR. VAN ALSTYNE: I move that Executive Proposal No. 3-1, as amended, be referred to the Committee on Arrangement and Form.

FIRST VICE-PRESIDENT: I assume there are no other amendments to be offered?

(The motion was seconded by a number of delegates)

FIRST VICE-PRESIDENT: It has been moved and seconded that the Executive Proposal on Executive, Militia and Civil Officers be referred to the Committee on Arrangement and Form.

All in favor signify by saying "Aye."

(A Chorus of "Ayes")

FIRST VICE-PRESIDENT: The motion is carried.

The Committee on Arrangement and Form will meet for two minutes right away. Where's Mr. McMurray?

MR. McMURRAY: Right here.

FIRST VICE-PRESIDENT: The chair would like to express its appreciation of the tremendous patience, and I mean that strongly, shown by the delegates by remaining here this afternoon until this late hour.

(The session adjourned at 5:20 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION

Thursday, August 14, 1947

(Morning Session)

(The session started at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and spectators to rise while the Reverend Jasper S. Hogan, Pastor Emeritus of the First Reformed Church of New Brunswick, pronounces the invocation.

REVEREND JASPER S. HOGAN: Almightly God and Father, as we assemble here this morning we would remember the statement that is given to us in Thy word: "If any man lack wisdom, let him ask of God Who giveth to all men liberally and upbraideth not, and it shall be given him." We have asked Thy wisdom in the days of danger, and now we ask Thy guidance in the time of peace. Our fathers sought Thy direction and tried to follow it. We have inherited benefits from what they have accomplished. We realize we have inherited responsibilities as well.

We are thankful to Thee for the State in which we live, for the opportunity that is given to Thy servants in this body to serve Thee. Grant individual guidance in response to the desire of each heart, and may we realize that there is a right way as well as a wrong way which all these things committed to us have. May that be done which future generations shall have occasion to praise because these, Thy servants, are acting in harmony with Thee as they seek to realize that they are a part of Thy great work upon earth, that Thine is the kingdom and the power and the glory forever. Amen.

PRESIDENT: The first item on the docket is the reading of the Journal. May I ask your pleasure?

MR. JOSEPH W. COWGILL: I move it be dispensed with.

FROM THE FLOOR: I second it.

PRESIDENT: It has been moved and seconded that the reading of the Journal be dispensed with. All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the*

roll and the following delegates answered "present"):

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present, sir.

PRESIDENT: The Secretary reports that a quorum is present.

May I inquire if there are any petitions, memorials or remonstrances to be presented at this time? Mr. Park.

MR. LAWRENCE N. PARK: Mr. President, I think this is the proper time for a remonstrance. I invite your attention to the minutes of Tuesday, August 12, which has the heading of 11-53A, wherein the remarks of Senator Van Alstyne are reported and he says this:

> "It seems to me we are going into the rounds of legal sophistry and fee lawyer business."

Now, as I understood it, he said "sea" lawyer—s-e-a. I think, therefore, it has been reported incorrectly. At the time I thought it was the naval equivalent of what we called in the Army "guard-house lawyers." Now, if he said "sea lawyer," the record should show it. If he said "fee lawyer," then I would like to protest and say that all of us at home at least will expect to get a fee.

(Laughter)

MR. DAVID VAN ALSTYNE, JR.: Sustained.

PRESIDENT: We will have it corrected.[1]

Are there any other remonstrances?

(Laughter)

Are there any motions or resolutions to be adopted at this time? If not, ladies and gentlemen, we will proceed with the consideration of amendments to the Legislative Proposal. Mr. Dixon's Amendment No. 1 is now under consideration. I will ask him if he would like to take the floor.

MR. AMOS F. DIXON: Mr. President, the discussion is under way. I would not wish to add anything at the present time until the discussion goes further. I think that the amendment should be open for continuation of the discussion, if you please.

[1] The text has been corrected. See p. 255.

PRESIDENT: It is open for discussion.

MR. DIXON: I have a resolution which I would like to hand the Secretary to read, if you please.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "*Resolved* that when today's session of this Convention adjourns, we agree to meet at 10:00 A. M. on Friday, August 15, 1947, and close the session at 1:30 P. M., and that we next meet at 11:00 A. M. on Monday morning, August 18, 1947."

FROM THE FLOOR: I wish to second it.

MR. DIXON: I have a number of requests to close at 1:30 P. M. tomorrow so that a number of the delegates who have had work piling up in their offices can get rid of it tomorrow afternoon. And I think, also, that after this stretch of hard work in the heat, many of them might wish to get a fair start toward their country rendezvous rather early in the afternoon. I just want to be sure that the delegates appreciate that we are cutting out tomorrow afternoon, and make sure that they agree with us. If they don't, then if they will vote this down—the closing hour—we will amend it to whatever the delegates wish.

PRESIDENT: May I inquire the pleasure of the delegates with reference to this. Is there any discussion on this resolution?

MR. A. J. CAFIERO: I would like to second the resolution proposed by Delegate Dixon because, by its adoption, it will at least enable me to get home before Saturday morning.

PRESIDENT: Any further discussion?

MR. WILLIAM L. HADLEY: Mr. Chairman, what is the status of our program now? Is it at all possible that we should not meet tomorrow? I thought if we didn't have to meet, why not adjourn through the day until Monday?

PRESIDENT: The order of business, I think, Mr. Hadley, does not make that possible.

Is there further discussion?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FOOR: Question.

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Minority of "Noes")

PRESIDENT: All in favor please raise their hands.

(Majority of hands)

PRESIDENT: Opposed?

(Minority of hands)

PRESIDENT: The resolution is carried.

May I inquire at this time if there are further amendments to be offered to any of the Articles? . . . Mr. Jorgensen.

MR. CHRISTIAN J. JORGENSEN: It has always been easy for a fellow to spend money when he has his hand in somebody else's pocket, and with the idea in mind of trying to curb the legislative hand from dipping too frequently into the municipal and county pocket, I offer this resolution.

PRESIDENT: That is an amendment to what proposal, Mr. Jorgensen?

MR. JORGENSEN: Proposal No. 2-1.[1]

PRESIDENT: Are there further amendments to be offered at this time? Senator Van Alstyne.

MR. VAN ALSTYNE: I offer an amendment to Proposal No. 1-1 which concerns itself with the question that the Legislature will put it up to the people every 25 years as to whether or not they would like to revise the Constitution.[1]

PRESIDENT: Are there further amendments to be offered? If not, we shall proceed with the discussion of Mr. Dixon's Amendment No. 1 which I shall read:

> "*Resolved,* that the following amendments to the above proposals for a new State Constitution be agreed upon."

That's Proposal No. 2-1 and Proposal No. 2-2.

> "Amend the preamble to Committee Proposal No. 2-1 on page 1 by substituting a period for the comma after the word 'Constitution' ending on the 4th line and strike out the remainder of the paragraph which reads, 'to which shall be added Alternative "A" or Alternative "B" of Committee on the Legislative Proposal No. 2, whichever shall be adopted by the people, as Section VII, Paragraph 2, of the Legislative Article.'
>
> Amend Committee Proposal No. 2-1 on page 6, Section VII, paragraph 2, by striking it out entirely.
>
> Amend supplementary Proposal No. 2-2 by striking it out entirely."

The amendment is now open for discussion . . . Colonel Walton.

MR. GEORGE H. WALTON: Mr. President and fellow delegates:

I think basically there should be no mention in our Constitution of the subject of gambling except, perhaps, a prohibition. However, just a few years ago, we had a referendum on the subject of pari-mutuel betting. It so happened that I was opposed to pari-mutuel betting. I not only spoke against it, but I worked hard against it. I belonged to a number of organizations and committees that were formed at that time to oppose the referendum, and I did everything I could to defeat pari-mutuel betting. However, I was one of the minority. The people of this State spoke. They spoke, as I recall, in emphatic terms, and there was nothing that I could do other than to bow to the expressed will of the majority.

This is a Convention to revise our Constitution. Accordingly, I

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

do not believe that it is proper for us who, for example, might be classified as opposed to pari-mutuel betting, to try to take this opportunity to express in the Constitution our opinions on subjects which the people have so recently spoken about in rather emphatic terms. I think it would be a great mistake were we to endeavor to leave it out of this Constitution, or rather, shall I say, change the status quo as to pari-mutuel betting. I do not believe that this is the time nor the place to make this change.

As to the subject of further liberalizing the gambling clause in the State Constitution, I am also inclined to feel that that is a subject which should not be taken care of by this Constitutional Convention. Certainly, I think our amending clause is going to be liberalized, or at least there is a good likelihood. Consequently, I think any further changes in gambling should perhaps be put off to another year so that people who are going to vote on this Constitution will not be basing their vote on whether we shall or shall not have bingo.

Accordingly, it is my feeling that we should maintain the status quo, and I am, consequently, intending to vote against Mr. Dixon's resolution.

(At this point, President Clothier relinquished the chair to Mrs. Marie H. Katzenbach, Second Vice-President.)

MR. DOMINIC A. CAVICCHIA: Mr. President—or Madam President, I should say.

SECOND VICE-PRESIDENT MARIE H. KATZENBACH: Yes, Mr. Cavicchia.

MR. CAVICCHIA: The previous speaker has said something with which, until a few days ago, I think I was in agreement. This question as to whether the Constitution should embody a provision concerning gambling has given me personally much concern, and I know it has given the Committee on the Legislative, of which I am a member, much concern. But recently I have thought this—that we had public hearings, and, if those public hearings amounted to anything at all, we certainly should consider the sentiment adduced at those hearing by great bodies of people through their representatives. And I have finally rather come to the conclusion that in offering these alternatives, we offer the people no real choice as between gambling or no gambling as a constitutional feature. We offer to the people under Alternate A, restricted gambling. We offer to the people under Alternate B, liberalized gambling surrounded by certain restrictions.

But my mind goes to our several public hearings where there appeared before us several pastors of churches who maintained that they regard gambling as immoral and that, in that expression, they were presenting the sentiment of the people of their congregations

or of people associated with organizations of churches which they represented. We had other witnesses before us who insisted that gambling was not immoral and that they represented a large segment of the people who accepted that view.

It is very difficult to arrive at a conclusion based upon those presentations, except it be reasoned in this wise: that if there are hundreds or thousands or hundreds of thousands of people in this State who look upon any form of gambling as immoral, and that if on election day we give to them no alternative but to vote for gambling or more gambling, don't we, in effect, put each of those people in the position of saying, "Well, this Constitution, other than the feature respecting gambling, is a fine Constitution; but if I vote for it, I must vote for gambling of some sort"—with the result that those people who have the right of franchise will feel obliged not to vote at all, because in voting they will be voting for gambling in some form.

Can we afford, as a Convention, to ignore that body of sentiment? Can we afford to so frame our Constitution that in effect we force those hundreds of thousands of people to disfranchise themselves? That's the question in my mind.

Now, Madam President, going to the matter of procedure, it seems to me that whether a member of this Convention is in agreement with the ultimate objective of this amendment or not, it behooves the members to vote for this amendment because, if the amendment carries, it will clarify the issue to this extent—that it removes any matter concerning gambling, and then the Convention starts from scratch to consider any other proposals that may be addressed to this particular subject.

Without having made up my mind as to the ultimate objective, therefore, I think I shall vote for this amendment.

SECOND VICE-PRESIDENT: The chair recognizes Dr. Clothier.

MR. CLOTHIER: Madam Chairman, ladies and gentlemen:

I have asked Mrs. Katzenbach if she would take the chair in accordance with our Rules in order that I might have the opportunity to go on record with reference to my position on Mr. Dixon's amendment.

I wish to say that I associate myself with him and with those who agree with him in the thought that gambling does not belong in the Constitution. I realize that there are many considerations to be borne in mind, as Mr. Cavicchia has pointed out, but as a matter of basic principle that is my conviction. From the point of view of what I am convinced is the long term public welfare, I wish it were possible to declare gambling unconstitutional and make such declaration effective, because history has shown that wide-open

gambling, especially organized gambling, has an impairing effect upon integrity and character. But that is not what we are discussing this morning.

A recent noble experiment has demonstrated that you cannot legislate virtue, and that virtue, so-called, must spring from within rather than from without through coercion. As a practical matter, consequently, it is my belief that any attempt to control gambling in this Constitution, or to prohibit it, will, in the end, be futile and meaningless, and possibly dangerous as the prohibition amendment proved to be.

In the long run, the people should have the right to say what they wish to do or wish not to do in the matter of gambling, as in everything else, and in my judgment this Constitution should place no restriction upon their freedom to do so. If this is the case, the matter of gambling, or no gambling, or controlled gambling, should be left in the hands of the Legislature for statutory action.

It has been said rather eloquently before the Committee on the Legislative, that this will lead to wide-open gambling throughout the State—something, of course, which none of us desire. But if the people desire wide-open gambling throughout the State, they should have the right to say that it shall be permitted through their representatives in the Legislature. Personally, I have sufficient confidence in the people of New Jersey to feel that once awakened to the danger, they will not permit their representatives in the Legislature to legalize wide-open gambling. But whether they desire wide-open gambling, or whether they desire to prohibit it completely, or whether they desire to permit gambling on some controlled basis, I believe it is a basic principle that the people should have that right through their representatives in the Legislature, and that this Constitution should not inhibit that right.

The purpose of the Constitution is to guarantee the liberties of the people, and not to restrict their freedom of action. Because of these considerations, Madam Chairman, I feel most strongly that gambling should not appear in the Constitution, and I urge the delegates to support Mr. Dixon's amendment.

SECOND VICE-PRESIDENT: Mr. Ferry.

MR. LELAND F. FERRY: Madam President, ladies and gentlemen:

Personally, I don't like the word gambling. It's a harsh word. I don't like to think that when I sit down at a simple bingo game, I am a gambler. But I want to say that I heartily subscribe to the words of Dr. Clothier. I honestly believe that if we sat here for another 104 years we could never absolutely prevent gambling in this State.

We have gone through a long process of shadow-boxing with

this question. To some extent it is absurd. You, for instance, can go down to the track at Monmouth and make a bet, and you are a perfectly law-abiding citizen. That isn't gambling, perhaps, under our law. But if you attempt to telephone that bet in, you are breaking the law.

During this past summer I was at a carnival, less than a hundred miles from here, in this grand State of New Jersey, where they had roulette wheels, bird cages with dice in them, open to the public. Children were there. Police were there, but they were regulating traffic. Now, that was for a fraternal organization. Does that mean it's not gambling when it's done for a purpose such as that?

I have heard it said that if we turn this over to the Legislature, the Legislature would be corrupted, because the great gambling interests with their huge slush funds behind them would corrupt our Legislature. I don't think that is true.

I remember when prohibition was repealed, we were told by a certain group of people, "Why, this State and the country will be just one situation of rum, riot and rebellion." But what happened in New Jersey? Our Legislature set up the Alcoholic Beverage Commission, and I defy anybody to point to anything cleaner or more efficient than that particular department. It has met the problem and it has handled it well.

Now, I am not an advocate of gambling, nor am I against it. But I am against hypocrisy. I am against anything that tends to break down respect for law, and certainly that does, in my opinion.

I firmly believe that we should leave this in the hands of the Legislature. We should not resort to any ultimate proposals which in themselves, I think, are unfair. I don't think, as some speaker has pointed out, it gives an opportunity to those who are opposed to all forms of gambling to vote on that question.

Now, we were elected to handle this problem ourselves. I say, let's bring it out into the sunlight and wrestle around with it and come back with a complete answer. And I think the only answer is that it is something to be handled by our Legislature, and by the Legislature alone.

I, therefore, am in favor of having no mention made in our Constitution concerning gambling.

SECOND VICE-PRESIDENT: The chair recognizes Mr. Cowgill.

MR. COWGILL: Madam President and members of the Convention:

I rise for the purpose of opposing the amendment offered by Assemblyman Dixon. It seems to me that some of the speakers have lost sight of the history of gambling in New Jersey. In 1899 the people adopted the anti-gambling amendment to destroy the in-

fluence of the race tracks in Gloucester City and in my own county of Camden, and that at Guttenburg.

The Legislature at that time was slavishly following the dictates of the promoters of those tracks. And while I am satisfied in a great measure to trust the Legislature—briefly, I have been a member of the Legislature myself—it seems to me that in the light of the history of this question in New Jersey, it is something that should be mentioned in our Constitution.

I realize the practical problem that has been advanced by Mr. Cavicchia—that a great many of our citizens don't want to be put in a position of voting for any form of gambling. Now, it seems to me that this thing can be worked out practically. At the risk of possibly being out of order, I would suggest to the members of this Convention that they examine the amendment offered by the Senator from Burlington. It seems to me that if that is adopted, no one will have to vote in favor of gambling. At the same time, the Legislature will be permitted to extend gambling, provided it is approved by the people at a referendum.

I don't like these alternatives that the committee has proposed, and I propose to vote against them. But I certainly think we will be ducking the issue if we say that we shall not mention this terrible subject in our Constitution. I urge that this amendment be defeated and that at the proper time due consideration be given to the amendment of the Senator from Burlington.

SECOND VICE-PRESIDENT: The chair recognizes Mayor Eggers.

MR. FRANK H. EGGERS: Madam President, fellow delegates:

I rise in opposition to Mr. Dixon's amendment, and yet I have a full conception of the principles that will compel the other delegates to state their position. We must realize that we, in this Convention, have been sent here to perform a certain duty to the people of the State of New Jersey, and we must face that duty fearlessly.

I wonder how many of the delegates assembled here realize the inherent danger contained in Mr. Dixon's proposal to eliminate gambling entirely from the Constitution of this State? To eliminate that by the adoption of this proposal would put all of the power to regulate gambling in this State in the Legislature and would revert this State back to the conditions years ago that Mr. Cowgill spoke about, when it required a gambling amendment to clean up the outrageous conditions which were taking place in the Legislature.

Do you realize that if we place this power entirely within the Legislature, we are going to create in that Legislature a vortex of confusion; that we will create year after year a contest between

the advocates of wide-open commercial gambling and those who oppose any gambling whatsoever?

We are going to make the Legislature the happy hunting ground for the professional lobbyist. We, as delegates, must realize that the adoption of this amendment would nullify the will of the people as expressed in 1939, when they voted to permit pari-mutuel betting at races. At that time the people expressed their will, and they do not expect this Convention to nullify that will by the adoption of an amendment which would prohibit any mention of gambling, and place all of the power in the Legislature.

The people today are clamoring for an opportunity to vote on the extension of gambling, if you call it that, by the playing of bingo and other games of chance, conducted by recognized fraternal and veterans' organizations. To say that we are denying the people the right to vote on gambling by the submission of these alternative proposals which the Legislative Committee has submitted to this Convention, is to deny the issue, because the people of New Jersey in 1939 expressed their opinion on the expansion of gambling, and today you are giving them the right to express their opinion on whether gambling should stay *in statu quo,* as they stated in 1939, or be expanded to include bingo and other games of chance.

We cannot sit here as delegates and deny the people that right by saying we must also give them the right to say that there shall be no gambling whatsoever. To say that is attempting to deceive the people. It is attempting to accomplish a "no gambling" amendment by splitting the vote of the people, and by deception and hypocrisy. And I do not believe for one minute that we, as delegates, want to so propose to the people that they shall be the victims of hypocrisy on this issue.

The people of today, of the veterans' organizations, of religious organizations, want to play bingo, and they want it legalized. The only way to legalize it is through the will of the people expressed on a vote on the Legislative Committee's alternative proposals, and I urge that this Convention put their faith in the people of New Jersey.

We do not say the Legislature will be corrupt, as Judge Ferry has said. We do not charge anything against the Legislature. But we do say that to put this onus upon the Legislature year after year will put a responsibility upon them which they will be unable to perform.

(President Clothier resumed the chair)

PRESIDENT: Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President, and ladies and gentlemen:

In view of the fact that reference has been made to a proposal introduced by me, and apparently that proposal has not yet been distributed to all of the delegates, I would like at this time to call attention to that proposal. May I just preface with a few remarks?

First, I agree with what has already been said that basically and fundamentally gambling is not a proper constitutional subject matter. If we were going to write a Constitution for a newly created, virgin state, gambling would not be mentioned therein any more than the common law crimes, such as murder, rape, and the like, or the statutory crimes which are not mentioned. Why should we dignify gambling with some constitutional recognition? Certainly we should not.

We are met, however, in New Jersey with a precedent. In 1844 our forefathers incorporated in the Constitution an anti-gambling clause. Again in 1897 an amendment—anti-gambling amendment. Again, as late as 1939, a further anti-gambling amendment. The people of New Jersey have spoken three times constitutionally that they want an anti-gambling provision in their Constitution. We cannot ignore that mandate of the people.

At the present time only one kind of gambling is authorized in New Jersey, and that is pari-mutuel gambling, in which the State of New Jersey participates, and I understand the revenue therefrom has been pledged to amortize veterans' housing bonds.

The people having so mandated so recently—within the last decade—and our government having committed itself by virtue thereof, I say to you in all candor that in my opinion the people of New Jersey do not expect that this Convention will ignore that mandate or ignore the credit or the good faith in back of the commitments of the State of New Jersey.

Bear this in mind, Mr. President, ladies and gentlemen,—we have in New Jersey only one kind of gambling, and that is by virtue of the voice of the people of New Jersey. How dare we, then, say there should be any other kind of gambling except only by and through the voice of the people of New Jersey?

Now, if this subject is a matter of legislation, what then do we want to accomplish? What are we seeking to accomplish today? We start with the premise that there must be some constitutional recognition. Do we not, then, want a provision in our Constitution that there shall not be any gambling authorized in New Jersey except as authorized by the people? Wouldn't that be a fair premise?

My proposal[1] reads as follows:

> "No gambling of any kind shall be authorized by the Legislature unless the specific kind and nature thereof shall have been or shall hereafter be submitted to and authorized by a majority of the votes cast by the people at a general or special election."

[1] Amendment No. 9 to Committee Proposal No. 2-1.

Now, what does that do? That leaves our anti-gambling constitutional provision just exactly where we find it today. The anti-gambling laws of today will remain unchanged. The subject of gambling is referred to the Legislature where it belongs, but not with the door wide open.

If Assemblyman Dixon's amendment passes, I predict that each and every one of us will be accused, and perhaps rightly so, of sidestepping a responsibility, of ducking an issue, of not being competent to solve this problem. I predict more than that. I predict that if that proposed amendment passes there will be released immediately in the State of New Jersey a flood of propaganda—no constitutional prohibition against gambling, the doors are wide open, there must be ulterior motives. There will be shouting from the roof tops that the Legislature is going to Reno-ize the State of New Jersey. Certainly we cannot suffer such a situation to occur, and you and I, we all know, the effectiveness of propaganda.

Now, if my proposed amendment should meet with your approval, we leave the anti-gambling situation where we find it. We refer the gambling question to the Legislature, where it belongs, but with restrictions. We say the Legislature may frame any question or questions relating to a modification of our gambling laws, and submit those questions to the people for a vote thereon by the people.

I submit that there is much merit in the argument that it is somewhat hypocritical to provide for betting at the race tracks and make criminals out of those who may engage in a social game of cards or bingo. To say the least, that is incongruous.

In any event, under my proposal the Legislature has the right to frame the question or questions to be presented to the people for a vote thereon, and it comes right back to the people to decide whether or not they want further modification. Is not that the answer to our problem today? Can we not include such a provision in the Constitution that merely provides, in substance, that the Legislature has the right to consider this problem: There shall be no more gambling in New Jersey, except what has already been authorized by the people, or except what may in the future be authorized by the people. The Legislature can only enact such laws relating to gambling, to become effective only if the people so vote at a general or special election.

With those few remarks, Mr. President, I close . . . I did want to call your attention at this time to the proposal which apparently has not yet been distributed to the delegates.

PRESIDENT: Mr. Hadley.

MR. HADLEY: Mr. President, I would like to be counted in on this debate. I am very sincere in what I am saying, and I want

to endorse Mr. Dixon's amendment and state that I will vote for it, and I will be very happy to vote for it.

I do not believe that gambling should be mentioned in our Constitution.

PRESIDENT: Mr. Cullimore.

MR. ALLAN R. CULLIMORE: Mr. President and fellow delegates:

I had not thought to be heard upon this particular subject, but it seems to me that in all fairness most of us should be heard, and that we should state our positions very definitely and very squarely. After all, when the people come to evaluate what we did or left undone, I think to some extent their view will be colored by the expressions, coupled with the personalities, of the members of this Convention.

And so I do feel it incumbent upon me to speak strongly in favor of Mr. Dixon's amendment. It seems to me quite clear that we are, perhaps, doing something which we have no right to do at a Constitutional Convention. After all, some of us—I think most of us—subscribe to a body of principles which are even more fundamental than the State Constitution of New Jersey. They go back, some of them, 2,000 years. That is the basis, perhaps, of most of our thinking with respect to these moral, so-called, or quasi-moral issues. Perhaps we can all go back to the time of Moses. Perhaps some of us can go back to the Sermon on the Mount, and we find there something which is perhaps moral, which is definitely a thing that I think very specifically, at least in my case, colors my thinking with respect to issues of this kind. And I see no mention there of gambling in any of its forms.

I think it is a question, then, of conscience, of the individual conscience of each one of us with respect to gambling, and it seems to me that if there is anything that the Constitution of the State of New Jersey should do, it is to reserve the right to man to do and act as he pleases and under the dictates of his own conscience.

PRESIDENT: Senator Stanger.

MR. FRANCIS A. STANGER, JR.: Mr. President and fellow delegates:

I shall vote for the Dixon amendment, not because I think it is the best way to handle the situation, not because I have been very much impressed by what Mr. Cavicchia, Colonel Walton, and Senator Lewis have said on the subject, but because the issue as now framed presents to me the opportunity to vote against gambling, which I think is a moral—strongly moral—and a very, very severe economic matter before the people.

I think it's a great mistake to permit gambling to exist through constitutional or legislative authority. It certainly is unfair as it

is now constituted. It doesn't seem to me within the realm of fair dealing to make something legal on one side of the street and illegal on the other side of the street. That is the situation which now exists. And as to the economic features, if my friends would merely consult some of the business men and professional men who have no personal interest, living near the race track, they will understand what I mean about the economic features.

But I have another reason, Mr. President, why I am voting in favor of this amendment, and that is, because it permits us to vote against the submission of any alternative proposal to the people. I thought as I sat here—we had numerous disputes before our committee, we had arguments in making proposals and opposing proposals, but it never occurred to the members of the Rights and Privileges Committee that we should side-step our responsibilities and turn them over to the people, for them to decide in this manner.

I feel, Mr. President, that the people of the respective counties of the State of New Jersey have chosen us because they think we are competent to deal with the subject matters before this Convention. And I think it's wrong for us to turn a matter of this kind, on alternative proposals, back to the people. I think that we should stand up, as wisely as wisdom is given to us, and with such courage as we can command, and say to the people, "This Constitutional Convention favored so and so," whichever side it may be. I am hoping that when I return home after my work here is completed, I can say to the folks, "Here is the Constitution as 81 delegates have decided upon it." I hope that there are no loop-holes. I hope that we don't have to go back with any excuses. I hope that we can go back with whole-hearted arguments to the people who have confidence in us, and say to them, "Here is a good document. We hope you will support it."

So, Mr. President, for the reasons I have advanced, I am certainly voting in favor of the amendment, although I hope I will not be charged with being inconsistent if I should vote for another one later.

PRESIDENT: Judge Carey.

MR. ROBERT CAREY: Gentlemen and fellow delegates:

I am going to be brief. I want to say to you at the outset that I am not here holding any interest of any sort, kind, or character in any gambling anywhere in the world. I am not interested in racetracks. I have never laid eyes on any one of three New Jersey race tracks. I am not interested in bingo. I don't like bingo. I am interested in the principles that are involved here. I was sent here, I take it, as a representative from my county, the second largest county in the State, to write a Constitution that would express it-

self as being the conception of the people of this State and of what a Constitution should be.

My thought was attracted to this gambling problem which, to my mind, is after all, probably the most difficult problem that we have to meet and solve, even in this Convention.

I saw in the *New York Herald Tribune* of this morning, on the first page, the first article, "The grand jury of Queens County, in the State of New York, yesterday said this: Gambling is way beyond our present methods of regulation. We are not reaching it at all. The streets are full of gamblers. The bookies are on every street corner and in every barber shop and everywhere else they can be." In the report in this morning's *Herald Tribune* the grand jury finds that $1,000,000 a day is being spent on the race tracks in New York, but $6,000,000 a day are being spent through the bookies on the streets in New York, betting on the same races.

In the one instance, New York gets a return, just as we do, out of the tracks, getting $28,000,000 a year in taxes from the legislation. But there is $100,000,000 which the grand jury says was collected by the small-time politicians and others, who operate on the street. We have them all through New Jersey in the same fashion, right today. They say the State is losing its share of the profits on what is being distributed in dishonest places, and this should be stopped.

They said in that grand jury session: "Let us face the facts. We are a gambling people. It's the nature of modern man to gamble." And the *Herald Tribune* says there is more natural gambling in America today than there ever has been in the history of the world.

In our own State we have five counties right now under investigation for gambling. The investigations are being conducted by the Attorney General's department and other departments of the State.

Now, let's face the proposition. We have an amendment that was adopted five or seven years ago—the most incongruous amendment ever put in any constitution in this land. It started off by saying: "All gambling is wicked and should be punished." It said, "All gambling is a misdemeanor, except gambling on a race track where the State gets a part of the rake-off of the profits." That amendment is in operation, and under it three race tracks are now operating in the State.

I have felt this all along, and my opinion is that gambling has no place in our Constitution. But it's there. It's there right now. We have got to get rid of it or leave it there. Now, the Committee on the Legislative has made recommendations of two alternatives to be considered and submitted to the people. If either one of those alternatives are adopted, the same racing law we have now

will be upon the statute books of this State and in the Constitution for all time. The incongruity of it—we take the race track, the most profitable kind of gambling there is, and we put it on a pedestal. It is no crime to bet on the horses if you go down to Camden, or Atlantic City, or Monmouth County. You can't do it in Hudson. We have no track yet. We're hopeful—some of us are—but we haven't the track yet. Passaic hasn't her track yet. Middlesex came near getting her track, but Rutgers stopped that. Some day Rutgers won't be able to stop that.

Let's look at the picture. If gambling is wrong, then it's wrong on a race track, even though the State gets five or six million dollars out of the profits each year. We would never have put through that amendment, of course, if we hadn't needed the money in our state treasury, and we need it right now.

I'm not afraid the State is going to let us change the law, if it can help it in any way, shape or manner. But, let's be honest. Here's what I did; I try to be honest with myself. I drew an amendment to take the racing laws out of the Constitution. Members of the committee told me that was not fair to the men who have built their tracks under contract with the State, and who are paying the State millions of dollars each year. These men should be permitted to get the cost of their investment out. A simple amendment was suggested by me permitting the continuation of these three tracks for a limited number of years, under legislative control all the time, paying the State what the State ought to get, until they can get their money back as a result of their investment. I'm in favor of that as being the exercise of common honesty by the State of New Jersey, which made this mistake seven years ago. Common honesty—the State must be honest, or nobody will respect the obligations of the State.

The amendment I offered was simply this: I say, in plain English, that the two Alternates of the Legislative Committee should be tossed into the wastebasket. They don't solve, in my opinion, anything. They only complicate the whole gambling program in the State. I say this: In lieu of that, we should have a statement in the Constitution. This will take gambling out too. Here is what I have provided; you may not like it—that isn't the point. I have no private opinion in this. I'm not down here to ask anybody to accept any view I have, or that I have expressed. I'm simply joining with the rest of you, trying to get something into the minds of all of us, work it out together, so we can get consonant results. Here's what I say, then I'll quit:[1]

"Gambling"—and this I'd write right in the Constitution—gamb-

[1] Delegate Carey is reading from Amendment No. 4 to Committee Proposal No. 2-2, the text of which appears in the Appendix in Vol. 2.

ling "is not a constitutional subject. It is not entitled to a place in the Constitution, even should there be a prohibition of all gambling. It is a matter belonging entirely to the domain of legislation.

"The State by constitutional amendment, however, in 1939 made betting at duly licensed race tracks under specific conditions, legal; and provided that all other gambling in the State is unlawful and prohibited."

That means you and I can't bet on Rutgers against Princeton—it might not be a good bet anyhow—but we can't do it. It means that you and I can't take a chance on a rag doll at a church fair. It means that you and I can't bet on what time the next Pennsylvania Railroad train is going to have a wreck—and other things of that character. It means that you and I can't bet with each other—can't say that the thermometer is going higher today than yesterday—and bet ten cents on it. If we do, under the law we commit a misdemeanor. We can go to jail for three years. And in some counties, if you were caught, some of you might go. If any of us Hudson fellows were caught down in South Jersey, we'd all go. . . . .

"The State receives large revenues therefrom. The continued operation of these tracks heretofore authorized shall be permitted for a reasonable time, and for the purpose of satisfying a possible moral obligation of the State to the investors, shall be permitted for a period of five years from the date of the adoption of this Constitution, subject, however, to control by the Legislature as at the present time.

"In all other respects the whole matter of prohibition, regulation, or operation of any and all kinds of gambling, and gambling rights and privileges shall be and are hereby made subject to such legislation and legislative control as may be enacted and provided from time to time. No constitutional rights or privileges are hereby granted except as specifically stated and set forth."

I like that amendment, whether you do or not. It treats the race tracks that are here fairly. The State does honor its obligations and it puts gambling in the hands of the Legislature. And immediately after the adoption of this new Constitution, the bingo people, the church people, the rag doll people, and all the rest of them—all the rest of us who bet every day of the year when we get the chance, everyone of us—would all feel no sword dangling over our heads. The Legislature can in one hour's work clean up the whole picture for every one of us. I leave it to you gentlemen.

PRESIDENT: Any further discussion on this amendment? Mr. Moroney?

MR. FRANCIS J. MORONEY: Mr. President, this will be very brief. I am neither an advocate nor an opponent of gambling. But

I can't honestly say, after listening to all of the speakers here today, where it has been pointed out to us as delegates how we can disregard the mandate of the people in 1939, which is of such recent origin, that they wanted pari-mutuel betting in this State. For that reason alone—I'm still of an open mind if they can convince me—but for that reason alone, I shall oppose this amendment.

PRESIDENT: Mr. Young?

MR. DAVID YOUNG, 3RD: Mr. President, fellow delegates:

I have listened very attentively, not only today but the other day, when a great number of people spoke on this subject of gambling. It seems to me that it is about time in this State that we, the people, look at the facts as they now exist. As Judge Carey said a few minutes ago, in Queens they are now waking up to the fact that they are betting on horse racing off the track. We of this Convention know that that is occurring every day in the State of New Jersey. It also seems to me that instead of being like the ostrich who stuck his head in the sand and said, "You can't see me because I can't see you," we ought to examine the facts and see what is going on.

In the first place, you know that when you take a chance on a car, or when you attend a bazaar and put a dime on a particular number and the wheel goes around, you are gambling; when you go out on the golf course and have a dollar nassau, you're gambling; when you do all these minor things—whether the heat is going to go up today or whatever it is—you are gambling. It seems to me that a little penny-ante game in your home—which is gambling, and which, as Judge Carey said, you can go to jail for—is not going to hurt anybody. But it seems to me that you ought to have some inalienable rights to do a few things in this State, and particularly to face the fact that certain sorts of gambling are going to go on regardless of what this Convention, or any other Convention, says. And you people here are going to participate in it, in some form or other, as well as myself.

I have heard of some remarks by the race track interests that this is emanating from certain sources that are trying to do away with the tracks, because if this goes through—this amendment—they will have a fight every year on the floor of the Legislature, and they don't trust the Legislature to stand up and be counted. I don't put too much stock in that, because, in the first place, if the Legislature had the votes to do away with race tracks, they will have the votes to pass a bill which would provide that instead of six out of every ten cents that goes to the track, only one cent would go to the track.

I also do not take the attitude of one of the delegates that we should ignore this, forget about it, put it off to some other day

because it is a rather touchy question and after all the Constitution might go down in defeat. I take the attitude that we, the delegates to this Convention, should face this issue and should do as we think is best, regardless of what the outcome is, and regardless of whether it is turned down or not.

Now, I do feel this way about one thing—and I want to preface my remarks by saying that I am not directly or indirectly interested in any race track in any form—but I do say this: By virtue of the very fact that an amendment was passed a few years ago allowing and making race tracks lawful, and particularly in view of what I know about the finances of the State (and I know the feeling of the Governor), we should not do anything about eliminating the race tracks. But we should have the principle that this gambling is a legislative matter.

I think, however, that in order to take away the inference that has been made, we should insert in the Constitution that it is lawful to carry on betting at the race tracks. Mr. Dixon offered this amendment, which I intend to support, and I would also like to say to him that I think the very clause that was approved by the people should be inserted with his amendment so that there may be no doubt cast on his integrity or the integrity of the people of this Convention, that we are trying to do away with the tracks which the people of the State said a few years ago should be lawful.

With that, there is only one thing else I can say—I think it is about time that we the delegates, we the people, should leave this to legislative action.

They may want to allow bingo. I agree with Dr. Clothier 100 per cent that if we don't, we are only shutting our eyes, like an ostrich with his head in the sand. Next year, maybe, the people of this State will demand that the veteran organizations, charitable and religious organizations may have bingo. My goodness, you're making a gambler out of every church organization in the State, because they do gamble, they have bazaars, they have wheels and things of that kind. I think it is about time that we face the facts and provide that gambling shall be omitted from the Constitution and leave it to legislative authority. Include in the Dixon proposal the amendment which was passed upon a few years ago by the vote of a very substantial majority, as the delegate from Camden said a few minutes ago, which would allow it to be lawful. That would take away the opposition of the race track and it would take away the opposition of the people who feel that the money is needed, that it has been assigned to particular bonds which have been issued quite recently by the State of New Jersey. We would be facing the facts as they now are, because I have faith in the legislature. Even though I am a member now, I realize in the future I

may not be.

PRESIDENT: Mr. Dixon, will you comment on that?

MR. DIXON: Mr. President, I take it that the presentation that I made on Tuesday is fresh enough in the minds of the delegates. In order to save time, I will not attempt to repeat the particular points that I made then, except perhaps one or two in the way of emphasis.

It seems to me that much of the discussion this morning was made for the purpose of clouding the issue—unintentionally, I will concede, but nevertheless it does cloud the issue. In other words, one would be led to believe, from the discussion of the morning, that if my amendment taking out alternatives A and B from the Constitution were passed and were approved by the people, that the race tracks would go out of business on the day after election. Well, again I would like to emphasize to you that the present provision in the Constitution says that gambling is prohibited except that pari-mutuel betting may be allowed at race tracks. That doesn't allow race tracks to be built. It didn't allow them to be built, and it doesn't have anything to do whatsoever with the details of the legislation. It required the Legislature, in which I want to say over and over again, I have faith, even though I am a member—I agree with Mr. Young on that—it required legislation to put that into effect.

If this amendment eliminating alternatives A and B is passed, that legislation is still on the books. The amendment has nothing to do particularly with the vote on the referendum. That is something to be dealt with later. While there is a tremendous moral issue involved in the question of gambling, I want to emphasize again and again that the elimination of these two alternatives does not effect the situation as it is today controlled by our Legislature. The fundamental thing, and the basic thing that this amendment covers, is the fact that in the Committee Proposal we are putting up to the people of the State of New Jersey two alternatives, which does not give them a free expression of opinion.

We pride ourselves on the fact that we are in a democratic administration, that we are a democratic country, that we are a democratic state and that this Convention is a democratic convention; and yet, we are not willing to give the people a chance to say what their laws shall cover. We say to them, "You either vote for gambling or you vote for more gambling." I know there is fierce resentment in the hearts of thousands and hundreds of thousands of people in this State when they are faced with a proposition of that kind.

I feel confident that there are many people who would not declare themselves against gambling, but will still declare themselves

against a proposition that doesn't allow them a choice. That is the situation we have in the countries of Europe which have been under dictatorship. That's the place where they put on the ballot one question, one party, and you go and vote for it, and you have no alternative. That isn't the kind of a country that we want to live in, and that is not the kind of a proposal that this Convention wants to put up to the people of this State. It seems to me that it is the height of hypocrisy to do so.

I think we can trust our Legislature. I don't know what our Legislature was a half dozen decades ago. I heard some statements made about it, and if those statements are true, I am quite sure, from my acquaintances, and close acquaintances—men and women in both branches of our Legislature—that our Legislature today is not the Legislature as it has been pictured a half a century ago.

I also feel that this is not a religious issue. I would like to emphasize that fact, that this matter is not a religious issue. It is just an issue of fair play at the present time. I'm quite sure that the Rights and Privileges Committee in dealing with its subject matter is certainly attempting in the finest way possible to be fair to the citizens, to have no discrimination in any way against the citizens of our country, and yet, right here, in this we are certainly discriminating against our people.

I have been besieged with letters and telegrams from various organizations. Some of them, I don't know whom they represent—I don't know how strong they are. Here is one from 20,000 members of a Newark conference. Here is another one from a Jewish congregation. I don't know how many that represents.

Speaking of the *Herald Tribune* that was mentioned this morning—and I'm not going to take a long time on this as I think the issues have been presented; I just want to emphasize these points—there is a part in the *Herald Tribune* editorial which represents, to a great extent, good thinking of good people. The writer of this editorial says that properly a constitution should either forbid all gambling as a matter of broad policy, or it should permit the legislature to authorize, license, regulate, control, or forbid all forms of gambling, or permit gambling. A constitution properly fixes the powers of the legislature. It should not undertake to do their regulating for them.

Senator Young mentioned an amendment to my amendment. I haven't had an opportunity to get the full import of it. I do urge these delegates to stand before the people of New Jersey forthrightly and prevent the inclusion in our Constitution of these alternatives which take away from our people the right to decide what they want to do in the future on this important question. The

Legislature is responsible to these people, and the Legislature will do what the people want. I have no faith whatsoever in this talk of lush money coming into the Legislature. I know the legislators, and I am very sure, as I look into their faces and as I know them, that they are not people who are going to be affected by lush money or pressure to do things that their constituents don't want them to do.

I urge and, as I said the other day, I plead with this Convention to go on record with a forthright declaration that these alternatives ought to come out of the Constitution. Now, we have amendments offered, or some additional amendments to be offered, and they will be discussed. I think my amendment practically covers what our Senator has in mind, but I ask for a vote upon this amendment as it stands.

PRESIDENT: Senator Young?

MR. YOUNG: Doctor Clothier, and fellow delegates:

As I understand the amendment that Mr. Dixon has introduced, it eliminates all of Alternates A and B and by virtue of that would leave the entire subject of gambling to legislative call. I want to amend that by adding the words,

> "It shall be lawful to hold, carry on and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on weekdays only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted."

The reason I offer is two-fold. In the first place, I think the people of the State have asked and have demanded that that be in there. I don't think my county voted for it, but I think the people of this State as a whole want it. I think also of veterans' housing bonds, forty million of them were passed, and the revenue from race tracks was dedicated to that. I think also that those bonds and the people who bought those bonds have a right to expect that we, the people, will stand back of our statement that that money is dedicated.

I think also that it will eliminate the opposition from the source which says you will have fighting every year at Trenton to do away with the race tracks. I think they have a right to expect that the people will vote upon this, and the way they will have to do it if this amendment goes through is by another constitutional amendment taking it out. If it gets the vote of the Legislature and the vote of the people then horse racing is finished, but until it is taken out by that method I think we are wrong, because the vote of the people was very substantial a few years ago. I offer this amendment to Mr. Dixon's amendment.

PRESIDENT: Just a minute Mr. Park, please.

Mr. Dixon, I understand that you do not accept the amendment

to your amendment.

MR. DIXON: Mr. President, it isn't a case of me accepting it. The amendment as offered by Mr. Young ought to be voted on as an amendment to my amendment, separately. Then, if the convention agrees to his amendment, my amendment will stand amended in accordance with his amendment.

PRESIDENT: Senator Young, have you your amendment in writing? . . . Mr. Cavicchia.

MR. CAVICCHIA: I understand that Senator Young has not moved his amendment.

MR. YOUNG: Yes I did.

PRESIDENT: He is making a motion now, Mr. Cavicchia.

MR. CAVICCHIA: May I suggest to him that he proceeds upon the theory that should the Dixon amendment pass, that will have the ultimate effect of leaving out of the Constitution all reference to gambling. I wonder if the gentleman understood what I spoke about a few moments ago? That is not necessarily so at this point, but it would be so if the time for filing amendments had passed and this were the last amendment we were voting upon. Now, the point I tried to make was, that even members who do not agree with the objective which Mr. Dixon seeks could vote for this amendment, nonetheless, and then vote for other amendments to effectuate what they, themselves, have in mind.

PRESIDENT: I'll ask the Secretary to read Mr. Young's amendment.

SECRETARY: Amendment proposed by Mr. Young *(reading):*

> "It shall be lawful to hold, carry on and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on weekdays only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted."

PRESIDENT: We are now discussing, gentlemen, the amendment to the amendment . . . Mr. Park.

MR. PARK: Mr. President, I move a five-minute recess.

PRESIDENT: You've heard the motion. Is it seconded?

(Motion seconded)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Chorus of "Noes")

PRESIDENT: All in favor, please raise their hands.

(Hands raised by delegates)

PRESIDENT: Opposed?

(Hands raised by delegates).

PRESIDENT: The Secretary will call the roll.

MR. PARK: Let's have the five-minute recess, it will take longer than that to call the roll.

PRESIDENT: All right, we will declare a five-minute recess.

(After a five-minute recess the Convention reconvened)

PRESIDENT: Will the delegates kindly take their seats? I would like to have the attention of the delegates, if I may.

We are about to consider Senator Young's amendment to Mr. Dixon's amendment, and we shall discuss Senator Young's amendment to Mr. Dixon's amendment now. By the way of clarification, at the request of a number of the delegates, I would like to point this out—that action taken upon Mr. Dixon's amendment, positively or negatively, does not preclude the delegates from considering the other amendments which are still before us on the docket.

The question has been raised by one or more members whether the adoption of Mr. Dixon's amendment closes the door to future consideration. I wish to explain to the members of the Convention that that is not the case and that nothing inhibits in any degree the delegates' consideration of these further amendments which have been distributed, and the still further amendments which may be submitted prior to the conclusion of the second reading.

MR. JOHN J. RAFFERTY: Am I to understand that should we vote in favor of the amendment of Senator Young, we thereby dispose of the amendment of Assemblyman Dixon?

PRESIDENT: No, then Assemblyman Dixon's amendment will come up for consideration before the Convention.

MR. FRANK S. FARLEY: Isn't the parliamentary procedure to call for a vote on the amendment to the amendment, rather than the procedure outlined by chair?

PRESIDENT: I didn't intend, Senator, to express myself otherwise. Of course, the first action is a vote on the amendment to the amendment.

MR. FARLEY: I don't know how you could consistently, in a congruous fashion, proceed to vote on an amendment where the floor has been denied an opportunity to vote on the amendment to that amendment.

PRESIDENT: Well, Senator, perhaps I don't make myself clear. We propose first to vote on the amendment to the amendment.

MR. FARLEY: I didn't hear you, Mr. President.

PRESIDENT: I say, I perhaps did not make myself clear, but we propose first to vote on the amendment to the amendment.

MR. FARLEY: I withdraw my objection.

MR. CAVICCHIA: As I understand the amendment proposed to the amendment, there would be a positive statement that it shall

be lawful to have horse racing, in substance. Do I understand that to be so?

PRESIDENT: I shall ask the Secretary to read the amendment to the amendment.

SECRETARY: Amendment proposed by Mr. Young *(reading):*

> "It shall be lawful to hold, carry on and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on weekdays only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted."

MR. CAVICCHIA: Mr. President, I think that clouds the issue tremendously, for this reason: Does the proposal mean that no other gambling shall be permitted? What is the purpose of it? Are we going to present a constitutional provision in such a manner that we are going to engage this State in the next 20 years in a maze of litigation? How about the doctrine of "inclusio unius est exclusio alterius"? Are the courts going to be met with this problem? . . .

MR. HADLEY: What does that mean?

(Applause)

PRESIDENT: Everybody should understand that!

(Laughter)

MR. CAVICCHIA: Are the courts going to be met with this problem? Did the Convention mean, by inserting that provision, that all other forms of gambling should be prohibited? And if this Convention actually means that, let it say that. But I see no purpose to be gained in amending the amendment in the way the Senator from Morris proposes.

PRESIDENT: Any further discussion on this amendment to the amendment? . . . Mr. Orchard.

MR. WILLIAM J. ORCHARD: To adopt Senator Young's amendment would automatically ally against this Constitution every one who voted against pari-mutuel betting in the referendum a few years ago. It seems to me to be a foolish amendment to adopt. I am opposed to it.

MR. HADLEY: Mr. Chairman, I wonder if you would ask Delegate Cavicchia to explain just what he meant by that Latin pronunciation he just got out? A lot of us weren't educated that way and we don't know what it means, and I'd like to understand it.

PRESIDENT: I think you'd better leave that for discussion at luncheon, if the delegates approve.

(Laughter)

PRESIDENT: I'll call on Senator Young.

MR. YOUNG: I would like to answer Mr. Cavicchia on one point that he raised. He says: "Does this mean that we will have no gambling in the State?" I say this, that according to my understanding of Mr. Dixon's amendment, it deletes both Alternates A and B, which means that there is no mention of gambling in the Constitution whatsoever. By virtue of that, as I understand my rule, the Legislature is then endowed with doing either one of two things. They can either permit it in total or deny it entirely, or allow gambling in some small form or whatever they want to veterans, religious groups and other people of this State or organizations. And I say this to you, that it would depend entirely upon the Legislature, and I have in my own heart the feeling that they will do the right thing, not only next year but for years to come.

I have a great deal of respect for Amos Dixon. I asked him personally just a couple of days ago when he mentioned this amendment, and he told me that his idea was not to eliminate horse racing in the State, nor did he have in mind the people back of it who are trying to eliminate horse racing, but he merely wanted to make it a legislative matter, such as you suggested, Dr. Clothier. I say to you that I agree with that 100 per cent, but I also say in addition, that by adding these affirmative words "it shall be lawful to have horse racing in the State," we are doing what the State of New Jersey, the people of the State, said is the right thing to do.

And I say that if Mr. Dixon and the people back of him are sincere in what was said to me the other day—in saying they were not trying to attack that—then this amendment would be substantial. It would protect those 40 million dollars of veterans' housing bonds and the money for them derived from horse racing. Furthermore, it would require a vote of the people to eliminate it or take it out of the Constitution, whereas if we leave his amendment as it now stands, the Legislature can do away with it.

MR. DIXON: Mr. President, I would like to say a word about the matter of these bonds. My recollection is—and it is purely a matter of recollection—that we do pledge the horse racing revenues. But we also pledge the liquor revenues, and we also pledge back of these bonds the entire resources of the State of New Jersey, and that is done with every issue of bonds. So that as a matter of fact, these bonds are not by any means invalidated by eliminating horse racing.

I would like to then mention the technical part of this matter. My amendment first cuts out the entire reference in the preamble to any racing—I mean to gambling, not racing—and it also then cuts out the paragraph in Section VII, page 6, which is a reference, and it also entirely strikes out Committee Proposal No. 2-2 by striking it out entirely. Well now, with all that stricken out, it seems to

me that Mr. Young should introduce his amendment, not as an amendment to this amendment, because after all this striking out and putting that on the tail end doesn't mean anything. What he ought to do is to submit his amendment as a separate amendment, to be voted on separately.

I'd like to see my amendment voted on as it is. Then I would suggest to Mr. Young that he put up his amendment and the Convention will make a decision as to what to do with his amendment, Mr. Carey's amendment, Mr. Lewis' amendment. This amendment merely clears the way entirely—we've got a clean slate— and there isn't anything at all that precludes putting in any of the three amendments mentioned, or any 30 others that 30 delegates may think of. This merely cleans the slate.

I would like to emphasize particularly—I've emphasized it time and again—that I've tried to eliminate the moral issue and point out the danger of putting in these alternatives. And I would again emphasize the fact that it is a tremendous affrontery to the people of the State not to give them an opportunity to vote on a question, either one way or another, except to vote for gambling or to vote for more gambling. That's the thing that they resent and that they seriously resent.

I've noticed, in connection with the talk about this referendum that we had in the past, that it didn't work out very well to the pleasure of the people in New Jersey. As a matter of fact, Camden County in this referendum voted against the gambling and the pari-mutuel gambling and the racing. And yet the first track and the biggest track in this State was located right down there at Camden. We've seen the statement of the mayor and the business people. So looking at it from an economic standpoint—we would want to go into that end of it—I would just like to point out that, after all, the people of the State have not been entirely fairly treated, although again I want to emphasize, as I told Mr. Young the other day, that this whole thing is not aimed at the race tracks. The laws are on the books at the present time, and they will stay there if this resolution is passed, if we omit it from the Constitution.

We would be in absolutely no different situation than we are in regard to liquor. There isn't a thing in the Constitution concerning the handling of the liquor traffic. It's all handled by law and, as has been pointed out this morning, very ably handled by law. I would expect the racing situation to be handled exactly the same way, well and fairly for the people of the State of New Jersey by law and by legislation, which can be changed from year to year, from decade to decade, as our situation changes. If we want a track in Bergen County, we can legislate and put a track in Bergen

County, although I think the Bergen County people have already resisted putting a track there. However, we'll have legislation on our books that can be changed from year to year and decade to decade . . .

PRESIDENT: Mr. Cavicchia? . . . I beg your pardon, are you through, Mr. Dixon?

MR. DIXON: And I want it in the Legislature.

MR. CAVICCHIA: Mr. President, there is more serious danger in the proposed amendment to the amendment than we realize—even beyond what I spoke about before. Now, if the members will refer to the present constitutional provision, which is Alternate A in the Proposal of the committee now before us, it will be seen that the first sentence is identical with the sentence which is now proposed by the Senator from Morris as an amendment to the Dixon amendment. Standing alone, there might be grave doubt whether with that positive assertion it is competent for the Legislature even to regulate horse racing, because this says "it shall be lawful"—the Young amendment unqualifiedly says "it shall be lawful"—but in the present constitutional provision, if you read further down, there is a decided necessity for the Legislature to authorize horse racing before it shall be lawful. I question whether, under the amendment which the gentleman from Morris proposes, the Legislature would have authority, in view of the clear wording, to control horse racing, or whether its mere insertion here would make for wide-open horse racing, with pari-mutuel betting.

PRESIDENT: Any further discussion? Or do you wish the question on the amendment?

MR. FARLEY: I can't let go unanswered a statement made by Delegate Dixon relative to the bond issue. I think, fundamentally in law, where bonds are issued, if there is any impairment of the security, that gives rise to what we call a suit at law for the impairment of the obligation of a contract, under the old *Dartmouth College* case under the Federal Constitution. When these bonds were issued they were predicated, first upon a constitutional amendment authorizing horse racing, and secondly, the mechanics of carrying out that amendment authorized by Legislature to issue bonds to the tune of 35 million dollars. So I say to you delegates, that you may be inviting a law-suit from a bondholder by entirely deleting the horse racing amendment from this proposed Constitution.

Secondly, may I answer Delegate Dixon relative to the situation of horse racing years ago, because I happened to be there and I happened to be on the committee. I might call to the attention of all of the delegates that after the people of the State of New Jersey voted 156,000 more "Yeses" than "Noes," that the Assembly, of which I

was a member, denied an opportunity to the proponents of racing to vote on a bill for the purpose of creating a racing commission. As a matter of fact, when the opponents of horse racing sponsored their own commission bill and it was defeated on two separate occasions, it was necessary to run a rump session in order to obtain a vote on our bill. Mind you, ladies and gentlemen, after receiving a mandate from the electorate of the State of New Jersey, some of the legislators took upon themselves, because they were in opposition to racing at the inception, an absolute right to prevent the proponents from creating a commission. I want you to think about it. In spite of 156,000 more "Yeses" than "Noes," it was necessary for the proponents of racing to run a rump session for the purpose of carrying out the mandate of the people.

And thirdly, in answer to the Camden situation, it might further be interesting to note that I, too, was on that committee and the proponents of horse racing voted to confine it to the counties that voted on the amendment. But, unfortunately, the opposition voted that it should be an open proposition throughout the 21 counties. And I suggest that Delegate Dixon get back to the committee report on the meetings; I think he will find my statement to be exactly true. I say this because there are members of the Legislature here. I say this by virtue of the fact that some people are not conversant with the mechanics of the Legislature.

So I say to you, Mr. President, I would like you to be mindful of the fact that probably, anticipatorily, something may happen as far as the bondholders are concerned. The lessening of the security of a bond always encourages vexatious litigation.

MR. CAVICCHIA: In the first place, with reference to the rump session, it has been so explained that it might be implied from that statement that the rump session passed that legislation. It did not. I was a member of the Legislature when that rump session, so-called, was held. The actual Legislature, without the rump session, did pass the legislation.

But on the question of revenues in support of the bonds, how specious is the argument of the gentleman from Atlantic! He lays so much stress upon it. The amendment offered by the gentleman from Morris has absolutely nothing in it with respect to revenues, so that under his amendment, even if I am wrong in the suggestion which I made a few moments ago—that I doubted whether the Legislature could regulate racing under his proposal—there is nothing in it which provides for revenue. In this State we cannot now have horse racing unless the State derives a reasonable amount of revenue from it for the support of the government.

Going now to the question of the pledge for the bonds, I say to this Convention that the basic pledge for those bonds is the

authorization to tax every parcel of real estate in the State of New Jersey; that not a single bond would have been sold had not that pledge been inserted in the bond law itself, and that the dedication of revenues—to the extent of one-half on horse racing and all the alcoholic beverage revenue—is just an additional security. And even they don't apply unless the Treasury has not sufficient funds with which to retire the bonds as they become due or there is a call. So that, failure of revenues from horse racing would in no wise jeopardize the standing of those bonds. Suppose, under the regulatory powers of the Racing Commission today, it closed every race track in operation so that there would be no horse racing for a year. How about that? That would result in a loss of those revenues. Would that impair the validity of the bonds? Or suppose, by reason of economic circumstances, the people did not flock to the race tracks as they do in these days, so that there was not sufficient revenue from these race tracks to the State. Would that impair the obligation? I say no; the bondholders look to the general revenues of the State, as reflected in the State Treasury, and basically and finally to property in this State which can be assessed in order to make good their bonds.

MR. JOHN L. MORRISSEY: Mr. Chairman.

PRESIDENT: Senator Morrissey.

MR. MORRISSEY: Mr. Chairman, do I understand the rules of this Convention to be that every member is limited to 15 minutes of debate and three minutes' rebuttal?

PRESIDENT: Except as he secures authority from others to use their time.

MR. MORRISSEY: Then I would suggest that a great number of the delegates refrain from speaking at least seven times on any given subject, at the request of the chair.

PRESIDENT: Senator Farley.

MR. FARLEY: May I answer the delegate from Essex? Mr. Chairman, Delegate Cavicchia loses sight of fundamental law when he says that you have real estate security in the State of New Jersey. I think that lawyers particularly know that when you go to a bank to borrow money and give security, that the bank controls the collateral. I would like everyone in this room to know, to ask a question, where they dealt with a bank and they wanted to withdraw the security or lessen the collateral securing that debt. These bonds were issued primarily and basically on a constitutional amendment by virtue of the Legislature authorizing the issue thereof.

I likewise have an opportunity to answer Delegate Cavicchia that it is true that the rump session didn't pass that bill. I would like to tell you why. It was because there were 32 votes for the bill.

We didn't want to embarrass the Speaker, the Majority Leader. We moved it to third reading and had to institute a new legislative session, and it took from 11:00 o'clock at night, I think, until 6:00 or 7:00 o'clock in the morning. And the following week the Speaker of the House, the Majority Leader, was very happy, at that particular time knowing that we had 32 votes and knowing that we didn't want to embarrass him, to permit us to move the bill. I suggest that anyone who wants to take it upon himself look at the record of that session and what happened the following week. I invite that investigation.

I think there may be someone in this room who might have been there then, because I can remember so well. Assemblyman Hanneman had his bill and they denied an opportunity to move the bill and reached the point of getting the votes and having 32 of them to avoid a rump session. I stood in the back room and pleaded with the Speaker for the purpose of affording us an opportunity to vote, and I warned him that the people who were proponents of racing would have to go ahead with the rump session to carry out the mandate of the public of the State of New Jersey which had been voted in the previous month of June.

I want everyone to be conversant with those facts, and the history and the background. Isn't it rather singular and rather peculiar, and isn't it rather unique that the people who have been bitterly opposing any type of gambling have been the sponsors of this Dixon resolution? Think about it, ladies and gentlemen! Contrary to everything you ever stood for in the Legislature, anyone suggesting an amendment about bingo or any other type of gambling, they would be the first ones to bottle it. Yet, on this very floor they argue and represent to you, ladies and gentlemen, that they want the Legislature to control all types of gambling and not have a constitutional prohibition. I would call it a reversal of form.

PRESIDENT: Our time is marching on. It seems to me that the arguments *pro* and *con* on Senator Young's amendment to the amendment have been well presented. Any further discussion, of course, should be encouraged, but I hope it won't be encouraged too long . . . Judge Carey.

MR. CAREY: I believe from a study of this amendment to the amendment, that if we adopt it we are giving race track men from Philadelphia, New York and Baltimore complete control of all gambling for the next generation. I can't see it otherwise. It is a practical proposition. The limitations that the amendment imposes upon the Legislature are going to make that so. The amendment is going to leave race tracks in a place all alone, by themselves, for all time. I can't see the practical reasoning in that.

Another thing it's going to do, it's going to seriously jeopardize

the adoption of our Constitution, because there are several hundred thousand people in this State who do not want to vote gambling into this Constitution in any way, shape or manner. They have a right to exercise that privilege, and the only way they will be able to exercise it will be to ignore the whole Constitution; otherwise, they would vote for race track gambling for all time. For that reason, I am opposed to this amendment to the amendment.

I still believe that Amendment No. 4, which I propose, is the one solution to this whole program and that it will clean the whole matter up positively, cleanly and clearly for everybody. There are over one million people in this State, identified with the American Legion Posts and all the other fraternal organizations in the State, who are looking for some relief from this Convention. They won't get it with this amendment to the amendment. They can get it through the original motion, or they can get it through Amendment No. 4 which I have proposed. I am opposed to the amendment to the amendment.

PRESIDENT: May I inquire if you are ready for the question? All in favor of Senator Young's amendment to the amendment please say "Aye."

(Chorus of "Ayes")

PRESIDENT: All opposed, please say "No."

(Chorus of "Noes")

PRESIDENT: The amendment to the amendment is lost.

We shall now proceed with further discussion of Mr. Dixon's amendment to the Proposal, the original Proposal . . . Senator O'Mara.

MR. EDWARD J. O'MARA: I would like to be heard further on it, but I think someone else wanted to be recognized first. I think, as chairman of the committee, I perhaps should have that right. I am willing to yield to anyone who wants to speak before me, but I would certainly like to have something further to say.

PRESIDENT: Senator Lewis was about to speak, I believe.

MR. RAFFERTY: Mr. Chairman, I desire to be recognized also.

PRESIDENT: Very well, Judge . . . Senator Lewis.

MR. LEWIS: My remarks go to clarification of the issue.

PRESIDENT: Senator O'Mara, will you speak on this? Or Judge Rafferty?

MR. RAFFERTY: Mr. President and delegates to the Convention:

The amendment proposed by Delegate Dixon, according to his explanation of the purpose of it, would be to take gambling from the Constitution and leave it entirely within legislative control.

With that general objective I am in sympathy, because our present constitutional provision, while it may be justified as a legal statement, is certainly a contradiction in morals. To say that I may go to the race track and gamble my shoes away, to use an expression, is legal, but yet within my competence I may not attend a country bazaar, or whatever it may be, and gamble a few dollars, presents, I think, an absolutely contrary statement of thinking which certainly does not add dignity to a Constitution.

I don't agree with what is popularly called gambling to be gambling; in my view you really don't gamble unless you have some understanding of the factual matter that goes into the subject of the wager. What is called gambling today, I think, is mere blind chance-taking, but nevertheless it is called gambling. And so, meeting a realistic situation, understanding the temper of the people as I think we cannot avoid, we must realize that the enforcement of the so-called anti-gambling laws of today is a futility.

The anti-gambling laws of today have led the people of this State, of every group, of every stratum of life, into a position where they are actually, consciously and deliberately law breakers. It stamps everyone of us an offender against the fundamental law of the State. And it has bred within the State an industry, because that is what caters to the gambling instincts of the people, all of which runs undercover but yet is publicly known, is not difficult to locate, and the trade may be carried on in absolute and utter defiance of the law, openly. To say that it is undercover is a contradiction entirely, because those of us who have any experience in public life at all know that it is not undercover but that it is open.

We are, therefore, attempting to enforce a negative and, Mr. President, as you yourself indicated this morning with the noble experiment of prohibition, a negative cannot and will not be enforced.

Now, I am in favor of such treatment of the gambling situation as will bring it out into the open, public market. I am in favor of presenting the law in such status that men can indulge in gambling without becoming law violators. I think it is a fair statement to say that in the very large preponderance of municipalities in this State the business of bookmaking is openly carried on. It is my view that bookmaking should be legalized. It is my view that it should be regulated by law and that bookmaking should make a contribution to the State's coffers similarly as contributions are made from the race tracks.

I think we must be realistic in this matter. It is my view that the people of this State expect of the delegates to this Convention not equivocations, not the "passing of the buck," if I may use the phrase, but they expect of this Convention and the delegates there-

of comprehensiveness of action and objectivity. If that is true, I respectfully suggest that the remedy which should proceed from this Convention is a frank acknowledgment, a frank admission, that gambling is an institution in this State; that gambling should be recognized as such because otherwise we are stating a contradiction and we are stating, to use the word, a lie, because it is a lie, because gambling pervades every municipality—perhaps with some few exceptions in the State.

Therefore, I find myself leaning to the amendment of Senator Lewis. I think that that should be broadened perhaps a bit further. I think we should frankly recognize what the people permitted in 1939 at the pari-mutuel race tracks. I think we should include in this Constitution, so that the people may vote upon it in the Fall, the permission of minor gambling, as has been suggested in the amendment of the Legislative Committee; that the people may there put the impress of their approval on it, subject to rules and regulations to be established by the Legislature. I think, further, that it should remain with the Legislature to initiate legislation looking toward the legalization of any other forms of gambling that may seem desired by the people but that, as Senator Lewis has pointed out, the Legislature shall not be the disposer of it. They shall initiate the proposal and submit it to the people.

There is one further matter, which is a matter of procedure, Mr. Chairman. Many of the delegates are confused about the several proposals before us, as I gather from the conversation in this room. Many of the delegates feel that if they vote for or against one amendment they are thereby precluded and foreclosed from voting for or against any of the other amendments. As a matter of procedure, I respectfully suggest that it might be appropriate and might save us a great deal of time if all of the amendments were placed before the delegates and if on one roll call, or on a series of roll calls, by way of elimination, the delegates may vote upon the amendment which they favor, and then by a process of elimination get down to the amendment that the majority of the delegates desire.

PRESIDENT: Dr. Saunders.

MR. WILBOUR E. SAUNDERS: Mr. Chairman and fellow delegates:

I find myself agreeing with certain people, but for very different reasons. This is a matter of conscience which will not allow me to be silent on this issue.

May I say, first, that in my opinion it is a moral issue. I do not expect everybody to agree with me, but that happens to be my opinion. I don't expect the majority of you to. I happen to be one of the people referred to, I believe, by Mr. Farley, who doesn't

believe that gambling is good for people but believes that everything should be done to prevent legalizing it that can be. I do not want, however, to have Mr. Farley's implication—that at least some of us who do support Mr. Dixon's amendment are doing it in any insincerity—to be held as the truth. For the implication is very definite that some of us are insincere, or playing some game in the matter, which I can assure you I am not.

I want to associate myself thoroughly with Senator O'Mara in desiring New Jersey not to become an American Monte Carlo. I differ from him in the feeling that constitutional restraint is needed to prevent our elected representatives from allowing the Garden State to become a modern Sodom and Gemorrah. I trust the representatives of the people. May I say I would especially trust them if Senator O'Mara would repeat for them his impassioned speech about gambling, which I thought excellent.

I know that you can't make people good by law. I know that whatever the people want they must have. I arise to express as strongly as possible a hope that we omit any reference to gambling in our State Constitution. There are a great number of people opposed to the legalizing of gambling in any form. I make no claim that we can by constitutional or legislative act make people moral or wise, but I do not want the basic document of New Jersey's law to state in black and white that the best that it can do is to limit its citizens in certain questionable activities.

There may be people who can be trusted to control personal ventures in games of chance, but many clergymen and social workers and many others know that there are also thousands of families right now where the necessities of life are being sacrificed to uncontrolled gambling by some member of the family. And that, ladies and gentlemen, ought to be said here. I don't expect that it will decide the issue, because you are not going to decide that issue by legal adoption. I would agree with any man who got up and said that isn't what we are discussing or voting on, and on the other hand somebody needs to say it. I am not saying that the correction of the situation is in law. That is not the issue before us.

I'm saying that I hope that our basic legal document and enduring base for New Jersey life, which we hope is going to continue for a long time, will not condone any gambling. Let it be a legislative matter so it may be flexibly responsible to the moral sense of our people, as it ought to be. It is then the responsibility of both the advocates and opponents of gambling to educate and persuade people as to what is best for the welfare of the people—and I will trust the judgment of the people. If what they want is race tracks and horse racing, if what they want is gambling, and we have not

been able to persuade them any differently, then it is their perfect right in a democracy to have it. But let us not entrench gambling in the Constitution.

If this amendment is lost, I feel that the least we should provide is multiple choices on this question—not alternatives—so that folks like myself are not required to vote for gambling or more gambling in order to get a new Constitution. I do not want us to have a new Constitution turned down just on this issue, for important as it is, it is not important enough to prevent the State from getting a new Constitution.

Will you forgive me for expressing views which, with many of you, will be personally unpopular but which my conscience would not let me do otherwise than express.

PRESIDENT: Mr. Winne.

MR. WALTER G. WINNE: Mr. President, I had tried to keep out of this and I'm sorry. I promise you I'll not be long.

My whole bringing up, everything that has entered into my life, makes me oppose gambling in every form. I voted against the race track amendment, and I believe, when I vote in this room, every vote I cast on this subject will be, as well as I am able to, to carry out the purpose of suppressing gambling of any kind in New Jersey. However, I listen to arguments and then hear how the speaker is going to vote. I am astounded at the conclusions that many of the speakers have come to and am unable to agree with their reasoning. As one of the delegates said to me, after all the illuminating speakers he was still in the dark.

I feel very strongly that the State is committed to what the people have voted on in connection with the horse racing amendment. I voted against it. My county voted against it. But I think those people who relied on it and invested their money are entitled to be protected, and somehow or other it seems to me that this Convention must do something to protect those people. It was my thought, at the beginning of this discussion, that I would vote against the proposed amendment. I am not yet sure how I shall vote, because whether I vote against it or whether I vote for it, I still am going to vote for Senator Lewis' amendment when it is on the floor and continue to think then as I do now.

However, I must say that I was astounded at the statements made by a delegate here a few moments ago, when he said openly that in this State of New Jersey there is carried on gambling in a manner in which he described. I dispute that. I say that if he has any such information he should lay it before the proper authorities of the State. If he has any such information concerning my county, I would be delighted to receive it. I will go with him tonight, today, and stay on it until it is an accomplished fact that there is no such

thing in my county. It is my belief that gambling, although it has been recognized openly in this State, today is very well controlled, and that in New Jersey there is no such condition as was described a few moments ago by a delegate in this Convention.

FROM THE FLOOR: Question!

PRESIDENT: The question has been called for . . . Senator O'Mara. I just recognized Senator O'Mara . . . All right, Mr. Randolph.

MR. OLIVER RANDOLPH: Mr. Chairman and delegates to the Convention:

I have deep convictions on this subject and I do not intend to speak at length on it. I, too, regard this, Mr. President, as a great moral issue. As I see the immediate question before us, I do not regard it as anything more than Delegate Dixon's amendment as to whether we shall have the word "gambling" in the fundamental law of the State.

As to whether gambling shall be permitted by legislative action is another question. The only question before us now, before these delegates, is whether or not we want the final product of this Convention, a product which may go down to future generations, to contain the word "gambling"; whether we want future generations to know that the delegates assembled here in 1947 favored the insertion of gambling in the fundamental law of the State.

Frankly speaking, Mr. President and delegates, I do not think it should go into the fundamental law of the State. I think, as other delegates have so well expressed, that it should go to the Legislature, to the legislative branch, and we should not make the error of inserting it in the fundamental law of the State. I announce that I will support Delegate Dixon's amendment.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President, ladies and gentlemen of the Convention:

I want to be as brief as I possibly can on this because this debate has already exceeded reasonable limits.

In the first place, I want to say to Dr. Saunders that while I appreciate very much the compliment which he paid me in implying that the Legislature would listen to an impassioned speech by me on the subject of gambling, I call upon my brother Senators who are here in the Convention to bear witness that I speak the truth when I say that I have made many impassioned speeches in the Legislature and that the vote has always been the same—16 in the affirmative, 5 in the negative.

I agree with many of the delegates when they say that there is confusion on the issue that is before us. That confusion, I think, is occasioned by the manner in which the amendment of Mr. Dixon

was presented. It has a two-fold aspect. The first is to strike out the two sentences in the main Proposal of the committee which indicate that there is to be inserted some kind of a gambling clause, either Alternate "A" or Alternate "B." As a separate Proposal from the committee, we have Proposal No. 2-2, which suggests one of two alternatives to be submitted to the people, the one receiving the greater number of votes to be inserted in the Constitution.

Now, the amendment to that is not properly an amendment at all. It is a motion to strike out, and in my judgment it could properly be reserved until Proposal No. 2-2 comes on for third reading. Then there will properly be presented to the Convention the question of whether or not those alternative propositions should be selected or approved by the Convention for submission to the people. I want to point out that the effect of the adoption of Mr. Dixon's resolution will be to strike out any reference to gambling whatever in the Constitution.

Now, I say that if the amendment is lost, that does not preclude the debate on the alternative propositions in Proposal No. 2-2. That Proposal is still on second reading. If any delegate desires to propose an amendment to that Proposal, the way is open. If no amendment to that Proposal is submitted and the Proposal passes second reading, it must still come on for third reading and final agreement. If the Convention does not like those alternatives, it will have the opportunity to defeat them, first by offering amendments on second reading, and second, by defeating them on third reading.

I propose this, Mr. President. It has been my steadfast intention that Proposal No. 2-1, the main Proposal of the Legislative Committee, should not be moved from second reading until the Proposal for the alternatives is finally disposed of by the Convention.

Now, I say that the substantial question which Mr. Dixon's resolution presents is this: Is this Convention to frame a Constitution for submission to the people of this State which contains no restriction on the right of the Legislature to legalize gambling in any form? That is the only question that is now before us on this resolution. I reiterate and I say it with all the sincerity of which I am capable, that in my judgment the Convention will make a tremendous mistake if the Constitution which it submits to the people contains no restriction on the right of the Legislature to legalize gambling.

I disagree with Mr. Randolph when he says we should not write into the Constitution anything about gambling. We are not writing in the right to gamble. We are writing in the right of the people, through their Constitution, to restrict the Legislature as to what type of gambling it shall authorize. I have no intention of

repeating what I said the other day on that subject, except to reiterate that in view of the 103 years of constitutional restriction on the right of the Legislature to act in that field, and in view of the restrictions so many other states have placed upon their legislatures, we should not submit to the people a Constitution which will open us to the charge that the Legislature is going to have *carte blanche* in the future to legalize any form of commercial gambling it chooses to approve.

I appreciate what Mr. Dixon has said. He said he is speaking for the Council of Churches, and I have the very greatest respect for that organization. But other church representatives came before us and expressed an opinion directly contrary to Mr. Dixon's.

A Dr. Marvin Green, of the Methodist Church in Hudson County —I think he is from Weehawken—came before the committee and this very question was propounded to him at the first hearing by Senator Lewis. He said: "Do you favor the Constitution being silent on this issue of gambling and leaving it entirely to the Legislature?" And Dr. Green said: "I would like to think that over. I would like to consult the people whom I represent and I would like to answer that question at a subsequent hearing." And he came back, I think the following week or a few days later, and he said this— and I am reading from the record of the proceedings before the Committee on the Legislative—said Dr. Green of the Methodist Church, and he represented a great many organizations affiliated with the Methodist Parish and the Clergy Club, and so forth—Dr. Green said this:

> "Therefore, I should like to speak to Senator Lewis' question. He asked me to state the official position of the organization which I represent, the Hudson Methodist Parish, in regard to whether or not this committee should deal with gambling at all. My group, with the full approval of the bishop of this area, and our Jersey City District Superintendent, wants to go on record as unanimously requesting this committee to deal specifically with the gambling issue in the new Constitution."

Now, I say, Mr. President, that if we do not do that, this Constitution, when it is up for adoption by the people, is going to be met with the objection of many thousands of sincere people who say that we are leaving the way open to make New Jersey a wide-open gambling State. That is going to create a body of sentiment against this Constitution, because their argument will be logical. And it might go a long way toward defeating it.

I have only one thing further to say: In addition to the constitutional history of the State of New Jersey on this question, 37 of the 48 states have by constitutional provision restricted the right of their legislature to legalize gambling. Thirty-seven, more than three-quarters of the states of the United States, have provisions of one type or another in their constitutions restricting the Legisla-

ture in its right to legalize gambling.

I am not going to speak to the alternatives now, because I consider that they are still open for amendments and that they will ultimately be before the Convention when they come on third reading either in their present form, or as amended.

I merely want to say in conclusion that it is my earnest, considered opinion that this Convention will make a great mistake if it does not write into the Constitution a constitutional restriction of some kind on the right of the Legislature to deal with the gambling question.

MRS. OLIVE C. SANFORD: I don't want to make this any longer, but I would just like to say that when Mr. Green spoke at the meeting to which Senator O'Mara has referred, he said they realized it would be difficult to change what was already in the Constitution, but they would be satisfied if we would say that there should be no further liberalization, and those words were not added.

Now, I think we have all received this folder as a statement of what was the final statement made by Dr. Green in representing the New Jersey Council of Churches. At the bottom of the page are four choices which they thought should be given. I will read to you—the first choice was:

> "Write in Alternative 'C' to allow those who oppose gambling in all forms to have a chance to vote."

Second choice:

> "Postpone the gambling issue until another year, as the Governor has suggested, at which time Alternative 'C' would be included with the others."

Third choice:

> "Drop the matter altogether with the sole reminder that the Legislature should deal with the problem. This would leave racing as it now is."

Fourth choice:

> "If it seems that only Alternatives 'A' and 'B' will be submitted, then amend Alternative 'A' to read as a positive statement in opposition to Alternative 'B' that no further liberalization of the present 1939 Constitutional Amendment permitting racing shall be permitted. Make this Alternative 'A' a clear-cut, out-and-out statement, showing easily and clearly to all voters that Alternative 'A' opposes Alternative 'B'; that the choice is (1) For no further gambling; or (2) For further liberalization and more gambling as outlined at present in Alternative 'B'."

PRESIDENT: With the consent of the delegates who have called for the question, I am going to ask Mr. Dixon if he wishes to make a final statement, and then put the question.

MR. DIXON: Mr. President.

MR. CAREY: Mr. President.

PRESIDENT: I have just recognized Mr. Dixon, Judge Carey.

MR. DIXON: I feel that the issue has been adequately presented.

There is nothing more I can add except to repeat the things that I have said, and I am ready for a vote. I don't want to preclude any further discussion, but as far as I am concerned I am ready for a vote.

PRESIDENT: Before putting the question, may I remind the delegates that action on this amendment does not preclude them from any freedom of action that they choose to exercise with reference to the other amendments to be considered under this article.

MR. JORGENSON: Mr. President.

PRESIDENT: Mr. Jorgenson.

MR. JORGENSON: Before submitting the question there are a couple of matters that I would like to address to the delegates here.

PRESIDENT: Apropos to this question, Mr. Jorgenson?

MR. JORGENSON: I beg pardon, sir?

PRESIDENT: Apropos to this question—I mean the question has been called for—are your remarks apropos to the question under discussion?

MR. JORGENSON: I am speaking on Mr. Dixon's amendment, if I may.

PRESIDENT: All right.

MR. JORGENSON: We in the committee, I think, originally were more or less for the opinion that Mr. Dixon's motion bears, and I think the further we wrangled with it the more we got a grip of the tense and emotional feeling of all those who came before our committee.

I, for one, personally have said and publicly have said, that gambling, in my opinion, as a matter of good constitutional law, has no place there. However, I listened to the people who testified before us, and the record will show absolutely that not a one, either for or against liberalization of gambling, would leave the matter up to the Legislature.

Now, there is a reason for that, sir, and I submit it. In 1939, if the people, through their chosen representatives, had wanted complete deletion from the Constitution of any prohibitions or restraint against gambling, they had the opportunity then and there to do it. But they did not so want. And through their representatives in the Legislature they submitted a referendum which amended the provisions to permit pari-mutuel betting on horse races only under given conditions; one, that they be legalized by the State, and, two, that the State derive a reasonable revenue therefrom.

Now, if this amendment of Mr. Dixon's is adopted, it will permit the Legislature to conduct and legalize race tracks throughout the State or any other form of gambling that they desire, without regard to the desires of anyone in their respective municipalities or

counties as to whether or not they want race tracks there or any other medium of gambling. But in addition to that, it will permit the Legislature to let them operate without the State deriving any reasonable revenue therefrom. And I say to the delegates here that that was not the intention of the majority voice of the people in 1939, and it never will be their intention to so permit unrestricted gambling. And I say to this Convention that when we permit this document, which we have spent this summer drawing, to go to the people without any restraint as to gambling, we are going to doom it to an opposition that may cause its ultimate defeat.

(Several delegates call for the question)

PRESIDENT: The question has been called for and I will ask the Secretary to call the roll.

SECRETARY *(calls the roll):*

AYES: Barus, Cavicchia, Clapp, Constantine, Cullimore, Delaney, Dixon, Dwyer, W. A., Ferry, Gemberling, Hadley, Hutchinson, Jacobs, Katzenbach, Lewis, McMurray, Miller, G. W., Miller, S., Jr., Orchard, Paul, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Randolph, Sanford, Saunders, Smith, G. F., Sommer, Stanger, Taylor—31.

NAYS: Barton, Berry, Brogan, Cafiero, Camp, Carey, Cowgill, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Farley, Feller, Glass, Hacker, Hansen, Holland, Jorgenson, Kays, Lance, Lightner, Lord, McGrath, Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Park, Proctor, Rafferty, Schenk, Schlosser, Smalley, Smith, J. S., Streeter, Van Alstyne, Walton, Wene, Winne, Young—46.

SECRETARY: 31 in the affirmative and 46 in the negative.

PRESIDENT: The amendment is lost.

Before we recess for lunch, may I ask you to keep your seats for just a moment. Will Mr. Cavicchia and Senator O'Mara mind stepping forward here for a moment?

(Discussion off the record)

PRESIDENT: We will recess for lunch and reconvene at 2 o'clock.

(Recess for lunch)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Thursday, August 14, 1947

(Afternoon Session)

(The session started at 2:00 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats?

The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present.

PRESIDENT: The Secretary reports that a quorum is present. May I inquire if there are any further amendments to be offered at this time to any of the articles? If not, we will proceed with the consideration of Amendment No. 3 to the Committee Proposal No. 2-2, offered by Judge Carey *(reading):*

> "Strike out all of said article [Section VII, Paragraph 2] and substitute therefor as an amendment in its place the following:
>
> 'The subject matter of gambling in this State is entirely a legislative matter, and is herewith fixed as such. The Legislature is therefore empowered, on such terms and under such conditions and regulations as the Legislature may fix and determine from time to time, to permit gambling of any kind or sort thereof. In the absence of any express grant of authority to conduct or operate any kind of gambling, such gambling shall be deemed prohibited under such penalties as are now provided by law or which may hereafter be provided by law.' "

Is there any discussion on this amendment?

FROM THE FLOOR: Question.

PRESIDENT: The question is called for. Judge Carey.

MR. ROBERT CAREY: I move its adoption.

PRESIDENT: Judge Carey moves its adoption. Is there any

discussion on this amendment? . . . Mr. O'Mara.

MR. EDWARD J. O'MARA: Mr. President, I oppose its adoption for the same reason that I opposed the adoption of the amendment that was voted on at the conclusion of the morning session.

PRESIDENT: Is there further discussion?

MR. LAWRENCE N. PARK: I oppose its adoption because I propose to vote in favor of Senator Lewis' proposal.

PRESIDENT: Is there further discussion?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question.

PRESIDENT: All in favor, please say "Aye."

(Silence)

PRESIDENT: Opposed?

(Chorus of "Noes")

PRESIDENT: The amendment is lost.

We will now proceed to the consideration of Amendment No. 4—"Amendment to the recommendations proposed by the Committee on the Legislative on the subject matter of gambling covered by Committee Proposal No. 2-2, being a proposal to be adopted as Section 7, Paragraph 2 of the Legislative Article of the new Constitution" *(reading):*

> "This amendment is made as a complete substitute for the paragraphs relating to gambling recommended by the committee. The paragraphs referred to are annulled in toto, and the following is proposed as a full and complete amendment of and substitute for the subject matter.
>
> GAMBLING
>
> Gambling is not a constitutional subject. It is not entitled to a place in the constitution, even should there be a prohibition of all gambling. It is a matter belonging entirely to the domain of legislation.
>
> The State by constitutional amendment, however, in 1939 made betting at duly licensed race tracks under specific conditions legal; and provided that all other gambling in the State is unlawful and prohibited. Race tracks have been established in this State under and by virtue of that amendment, and as the result of legislative sanction and action, and are now in operation. The State receives large revenues therefrom. The continued operation of these tracks heretofore authorized shall be permitted for a reasonable time, and for the purpose of satisfying a possible moral obligation of the State to the investors, shall be permitted for a period of five (5) years from the date of the adoption of this Constitution; subject, however, to control by the Legislature as at the present time.
>
> In all other respects the whole matter or prohibition, regulation, or operation of any and all kinds of gambling, and gambling rights and privileges shall be and is hereby made subject to such legislation and legislative control as may be enacted and provided from time to time. No constitutional rights or privileges are hereby granted except as specifically stated and set forth."

Judge Carey.

MR. CAREY: Mr. Chairman, I formally move its adoption.

MR. O'MARA: Mr. President, I oppose its adoption for the reasons that have been advanced with regard to the last two proposals.

PRESIDENT: Any further discussion?

FROM THE FLOOR: Question.

PRESIDENT: The question is called for. All in favor, please say "Aye."

(Silence)

PRESIDENT: Opposed?

(Chorus of "Noes")

PRESIDENT: The amendment is lost.

Amendment No. 5, an amendment to Proposal No. 2-1, Committee on the Legislative, introduced by Oliver Randolph, delegate from Essex County *(reading):*

> "RESOLVED, that the following amendment to the above proposal for a new State Constitution be agreed upon:
> Amend Section VII, Paragraph 9 as follows:
> After the period in line 15 on page 7 insert the following words: 'Discrimination on account of race, color, creed or national origin in the management and control of free public schools is prohibited.' "

Mr. Randolph.

MR. OLIVER RANDOLPH: Mr. Chairman, I have had some discussion with Colonel Walton about the introduction of a new paragraph relating to civil rights which, if approved, will no doubt make it unnecessary for the present amendment. I am respectfully asking that it go over for the present, asking unanimous consent.

MRS. JANE E. BARUS: I second it.

PRESIDENT: You have heard the motion seconded. Is there any discussion? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion to lay over is carried.

Amendment No. 6, proposed amendment to Proposal 2-1, Committee on the Legislative, introduced by Spencer Miller, Jr. *(reading):*

> "RESOLVED, that the following amendment to Section V—Article Legislative be agreed upon:
> Add to Section V a new paragraph to be entitled Paragraph 6 to read as follows:
> 'The Legislature shall enact laws and adopt rules prohibiting the practice of lobbying, on the floor of either house of the Legislature, and further regulating the practice of lobbying.' "

Mr. Miller will you speak to this?

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Convention:

The Legislative Committee had before it a resolution to prohibit lobbying in the legislative chambers of either House of the Legislature, and also had the benefit of the opinions of certain leaders of the State on this important subject. The committee rejected both these proposals for the two reasons which are set forth in its Report, which asserted in the first place that it did not consider the subject to be of such a nature as to be properly subject to constitutional provision, and, second, because of the difficulty of adequately defining lobbying within the proper limitation of a constitutional provision. The committee, however, in its Report says that it agrees that lobbying should be curtailed and regulated, and it voted to request the Convention to recommend to the Legislature that suitable restrictive laws concerning lobbying be enacted. The chairman of the Committee on the Legislative, Senator O'Mara, made this very emphatic in his statement to the Convention.

My resolution does not provide specifications for this whole matter of lobbying within the chamber, but would merely provide a mandate to the Legislature to act. It will provide the constitutional authority, which it is now the declared intention of the Committee to implement by specific recommendations to the Legislature. I take it that none of us who are in attendance at this Convention would disagree with the existence of the evils of lobbying, in the form in which it has developed in this and other states, or with the public demand that it be properly regulated.

President Truman in a recent public statement denounced the "real estate lobby" in Washington that had, as he said, crippled a sound public housing program for the nation and made it impossible to provide low-cost housing for the veterans of this country. Governor Driscoll and other chief executives of our several states have, in recent months, taken occasion to point out some of the growing evils of lobbying in its more serious aspects—not only defeating certain measures which are presently before the Legislature but, in a very real way, limiting the effectiveness of the legislative branch of our government. Members of the legislative bodies in this and other states have, on occasion, protested the tactics which have been used by those who, for hire, seek to influence the course of legislation, not outside of the legislative halls but within the legislative halls in our several states. Leaders of civic organizations, as well as the press, have protested against practices which, if they have not descended at times to the level of bribery and corruption, have tended to jeopardize the sound operation of the legislative process.

The regulation of lobbying involves essentially a reconcilation of the realities of the legislative process with the guaranteed right of the people "to make known their opinions to their representa-

tives and to petition for the redress of grievances." A monograph has been prepared for the Governor's Committee on Preparatory Research for this Convention by that very able student of American government who has been the technician to the Committee on the Executive, Dr. William Miller, the Research Director of the Princeton Surveys and a lecturer of politics at Princeton University. A real debt of gratitude to him has been laid upon us all, for in the monograph he not only assembles the pertinent data on this question but also points out what has become presently the trend in its public regulation. Lobbying, as he shows, has been the subject of some form of regulation in many of our states for a considerable period of time. As far back as 1877, the Georgia Constitution made specific provisions against lobbying. Other state constitutions have written provisions into their basic law dealing with this important matter. The proposed Constitution of 1944 contained a provision which reads "Lobbying in the legislative chambers of either House shall be prohibited. The Legislature shall impose suitable penalties for violation of this provision." In 1946, the Federal Government adopted a federal act regulating lobbying, which required the registration of lobbyists in Washington. Thirty-two states have some type of regulation. Sixteen of them require a form of registration. In recent years, new regulations or amendments have been made in the statutes of 13 different states. No such provision has been made in our own law in this State. We do, however, have legislative rules. We have sought from time to time to cope with this matter by the legislative process. We have on the statute books a provision for dealing with bribery and corruption. The failure of state regulation is, of course, as much a matter of unwillingness on the part of legislative bodies to enforce the regulation of pressure groups as it is to define the proper scope of their activity. A number of the states have now made provisions or provide mandates in their constitutions prohibiting lobbying.

I agree, Mr. President and delegates, wholeheartedly with the statement of the committee that the detailed rules and regulations should be left to legislative action. I also concur with the conclusions of this monograph by Dr. William Miller that the subject appears to require too much flexibility of treatment to permit more than a mandate to the Legislature and a statement of principles in the Constitution. I, therefore, have prepared for consideration by this Convention a simple directive which merely authorizes the Legislature to act in this regard, and I have done it, sir, for three specific reasons.

In the first place, where the Constitution is silent on this matter, courts have held that anti-lobbying laws violate the right of petition. In one of our neighboring jurisdictions that has been the

precise position taken by the courts of that state. Certainly no one desires to invade the sovereign right of petition on the part of the citizens, directed to the Legislature. That, however, can be achieved by such a declaratory statement or mandate as I have proposed in this simple resolution or proposal to amend the report of the Legislative Committee. There is, I take it, not only a responsibility on the part of the members of the Legislature to inform themselves about all pending legislation, but the sacred right of petition on the part of the citizens to inform the legislators is basic. You will notice, if you will examine the text of this resolution, that it is very specific; it is directed merely to the Legislature, and it provides the necessary constitutional authority against the possibility that the courts themselves might act adversely.

In the second place, the resolution is a declaration of public policy. It would, in my judgment, greatly hearten the public to have such a forthright declaration of policy on this important question. It would not only protect the Legislature in the exercise of its functions but it would also protect the body of the citizens in that the Legislature itself would feel immune from the operation of lobbyists within the chambers of the halls of the Legislature itself.

It would, in the third place, give both constitutional and moral impetus to the Legislature to act in a manner which would befit both the situation and the conditions in our times.

In moving, then, this resolution, sir, I am merely seeking to implement what seems to me to be the wise decision on the part of the Legislative Committee by providing that this mandate should appear as a constitutional directive to the Legislature, authorizing them to act in an affirmative manner in this important question of lobbying.

PRESIDENT: Senator Barton.

MR. CHARLES K. BARTON: Mr. President and members of the Convention:

I feel I should come up here to discuss this matter in brief, as I will explain later. One reason is that if I had stayed down there by the sponsor of the motion and he had come back there, we would be so close together, everybody would think we were lobbying, and that would be quite true. I feel that I have had some experience in this matter, and that is the only reason I offer to speak.

I have been religiously determined in this Convention to remain off my feet as long as possible. I have been quite successful. There were many times I thought I should speak, but the matters were amply covered and I thought I could best express myself by my vote, without explaining how I was going to vote. I like to hear why I should vote that way once in a while, and so I will not open like most of the speakers and say that I will be brief. I have borrowed

from two members 15 minutes of their time, and I will have, then, 45 minutes. Now, if I do not take that long I will be unusual, and you will think more of me than if I said I won't be very long and I will be brief, and then continue to talk and keep you here for half an hour. I will do my best, however, in the short space of 45 minutes which have been alloted to me. I may lose my point, however.

Now, I feel that I have a right to speak about lobbying, being President of the Senate and having been in the Senate for a number of years, but before doing so, sir, I would like to ask the sponsor, my dear friend, Commissioner Miller, a question, if he will submit.

MR. MILLER: I will submit, sir.

MR. BARTON: Through you, Mr. President, will you, sir, define in as concise words as you can, without any great length which might spoil the definition, lobbying?

MR. MILLER: The report presented by the committee appointed to investigate the rules and regulations affecting the privileges of lobbyists under resolutions submitted to the General Assembly in 1905 attempts that, Senator Barton, in five pages. I shall not attempt to paraphrase even what they have suggested.

I think what I would add by way of definition is "The practice of lobbying that is sought to be prohibited is by those persons who, for hire, seek to influence the course of legislation within the legislative chambers of the State Legislature." That will serve as my definition of lobbying.

You will notice, sir, if I may just carry forward, that my amendment does not seek to spell out the definition of lobbying. I was leaving that to the good judgment of the members of the Legislature, of which number you are a distinguished one. The amendment merely provides the constitutional authority vesting in the Legislature itself the power to do this, lest some court at a future time throw out such a regulatory provision as violative of the principle of the right to petition.

MR. BARTON: Thank you, Commissioner. I think the courts would be much more interested in the definition of "lobbying" given by *Webster's Standard* or *Funk and Wagnall's.* Therein, concisely, "to lobby" means to try or to attempt to press a measure through a legislative body by outside influence. Now, if you can read anything improper in that, I cannot. As a matter of fact, I am happy that that is the definition, because legislators who are interested in passing legislation, not knowing all about the subject matters, are quite apt to want to be influenced properly. In order to carry out the terms of the resolution to the intent of the sponsor, you must include some words which imply more vice than I take out of the simple word "lobbying."

I have had the pleasure of having been influenced by some of

the greatest minds in the State. It was my privilege a short time ago as Majority Leader of the Senate to ask the then Chief Justice of our Supreme Court, who sits here today with us, to come in and to help to influence my committee. This amendment is an attempt to stop that. If its meaning is as it is proposed, you will have to have harsher words, but I for one will stand by the Legislature and say that we are not subject, insofar as I have been able to detect in my short space of half a dozen years there, to evil influences such as are being imputed here. Let us have more respect for our men who give up their time for little or no remuneration to do something for our State. Let us put the truth in here, if you want it, but leaving it this way, ladies and gentlemen, means just this: You have received, since June 12th, many many messages, orally and by mail. You had them on your desk this morning. Are we limiting oral lobbying? Lobbying by mail, if it has the same object in view, is just as bad. It isn't *where* you lobby improperly, it's *do* you lobby improperly?

I have had some of the finest men in our State—ladies and gentlemen, have you ever heard of "front-office lobbying"? Well, "front-office lobbying" is when the Governor sends for you, and that's in the same building. Apparently the only place that you can lobby, to come back to Webster, is in a lobby. That's wrong, too. I have seen the finest type of lobbying on my rostrum—that's to be called "rostruming." I have many lobbyists at my desk—that should be called "chambering." It isn't the name; it isn't what they try to do, if they do it properly. This morning, a five-minute recess was asked for. Seventh inning stretch? Not at all—a chance to assimilate our ideas—to do a little lobbying.

Ladies and gentlemen, if you want this type of article in your Constitution, and many more like it that have been turned down and many more like it which will probably come before us, a suggestion to get out of this heat and to cut this short would be to adopt the revisions—the 1937 Revision and the other revisions—as our Constitution. This is purely legislative. Who can do better than the members of the Senate and members of the House themselves to regulate what they call unfair practice there?

Now, the gavel means a lot—an awful lot—and if the gavel cannot control improper influence, that belongs to the man with the gavel and he should be criticized and held to account for it. But is there a difference when a man comes to my house? There's an attempt to make a difference—this attempt to prohibit the practice of lobbying. By very inference, by prohibiting it, that means that it's evil and false and unfair and improper, and yet the next line says "and further regulating the practice of lobbying."

So the intent is to tell the Legislature that they cannot permit

lobbying on the floor, but if others come to your house or do it by mail, or you are sent for by the front office or have the heads of departments seek to have their measure put through—well, that is not lobbying in the strict sense of the word.

It gave me a great pleasure, during the last session, to have the State Banking and Insurance Commissioner and the heads of the banking and insurance attorneys of New Jersey come to my rostrum and lobby. What were they doing? Hiring me? No, they were seeking to show there may have been some point which I didn't get concerning a piece of legislation—the revision of the state banking laws.

Lobbying is done all over. If it is done improperly, there are ample laws today to run out the culprits. I say this would be a stain upon the honor and dignity and decency of the great men whom we have had in our Legislature to impute 100 per cent of the time the fact that because someone is talking to them, they are receiving money or some other matter of material wealth which is acceptable to them.

Well, I have been down there a long time and I have never heard or seen of anything material coming along with what is called "lobbying." I have heard a lot of phony ideas. I've heard a lot of things that made me feel the stronger for my own position. I have heard some, too, that changed my mind in the right way, where I found I hadn't made the right deduction. But this policy of criticizing simply because a man in the Legislature is seen talking to someone who may be in some business but who is politically inclined, and to castigate him as an improper man to hold public office, I say to you, casts an unfair blot upon every man who sits right in this chamber today. It is wholly unfair, and did I not have the respect, did I not have the profound respect for my friend Spencer Miller, the sponsor of this, if I didn't think so much of him, I would say that it borders on the ridiculous and is a profound piece of nonsense.

MR. WESLEY L. LANCE: Mr. President.

PRESIDENT: Senator Lance.

MR. LANCE: Mr. President, only five state constitutions mention "lobbying." As Commissioner Miller said today, we shouldn't copy our New Jersey Constitution from some of the small southern states. The states which do have a prohibition against lobbying are Alabama, Arizona, Colorado, Georgia, California. This provision is a replica of the Arizona Constitution.

Mr. William Miller's monograph, which has been represented to us as very fine on this subject, reads as follows:

> "It is notable that the only states which have had any reported success with lobbying regulations are Wisconsin, Maryland and Massachusetts.

None of these states mention lobbying in their constitution. This subject is purely a legislative matter and not the proper province of constitutional enactment."

PRESIDENT: The question is called for. Mr. Miller, would you care to comment further?

MR: O'MARA: Mr. President.

PRESIDENT: Senator O'Mara.

MR. O'MARA: May I say that the Committee on the Legislative gave this matter careful consideration and unanimously decided it was not the proper subject of a constitutional provision;, that it has voted to submit a resolution which will be offered at the proper time, requesting the Legislature to take appropriate action in the premises.

PRESIDENT: Are you ready for the question? All in favor of this amendment, please say "Aye."

(A few "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: The amendment is lost . . . Mr. Gemberling.

MR. ARTHUR R. GEMBERLING: I spoke too fast; I wish to change my vote.

(Laughter)

PRESIDENT: We'll declare a short recess while the pages, or whatever we call them, distribute these minutes of the Judiciary meetings.

(Short Recess)

PRESIDENT: Will the delegates kindly take their seats?

We will proceed with the consideration of Amendment No. 7, "Proposed Amendment to Proposal 2-1, Committee on the Legislative," introduced by Spencer Miller, Jr. *(reading):*

"RESOLVED: the following amendment to Section VI, Paragraph 2, Article Legislative be agreed upon:

Delete phrase in 2nd line, 'other than,' and substitute therefor the phrase 'and counties.'"

Mr. Miller, will you comment on this?

MR. MILLER: Mr. President and delegates to the Convention:

The Report of the Committee on the Legislative, in dealing with the matter of zoning, has made a very important contribution, it seems to me, to this subject. However, in Section VI, Paragraph 2, the use of the phrase "other than," deprives the counties of the State of New Jersey of zoning authority. I take it that one of the reasons the committee made this decision, was that this is the present provision of our Constitution. The language of the first part of the committee's zoning provision is substantially that of the pres-

ent zoning provision of the Constitution. I point out, Mr. Chairman and delegates, that the zoning amendment was adopted 20 years ago. In that time a great deal of water has run over the dam; we are today presented with the problem of widening the whole field of zoning to include both counties and municipalities.

In the first place, we ought to bear in mind that there are vast areas of this State outside of our urban centers where the problem of zoning has become one of such importance that if we limit it only to municipalities, we shall have a serious, if not a difficult time in carrying on some of the broad public developments which are contemplated.

Indeed, I think it's not too much to say that this area of zoning is not only one which has to be expanded, but if we are to proceed with the creation of master plans for programs of public development, a wider authority is needed. The Association of Chosen Freeholders, who have been wrestling with this problem of the development of master plans over the past few years, have unanimously gone on record in favor of a widening of this provision in the Constitution dealing with zoning.

Furthermore, this provision has another sufficient reason for its enactment. We are presented today with a situation about which I may be presumed to speak with some knowledge. For the first time, the counties of our State are receiving very considerable amounts of federal grants-in-aid for what we call our Federal Aid Secondary Highway System. Only next week we shall take the first public bids on the Federal Aid Secondary System in the State Highway Department.

Now, as the counties proceed with the expenditure of these grants-in-aid, the Federal Government is making new requirements with reference to the acquisition of rights-of-way so that this new Federal Aid Secondary System will conform to good standards of design. This will require more advance planning and control than in the past. I feel sure, ladies and gentlemen of the Convention, that if that point had been brought to the attention of the committee, it would have had weight in their final conclusion.

There is a matter which seems to me to be pertinent here. There was a fear which I think was shared by some of the members of the committee, that conflicts might arise between municipalities and counties. The fear is rather imaginary. I think such conflicts, if they arose, could quite easily be resolved.

I know of at least two counties in this State where municipalities have developed planning boards which have resorted to the device—a very familiar and a very desirable device—of setting up a federation of municipal planning boards, to insure effective cooperation with the counties. I think, therefore, that this fear that there would

be any substantial friction between the municipalities and the counties can be laid at rest. We have every reason to hope and to believe that the matter can be effectively accommodated.

In a word, then, may I express the hope that the Convention, having made such a notable contribution in the sections dealing with zoning, will feel moved to make what seems to me to be certainly a very small addition to the Committee Proposal—one which not only represents the considered request of the freeholders of all the 21 counties, but one which, I presume to say to you this afternoon, will also facilitate carrying forward our Federal Aid Secondary Highway program.

I have pleasure, therefore, in moving this proposal.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President and ladies and gentlemen of the Convention:

Very briefly, the reason why the Committee rejected the idea which is embodied in this proposed amendment is set forth in the Committee Report.

If this amendment were adopted, and the Constitution gave to the Legislature the right to grant to counties the same zoning rights as it does municipalities, it is perfectly conceivable that two bodies having jurisdiction in the same geographical limits would have conflicting zoning regulations. For instance, take the County of Middlesex, the county in which the Convention is sitting. If there were such a grant in the Constitution as this, and the Legislature implemented it by giving the County of Middlesex the right to adopt zoning regulations, it is conceivable that the county would adopt zoning regulations which would conflict with the zoning regulations already adopted by the City of New Brunswick, or by the other municipalities in the county.

We recognize the problem which Mr. Miller propounds, and if there were any logical way to solve it we would be happy to do so. We feel, however, that the reason why the grant of zoning powers in the existing Constitution was limited to municipalities, and counties were expressly excluded therefrom, was to prevent a conflict in the jurisdictions which, as I said before, covered identical geographical territories. For that reason the committee rejected the proposal.

PRESIDENT: Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: Mr. President and ladies and gentlemen of the Convention:

I think that at the start of the committee meetings I had the fear, as my colleagues on the committee had, that there must essentially be a conflict between a county and a municipality in the matter of zoning if this amendment were made. But before the com-

mittee session terminated and after giving the matter much thought, I became persuaded, and I am now persuaded—and I hope you will be persuaded, Mr. President and members of the Convention—that that is a matter for the Legislature to determine at the time it enacts the legislation.

In other words, the power to the counties will not be the same in every respect with the power granted to the municipalities. The Legislature will have the authority and the obligation to delimit the zoning power as between the municipality and the county; and, therefore, there need not necessarily, by reason of this amendment, be any conflict at all.

I think it is a very good amendment, and I ask that it be given support.

PRESIDENT: Mr. Emerson.

MR. SIGURD A. EMERSON: For a number of years I represented municipalities in Union County. I grew up with the zoning amendment in the cases that were tried before the amendment became effective. I think we are attempting to do something that will not work successfully without impairing the right of individuals. To start with, the right to zone is the taking of property. I know from experience that the municipality where they prepare their own zoning ordinances will run counter to the views of the freeholders, and you may impose upon my property or your property a double zoning ordinance which will affect your property and possibly destroy it. I think we are going too far in our attempts to regulate the use of private property. It covers the same area as the property owned in the municipalities, and I am very much opposed to this amendment.

PRESIDENT: Is there further discussion on this amendment?

FROM THE FLOOR: Question!

PRESIDENT: All in favor of the proposed amendment please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Those opposed, "No."

(Chorus of "Noes")

PRESIDENT: Those in favor, please raise their hands.

(Minority of hands raised)

PRESIDENT: Those opposed, please raise their hands.

(Majority of hands raised)

PRESIDENT: The amendment is lost.

We will proceed with consideration of Amendment No. 8, "Proposed Amendment to Proposal 2-1, Committee on the Legislative," introduced by Spencer Miller, Jr. *(reading):*

"RESOLVED: the following amendment to Section VI—Article Legislative be agreed upon:

Add new paragraph to Section VI to be entitled Paragraph 4 as follows:

'The natural beauty, historic association, sightliness and physical good order of the State and its parts contribute to the general welfare and shall be conserved and developed as part of the patrimony of the people, and to that end private property shall be subject to reasonable regulations and control.' "

Mr. Miller?

MR. MILLER: Mr. President and fellow delegates. May I ask the privilege of a delegate to have this matter held over until another day, please?

PRESIDENT: The chair so rules.

MR. O'MARA: What was the result of that, Mr. President?

PRESIDENT: Mr. Miller proposed that it be allowed to lay over . . . Amendment No. 9.[1]

MR. O'MARA: Mr. President, I have requested Senator Lewis, who proposes this amendment, to allow it to lie over until tomorrow morning, and he has consented to do so. That also applies to Amendment No. 10.[1]

PRESIDENT *(reading):*

"Amendment No. 11
Amendment to Committee Proposal No. 2-1 (Legislative)
Offered by Dominic A. Cavicchia,
Delegate from Essex County
Strike out paragraph 11 of Section VII (page 8)."

MR. CAVICCHIA: Mr. President, and fellow delegates:

I seek to strike out Paragraph 11 only because I think it is so revolutionary in its present form that it will create much doubt and confusion as to just what it means.

I respectfully urge that the delegates read that paragraph *(reading):*

"The provisions of this Constitution and of any law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor; the powers of any county or of any municipal corporation shall include not merely those expressly or incidentally conferred; specifically enumerated, indispensable, essential, or merely implied, but also those powers reasonably convenient for the execution of such powers and not inconsistent with or prohibited by this Constitution or by law." (Par. 11, Sec. VII, Page 8).

Now, Mr. President, I am not opposed to the principle of home rule. I believe in it, but as the law stands today, generally, municipalities are creatures of the State, and counties are too, and they have only those powers which are specifically given to them or necessarily implied. But this provision would open the door to such an extent that each municipality would be able to decide for itself what is reasonably convenient, and then the question would arise

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

in litigation by any taxpayer, or by anybody having the authority to test the action of the governing body, as to whether the governing body acted properly.

I say that, whereas now the Legislature apparently grants powers to the municipalities and counties of the State by saying they may do thus and so, the adoption of this provision will mean virtually that legislation will have to be so planned as to say: Municipalities, or counties, as the case may be, shall not do this, and shall not do this, and shall not do this. I say that this does not accomplish what is in the minds of people when they speak of home rule. I say that by the adoption of this paragraph you are removing municipalities and counties so far away from legislative control, through opening up and enlarging upon their powers by giving them the right to do what they think is reasonably convenient, that the measure of control by the Legislature that ought to prevail will be lost. I think this paragraph ought to be stricken from the Committee Proposal; it certainly ought to be unless someone comes up with a more sensible provision relating to home rule.

PRESIDENT: Is there any further discussion on this Amendment No. 11? Senator O'Mara?

MR. O'MARA: Mr. President, ladies and gentlemen of the Convention:

The committee conceived that this was one of the most important improvements made in the Legislative Article. Practically every civic organization that has been concerned with the revision of the Constitution has urged that a larger grant of home rule be made to municipalities. The rule which is invoked in this State now is that a municipality depends upon the grant of power from the Legislature, and that grant of power, the courts have said, is strictly construed. The purpose of this amendment—and I think it is in line with the overwhelming weight of public opinion in this State as expressed by the people who have been concerned with the revision of our Constitution—is that that rule of construction should be reversed. Local governments, should have not only the powers expressly or by necessary implication granted by the Legislature, but that such grants should be liberally construed by the courts to the end that local governments should have not merely powers that are expressly or incidentally conferred or specifically enumerated, but also those powers which are reasonably convenient for the exercise of such powers, provided that they are not inconsistent with or prohibited by the Constitution or by law.

I think that this is a tremendous improvement. It changes to a large extent, perhaps, the basic conception of the relation between municipalities and the State, but that change, in my judgment and in the judgment of the committee, is a decided improvement. I

oppose the adoption of the amendment proposed by Mr. Cavicchia.

FROM THE FLOOR: Question on the amendment!

PRESIDENT: Any further discussion on this amendment? . . . Mr. Paul?

MR. WINSTON PAUL: Through you, Mr. President, I would like to address a question to Senator O'Mara, if he will submit.

MR. O'MARA: I will submit.

MR. PAUL: I am not clear as to the necessity for the words in the last clause: "but also those powers reasonably convenient for the execution of such powers . . . " That particular phraseology, in view of the preceding phraseology, seems to be a bit superfluous or ambiguous. Is there any necessity for such a clause?

MR. O'MARA: Through you, Mr. President, I think there is. It gives a broader grant of power than the language immediately before it, namely, grants of power that are specifically enumerated or indispensable or essential or merely implied. Now, that is a rather broad definition of the grant of power. But the next clause goes even further and says it also gives, in addition to the grants described just immediately before these words, those powers which are reasonably convenient. That includes powers that do not come within the enumerated powers. Of course, the question of what is reasonably convenient would in the first instance be determined by the governing body, but its determination would be subject to judicial construction and review.

PRESIDENT: Is there any further discussion on this amendment?

(Silence)

PRESIDENT: Are you ready for the question? All those in favor of this amendment please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, No.

(Chorus of "Noes")

PRESIDENT: All those in favor, please raise their hands.

(Minority of hands raised)

PRESIDENT: All those opposed, please raise their hands?

(Majority of hands raised)

PRESIDENT: The amendment is lost.

MR. CAVICCHIA: May I have a roll call?

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Cavicchia, Clapp, Constantine, Cullimore, Emerson, Holland, Lance, McMurray, Miller, G. W., Murray, Orchard, Peterson,

H. W., Randolph, Sanford, Schenk, Sommer, Streeter, Taylor, Young—19.

NAYS: Barton, Barus, Berry, Brogan, Cafiero, Camp, Cowgill, Delaney, Drenk, Dwyer, W. A., Dwyer, W. J., Eggers, Farley, Feller, Gemberling, Hacker, Hadley, Hansen, Hutchinson, Jorgensen, Katzenbach, Kays, Lewis, Lightner, Lord, McGrath, Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Naame, O'Mara, Park, Paul, Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Saunders, Schlosser, Smalley, Smith, G. F., Smith, J. S., Stanger, Van Alstyne, Walton, Wene, Winne—51.

SECRETARY: 19 in the affirmative and 51 in the negative.

PRESIDENT: The amendment is not adopted. We will proceed, then, with the consideration of Amendment No. 12. *(Reading):*

"Amendment No. 12

Amendment proposed by John J. Rafferty, Delegate, Middlesex County.
An Amendment to Committee Proposal No. 2-1

RESOLVED, That the following shall become new Paragraph 9 (14), Section VII, Article....., Legislative, in Committee Proposal 2-1, presented by the Committee on the Legislative, and shall become part of the proposed new State Constitution.

'9 (14) Nothing in this Constitution shall prevent the Legislature from providing as it may deem proper by general laws for the secular education and support of persons who are blind, deaf, dumb, physically handicapped or delinquent, or for the aid, care and support of neglected and dependent children and of the needy, sick or aged, through agencies and institutions, religious or secular, authorized and approved by the Department of Institutions and Agencies, or its successor department, or other designated department having the power of inspection thereof, by payments made therefor on a per capita basis. No such payments shall be made for any such person so provided for who is not received and retained in any such institution or agency pursuant to reasonable rules established by the Department of Institutions and Agencies, or its successor department, or other designated department having the power of inspection thereof.' "

Judge Rafferty.

MR. JOHN J. RAFFERTY: Mr. President and delegates to the Convention:

This proposal which I present to you is the first approach that the Convention is making to social provisions in the Constitution. Heretofore we have considered matters dealing with the Executive. Insofar as they have dealt with the Legislative, they have not been of a social nature. This provision is distinctly referrable to the social law, and the design of it is to impress upon our constitutional law, not a departure from present practice, but rather a recognition of present practice in the administration of the social and welfare work of the State.

I am not at liberty to indicate the attitude of the Department of Institutions and Agencies insofar as this proposal is concerned, but I can say to you that the emphasis for the last decade or more has

been to avoid, insofar as it can be avoided, the institutionalization of those who properly come within the categories requiring aid and assistance from the State. The emphasis in the last decade or more has been to abolish institutions. It has been to keep those persons, those fellow citizens, who are within the category in the home, and I am perfectly in agreement with that attitude. It is an effort to deal with this great social problem in an aspect that surely is desirable and helpful.

But it has become necessary, notwithstanding the attitude of the Department, to utilize the institutions that have been erected and the facilities that have been afforded for the assistance of these several persons through those institutions. This program which I propose to you is in no sense revolutionary, but is designed to supplement the work of the Department of Institutions and Agencies so that the facilities which are presently available to the Department may be expanded by the use of other facilities of private charitable corporations. The purpose of my proposal is to clarify what is considered to be of general law, but which has been understood by the administrators of our social laws to the contrary. For instance, it is the view of the administrators of our social laws that one who qualifies for an old age pension in this State may receive the proceeds of that pension while he is living in his own home, or while he is living in another home or institution specially provided in a special case. But yet, if that individual desires, either because he has no one to whom he may go or because he would prefer to be in a charitable institution where he may have the facilities of that institution and at the same time have the friendly ministrations and the solace of those who are one with him in his personal life, his old age pension is immediately and thereby cut off. In other words, if he goes to a charitable institution and not a public institution, he loses the benefits of his old age pension to which he would otherwise be entitled.

So also, for instance, in the case of a young girl who has offended against the criminal law. The sentencing judge may send her to a penal institution provided by the State, but pursuant to a policy subscribed to by all of those who are conversant with social welfare laws, he will offer to that girl the opportunity to go to an institution maintained and operated by the religious organization of which she may be a member. For instance, in this State, in the County of Essex, she may be given the option of voluntarily entering the House of Good Shepherd instead of going to a penal institution of the State. The girl goes to that charitable institution, she benefits by it, the law is vindicated thereby, but the State will not pay for the reasonable cost of maintenance of that girl in that charitable institution because of the principles to which I have here-

tofore alluded.

It is a case such as this kind that I have in mind. I give you a particular instance. The local administrator of welfare wrote to the Director of the Charitable Institutions of the Catholic Diocese of Trenton in 1944, and this director of local welfare advised the Director of the Charitable Institutions that there was an elderly lady under his care who desired to enter the charitable institution and for whom there was at the moment no facilities available from the State. He wanted to know whether or not the charitable institution would accept this person and whether the old age grant would continue while the party was in the charitable institution. The public officer in charge of the matter replied that it was impossible, because of the theory under which the institutions operated, to continue the old age grant if this lady went to the charitable institution.

There is another phase of the administration of the social laws that is here involved. Because of the theory, if I may expand upon it a moment, that state monies may not be used for the aid of any private corporation, it is considered that these charitable institutions may not participate in the federal social welfare program where it is necessary to utilize monies of the State, or in an even more refined situation where, even though there is no direct disbursement of state money, the officers of the State, paid by the State, participated. There the charitable institution may not take advantage of the federal welfare laws because state money, either directly or indirectly, is being used in the administration of that federal welfare law.

Only this year, in the 1947 session of the Legislature, Mr. Mischlich, the Assemblyman from Atlantic County, introduced a bill of the tenor and purport of the proposal which I am now advancing before you. The committee of the House of Assembly did not permit that bill—or rather, the bill was left in committee because of the view that it would be futile to pass the bill because of the general understanding that state money may not so be used.

Therefore, I indicate to you, my fellow delegates, that the proposal is not, as I said a moment ago, revolutionary. Rather, it is in clarification of the social laws of our State, so that this general misunderstanding of the constitutional provisions involved may be clarified and, in a proper case where the State desires to utilize the services of these charitable institutions, they may be so utilized, and that the State will thereby become obliged to pay for the reasonable cost of the maintenance of a person who otherwise is a state ward in a charitable institution.

Aside from the reasons which I have already advanced to you, and which of themselves, I respectfully submit, are sufficient to

justify the passage of this proposal, I would like to point out to you that the charitable institutions in our State are of great stature. I think every delegate to this Convention is more or less conversant with the great number of charitable institutions—hospitals, orphanages, and other buildings—erected and constructed, together with the maintenance and the personnel thereof; and the great value of these institutions to the public welfare of our State, wherein there is no contribution to the institution itself, wherein there is only reimbursement—there is only repayment to the charitable institution for the services rendered. I realize that it is the law that the State may contract with charitable institutions, as it does with hospitals, for services, but that in itself seems not sufficient. It seems that it is necessary that there be a clarification of the public policies of the State, and that is the purpose of my proposal.

I desire, lastly, to direct your attention to the limiting provisions of this proposal. It is specially set forth that the constitutional provision, if adopted, is not mandatory, but is permissive only. It lies with the Legislature to consider the problem. It lies with the Legislature to lay down in statute law the provisions and the conditions under which such cooperation might be afforded. Further than that, it requires that the charitable institution must be one which has been approved by the Department of Institutions and Agencies, and more than that, that the payments be so made as to emphasize the fact that they are remunerations or reimbursements only, and that they shall be on a per capita basis. And further, it requires that it shall be through the Department of Institutions and Agencies, or other like institution having power of inspection, having power to prescribe standards; and no person may receive the benefits of this proposal unless that person shall first have been received and his introduction into the charitable institution shall have been initiated by the Department of Institutions and Agencies.

I urge upon you, my fellow delegates, that this is social legislation; that this is not exclusively a matter for the Legislature, because I have indicated that the legislative mind is that the constitutional provisions are that a payment of money to any corporation whatsoever is contrary to that which I propose; and that it is absolutely essential, in order that the Department of Institutions and Agencies and the Legislature itself comply with the thing which I have reason to believe they would comply with, because it is innate in the great purposes of the Department. It would give a declaration of constitutional policy which would permit the enactment of such legislation and the practice and the exemplification of the principle and the purpose which I here espouse. I urge the adoption of the amendment.

PRESIDENT: Mr. Cowgill?

MR. JOSEPH W. COWGILL: Mr. Chairman, through you, will the sponsor submit to a couple of questions?

MR. RAFFERTY: I should be happy to submit.

MR. COWGILL: It may be that in asking these questions it will be revealed that I have been inattentive, or stupid, or maybe the heat's got me, but, for example, under the provisions of the amendment which you sponsor, suppose an indigent aged person were to apply, let us say, for admission to the Methodist Home for the Aged at Collingswood. Could payments be made to that institution, provided the institution complied with rules to be made by the Department of Institutions and Agencies?

MR. RAFFERTY: That would be the purpose of the amendment.

MR. COWGILL: Then may I ask you, sir, is the implication not present that that institution would be subject to the control of the Department?

MR. RAFFERTY: It would not be subject to the control. Indeed, Mr. Cowgill, that is the reason I have so restricted the proposal. The charitable institutions, as I understand them, while they comply with at least all the minimum standards of construction, of fire protection, and of all of the other legal standards which apply to them—this would not give the Department of Institutions and Agencies the power of control implicit in your suggestion. It would merely mean that before one could enter the institution, and for the institution to be reimbursed for the reasonable cost of the care and maintenance of that person, that institution would have to comply with the standards set forth by the public agency.

MR. COWGILL: Thank you, sir. On the question, Mr. President—in view of Delegate Rafferty's explanation, I shall support the amendment. I am still somewhat doubtful, however, as to whether or not the promulgation of minimum standards does not mean control.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President. Personally, I am in favor of this amendment and shall vote for it. However, I want to say for the information of the Convention, that a majority of the committee voted against this proposal when it was before the committee, and did so on the ground that they felt that the object which the amendment seeks to accomplish can be accomplished under the present state of the law. Perhaps Judge Rafferty would like to address himself for a moment or two to that report.

MR. RAFFERTY: Mr. President and delegates:

That matter was discussed before the committee and I attempted

to meet it there. It is true, and it has judicially been determined, that the State may contract with the private agency. But because of the principle which I referred to in the very beginning, it is the theory of the Department of Institutions and Agencies—and I do not quarrel with the theory—that institutions are not to be utilized except where it is absolutely necessary, and that such contract should not be entered into because if the institutions, representing as they do private corporations, were utilized it would operate against the constitutional clause. The contract is only entered into in an emergency situation. The purpose of this provision is to permit Institutions and Agencies, having in mind the provision against the contribution to corporations, to more generally utilize the charitable institutions. They utilize them now only in an emergency. As I indicated in the one example where the local director of welfare sought to utilize the charitable agency, it could not be done because of that policy.

I have no doubt whatsoever—although, of course, I don't want to imply whatsoever by anything that I say—that because of the tremendous growth in the case load of the social work of the State, the Department of Institutions and Agencies, having this matter cleared for them, would utilize the charitable institution more than they do. That would amount to a tremendous saving to the State, because in this case the State would only pay—and I emphasize this—the reasonable cost of the care. It would be mere reimbursement. There would be no expenditure for plant, there would be no expenditure for personnel, there would be no expenditure for administration—merely a reimbursement for the reasonable cost of the care rendered, as the State may choose to utilize it.

PRESIDENT: Mrs. Streeter.

MRS. RUTH C. STREETER: Mr. President and fellow delegates:

I think that the form of this proposal tends to minimize the importance of it. It sounds as if it was a comparatively small, rather reasonable, very kindly and somewhat practical suggestion. As a matter of fact, I'm sure that it goes a great deal further than that. Mr. Rafferty and I served on the same Committee on Taxation and Finance to which was assigned the old paragraphs 19 and 20 of Article I. Those were the ones, particularly paragraph 20, to which he refers. Paragraph 20 reads as follows:

> "No donation of land or appropriation of money shall be made by the State or any municipal corporation to or for the use of any society, association or corporation whatever."

When this paragraph came up before us for discussion I said that I was surprised that there had been so little interest taken in it, because it seemed to me it was one of the big things which was

changing in our day. It seemed to me that many charitable institutions—whether they are educational, hospitals, schools, libraries, or what have you—which have in the past been supported liberally by private contributions and had existing plants and were in running order, we are now finding cannot meet their operating expenses. One after another they are turning either to the local government, or the State Government, or the Federal Government for assistance in making up their deficits.

I am not necessarily against that. I think it might easily be shown that the least expensive and best way for the State to take care of some of its surplus wards of one kind or another might be through the use of these private agencies which otherwise might have to close their doors. However, I think that it is in direct opposition to what has been the theory of government for many, many years—that public funds which are levied upon everybody, willy-nilly, should not be used for private corporations, whatever their purpose was. It is true that it has been interpreted that you may make a contract with them for services rendered, but we are going really way beyond that.

Now, you have heard and you will hear again, that the matter concerns a service to people, whether they are old people or whether they are children, or what have you, but to me that seems a completely facetious argument. There is no difference between the service to a number of people and a subsidy to the institution which is taking care of them. I think that it may well be, and this I wish to emphasize, that the time has come when we should modify our traditional stand in this matter. But, I think that it is a far broader and more complicated subject than this Convention is equipped to deal with. I would suppose the best way of going into it would be to have a commission appointed to conduct a survey on the facts. Let us know how far we would be obligating ourselves, to how may kinds of institutions and what form of accountability—and I think this is especially important—what form of accountability is necessary if public funds are to be spent not merely for supervision or control of public bodies.

I submit, fellow delegates, that this proposal goes too far to be incorporated in the Constitution at this time. I expect to oppose it, but I am very much interested to see if the subject can be studied at a later date and more at leisure.

PRESIDENT: Any further discussion on this Amendment No. 12? . . . Judge Stanger.

MR. FRANCIS A. STANGER, JR.: Mr. President and delegates:

I rise to oppose the amendment as offered. It's been freely expressed here, even by the sponsor himself, that contracts can

now be made, so that we can take care of the wards of the State if it's so approved by the Department of Institutions and Agencies. For years during the life of this State we have kept apart from making public contributions to private causes. I think that that should continue. I think that should we adopt this amendment, we are not only setting aside one of the great traditions of New Jersey but we are beginning then to interfere with every private charity and, if I may add, with every church in a way that I do not think we should. And it also will be destructive of the private charity which we have all enjoyed engaging in, in our own little humble way. I think that it's a very dangerous amendment and I shall oppose it, sir.

PRESIDENT: Mr. Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: Mr. President and fellow delegates:

I think this amendment has a very worthy purpose. On the other hand, it sets up a precedent which we have never had before in this State. When the Honorable Sanford Bates, Commissioner of the Department of Institutions and Agencies, appeared before the Joint Appropriations Committee this year, he did not bring up this subject. He did not state that there was any particular need for it. I want to be frank and honest and say that the subject wasn't brought up by us; in fact, it wasn't thought about.

My feeling about it is very much like Mrs. Streeter's. I think the chances are that if I had time, after due consideration and deliberation, after having a report of the commission that studied this matter—if there were time, which there is not, for this Convention, or subsequently for the Legislature—I might be very strongly in favor of this matter.

Incidentally, there's another collateral problem which constantly confronts people in various counties and which I think indirectly touches on this matter, and that is, should state funds or county funds be allowed to be appropriated to private hospitals for construction purposes? There are some very fine people who very strongly believe that that should be done. So frankly, through lack of study and lack of intimate knowledge of the ultimate result that might be brought about by this amendment, I intend to oppose it.

PRESIDENT: Any further discussion on this amendment? Are you ready for the question? . . . All in favor of Amendment No. 12 please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: All those in favor, please raise their hands?

(Minority raise hands)

PRESIDENT: Those opposed?

(Majority raise hands)

PRESIDENT: The amendment is not adopted.

We will proceed, then, to the consideration of Amendment No. 13 by Mrs. Barus:[1] "Resolved, that a new paragraph 4 be added to the Legislative Article at the end of section 6 of the Article. . . . "

MR. O'MARA: Mr. Chairman, I have asked Mrs. Barus to have this lie over, and she's consented to do it.

PRESIDENT: We will proceed, then, to consideration of Amendment No. 14 by Mr. Jorgensen.[1]

MR. CHRISTIAN J. JORGENSEN: This amendment has been revised somewhat and has to do with a matter of importance. It has a lot to do with the enlargement of the principle of home rule. A number of the delegates have spoken to me today and asked me if I wouldn't hold the amendment over for a day or so to give them a chance to study the language and have their reaction to it, and I would so like to do.

PRESIDENT: The proposed Amendment No. 15—Mr. Lewis has asked that it be held over until tomorrow.[1]

May we have a brief recess? I would like to speak, if I may, with Senator O'Mara.

MR. STANGER: Mr. President, may I address a question to you? How late will we continue in session? I know a number of delegates, including myself, very specially would like to conclude early tonight.

PRESIDENT: I hope to answer that in about five minutes, Mr. Stanger.

MR. STANGER: Thank you very much, Mr. President.

(Short recess)

PRESIDENT: The chair recognizes Mr. O'Mara.

MR. O'MARA: I now move we adjourn until 10 o'clock tomorrow.

MR. WILLIAM J. ORCHARD: I want to know if this Convention would now reconsider the proposed adjournment at 1:30 tomorrow afternoon. It seems to me that we are short-changing ourselves on time. Many delegates come too far a distance to devote three hours for a session tomorrow.

PRESIDENT: May I comment on your suggestion by saying we expect to complete all Legislative measures tomorrow by noon. I have been requested by the Judiciary Committee that we do not ini-

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

tiate the discussion of their Proposal until the following Monday.

There is a motion to adjourn. All in favor say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The Convention will adjourn until 10 o'clock tomorrow.

(The session adjourned at 4:10 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Friday, August 15, 1947

(The session began at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and the spectators to rise while Father O'Dea of St. Peter's Church, New Brunswick, pronounces the invocation.

FATHER O'DEA: We pray Thee, O Almighty and Eternal God, that the deliberations of this Constitutional Convention be decided and enacted for the welfare of the entire State of New Jersey with unchanging faith in the confession of Thy name.

We ask Thee, O God of might and wisdom and justice, to Whom authority is rightly administered, laws are enacted and judgment decreed, assist with Thy Holy Spirit of counsel and fortitude the Governor of this great State, that his administration may be conducted in righteousness and be eminently useful to Thy people over whom he presides, by encouraging due respect for virtue and religion, by a faithful execution of the laws in justice and mercy, and by restraining vice and immorality.

Let the light of Thy divine wisdom direct the deliberations of this Convention and shine forth in all the proceedings and decisions framed for our rule in government, so that they may tend to the preservation of peace, the promotion of national happiness, the increase of industry, sobriety and useful knowledge, and may perpetuate to us the blessings of equal liberty.

PRESIDENT: The first item on the docket is the reading of the Journal. May I ask your pleasure in this respect.

(A number of delegates moved that it be dispensed with)

PRESIDENT: It has been moved and seconded that the reading of the Journal be dispensed with. All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried . . . The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia,

Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present.

PRESIDENT: The Secretary announces that a quorum is present.

Are there any petitions, memorials, or remonstrances to be presented?

(Silence)

PRESIDENT: Or motions and resolutions? . . . Mr. Dixon?

MR. AMOS F. DIXON: Mr. President, I have a resolution I am going to ask the Secretary to read.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourns it be to meet at 10 A. M. on Monday, August 18th."

MR. WINSTON PAUL: I move to amend it to 11 A. M.

MR. DIXON: I move the adoption of the resolution. A motion should be made to adopt it before an amendment is put in.

PRESIDENT: Mr. Paul, I didn't get your amendment. Do you mind stating it again?

MR. PAUL: Gladly. I move the resolution be amended to read 11 A. M., Monday.

MR. GEORGE H. WALTON: I second Mr. Paul's amendment.

PRESIDENT: Will you accept the amendment, Mr. Dixon?

MR. DIXON: Mr. President. I might say that I have discussed this matter of the time to meet, with our President. We have also gone over the schedule, about which the President will have some comments to make a little later. We are short on time. While we realize that many men, and the ladies perhaps, too, come from a long distance and it is difficult to get here at 10:00 o'clock, at the same time in the starting of the morning session there are enough routine matters to take care of, so that the business of the Convention and any voting will probably not occur until much before 11:00 o'clock. In our discussion it was hoped that we could take advantage of the time to get that out of the way early, by starting at 10:00 o'clock, and still not infringe in any way upon any of the rights of the delegates to hear the discussion and take part in the

voting if they found it impractical to get here by 10:00 o'clock but wanted to come in a half an hour or so later.

On that basis, and for the sake of the record, I am going to suggest that we vote down the amendment so that we let the 10:00 o'clock hour stand. That will show the wishes of the Convention.

MR. PAUL: Will the gentleman from Sussex accept an amendment of 10:30?

MR. DIXON: Well, that's edging the camel's nose into the tent. I think I would rather have a vote on the 10:00 o'clock hour—on the amendment to see whether the men want that or not. Then that may be followed, Mr. Paul, by another amendment, if you wish. Let's see what the wish of the Convention is.

MR. WILLIAM J. ORCHARD: I offer an amendment that we convene at 9:00 o'clock, Monday morning.

PRESIDENT: I think, ladies and gentlemen, we will take a quick vote on Mr. Paul's amendment, if it's all right with you . . . Any further discussion?

(Silence)

PRESIDENT: All in favor of Mr. Paul's amendment please say "Aye."

(A minority of "Ayes")

PRESIDENT: Those opposed?

(A majority of "Noes")

PRESIDENT: I am afraid Mr. Paul's amendment to the resolution is lost. We vote, then, on the proposal that we meet Monday at 10:00 o'clock. Is there further discussion?

(Silence)

PRESIDENT: If not, all in favor please say "Aye."

(A majority of "Ayes")

PRESIDENT: Opposed?

(A minority of "Noes")

PRESIDENT: The resolution is adopted . . . Mr. Peterson?

MR. HENRY W. PETERSON: Mr. Chairman, may I introduce an amendment, sir, to Proposal 2-1. It affects Paragraph 11 which was before the Convention yesterday. I am of the opinion that the provision of this Paragraph 11 of the Committee Proposal was put in there after a great deal of consideration as to the preservation, or rather the granting of home rule, and I believe that that amendment was defeated because of the language at the end of the paragraph.

Now, what this amendment does is preserve the first few words of Paragraph 11 down to the word "favor," so that it would read exactly as the Committee proposal:

"The provisions of this Constitution and of any law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor;"

and deletes the rest of the paragraph.[1]

PRESIDENT: Mrs. Barus?

MRS. JANE E. BARUS: Mr. Chairman, I just noticed that the chairman of the committee is not here, and I should think we should, perhaps, postpone discussion until he arrives.

PRESIDENT: We shall. Will somebody constitute himself a sheriff and go out and see if you can find Senator O'Mara? . . . Mr. Schenk, will you look in Room 109?

I might say apropos of our time table, to which Mr. Dixon has made reference, that it is our hope to complete the Legislative section today, if the time and the heat and the amount of material permits. Then, with the approval of the delegates, we shall proceed with the consideration of the Judicial Article on Monday and devote Monday and Tuesday to it, and as much additional time next week as may be required, going on then, next week, upon the completion of our consideration of the Judicial Article, to the consideration of the Article on Rights and Privileges.

Mr. Schenk?

MR. JOHN F. SCHENK: I wish to report that I found Delegate O'Mara, who said he would be right here. Now, if you will take time here, you will find out what his definition of "right here" is.

PRESIDENT: We are very glad to have your encouraging report, Mr. Schenk. Thank you.

I might report that there are 16 amendments suggested to the Legislative Proposal. If all the delegates do not have copies of all these 16 amendments, including, of course, No. 16, will they kindly raise their hands in order that we may see that they are provided with them?

(A few hands raised)

MR. DOMINIC A. CAVICCHIA: Were there any passed out this morning?

SECRETARY: There's one being distributed now, a substitute for Amendment No. 8 by Mr. Miller. That's the only distribution this morning. The complete sets were distributed yesterday afternoon.

(Distribution of amendments)

PRESIDENT: We shall proceed with the consideration of Amendment No. 8. . . . The Secretary requests that I wait a minute for distribution. This, I understand, Mr. Miller, is a substitute for Amendment No. 8?

[1] The text of this amendment (No. 16 to Committee Proposal No. 2-1), and other amendments appears in the Appendix in Vol. 2.

May I ask, now, if you all have in your hands a sheet which is headed at the top "Substitute for Amendment No. 8"? Those who have not received it, will they be good enough to raise their hands? Substitute for No. 8.

(A few hands raised)

MR. FRANCIS D. MURPHY: It is being distributed now.

PRESIDENT: Yes.

MR. DAVID VAN ALSTYNE, JR.: Mr. President.

PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: May I use this interval to introduce an amendment?

PRESIDENT: Please do.

MR. VAN ALSTYNE: I would like to introduce an amendment to Proposal 2-1 which would change the time in the interim when senators would serve.[1] At the present time, under the Legislative Proposal, there are six senators coming up for election next year, and the Legislative Proposal has three of them serving for one year and three for three years. I think it very unfair that we should ask a man to serve only for one year. This makes it three for three years and three for five years.

PRESIDENT: Are there any other amendments to be presented at this time? This seems to provide the opportunity.

May I ask if you now have in your hands the "Substitute for Amendment No. 8"? This reads as follows *(reading)*:

> "RESOLVED: the following amendment to Section VI—Article Legislative be agreed upon:
>
> Add new paragraph to Section VI to be entitled Paragraph 4 as follows: 'Private property shall be subject to reasonable regulation and control in order to conserve the natural beauty, historic association, sightliness and physical good order of the State.'"

Mr. Miller, will you comment on this, please?

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Convention:

The short title of this proposed amendment to Section VI of the Report of the Legislative Proposal is "Conservation of Community Resources." It looks to the future; the reasons for it stem from the past. There was no such provision dealing with the public welfare in the Constitution of 1844 or that of other state constitutions. New Jersey was a young state in the sisterhood of states. It was not until the nation had grown to maturity that the people of the nation were finally aroused by President Theodore Roosevelt to the realization that our natural resources were being expended and exploited at a prodigal rate and must be conserved. No nation under God has been more richly endowed, and no gov-

[1] The text of this amendment (No. 17 to Committee Proposal No. 2-1) and other amendments appears in the Appendix in Vol. 2.

ernment has ever possessed in its own right such a heritage of lands, waters, forests and minerals.

Few states in the Union have the natural beauty and historical association as has New Jersey. It is essential that our goodly heritage should be protected and preserved for posterity. The State of New Jersey, through its Department of Conservation and Development and the State Highway Department, is not only adding to the public domain and protecting historic sites but is developing public parks and carrying forward an extensive program of parkways. This is presently being done without any broad constitutional authority such as is contemplated in this proposal.

The principle that private property shall be subject to reasonable regulation and control to preserve our general heritage is slowly being evolved by community planning as well as legislative enactments.

What is here proposed is that constitutional warrant be established to protect our heritage for posterity and provide the basis for broader interpretations which modern conditions require. Wherever such regulations of private property constitute a taking of property, the owner would be entitled to just compensation as set forth in the Bill of Rights.

The broad, general purpose of this proposal is to be found in the *Model State Constitution.* New York, in the revision of its constitution in 1938, included a forward-looking clause dealing with the broad subject of conservation. It lies within our power at this new constitutional frontier to write into our basic law this new statement of public policy on conservation through community planning, and thus covenant with future generations that the heritage which has been transmitted to us will be conserved and transmitted undiminished to them.

I move you, sir, the adoption of this amendment.

PRESIDENT: Is there discussion on this amendment?

MR. SCHENK: Could I ask a question, sir?

PRESIDENT: Mr. Schenk.

MR. SCHENK: I would just like to ask Delegate Miller the meaning of the words "physical good order of the State." I mean, his construction of the same.

PRESIDENT: Mr. Commissioner.

MR. MILLER: It is a synonym, if you will, Mr. President, under the "general welfare," meaning "the general physical good order."

PRESIDENT: Mr. Emerson?

MR. SIGURD A. EMERSON: I am opposed to the amendment. I believe in preserving all historic sites in this State that it is possible to preserve. As a matter of fact, I was the president of an organization in Elizabeth that acquired the old Boudinot mansion

which was occupied by Elias Boudinot many years ago. We had to pay for that.

I don't know what is intended. If the State wishes to preserve those properties, I think it should pay for them, or individuals should pay for them. They should put up the money to pay for them. I think it's placing in the hands of government too much control over private property. I think it's very dangerous. I don't know what the result ultimately would be, and I am very much opposed to it.

PRESIDENT: Senator O'Mara?

MR. EDWARD J. O'MARA: Mr. President, the Committee on the Legislative rejected the proposed plan that is the substance of the amendment now proposed by Mr. Spencer Miller, for substantially the reasons that Mr. Emerson has outlined in his objection to the amendment. I also oppose the adoption of the amendment.

PRESIDENT: Any further discussion on the Substitute Amendment No. 8? . . . Mr. Schenk.

MR. SCHENK: Under the definition of the synonym which Delegate Miller has given us, you could then read it this way:

> "Private property shall be subject to reasonable regulation and control in order to conserve the general welfare of the State."

That might be much more than physical property or historical sites. It might go to investments; it might go to anything. I may be straining the interpretation beyond what Delegate Miller means, but in the future it could have very grave implications. Therefore, I must oppose it.

PRESIDENT: Any further discussion? . . . Senator Barton.

MR. CHARLES K. BARTON: Mr. President and members of the delegation:

I am opposed to the amendment for these reasons. There'll be two of them.

One is that the words "reasonable regulation" will depend altogether upon what the court of last resort thinks is reasonable, and, of course, what I think is reasonable other people may not, and vice versa. It's a word which, even if this amendment should pass, should not be in there because it is so vague and indefinite. But as to the entire amendment, I feel that the present laws and constitutional right of eminent domain and condemnation are ample and sufficient, and always have been, to take care of matters such as this through the Legislature and those proceedings. I oppose the amendment.

PRESIDENT: Is there further discussion? . . .

(Calls for the question)

PRESIDENT: The question is called for. All in favor of Substitute Amendment No. 8, please say "Aye."

(A few "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: The substitute amendment is lost.

I would like to ask Senator O'Mara, chairman of the committee, if Amendment No. 5, which was laid over, I believe, yesterday, is to be discussed at this time and considered.

MR. O'MARA: That was laid over yesterday on the motion of Mr. Randolph, the proposer of the amendment, Mr. President.

PRESIDENT: Mr. Randolph, may I ask your desires with reference to consideration of Amendment No. 5, which was laid over yesterday at your request?

MR. OLIVER RANDOLPH: Mr. President, that amendment may be withdrawn.

PRESIDENT: Withdraw the amendment . . . The next amendment is Amendment No. 9 proposed by Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President, in view of the fact that proposed Amendments No. 9 and 10 relate to the same subject matter as proposed Amendment No. 15, I request that 9 and 10 be deferred until we consider proposed Amendment No. 15.

PRESIDENT: The chair so rules . . . The next amendment is Amendment No. 13 offered by Mrs. Barus. Do you wish me to read it, Mrs. Barus?

MRS. BARUS: Mr. Chairman, on the advice of Senator O'Mara, chairman of the Committee on the Legislative, I am withdrawing this temporarily. He feels that it belongs more logically under the sections dealing with taxation, and I would like to lay it over until then.

PRESIDENT: The chair so rules . . . The next amendment is Amendment No. 14 by Mr. Jorgensen. It was laid over, I believe, at your request, Mr. Jorgensen, yesterday. What is your wish in the matter? Do you wish me to read it?

MR. CHRISTIAN J. JORGENSEN: If you will, please.

PRESIDENT *(reading):*

> "Proposed Amendment to Committee on the Legislative, Proposal No. 2-1,
> RESOLVED, that the following shall become new Paragraph 12, Section VII of Article on the Legislative in Proposal No. 2-1 presented by the Committee on the Legislative and shall become part of the proposed new State Constitution:
> 'No law shall be passed which shall make mandatory the appropriation or expenditure of any moneys by any county or by any municipal corporation formed for local government unless such law shall be applicable to all counties or to all such municipal corporations or unless the moneys so to be appropriated or expended shall be provided by the State, or the county or municipal corporation shall be reimbursed by the State for the appropriation or expenditure thereof.' "

Mr. Jorgensen.

MR. JORGENSEN: Mr. Chairman and fellow delegates:

I think the purpose of this particular amendment is quite obvious. What this amendment attempts to do is to curtail the reckless enactment of mandatory spending laws by the Legislature. The particular language used was used in our tentative draft but was stricken out after public hearings, and by a very narrow and closely divided vote.

It is true that throughout the history of the State, and particularly in recent years, we have seen enacted in this State laws which made it necessary for counties to raise money from county assessments in order to pay salaries for boards and other divisions which were created by the State and superimposed upon the county without any desire of the county to have them or without there being any need to be created. As a result, the practice has created a situation whereby there is actually no home rule permitted, because if the municipalities or counties involved were permitted an opportunity to pass judgment upon these particular laws, they undoubtedly would be defeated because the will of the people in those municipalities and counties would not permit the incurrence of these additional expenditures which they felt were not necessary in the operation of their government.

The New Jersey Local Government Board, in its Third Annual Report, pointed out this feature—that some mandatory spending laws impose upon local governments burdens which they otherwise would not have assumed; that such laws are without regard to their need and bear no true relationship to the question of necessity, efficiency or minimum standards of service; and that many of these laws are ill-advised, unnecessary and were thrust upon local governments in the interest of special persons or groups. I think that that statement succinctly points to the actual problem and the evil of mandatory spending legislation, and for that reason I respectfully urge the adoption of the proposal.

PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: Mr. Chairman, I should like to say at the outset that the committee, after having included this paragraph in the tentative draft, on reconsideration decided to delete it. This is no solution for the evil of mandatory spending laws. In this State, during the past quarter-century, public officials and commissioners have studied the question of mandatory spending laws, and no solution has been found. In 1941, in connection with W.P.A., a compilation was made of spending laws affecting municipalities and counties. In the letter of transmittal the Chairman of the New Jersey Planning Board said this, among other things:

> "The whole problem of mandatory legislation in particular, as it affects and influences local government costs and administration, has been a matter of much public consideration and discussion heretofore.

> "This report does not offer any solution. It does give a clearer picture of the mass and character of our mandatory and permissive legislation applying to local governments in the State. It is believed that this compilation will provide essential basic data for any systematic study that may be made looking to an ultimate solution of this problem."

Again, in the foreword to this compilation appears this statement:

> "It further included those laws, by some designated as permissive, where the power of discretion was vested in the governing bodies of the units, but, where, having undertaken to apply the provisions of the law, certain mandatory standards required the spending of money in compliance therewith over which the governing body had either a limited control or no further discretion."

Further on in the foreword, this statement appears:

> "In this connection it should also be noted, that many of these services and functions are in themselves indispensable in the normal operation of government and if not set up under legislative mandate would still need to be instituted and maintained by the governing bodies. Obviously, mandatory laws, *per se,* are not in all cases an evil. In the situations mentioned above, investigation may reveal the exemplary standards of performance upon which governing bodies could not improve."

By that statement I understood this: That in adopting various standards for classified municipalities—standards of health, for instance—the Legislature will make standards for first class municipalities having tremendous numbers of population. Necessarily such standards are accompanied by mandatory expenditures on the part of the municipality, to make them effective. Those standards would not be applicable to the rural counties. But under this proposal, unless the standards which make incident the necessary spending were to apply state-wide, the State would have to assume the financial burden of those expenditures.

Now, how ridiculous is that? Inherent in this amendment is the possibility that you will cause the State budget to go up annually by a tremendous number of millions of dollars. It's ridiculous and fantastic. This amendment isn't the proper approach to the mandatory spending evil; and the fact does remain that if the Legislature did not impose those standards, which carry with them those mandatory expenditures, some municipalities—since we are talking so much about home rule in the last couple of days—might not be up to the adoption of such measures as would provide the resultant services to their people locally, as they ought to. And legislative direction is needed in order to bring that about for the benefit of the people.

I say further that this proposed amendment does not clarify the issues as to what is a mandatory spending law, since the mandatory feature may follow what in the beginning was a permissive feature. Let me illustrate. I think, in our laws, we have a provision that certain counties may have park commissions, but that, once set up, they must appropriate enough money to pay the cost of personnel,

and so on, in the maintenance of the parks. Now, that's a mandatory spending provision that affects only the counties that are affected by the permissive legislation. Yet under this amendment, if adopted, the State would have to assume the financial burden of those counties with respect to that expenditure because in the rural counties there are no park commissions permitted under the particular law to which I refer.

Now, let us not lose perspective in this matter because on the surface the proposed amendment looks all right. I think we are losing sight of the fundamentals here concerned. We are losing sight of the fact that these proposals that look good on their face have buried beneath them vicious provisions which we ought not for a minute to consider if we put our minds to them and realize what they mean. I think this is a thoroughly bad amendment and ought to be defeated.

PRESIDENT: Any further discussion? . . . Senator Lance.

MR. WESLEY L. LANCE: Mr. Chairman, I think the reasons against this amendment may be summarized as follows: First, the present State-local governmental relations would become so confused that an entirely new system would in effect have to be developed. Second, the right of the Legislature to control its counties and municipalities would be curtailed. Third, the progress toward uniform minimum standards of health, safety and education for municipalities would be impeded. Fourth, this would lead to a transfer to the state budget of the burden of many municipal functions and this, in the long run, leads to extravagance. Fifth, it would for all practical purposes, abolish the classification of counties into six classes as the Legislature has for many years provided.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President and ladies and gentlemen of the Convention:

The proposal which is the subject matter of the present amendment was in the original tentative draft of the Legislative Article. It was stricken from the final draft by a very close vote of the committee. As I recall it, the vote was six to four. I was one of the members of the committee who opposed the elimination of this provision from the draft. I feel that is one of the most important matters for the attention of this Convention. For many years movements have been initiated by civic organizations interested in good government, to curb the right of the Legislature to enact laws requiring mandatory appropriations by municipalities and counties. And for a very good reason! These local government units are close to the people. They are the bodies which strike the tax rate, adopt budgets and determine how much taxes must be raised. I've seen it happen time and time again, that local officials, in ex-

cusing an increased tax rate, point to the fact that many items are in the budget because of mandatory laws passed by the Legislature. In other words, they have been able to pass the responsibility and say, "We have no control over that." This amendment is directed toward curing that situation. It provides that unless a bill requiring an appropriation applies to all counties alike, the State must bear the burden of it. I think this is a very excellent provision and ought to be incorporated in the new Constitution.

MR. WALTER G. WINNE: May I ask a question? Assuming the Legislature passed an act that says that there shall be four county judges in counties of the first class, is that mandatory legislation?

MR. O'MARA: Mandatory in a sense, yes. But the question is whether or not that should not be made permissive—the salaries of the judges.

MR. WINNE: I'm trying to make a point. If the Legislature passes an act and says the sheriffs in counties of the first class shall receive ten thousand dollars, that's mandatory legislation, isn't it?

MR. O'MARA: That's right.

MR. WINNE: All right. I only say that the law books are so full of that kind of legislation that I can't conceive of this amendment accomplishing the purpose that it seeks. I'm entirely in accord with the spirit of it but it seems to me that the county and municipal laws are full of difficulties. There is an act that the first class counties have a county supervisor. No other county has a county supervisor. First class counties have five or seven assistant prosecutors. Second class counties have three; other counties have none. Almost anything you mention in connection with county or municipal legislation is mandatory and applies differently to one class of county, or one class of municipality, than to another. Boroughs have recorders; cities have police judges with fixed salaries. All of that is mandatory legislation, and, as I say, it's almost impossible to discuss any problem of municipal law without running into mandatory legislation enacted in classes of counties or municipalities. Therefore, it seems to me this is a very bad amendment and does not accomplish the purpose it would seek to accomplish.

PRESIDENT: Senator O'Mara.

MR. O'MARA: May I reply very briefly to Mr. Winne?

Of course a law which says that in first class counties "there shall be four common pleas judges," would apply only to those counties. But that law in and of itself carries no appropriation. If Mr. Winne were familiar with what the trend of legislative action in the last two years has been with relation to the fixing of salaries, he would know that almost invariably salaries are now fixed for the officers of any county on a permissive basis. And that is as it should be.

For instance, the Legislature at the last session was just flooded with bills increasing, in effect, the salaries of judges of various counties and prosecutors and county clerks, permissively, and the effect of Mr. Winne's objection could be overcome by allowing the local bodies to fix the salaries of those various officers. Now, I think that that would entirely overcome any objection that you couldn't differentiate between salaries of sheriffs in first class counties, and so forth. The control of those salaries ought to be in the hands of the local officials.

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

For six years I served on the town council, and many times during each one of those years I damned the Legislature for having passed mandatory legislation. But when I got down to the Legislature I realized that there are certain types of legislation that you have to pass and have to make mandatory. I can think of no better way to throw the government of this State into utter chaos and confusion than to pass this amendment. I can think of more suits—you lawyers can think of ten times more than I can—that would be brought before the Supreme Court to test the constitutionality of every law that the Legislature has passed for I don't know how many years, and a good percentage of the laws that will be passed for the next decade. It will be absolute chaos and confusion, I think that I, myself, since I've been down in Trenton, have done my best to vote for as few mandatory bills as possible. I think they're terrible. But I'm absolutely opposed to binding the Legislature in this regard. I can think of nothing worse for the future good government of the State.

PRESIDENT: Senator Barton.

MR. BARTON: Mr. President and members of the Convention:

Just as a sidelight on this issue, I wonder if the Senator from Hudson would permit a question?

MR. O'MARA: Certainly.

MR. BARTON: May I preface it by a statement, a short statement? I think it was either two or three years ago that Senator Summerill of Salem County introduced two measures in the Senate. Number one was to dispose of all mandatory regulations or laws affecting salaries of municipal officers, and the second bill was to do the same thing for county salaries—to discontinue entirely mandatory legislation on those points in municipalities and counties. Do you recall, Senator, through you sir, the attitude of the League of Municipalities on number one?

MR. O'MARA: Mr. President, in answer to the question of the Delegate from Passaic, I don't recall that Senator Summerill's bills ever came on the floor. If any organizations took any position with

regard to those bills, it happened, I assume, when there were committee hearings, or there may have been public hearings. I was not a member of the committee which had Senator Summerill's bills under consideration and so I must answer the question in the negative.

MR. BARTON: Well, sir, on the question, it was quite common knowledge that the League of Municipalities opposed the bill; and the Association of County Boards of Freeholders disapproved, in writing, of the second bill.

PRESIDENT: Senator O'Mara.

MR. O'MARA: I don't want to prolong the discussion, but I can see a very good reason why the Association of Freeholders should be opposed to it.

PRESIDENT: Any further discussion? . . . Mr. Cowgill.

MR. JOSEPH W. COWGILL: It may very well be, Mr. Chairman and members of the Convention, that some chaos might result. I don't know. It seems to me that possibly something can be worked out. I would like to give you an illustration of how this thing is worked in my county. The Legislature, in its wisdom, not too many years ago decided that second class counties were to have voting machines. It is my understanding that the members of the Legislature from my county opposed the bill because our county was in no position, financially, to pay for them. Nevertheless, we've got the voting machines and we've got to pay for them, and we've never had an opportunity to say whether we wanted them or not. It resulted in a substantial increase in our tax rate and will continue to do so until they are paid for. Now, it seems to me that voting machines are a good thing. They are just as good in Burlington, they are just as good in Cape May as they are in Camden, and if the Legislature wants them, let them put them in all counties or pay for them.

PRESIDENT: Judge Lance.

MR. LANCE: Through you, Mr. President, I would just like to ask Senator O'Mara one question.

PRESIDENT: Senator O'Mara.

MR. LANCE: In times past, the Legislature has enacted bills for a minimum salary for teachers and fixed one figure for the larger counties and a smaller figure for the smaller counties. What would be the effect of this constitutional clause upon that class of legislation?

MR. O'MARA: I think that kind of legislation could not be passed under this clause. I agree with that.

PRESIDENT: Any further discussion on this amendment? . . . Colonel Walton.

MR. WALTON: Fellow delegates:

I'll just take a second to answer one point and that has to do with the question of voting machines. I was not in this country when the Legislature decided that voting machines were necessary in Camden County, but I am sure that had my colleague from Camden County sat on the recount that I sat on for six to seven months, when some two thousand fraudulent ballots were thrown out and freeholders were determined not to have been elected after they had been serving, he would feel that the Legislature's action in putting voting machines in Camden County was a very good thing.

PRESIDENT: Mr. Cowgill.

MR. COWGILL: I quite agree with him that they are a good thing, but I say they are just as good in Cape May, Burlington, Gloucester, Essex and every other county in the State, as they are in Camden.

PRESIDENT: Senator Lewis.

MR. LEWIS: Mr. President, as long as Burlington County has been mentioned, I would like to go on record as saying that in my opinion they are not needed in Burlington County.

(Laughter)

PRESIDENT: Are you ready for the question on this amendment? . . . All in favor of Amendment No. 14 by Mr. Jorgensen, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Larger chorus of "Noes")

PRESIDENT: All in favor please raise their hands.

(Minority of hands raised)

PRESIDENT: Opposed?

(Majority of hands raised)

PRESIDENT: The amendment is defeated.

We will proceed to the consideration of Amendment No. 15. Senator Lewis do you care to have me read it?

MR. LEWIS: If you will, please.

PRESIDENT: Introduced by Mr. Arthur W. Lewis *(reading):*

"RESOLVED, that the following amendments to the above proposals for a new State Constitution be agreed upon.

Amend the preamble to Committee Proposal No. 2-1 on page 1 by substituting a period for the comma after the word 'Constitution' ending on the 4th line and strike out the remainder of the paragraph which reads, 'to which shall be added Alternative "A" or Alternative "B" of Committee on the Legislative Proposal No. 2, whichever shall be adopted by the people, as Section VII, Paragraph 2, of the Legislative Article.'

Amend Committee Proposal No. 2-1, page 6, Section VII, Paragraph 2, by striking out all of lines 1 and 2 and inserting in lieu thereof the following:

'No gambling of any kind shall be authorized by the Legislature unless

the specific kind and control thereof has been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast by, the people at a general election.

Amend supplementary Proposal No. 2-2 by striking it out entirely."

Senator Lewis.

MR. LEWIS: Mr. President, my colleague, Delegate Drenk from Burlington County, has allocated to me his time to speak on this subject. I would like to file with you his certificate and to thank Delegate Drenk, whose time I shall try to use sparingly. I wish to thank the delegates, in advance, for their indulgence in the event that it becomes necessary to use his time.

Perhaps it is appropriate, in discussing this subject, that we come to the microphone in front in order that we may, as Delegate Read from Camden so appropriately said the other day, bow our heads in prayer. When we consider the seriousness of this subject, its profound and extended effect upon the people, their liberties, their properties, their families in the State of New Jersey, we cannot help but approach this subject in the spirit of humility, and to seek the guidance of Providence as well as the wisdom of man.

In the transcript of the testimony before the Legislative Committee at one of its hearings, I believe it was on the day of July 2, you will find therein a quotation from no less a personage than our first President of this country, the father of our country, George Washington. Washington, speaking on the subject of gambling, said, I quote:

"It is a vice which is productive of every possible evil. It is the child of avarice, the brother of iniquity, and the father of mischief."

Why does practically every enlightened state and nation in the world today frown upon, restrict, or prohibit gambling? Why do we not have more public lotteries such as they have in Spain, Italy, Mexico, or the Latin Americas? Why can we not walk into a public gambling house in any city in this State or in any city in our sister states? Because gambling is immoral? Is buying stock, flipping a coin, taking a chance, in itself immoral? The answer is no. Obviously, no. Governmental authorities, as a rule, do not attempt to write moral codes. That is a province left to the preachments of the churches. Government asserts itself, rather, because gambling, as George Washington said, is a vice—a vice which, like morphine, easily becomes a habit that disregards prudence, character, integrity, rights of families and the property of others, thereby begetting offenses against society. That is the social reason why we find anti-gambling clauses in state constitutions today.

Notwithstanding the fact, as I tried to point out yesterday, that basically and fundamentally gambling is not a subject matter for a Constitution, the people of this State, on three occasions, namely

1844, 1897 and 1939, voiced their mandate on constitutional recognition of the subject. And in 1947 we cannot escape facing the issue four-square again. In the debate on Mr. Dixon's proposed amendment yesterday, I tried to make clear the impelling reasons why we should not omit an anti-gambling clause in our revised Constitution. To repeat or review the same arguments today would not serve any useful purpose because, as I understand it, our vote yesterday places this Convention on record as favoring some kind of a constitutional recognition of the gambling question. The problem, then, today is to determine what should go into the Constitution.

We have disposed now of all proposed amendments on this subject except Amendments Nos. 9, 10, and 15. I would like to refer briefly to these three amendments. Proposed Amendment No. 9 contains the original language proposed to be inserted in the Constitution. Proposed Amendment No. 10 strikes out in its entirety the Proposal of the Legislative Committee relating to alternative provisions; it strikes that out in its entirety.

In view of the fact that the Dixon proposed amendment was defeated, it was deemed advisable to draft a new proposed amendment incorporating in substance Amendments Nos. 9 and 10 and also striking out that part of the preamble in Committee Proposal No. 2-1 relating to alternate provisions. There were two changes made in the language of original Amendment No. 9. The word "nature" was changed to the word "control," because the word "control" has a more definite and specific meaning. As you will note, in the original amendment, the words "special election" are mentioned. That was mentioned there because the referendum in 1939 was at a special election. I understand that the Bill of Rights Committee will recommend that all referenda hereafter should be at general elections. Therefore, in the original amendment the word "special" could then only relate to referenda in the past, and the words "general election" would relate to referenda in the future. But in order to avoid any doubt, we changed that language so it would specifically read:

> "No gambling of any kind shall be authorized by the Legislature unless the specific kind and control thereof has been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast by, the people at a general election."

There therefore can be no doubt that any future election on this subject must be a general election.

I want to emphasize the fact that if this Amendment No. 15—by the way, if it is carried I will immediately move to withdraw Amendments Nos. 9 and 10—if this Amendment No. 15 is defeated, there remains before this Convention only the Legislative Com-

mittee's Proposal with alternate provisions "A" and "B" which I am confident will not be satisfactory to this Convention or to the people of our State. I join with the minority of our committee in opposing these alternate provisions. I was against these alternate provisions before the committee and I am now against them for the same reasons, namely:

1. We have no legal right or authority under the clear language and intent of Senate Bill 100 to submit to the people this question in alternate form as proposed by the Committee Proposal.

2. I concur with the legal conclusions reached by the Attorney-General on this subject and predict that if we attempt to submit these questions in such form in the alternative we will embroil our entire proposed Constitution in litigation, subjecting our summer's work to nullification by the courts, or the people, or both.

3. Even if we could, legally, we should not confuse the issue, confuse the Constitution and confuse the people, with such alternate provisions.

4. I am not here objecting to churches and charitable organizations and the like playing such games as bingo, etc., but I do object, and I object with all of the force of words at my command, to constitutionalizing the legality of gambling in the name of religion, in the name of charity, or in the name of fraternity. This would be an insult, in my opinion, to God himself. It would be a mockery of all that stands for charity and charitable causes. It would be a sacrilege to everything fraternal. Would not the professional and the commercial gamblers flood into the State of New Jersey under the guise of religion, charity, and fraternity? Again I say, and say emphatically, "No." In the name of everything that is good, everything that is decent, that is right, that is religious, that is charitable, that is fraternal, alternatives "A" and "B" do not meet the issues and should not be submitted as a part of our proposed Constitution.

Now, let us rationalize the issue. What do we want to accomplish? How can we reach a logical, sensible and practical solution of the entire gambling question? I respectfully submit:

1. If any gambling is to be allowed in the State of New Jersey, the people should have the opportunity to vote upon the question. No gambling since 1844 has been authorized without such a right reserved to the people, and this right should now be constitutionally preserved.

2. With such a constitutional restriction upon the Legislature, the entire subject of gambling could be delegated to the Legislature where it rightfully belongs and where any issues to be presented to the people can be properly framed.

3. Our present anti-gambling laws permitting only pari-mutuel

betting should remain unchanged, because the people have already voted on that question and the State's pledge of anticipated revenues should not be disregarded.

4. If any further modification of the anti-gambling laws is desired in order to permit social games of chance, such as cards, bingo, and the like, the people can, through their Legislature, be given an opportunity to vote for or against any such modification. In short, gambling only in New Jersey provided the people have so authorized either in the past or the future the kind and the control thereof.

Such a desired result is accomplished with the language set forth in the proposed Amendment No. 15. Moreover, this proposal would make possible the submission of our proposed Constitution to the people without alternates or controversial provisions relating to the subject of gambling, and without requiring the people to vote for gambling or more gambling, and without fear that the Legislature may in itself extend or permit gambling. Until the people decide otherwise, our present anti-gambling law and the referendum of 1939 will remain *in statu quo,* reserving, however, to the people and the Legislature the right and opportunity to seek modification. But apart and beyond from that, the adoption of this proposal will solve constitutionally once and for all, in a logical and sensible and practical manner, the constitutional gambling question, and in a way that should be acceptable to the people.

In all sincerity and in all humility, I offer this proposal and ask your most serious consideration before any delegate will cast a vote against it.

MR. MURPHY: Will the Senator submit to a question, please?

MR. LEWIS: I will, sir.

MR. MURPHY: Senator, the language or the substance of the question submitted to the voters was as follows:

> "Do you favor the holding of a State Constitutional Convention which shall prepare for submission to the legal voters next November 4th for their adoption or rejection, in whole or in part, a new State Constitution revising, altering, or reforming the present Constitution, in such part or parts, and in such manner as the Convention shall deem in the public interest?"

Is it the Senator's contention that that language restricts this Convention in the manner in which the question may be submitted to the voters in the Fall?

MR. LEWIS: Through you, Mr. President, I wish to answer that question by referring to Senate Bill No. 100, section 28 thereof, page 13, which is the basis on which the question was submitted to the people and which is the authority for which and under which this Convention was convened. That language reads as follows:

> "If a Constitution as a whole is submitted to the people and a majority

> of all votes cast for and against its adoption shall be in favor of its adoption, then it shall become the Constitution of this State taking effect according to its terms."

Bearing that in mind, I now wish to refer you to section 23 of the same bill, page 11 which reads:

> "The Convention may frame a Constitution to be submitted as a whole to the people for adoption or rejection;".

Immediately following that language we find a semicolon; then we find the word "or," disjunctive, and it continues:

> "*or* it may frame one or more parts of a Constitution . . ."

Why do we have that semicolon and why do we have that disjunctive word "or"? Merely because it was the intent of the Legislature that this Convention should submit to the people a Constitution as a whole, semicolon, *or* this Convention can submit to the people parts of a Constitution which the people may vote upon, and in the later language of the bill, if the people by a majority vote adopt a part of a Constitution, it then becomes a part of the present Constitution and not a part of any proposed revision.

PRESIDENT: Any further discussion? . . . Judge Carey?

MR. ROBERT CAREY: May I ask the Senator a question? I note in the language of your proposition that the subject matter of any adoption by the Legislature shall be submitted at a general election to the people of the State, and that the result of that election shall depend, as far as the success of the proposition is concerned, on a majority of the votes cast at said election being cast in favor of the proposition. I want to ask if that, in your judgment, means that if, for instance, at a general election 1,500,000 votes were cast for Governor, and that, shall we say, was the approximate number of votes cast in the election, would it require a majority of that 1,500,000 votes cast in order to put through a matter referred by the Legislature?

The reason I ask that is this: My experience is that on contingent questions invariably not more than 50 per cent of the people, and sometimes less than that, vote on the subject of the reference. Now, if that is so, and if this would mean that—for instance, suppose the Legislature should vote to permit bingo or anything of that character to be practiced in the State—would that mean that 750,000 votes, enough to be over one-half of the total votes cast, would have to be in favor of the proposition in order to put it through? Because if that is so, invariably there would never be enough votes to put through any special contingent reference made to the people by the Legislature. That is my experience in the study of referenda.

Now what is the meaning of that? Does it mean that, or does it mean a majority of the votes cast for or against the proposition? It seems to me that that should be the manifest way of determining

what the people want on a problem. The votes cast for and against, and then the majority would prevail. But if it is the majority of all the votes cast in the election, I think, now that I look at the picture, that it never would succeed, under our present practice, in getting a referendum through that would satisfy anybody in the State.

MR. LEWIS: Through you, Mr. President, in answer to the questions by the delegate from Hudson.

The word "all" is not used in this proposed language. It seems to me quite clear that when the Legislature puts an issue to the people which can be adopted by the people only by a majority vote, it is the majority vote of the people voting on that particular issue put to the people by the Legislature. That is why the matter should be left to the Legislature, to frame the issue pursuant to this constitutional language. I may say, Mr. President, in further answer to the delegate from Hudson, that should there be any doubt whatsoever as to the meaning—the meaning and intent is absolutely clear in my mind—but should there be any doubt whatsoever, I think the Committee on Arrangement and Form, will come forward with suggestions which we can then consider.

MR. MURPHY: May I pursue just a bit further the point I raised before? You quoted from sections 28 and 23 of the enabling act. I quoted from the language as submitted to the voters. If there is a conflict, and I do not say there is one—in fact, I do not think that there is a conflict—but if there is one, should the delegates be bound by the language as contained in the question submitted to the voters or the language contained in the two sections of the enabling act?

MR. LEWIS: Through you, Mr. President, in my opinion, if there is any conflict, that remains for the courts to determine. That is why I raised the point, there being differences of legal opinion on this very question. We certainly should not subject the rising or the falling, the acceptance or the rejection, of this proposed Constitution to possible litigation on that question, and it can be avoided by adopting Amendment No. 15.

PRESIDENT: The chair recognizes Dean Sommer.

MR. FRANK H. SOMMER: Mr. President and members of the Convention:

Appalled by the mass of material on my desk recording the words that have been uttered in this Convention, I early resolved that I would not take the floor so long as another had presented my point of view as well or better than I could. I find myself, however, at this time sorely tempted to make an exception to that resolution.

I want to call your attention to the fact, quite incidentally, that the proposed amendment which is before you is broader and more

liberal than Alternative B, and I am astounded as I read Alternative B. What Alternative B proposes is to provide for the authorization of innocent games of chance for the benefit of religious and charitable institutions and associations of volunteer firemen and fraternal organizations. There is no provision that would include educational institutions in the category of organizations in which these innocent games of chance may be authorized, while on the proposed amendment provision can be made for an educational institution. I want to call your attention to the fact, if it be a fact and my memory serves me right, that into the founding of the educational institutions of this State, and in saving them in time of crises from disaster, authorization was given by this State to conduct a lottery for their benefit. I seriously object to leaving the educational institutions of the State out of this bestowal of authority on the part of the State.

Mr. President and members of the Convention:

The amendment that is proposed is a simple solution of a vexing proposition that has caused the policy of the State from the beginning. From the beginning we treated this matter of gambling as a matter to which constitutional provision should be directed. Again and again, the people through their acceptance of proposed amendments to the Constitution preserved this principle. There is but one exception thereto, which we find in the statute authorizing under constitutional sanction pari-mutuel betting. In view of that situation I would not like to see the subject wholly deleted from the Constitution, nor do I believe that the record made by the people at the ballot box would sanction such a cause. This proposed amendment leaves the way open to the people to sanction innocent games of chance according to their judgment. It rests the proposition upon our innocent games of chance and when such games shall be sanctioned by the people themselves. I believe this amendment is in accordance with our tradition. I believe this provision affords a simple and rational way for the solution of the problem that is now before you.

I do not want to engage in a discussion of whether or not these alternatives can be submitted in the situation that now exists. I have read the opinion of the Attorney-General. I have read the opinion of personal counsel to the Governor. And last evening, having nothing else to do, I read the cases that bear upon this question. I say to you frankly that I am still in doubt. But the thing in reading the cases that struck me forcibly is the extent to which the courts have interfered with the submission of the work of constitutional conventions. I, therefore, desire to have it said that if this amendment is adopted no doubts will arise. If the Proposal of the committee is adopted, doubt will exist until it is resolved by

the court of last resort of the State.

Looking over the cases, I find that where the constitutional provision as to which the doubt existed provided for radical changes, or the abolition of the courts, and the question was presented to the prior existing court, that uniformly they found that the submission was not in accordance with the act of submission. I have a profound respect for our courts, but they are human. And if you proceed to the abolition of some of these courts, and to the alteration of others, I wonder whether the human desire to hold on will not color the determination. I favor this amendment.

Now, Mr. President, may I say a concluding word that is personal. I hope it may not be ruled out of order as not germane to the issue before you. I utter this personal word because I may at any time be called out of this Convention. As I have sat in committee, as I have observed the work of other committees, as I have read these Reports, as I have listened to the debate upon the floor, I think I have caught the spirit of the delegates assembled in this Convention, the spirit of disinterested desire to further the common good. Mr. President, I want here and now to gamble with myself and to take a chance. I have absolute confidence that this Convention will take no action that will violate my convictions with respect to fundamental principles of government. I'm game. I'll take a chance. And I pledge you now that while on the floor I will battle to the best of my abilities to secure the adoption of my point of view, that when the work of this Convention is over, when we have the product of our efforts before us, I shall exert all the humble power and influence that I have to secure the approval of that work by the people.

(Applause)

PRESIDENT: Judge Eggers?

MR. FRANK H. EGGERS: Mr. President, my fellow delegates:

It has often been said that fools rush in where angels fear to tread. It would appear to me that only a fool would dare to follow so eminent an authority as Dean Sommer. And yet, like the Dean, for whom I have the greatest respect and affection, I too also have my convictions. And I also have an abiding faith that the members of this Convention will do their duty honestly and sincerely, to the best interest of the State of New Jersey.

There can be differences of opinion here, of course. That is natural at a Convention. And those differences can be resolved satisfactorily to us and satisfactorily to the people of New Jersey. But on the present amendment of Senator Lewis—I have a great deal of respect for the legal acumen of Senator Lewis, and I noted with great interest the manner in which he argued for the adoption of his proposal by this Convention. I am happy that he has observed

the will of the people as expressed in 1939, and has incorporated that into his amendment. But I am at a loss to understand, my fellow delegates, why we have resorted to legal sophistry in order to deprive the people of New Jersey of the opportunity to vote on a referendum to be submitted to them as to whether bingo or other innocent games of chance should be authorized. Yes, Senator Lewis has drawn an amendment which in effect and upon cursory reading would imply that the people of New Jersey are being given the opportunity to vote on whether bingo or innocent games of chance should be legalized, but we have no authority from the Senator, or from anyone else, as to when the people would be permitted to have the opportunity to vote on such a referendum. If we are to look back upon history and depend upon the Legislature, then we must realize that the facts will disclose that the Legislature has at times, and only a few years ago attempted to thwart the will of the people, even when they voted in 1939 to permit pari-mutuel betting at race tracks.

It is very well for those who espouse the Senator's amendment, and for the Senator himself, to call upon George Washington and have him say that gambling is a vice and is wicked. Yes, we have respect for Washington; we have respect for all our forefathers. But if it were not because of the conditions of the times and the changes brought about over the years, we would not today be meeting in a Convention to revise a Constitution which was drawn up by our forefathers. We have met here to meet the changing conditions of the times. We have met here to change the courts and to change other elements of our government to meet a modern civilization. And we, in determining those matters which are to go into the new Constitution, will not be performing our duty if we are going to be bound by the precept of our ancestors, which precept we have come here to change.

The people of New Jersey are entitled to an opportunity from this Convention to express their will as to whether there shall be legalized bingo or other games of chance. The Legislative Committee of this Convention has submitted to the Convention alternative propositions which afford the people of this State an opportunity to vote and express their will. The legal sophistry which is attempting to frighten this Convention into refusing to accept those alternatives because of the fear that the courts may say that we acted beyond the scope of our authority, has been deviously designed to frighten the delegates into accepting this amendment and defeating the alternatives.

Ladies and gentlemen of this Convention, let us resolve that we will do the duty that is assigned to us—do the duty that the statute says, *submit in whole or in part*—and if the courts of New Jersey

would dare to thwart the will of the Convention, and thwart the will of the people because of a desire, as Dean Sommer says, to hang on, then the will of the people will take care of the courts, because the courts will never dare to go counter to the will of this Convention or the will of the people of the State of New Jersey. Let us give the people the things that they sent us here for, the things that they desire. Let us have the courage to adopt these alternative proposals and put them before the people and have the people say "Yes, we want legalized bingo and we want legalized games of chance." And when they say that, let that be the mandate to the courts and the mandate to the Legislature that the people of New Jersey have spoken.

PRESIDENT: Senator Lewis?

MR. LEWIS: Mr. Chairman and fellow delegates: I think it may be best that I answer these questions as they arise. And in answer to the delegate from Hudson, may I answer him in the form of a question, as to what there is in Alternate B that makes it necessary or compels the Legislature to submit the question to the people? Is not the legal sophistry in back of Alternate B identical in that respect to Amendment No. 15?

MR. EGGERS: Senator, if the people vote in favor of Alternate B in adopting the product of this Convention, that will be a mandate to the Legislature immediately to enact legislation in conformity with that proposal.

MR. WILBOUR E. SAUNDERS: Will the previous speaker yield to a question? Will you tell me, under the present Proposal of the committee, these alternatives, how the person who wants to vote for the new Constitution but is not desirous of voting either for race track betting or for a more liberal provision on betting, can express himself in any way except to vote "no" on the whole Constitution?

MR. EGGERS: I can answer that Doctor, by simply saying what I said yesterday, that under our democratic processes in 1939 the people of New Jersey voted overwhelmingly in favor of pari-mutuel betting. I assume that, being of the minority, you agree with the majority rule. Having so voted, there is no purpose in again putting before them the proposition as to whether they want gambling or do not want gambling. The proposition is, do they want to retain what they already have and have voted for, or do they want to extend that to games of chance and bingo.

MR. SAUNDERS: Then I judge that his answer is that there would be no chance and of course his statement is that there should be no chance. I'm perfectly agreed to the fact that the will of the people should prevail, but I judge that his statement is that there is no reason why the people should be allowed to express any will

that they may have, except on the two lines that are indicated. I just wanted to be sure and clear about that.

MR. EGGERS: Mr. President, answering Doctor Saunders—as I stated yesterday, it would simply be a hypocrisy and a deceit upon the people to put three alternatives on the ballot, in one of which they would vote for no gambling, and the other two alternatives would provide for gambling in another form. That would simply be to stack the cards against the people where they could not get their will. It would divide the gambling vote. It would divide the vote of the people who want the pari-mutuel betting. It would divide the vote of the people who want an extension for bingo and games of chance, and would create a solid vote of no gambling which would put a minority into a majority.

PRESIDENT: Mr. Dixon?

MR. DIXON: Mr. President and delegates to this Convention: The delegates showed very clearly and unmistakably yesterday that they did not want this question of gambling left to the Legislature. I think the vote of yesterday indicated that they wanted the question of race track gambling, particularly, left in the Constitution. I am certainly willing to bow to the decision of this Convention in that regard.

Now, then, the question that comes to my mind is what is the next step that we should take. Race track gambling was put into the Constitution, as has been pointed out time and again, by a referendum of the people—a vote of the people for and against, and that vote favored the constitutional provision that we have now. And the Convention apparently feels that that vote is still binding. But looking to the future, Alternatives A and B have been suggested, and as pointed out by a previous speaker, A and B leave no alternative whatsoever for those who might want an extension of gambling except to record themselves for one kind of gambling or another. Even leaving the present race track gambling in the Constitution, alternatives might have been provided for the extension of gambling to the so-called innocent games of chance, or no extension.

It seems to me that Senator Lewis' amendment puts the finger directly on the question and allows a very fair disposal of it, in view of what has happened in the past. In other words, we are keeping what has already been decided by referendum, if we adopt Senator Lewis' amendment. And looking toward the future, we are using exactly the same process that we used originally to put the gambling provision in the Constitution. We are saying that in the future, whether the problem is bingo, lottery, other games of chance, or whatever the people might decide, we're putting that up to the people.

In view of the feeling of the Convention, as heretofore shown, I feel that for myself the best provision, the best suggestion yet made in order to handle this situation and bring it to a satisfactory conclusion, is to adopt Senator Lewis' amendment. We keep what we have. Looking forward to the future, we put it up to a vote of the people to determine what we might want in the way of expansion—whether we want it, or whether we want to hold it exactly where it is. I urge the people who supported the amendment which was proposed yesterday and which was defeated—I urge them to take a look at this amendment and to support it as the best way out of the dilemma that we find ourselves in now.

(Second Vice-President, Marie H. Katzenbach, took the chair at the request of President Clothier)

SECOND VICE-PRESIDENT: The chair recognizes Doctor Clothier.

MR. CLOTHIER: Madam Chairman and delegates:

I have some hesitancy in taking part in this discussion after the very eloquent presentations we have had from Dean Sommer, Senator Lewis and Mayor Eggers, and others; yet it seems to me that I would like to express my point of view, and express it very briefly.

I entertain the profound hope that this amendment of Senator Lewis will be adopted for four reasons. First, because it proposes to delete from the Constitution those controversial clauses "A" and "B" which have been deemed necessary to the Committee on the Legislative, and to many others, in view of the conflicting points of view which have to be taken into consideration. Some of us have thought these clauses to be most unfortunate in that we felt that so far as possible the Convention should present a finished document to the voters at the November election. I have been particularly impressed by what Dean Sommer has said—that totally aside from the legality of the proposed action, doubt will remain in the minds of the people of the State. It might even result in a certain amount of litigation which might conceivably go to defeat the Constitution itself at the polls.

Second, only eight years ago the people of the State authorized pari-mutuel betting at the race tracks, and as a result of that constitutional amendment, millions of dollars have been invested in the race tracks and the State's returns from the operation of the race track have been dedicated to servicing a certain bond issue for veterans' housing. Under this amendment of Senator Lewis, the investors' interests and the State's interests are protected.

Third, the amendment seems to protect the Legislature, and the members of the Legislature, from the alleged unwholesome pressures which were brought into sharp focus yesterday in the discus-

sion on Mr. Dixon's amendment, which was defeated.

Fourth, the responsibility for the decision as to whether other kinds of gambling shall be recognized and authorized is referred to the people of the State, where, in my judgment, it belongs.

Because of these considerations, Madam Chairman, I favor Senator Lewis' amendment and urge its adoption by the members of this Convention.

SECOND VICE-PRESIDENT: Mr. Cowgill.

MR. COWGILL: Madam Chairman. I, too, rise to support the amendment of the gentleman from Burlington. It seems to me that the submission of these alternative proposals on a question of gambling will do more to defeat the product of this Convention than anything else. It seems to me that it would be unfair to submit these two alternatives without giving those who desire to vote against all gambling an opportunity to do so. A practical effect of that might be to have a plurality select what went into the Constitution, and I think that would be wrong. I can see, too, that Alternative B, were it to be adopted, could very reasonably lead to the creation of a racket. I might even get so facetious as to say that George Walton and I might form the Camden County Association for the Relief of Ex-job Holders, and hold a bingo game at Haddonfield Republican Club. That sounds pretty silly, but at the same time we have had illustrations of one-man clubs and fraternal organizations that are mere covers for individual profit. It seems to me that the adoption of Alternative B could very well lead to a racket. It seems to me that the suggestion of the gentleman from Burlington most nearly will bring about those things that all of us want to bring about, and I respectfully urge its adoption.

(President Clothier resumed the chair)

MR. FRANKLIN H. BERRY: Mr. President.

PRESIDENT: Mr. Berry.

MR. BERRY: I believe that proposed Amendment No. 15 better accomplishes the results which we are all seeking to attain in this Convention. However, there is one question involved which I hope Senator Lewis will clarify for us. Proposed Alternate B does contain definite provision for the exercise of local option before any extension of gambling is permitted, and I think that is very important for it seems to me that no matter how great may be the majority in the whole State in favor of the liberalization of gambling, there still would be some communities in which an overwhelming majority of the citizens would be very very strongly opposed to gambling of any sort in those communities. I do not think that such communities should be put in the position of having to suffer gambling being brought into their communities because a majority

of the citizens of the State were in favor of such liberalization.

Now, perhaps this amendment does, in some hidden way which I have been unable to discern, make it possible for the exercise of the will of the citizens of each community before an extension or liberalization of gambling is allowed in that community. I would appreciate it if Senator Lewis would comment on that question.

PRESIDENT: Mr. Lewis.

MR. LEWIS: If it is agreeable to you, Mr. President, I would like to answer the delegate from Ocean by saying that under this proposed amendment the entire question of gambling is delegated to the Legislature, with the constitutional restriction as set forth in the language of the proposal. I, for one, am strongly in favor of local option. If we are going to leave this question where it belongs, with the Legislature, it is then up to the Legislature in framing any issues that go before the people to frame those issues so that the people can decide whether or not gambling is going to be subject to local option. This proposal leaves it entirely up to the Legislature and the people to decide whether ultimately local option should be required.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for . . . Senator O'Mara.

MR. O'MARA: I appreciate the desire of the delegates to have the question put, in view of the length of this debate. However, I feel that as chairman of the committee which has wrestled with this problem ever since the inception of the Convention, I ought to say something about the Committee Report and the Proposals which accompany it.

There is no doubt, I think, in the minds of any of the delegates of this Convention that this question of gambling was one of the most troublesome and vexatious problems with which any committee had to deal. The committee sought earnestly to find a solution. In my judgment, they have done so. We proceeded upon the fundamental proposition that there were many things, many issues, far more important to good government in the State of New Jersey than the gambling question. We recognized the great public interest in this problem, however, and we realized that many thousands of people would cast their votes one way or the other on the question of the adoption of this Constitution on the gambling clause alone. We therefore very earnestly and very sincerely tried to avoid the danger to the adoption of the Constitution which writing a specific gambling clause into the Constitution would, in our judgment, entail. We started, therefore, with this basic thought. We wanted to devise a mechanism, if you will, we wanted to devise a scheme which would allow the people to vote on the Constitution on its merits regardless of their views on gambling, and at the same

time put out as a separate referendum the question of what kind of a gambling clause the majority of the people desired to have inserted in their Constitution.

I recognize the difficulty that Dr. Saunders raises. I recognize that in order to give people who were opposed to gambling at all the right to express their convictions on that subject it would entail a three-way referendum; one, do you favor the present clause; two, a liberalized clause; three, no gambling at all. The committee, or the majority of the committee, was forced to reject that on the basis that the people of the State had spoken only eight years ago on the question of whether or not they wanted betting at race tracks; that they had spoken overwhelmingly at a special election conducted just for that purpose, and that they had decided that they wanted it and that the State was deriving very large revenues from the operation of the tracks—revenues which, if my memory serves aright, amounted to more than six million dollars, or approximately six million dollars, last year. We felt that if a three-way referendum were held, there would be the possibility that a little more than one-third of the people voting on that proposition could cause the State to lose that revenue.

I call your attention to the fact that this is no time for the State to throw away revenue of that kind. The very able Senator from Bergen County, who is serving with such distinction as a delegate to this Convention, and who performed magnificently as chairman of the Appropriations Committee of the Senate during the last session, when he introduced the appropriations bill warned the Legislature in a very blunt and forthright manner that the State was at the end of its financial rope and that if the governmental services which the people demand of the State were to be continued, new fields of revenue would have to be opened within a very, very short time.

But I take it that that is a little beyond this discussion now, because it seems to me that everybody agrees that the present laws, at least in so far as they relate to the race tracks, are not to be disturbed in any way. We thought that the sentiment of the people being divided so sharply as to whether or not the present clause should be retained or, in the alternative, a liberalized clause should be inserted in the Constitution, those questions should be submitted to the people to decide on whether or not they should give a mandate to the Legislature to legalize and regulate the so-called games of chance when conducted by charitable, religious or fraternal organizations. There is a tremendous amount of sentiment both ways on that question, and in my judgment the way to do the least possible harm to the chances of the adoption of this Constitution is to submit those alternatives. I think that we would achieve that

result very much more clearly if we adopt that course than we would if the resolution of Senator Lewis should be adopted.

Let me point out to you, sir, that the principal objection which I have heard to the alternatives is that those who are opposed to all gambling will not have a chance to vote their convictions without voting against the Constitution.

I say that that is not so. They can vote for the Constitution and not vote at all on the referendum. But, on the other hand, if Senator Lewis' amendment is accepted by this Convention and this clause, and this clause alone, is written into the Constitution, a clause which legalizes or continues the legalization of race track betting and authorizes the Legislature to legalize additional forms of gambling on a referendum by the people, how in the name of all that's holy is anybody who is opposed to all gambling going to vote for the Constitution?

So I say that the adoption of the Lewis resolution does not cure the defect alleged by those who oppose the alternatives. On the other hand, those who are in favor of a liberalized clause will feel that this Convention is merely passing the problem on to the Legislature, that they will have to overcome what we might call "legislative inertia," that the Legislature is never going to initiate this referendum unless it has a mandate of some kind from the people; and they are going to be dissatisfied, in my judgment, with a clause such as is proposed by Senator Lewis.

I feel, and I feel very strongly, that the committee has given a great deal of care and attention to this proposition. We have no pride of authorship at all. There was a serious division of opinion even among the members of the committee. I feel, as I said very strongly that this Convention doesn't have to decide by the adoption of these alternatives whether or not the Convention is in favor of a liberalized clause. It is merely a device which will pass on to the people for decision the question of whether or not they desire to authorize the Legislature to legalize and regulate specified games of chance when conducted by charitable, religious, fraternal and veterans' organizations and volunteer fire companies, subject to local option. That's all that we have to do. Put that up to the people and let them decide whether or not they want to give that authority to the Legislature. Then they could pass upon that in a truly democratic fashion and, in my judgment, in such a way that it would not endanger the adoption of the Constitution. That is the opinion of the majority of the committee. I still feel that it is a sound way to approach the problem and I oppose the passage of the Lewis resolution.

PRESIDENT: Judge Rafferty.

MR. JOHN J. RAFFERTY: Mr. President and delegates to the Convention:

Just a word or two. I stated to the Convention yesterday that I inclined to Senator Lewis' amendment. I suggested, however, some amendments which I thought should be in it, and suggested the matter of the pari-mutuel which Senator Lewis, it seems, adequately covered. And then I said also that we should include in this Constitution, so that the people may vote upon it in the fall, the permission of minor gambling, as has been suggested in the Proposal of the Legislative Committee. Senator Lewis evidently doesn't think well of it and for one reason or another left it out.

I thought, too, yesterday that the State should derive a revenue from gambling just as we derive a revenue from horse racing. I said that I thought that bookmaking should be regulated and that they should pay a revenue to the State. That evidently did not fall upon receptive ears because it is not included in this amendment nor is there any suggestion that it might be. The amendment does say "No gambling shall be authorized unless the specific kind and control thereof . . . " Control does not give the power to tax. The control of gambling can only bring to the State or the municipalities a mere license fee, and yet I think this great industry, as I characterized it yesterday, should pay a tax to the State the same as pari-mutuel pays a tax to the State. But there is no provision here for that.

I would like also—of course Senator O'Mara dwelt upon it so conclusively that it is unnecessary—but I merely wish to reiterate that our good friends and fellow citizens who desire to vote against all gambling are not hereby given that opportunity. If they are going to vote against the product of this Convention because there is no provision that there shall not be any gambling, this doesn't give them that opportunity. This says no gambling shall be authorized *unless*—unless an existing factor, one which everybody seems to think cannot be done away with, one which is sacrosanct it seems, and I'm not disputing that—but there is an *unless,* unless other gambling is authorized. So how can anyone who is opposed to gambling and who is going to vote against the Constitution because they aren't given the opportunity to vote against gambling—how can they vote in favor of this Constitution?

Furthermore, in a municipality where the preponderance of view may be that there shall be no gambling in our municipality, how are those people protected by this proposal? Where is the local option feature? Why, in a municipality if the people do not wish gambling, shouldn't their wishes be respected? Why shouldn't they have the opportunity to say there shall be no gambling in my town, and conversely, in another municipality where people want this

gambling, why shouldn't they have it? Those are the points that I stressed yesterday, although I elaborate on them at this moment. Those are the amendments I hoped Senator Lewis might be able to work into his amendment. He has not done it; therefore, I continue in opposition.

PRESIDENT: I recognize Senator Barton.

MR. BARTON: Mr. President. My thought was, and it is with the acquiescence of Senator Lewis, to respectfully request a five-minute recess because of the question of the language in the amendment.

PRESIDENT: Is that agreeable to you, Senator Lewis?

MR. LEWIS: It is, Mr. President.

PRESIDENT: I declare a five-minute recess.

(Recess)

PRESIDENT: Will the delegates kindly take their seats? . . . The chair recognizes Judge Cafiero.

MR. A. J. CAFIERO: Mr. President and fellow delegates:

I rise to support the Lewis amendment for three reasons. First, because I share the opinion of the learned lawyer and Senator from Burlington that the submission of alternative questions with the completed draft might well bring into sharp legal dispute the legality and validity of the entire document which this Convention will eventually submit to the people.

I have no hesitancy in stating, since it has already been made clear, that the Committee on Submission and Address to the People considered this matter and submitted a report. I am a member of that committee. The committee labored hard and sought the advices of gentlemen learned in the law, and as a result of that information, coupled with their clear thinking, they reached a conclusion. You will remember our learned chairman, Dr. Saunders, reported the vote of the committee as five to one. It is generally known, and there is no reason why it should have been retained as a secret, that I cast that negative vote because I am firmly of the opinion that it will be clearly contrary to the text of the statute to submit a completed document with alternatives on various questions.

My second reason for rising in support of the amendment is that we are here today to draft a Constitution to submit to the people. We are not here to resort to any device which will seek to destroy that which the people themselves have so recently voiced. We lawyers know that eight years in the law is just a recent decision. We must recognize that the voice of the people eight years ago was but a mere decision. Eight years ago, they went on record firmly and clearly that they were in favor of pari-mutuel betting. To submit the alternative proposals in their present form might well remove—

and I have no interest in any race track or any clients of that nature—the constitutional amendment which was adopted only eight years ago.

Furthermore, we were not sent here by the people in our respective counties to determine whether or not any modified form of gambling might be submitted to the people at this time. We were sent here, as I stated, to draft a Constitution. It is my firm conviction that Senator Lewis' amendment more nearly approaches that which we are instructed to perform. The people who may be interested in a modified form of gambling will not be prevented from having that question submitted by the method proposed under the amendment. It is true that it might be delayed some little length of time, but what is one year when we consider that we are here today to try to improve upon a document which was submitted 103 years ago? I think the fairest method to both parties, those who are interested in pari-mutuel betting and those who may be interested in a modified form of gambling, is to eliminate reference to both, and I shall vote accordingly.

PRESIDENT: The chair recognizes Senator Lewis.

MR. LEWIS: Mr. President, I would like to move to amend Amendment No. 15, Line 10 thereof, by the insertion of one word—the insertion of the word "thereon" after the word "cast," so that that line will read, "the votes cast thereon by the people at a." I make that motion in the interest of clarity, to overcome any possible question such as was raised by Judge Carey. I move that motion to amend.

PRESIDENT: You have heard the motion. Is it seconded?

MR. WAYNE D. McMURRAY: Second.

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The amendment to the amendment is carried.

MR. LEWIS: Mr. President, I would like to move the previous question.

FROM THE FLOOR: Question!

PRESIDENT: All in favor of Amendment No. 15, as just amended by the vote of the Convention, please say "Aye."

(Some "Ayes")

PRESIDENT: Opposed?

(Some "Noes")

PRESIDENT: Those in favor please raise their hands.

(Some hands raised)

PRESIDENT: Those opposed?

(Some hands raised)

PRESIDENT: For the record, I think I shall ask the Secretary to call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Barus, Berry, Cafiero, Camp, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Katzenbach, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Murray, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Randolph, Read, Sanford, Saunders, Schenk, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young—66.

NAYS: Brogan, Eggers, Hansen, Jorgensen, Kays, Milton, Morrissey, Murphy, Naame, O'Mara, Rafferty, Schlosser—12.

SECRETARY: 66 in the affirmative; 12 in the negative.

PRESIDENT: The amendment is carried . . . Senator Lewis.

MR. LEWIS: I now wish to move Amendment No. 15 as amended.

(Discussion off the record)

MR. LEWIS: Were we voting on the amendment or the proposal?

PRESIDENT: On the amendment.

MR. LEWIS: Thank you.

(Laughter)

PRESIDENT: Senator Lewis.

MR. LEWIS: Mr. President, I now wish to withdraw Amendments Nos. 9 and 10.

PRESIDENT: They are withdrawn.

MR. EGGERS: Mr. President, I have a resolution which I desire to introduce *(reading):*

> "Whereas, delegates to the Constitutional Convention have adopted Amendment No. 15 entitled 'Amendment to Legislative Committee Proposal No. 2-1 and its Supplemental Proposal No. 2-2,' this said amendment reading as follows: . . ."

I will omit the reading of the amendment because everyone knows what it contains. Following the amendment, the purport of the resolution goes on, Mr. President:

> "And whereas, the Constitutional Convention by the adoption of this amendment has authorized the specific kind and control of gambling

when submitted to and authorized by a majority of votes cast thereon at a special or general election; and

Whereas, this amendment fails to specify when the Legislature will submit to the people of this State a specific proposal for gambling; therefore, be it

RESOLVED, that this Convention does hereby memorialize the members of the New Jersey Legislature of 1948 to enact legislation which will permit the playing of games of chance or bingo by and for bona fide veteran, charitable, religious and fraternal organizations, the proceeds of which are to be devoted entirely to the uses of such veteran, charitable, religious and fraternal organizations; and be it further

RESOLVED, that this Convention memorialize the members of the 1948 Legislature to submit such legislation to the voters of this State for adoption or rejection by the voters at the general election of 1948."

PRESIDENT: The resolution has been moved. Is it seconded?

FROM THE FLOOR: Second.

PRESIDENT: Mr. Read.

MR. WILLIAM T. READ: I would just like to ask a question. I haven't my copy here. I read so much on this Constitution, I am getting a little confused. My recollection is that if the people adopt this at this fall's election, it doesn't go into effect, generally, until January 1, 1949. If my recollection is correct in that, it ought to be the Legislature of 1949 that should be memorialized.

MR. EGGERS: 1948, Senator.

MR. READ: 1948, is it?

MR. EGGERS: Yes.

PRESIDENT: Any further discussion on this resolution? Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor please say "Aye."

(Some "Ayes")

PRESIDENT: Opposed?

(Some "Noes")

PRESIDENT: I will ask the Secretary to call the roll.

MR. WINNE: I think it is a little unfair to vote on this without knowing the language a little better. I heard it read, but I am not exactly sure of the language of this resolution. I might be willing to vote for it—

MR. EGGERS: I will be glad to have the vote laid over.

PRESIDENT: Mr. Winne, Mayor Eggers has just said that he will be glad to have the vote laid over, if that is agreeable to the Convention. We will have it mimeographed in the meantime.

(Discussion off the record)

PRESIDENT: A copy will be placed on every desk. We will postpone the actual vote until before adjournment . . . Mr. Emerson.

MR. EMERSON: May I offer an amendment to the proposal of the Mayor, to include education?

MR. EGGERS: I will accept that amendment.

PRESIDENT: The amendment is accepted . . . Mr. Smith.

MR. J. SPENCER SMITH: Mr. Chairman, I would like to offer an amendment to the resolution that it include the words "local option."

MR. EGGERS: I will accept that amendment.

PRESIDENT: Any other suggestions, proposals or amendments?

MR. EGGERS: I will accept all the votes in favor of it that I can get.

PRESIDENT: If it is agreeable to the members of the Convention, we will now proceed to the consideration of Amendment No. 16 by Mr. Peterson, which reads as follows *(reading):*

> "Section VII, Paragraph 11 (page 8), line 3, delete semi-colon after the word 'favor.'
>
> Delete the language following the word 'favor' in line 3, the language in lines 4, 5, 6, and 7 so that paragraph 11 will read as follows:
>
> '11. The provisions of this Constitution and of any law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor.' "

Mr. Peterson.

MR. PETERSON: Mr. President, ladies and gentlemen of the Convention:

Amendment No. 11 offered by Mr. Cavicchia was lost yesterday. That would leave in the Committee Proposal ambiguous language which, in my humble opinion, has no place in our Constitution. If Paragraph 11 stops at the word "favor" and advocates a home rule, of which I am in favor, and we retain in the Constitution that short sentence:

> "The provisions of this Constitution and of any law concerning counties and municipal corporations formed for local government shall be liberally construed in their favor."

it would certainly be sufficient.

I respectfully submit that the following language which this amendment proposes to delete:

> "The powers of any county or of any such municipal corporation shall include not merely those expressly or incidentally conferred, specifically enumerated, indispensable, essential, or merely implied, but also those powers reasonably convenient for the execution of such powers and not inconsistent with or prohibited by this Consitution or by law."

most certainly, in my opinion, should be deleted as a constitutional provision. I believe the advocates of home rule have gained great ground in the draft as proposed by the committee, and I don't believe the Constitution should contain any language as ambiguous as the language proposed there and so difficult of interpretation. I don't believe any of the drafters of that paragraph could explain to this Convention the many interpretations which could be put on the construction of the phrase that I propose to delete.

I move the adoption of the amendment, sir.

MR. ORCHARD: Second.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President, I oppose the adoption of this amendment for the same reason that we opposed the adoption of the amendment offered by Mr. Cavicchia yesterday.

PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: I think that I shall vote for this amendment because it is certainly the lesser of two evils insofar as constitutional provisions go. I think it is as far as we should go, and I am going to vote for it.

PRESIDENT: Is there any discussion on this amendment? If not, are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor please say "Aye."

(Some "Ayes")

PRESIDENT: Opposed?

(Some "Noes")

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Berry, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cullimore, Dixon, Drenk, Emerson, Hadley, Holland, Hutchinson, Lance, Lewis, Lloyd, McMurray, Miller, G. W., Miller, S., Jr., Murray, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Pyne, Randolph, Read, Sanford, Schenk, Smalley, Smith, G. F., Sommer, Streeter, Taylor, Walton, Young—37.

NAYS: Barton, Barus, Brogan, Camp, Cowgill, Delaney, Drewen, Dwyer, W. J., Eggers, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hansen, Jorgensen, Katzenbach, Kays, Lightner, Lord, McGrath, Milton, Montgomery, Moroney, Morrissey, Naame, O'Mara, Proctor, Pursel, Rafferty, Schlosser, Smith, J. S., Stanger, Van Alstyne, Wene, Winne—37.

SECRETARY: 37 to 37.

PRESIDENT: Mr. Peterson.

MR. PETERSON: I'm reported as voting "yes." I wish to change my vote, as the introducer of the amendment, to "no," sir.

SECRETARY: 36 in the affirmative, 38 in the negative.

PRESIDENT: The amendment is lost by the vote of 36 in the affirmative and 38 in the negative.

We'll proceed then, if you will, to the consideration of Amendment No. 17, by Mr. Van Alstyne, which reads as follows *(reading):*

> "RESOLVED, that the following amendments to the above Proposal for a new State Constitution be agreed upon:
>
> Amend on page 10, Schedule, paragraph 3, line 12, by striking the word 'three' in front of the word 'years' and inserting in lieu thereof the word 'five.'

Amend on page 10, Schedule, paragraph 3, line 13, by striking the words 'one year' and inserting in lieu thereof the words 'three years.'"

Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

Under the present Constitution, and in the normal course of events, six senators come up for election in 1948. They would normally be elected for three years. The Committee on the Legislative, in order to adjust the new program so that senators would be elected for four years—seven senators, or as near seven as possible, are now elected each year—they provided that three of the senators would be elected one year and three would be elected for three years. On further consideration, it seems rather an injustice to have a man who should, under the new Constitution, be elected for four years, run for only a one-year term. Of course, it leaves it up to the Senate to decide who are the three men who would run for only one year.

This amendment has for its purpose changing it so that three of these senators would run for three years and three would run for five years. That would get the Schedule in order. I can see no objection to this, and I believe it has the blessing of the chairman of the committee.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President, the committee, in drafting the Schedule, found it necessary to rearrange the terms of the senators who would run in 1948, so as to bring them in conformity with the new constitutional provision which would require the election of one-half the Senate every two years. We first thought that we should not give to any senator a term longer than the new four-year term, and that was the basis of the recommendation that of the senators who run in 1948, half should run for a one-year term, and half for a three-year term. Nevertheless, there is a great deal of justice in what Senator Van Alstyne says. As to giving the senators a five-year term, that would merely be on one occasion only, and solely for the purpose of bringing the Schedule into conformity. I, for one, am glad to support the amendment offered by Senator Van Alstyne.

PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: I am in agreement with this. I think—and Senator O'Mara will bear me out—that this was one of the last things the committee had to decide before it submitted its Report. I think, had we had more time to give to the consideration of this question, we might have come out with the provisions of this amendment. So I endorse the amendment and shall vote for it.

MR. VAN ALSTYNE: Thanks, Mr. Cavicchia.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor of this amendment, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Amendment No. 17 is carried.

Are there any further amendments to be offered to Committee Proposals Nos. 2-1 and 2-2, Legislative?

MR. O'MARA: Mr. President, the only amendment lying open is Mr. Randolph's No. 5, which I understand he wants to move now.

PRESIDENT: I will read it for you *(reading):*

> "RESOLVED, that the following amendment to the above proposal for a new State Constitution be agreed upon:
> Amend Section VII, Paragraph 9 as follows: After the period in line 15 on page 7 insert the following words:
> 'Discrimination on account of race, color, creed or national origin in the management and control of free public schools is prohibited.' "

Mr. Randolph.

MR. RANDOLPH: Mr. Chairman and delegates:

I ask unanimous consent to amend the amendment by striking out the word "creed" and inserting the word "religion." The amendment would then read:

> "Discrimination on account of race, color, religion or national origin in the management and control of free public schools is prohibited."

PRESIDENT: Is the amendment to the amendment understood? Are you ready for the vote?

All in favor of the amendment to the amendment substituting the word "religion" for "creed," please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The amendment to the amendment is carried.

MR. RANDOLPH: Mr. Chairman and members of the Convention:

The argument has been advanced that this amendment and the amendment to the militia, inserting a similar clause against discrimination, should properly be in the Bill of Rights. I consider that that is true. However, the Bill of Rights section, the Article relating to the Bill of Rights, has not yet been considered by this Convention. It is my purpose, Mr. Chairman and fellow delegates, if I am successful in getting this amendment through, to ask if the Bill of Rights can be amended so as to include both the reference to the militia and reference to the public schools. It is my intention then to withdraw, with the consent of the Convention, both of these amendments.

Now, speaking to the amendment, I think that at this time, for the purpose of protecting the two clauses relating to discrimination

—on one of which the Convention has already acted favorably, and this one—I think that the proper thing to do, if the Convention will go along with it, is to adopt it. I will pledge my word to withdraw them both if the Bill of Rights is amended to include these.

Now, Mr. Chairman and gentlemen of the Convention and ladies of the Convention: I think the purpose of this amendment is so clearly stated in the words set forth as practically to need no further reference. We have a very peculiar situation in our State. The state law relative to public schools prohibits discrimination on account of race. In spite of that law I dare say that every delegate here knows that there is separation on account of race, and only on account of race, practiced in the State of New Jersey at this time. I make practically the same argument, Mr. President and members of the Convention, in support of this amendment as I made in support of the amendment relative to the militia—that here and now, we should take the opportunity after the great World War II to eliminate from our basic law any vestige of discrimination on account of race, color, religion or national origin.

The fact is known that the members of a race group are discriminated against in the public schools, where separate schools *do* exist. I must say this—they do exist contrary to the law of the State. The fact is that those discriminated against belong to a race, as you all know, of which a great many young men gave their blood and laid down their lives for the great cause of democracy. Are we going now to return to the old system of allowing those who survive to be subjected to that same embarrassing situation? I can't believe that this Convention, the Convention which is taking such marvelous strides to present a product that will be a model, I can't believe that we will allow discrimination in our public schools to be continued.

Therefore, Mr. Chairman and fellow delegates, I urge you to vote for this amendment and I pledge you that if the Bill of Rights, the present Bill of Rights, is amended to add a discrimination clause so as to include these features, I will withdraw both of them. But at the present time I think that in order to secure firmly these rights, this amendment should be adopted.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President, I am in complete accord with the objective which the distinguished delegate from Essex seeks to achieve. However, I think it is quite clear that the subject matter is one for the consideration entirely of the Committee on Rights and Privileges.

The only mention in the Legislative Article concerning the management and control of free public schools is the one which Mr. Randolph now wants to amend, by adding to it the language of

his amendment, and that is, the clause which provides that "The Legislature shall not pass any private, special or local laws . . . providing for the management and control of free public schools."

This clause is merely a restrictive clause, prohibiting the Legislature from passing special, local and private laws in the case of public schools. I submit that logically the delegate's proposal should not be incorporated in this section of the Constitution, but should be referred back to the Committee on Rights and Privileges, where it properly belongs. I therefore oppose the proposal.

PRESIDENT: Is there any further discussion on this amendment? . . . Mr. Paul.

MR. PAUL: Mr. Chairman, I reluctantly oppose the adoption of this amendment. I agree with Senator O'Mara that the purpose is a most commendable purpose, but I think that the question of the broadening and the handling of the matter of discrimination should be in the Bill of Rights, and that that section, when adopted by this Convention, should then flow to the various aspects of our civil life.

I don't think you can handle this thing adequately by trying to put into each section some anti-discrimination clause. You not only clutter up the document, but I think you render a disservice and harm the purpose which the gentleman has in mind in proposing this resolution. Because if you fail to put it in any one clause, then the inference is that you deliberately eliminated it from that clause and, therefore, it does not apply there.

I think a broader, a more satisfactory method of handling this is to handle it through a clean-cut, definite debate on the question of it being in the Bill of Rights.

PRESIDENT: Mr. Farley.

MR. FRANK S. FARLEY: Mr. President, I have an amendment to offer to Delegate Randolph's amendment.

I understand the procedure would be a member of that committee submitting his report and the amendment thereto. The procedure normally would be to amend his recommendation to the original report, but at this time I would like to present an amendment to Delegate Randolph's amendment, and I would like to be heard upon it.

SECRETARY: Amendment proposed to Amendment No. 20, Section 5, adding a new proposal to read as follows *(reading):*

> "1. No person shall be denied the equal protection of this State or any subdivision thereof. No person shall, because of race, creed, color or religion, be subject to any discrimination in civil rights by any other person or by any firm, corporation or institution, or by this State, or any agency, or subdivision of this State.
> 2. That the following sentence be added to Section 17, under Rights and Privileges."

MR. FARLEY: Continue on, there is a second clause to the amendment, please.

SECRETARY: *(reading):*

> "Property taken for public use shall be enjoyed without discrimination because of race, color, religion, or national origin."

MR. FARLEY: Mr. President and fellow delegates:

This amendment is in no fashion to be interpreted to be for the purpose of confusing the particular presentation of Delegate Randolph. However, the people who live in my community, and who elected me as delegate, have specific ideas. They are connected with the State Association of various women's clubs, professional men's clubs, and cover all kinds of opinion throughout the entire State. They have made it a practice, in order to arrive at a sound decision, to research the progress of the colored race as a whole, and their recommendations on this proposal have been by virtue of sound reasoning, basic logic and through actual experience that has, more or less, encumbered the progress of their race.

You gentlemen well know the fact that in the early part of the century, back in 1890 to 1900, there was a movement afoot in these United States for the purpose of trying to deny to certain minorities the opportunities and privileges that represent everything that we stand for in these great United States. Whether such a person might be Polish, or whether Russian or German, there was a movement on foot for the purpose of denying these minorities the right to occupy property, the right to occupy certain public buildings, and likewise the benefits of the general education afforded by the State of New Jersey, as well as the Federal Constitution. That, fortunately for you and me, was stamped out by the great majority of the people. And, at that particular time, there was likewise a contramovement on foot for the purpose of the progress of the Negro race.

You and I, as men and as delegates and as legislators in the Senate, know of this constant turmoil that has happened so frequently in the State of New Jersey. I was obliged while in the Senate, under the Civilian Defense Act, to amend that act to protect a fine Negro gentleman. It seems that in a certain city in the State of New Jersey during the recent war, that when the air raid warden had given the signal to the people to clear the streets, this particular individual had gone into a restaurant, and as he entered the restaurant he was thrown physically and forcibly from the premises. It was necessary for me to introduce and pass an act in the Legislature to protect and insure protection of all Negro men and women, so that when that air raid warning was given, no matter what shelter they would seek they would receive the same protection as white people.

That is merely by way of demonstration and illustration of what has been encountered by these fine people. I say that, because on

so many repeated occasions where they sought equal opportunity they have been denied that privilege and pleasure.

Now, may I say and demonstrate to you that even in the State of New Jersey, and shamefully so, in schools where they have white and colored children they have separate lavatories for the colored boys and for the white boys. They have fences, partitions, for the purpose of segregation, and I say to you that this is something that must be given serious thought before we make any final disposition of the amendment proposed by Mr. Randolph.

I want to call your attention that in this recent war there was something called "blood plasma." It might interest you to know that the head of that research department was a Dr. Charles Drew, an outstanding Negro medical man. As a result of his research and study, and by virtue of his ingenuity as a medical man, he conquered the most important task of saving lives by preserving blood plasma. He was summoned to Rome for the purpose of saving, I believe, the life of Ambassador Taylor. And likewise, after that terrific air raid and catastrophe in Coventry, England, after the Germans inflicted their venom of bombs, he was sent over on a mission at the request of the British Government. He performed a magnificent job, in such excellent fashion that he was given public commendations throughout the entire world. And how was it possible for Dr. Drew to attain his objective in life, to be a professional man? Only by virtue of the fact that the people in his particular community afforded all peoples the right of equal opportunity to obtain an education.

I know, gentlemen, that this is a subject that is deep-rooted. It is a subject that we can talk about for hours and days. It is not one that should ever be circumvented. In this great State of ours we have what we call a "restrictive covenant." It means that building programs have been planned purposely to circumvent occupancy by the colored people of the State of New Jersey. And not long ago, I believe, a law was passed for the purpose of authorizing certain corporations to condemn property. It just so happened that in certain parts of the State of New Jersey, after obtaining the property from colored individuals who were induced to go along with this program to obtain better living conditions, they were denied the opportunity of seeking the rental of the finished product.

I say to you honestly and sincerely that I think this amendment is a step in the right direction. You well appreciate the fact that the first amendment offered by Delegate Randolph is the replica of the provision in the State Constitution of New York where it has worked in splendid fashion, where it has worked effectively. I say to you, Mr. Randolph, this is not for the purpose of trying to deter action on your amendment, but for the purpose of amplification

and to bring to the attention of the delegates things that happen in everyday life. Just stop and think. By virtue of the fact that your skin may be colored, you are denied the opportunity of participating in the fruits of a great democracy. It is entirely within your hands, ladies and gentlemen, by your unanimous support of this amendment, which includes two clauses: first, the right of the colored man to have protection, not to be denied the right of employment in industry, which is so vital at this time. Effective work is being done day by day, but not to the extent and not in a fashion that is commensurate with the so great needs of these fine people throughout this entire State.

It is only through the determined efforts of these people in various municipalities, that the utilities have finally assented to hire the colored man and woman. I hope you afford them the same rights that you and I enjoy; afford them the same opportunities that you and I enjoy in this great State.

There was a famous article written not long ago in *Commentary Magazine* that outlines specific instances where there has been class hatred created by restrictive covenants.

I ask for your unanimous support on my amendment. I think it requires serious consideration and I know that you will analyze the facts and the entire picture for the progress of all people. I can't let you forget that in this recent war, when they drew names and numbers for the draft, there was no differentiation between white and colored; and when the bullets flew on that battlefield in France and the South Pacific they didn't pick out a man who happened to be white or colored. And if he fought to protect you and me, may I say to you he is entitled to every consideration, every possible opportunity that you and I enjoy under this great State of ours and under the Federal Government.

PRESIDENT: Senator O'Mara.

MR. O'MARA: The amendment Senator Farley just proposed is an amendment to Mr. Randolph's amendment?

PRESIDENT: You offer it, Senator Farley, do you not, as a substitute really for Mr. Randolph's amendment?

MR. FARLEY: Mine is an amendment to Mr. Randolph's amendment and it incorporates additional factors which are not included in his amendment, such as the right to be protected from discrimination in employment and in industry.

MR. O'MARA: Mr. President, I move that Mr. Randolph's amendment, as amended by Senator Farley's proposal, be referred to the Committee on Rights and Privileges where, in my judgment, it properly belongs.

PRESIDENT: You have heard the motion. Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

MR. FARLEY: Mr. Chairman, that means that my amendment is referred with Delegate Randolph's amendment. Is my understanding correct, Senator O'Mara, that my amendment is to be incorporated with your amendment, Mr. Randolph, and is to be referred to the committee?

MR. RANDOLPH: That was the purpose of Senator O'Mara's motion.

I would say, Mr. Chairman, that I was under the impression that —Senator Farley had talked to me about this—that his amendment was to be offered to the Bill of Rights, and this amendment that I proposed, and on which I spoke, was an amendment to the Legislative Article. I have not thought of amending it to the Bill of Rights yet.

MR. FARLEY: I beg your pardon, Mr. Randolph. It was my understanding that you were offering Amendment No. 5 to the Rights and Privileges Committee and that section of the Constitution; and my purpose and intent was to relate it to that particular section. So I certainly should have the right to reserve to make that presentation at the right time.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President, I move that Committee Proposal No. 2-1 be referred to the Committee on Arrangement and Form.

PRESIDENT: You have heard the motion? Is there any discussion?

MR. WALTON: I second the motion.

PRESIDENT: All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

Committee Proposals Nos. 2-1 and 2-2, Legislative, having been twice read and considered by sections, are referred—

MR. O'MARA: Mr. President, Proposal No. 2-2 is lost by virtue of Mr. Lewis' amendment. You mean 2-1.

PRESIDENT: Yes, Proposal No. 2-1, having been twice read and considered by sections, is referred to the Committee on Arrangement and Form for necessary action and report.

Mr. Peterson.

MR. PETERSON: Mr. President, as I understand the Rules, the amendment that I offered can be reconsidered within two days of the vote on Amendment No. 16. I am inquiring now, sir, whether Senator O'Mara's motion would preclude that consideration provided under the Rules?

PRESIDENT: Senator O'Mara, would you care to answer that?

MR. O'MARA: My interpretation of the Rules is, Mr. President, that consideration of amendments end when a Proposal passes second reading, and this Convention having voted to refer this Proposal, this Committee Proposal No. 2-1, to the Committee on Arrangement and Form and it having passed on second reading, would preclude further discussion of the amendments without unanimous consent.

PRESIDENT: That is the ruling.

MR. PETERSON: With respect to amendments that have been laid over, the proponent has the right, under the Rules, to ask reconsideration of a vote. Senator O'Mara rules to close consideration on the Proposal No. 2-1 in a very hasty manner, and I respectfully submit that in my particular case the amendment is worthy of a further consideration.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President, I want to point out that this Convention has already voted that this Proposal, which passed second reading, be referred to the Committee on Arrangement and Form. Mr. Peterson's amendment was not laid over for further consideration. It was defeated. It was lost.

MR. PETERSON: Mr. President, I changed my vote, sir, and I respectfully submit that I have the right to bring it up, and I do so move you, if Senator O'Mara will concur, to reconsider the vote on Amendment No. 16.

MR. O'MARA: No, I can't agree to that, Mr. President. The Proposal has moved off second reading by a vote of the Convention.

PRESIDENT: That is the ruling, Mr. Peterson.

Is there any further action to come before the Convention at this time?

MR. WALTON: I move that we adjourn until next Monday, at 10:00 A. M.

MR. CAFIERO: I second that motion.

PRESIDENT: It is moved, then, that we adjourn to meet again next Monday, at 10:00 o'clock. All in favor please say "Aye."

(Majority chorus of "Ayes")

PRESIDENT: Adjourned.

(The session adjourned at 1:25 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Monday, August 18, 1947

(Morning Session)

(The session started at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . . I have asked Rabbi Cohen to pronounce the invocation, but he has been prevented from coming. I will ask Dr. Saunders, if he will, to again announce the invocation. Will the members of the Convention please rise?

MR. WILBOUR E. SAUNDERS: Oh God and Father of us all, again at the beginning of another week's work we seek Thy direction and Thy blessing. At the end of this week's work may we, though weary, be able to be content, having given our conscientious best thought to the work that is before us, that we may produce for our people and our State that which shall form the basis of right and fairness for many years to come. Give us, we pray Thee, true humility as we approach our task, that we may rely, not on our wisdom alone, but our best combined with the blessing of Thy presence in our thinking. We ask it in Christ's name. Amen.

PRESIDENT: The first item of business on the docket is the reading of the Journal. May I ask your wishes?

FROM THE FLOOR: Move it be dispensed with.

FROM THE FLOOR: I second it.

PRESIDENT: It has been moved and seconded that the reading of the Journal be dispensed with. All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray,

Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present, sir.

PRESIDENT: The Secretary reports that a quorum is present. May I inquire if there are any petitions, memorials or remonstrances to be presented?

(Silence)

Any motions and resolutions? . . . Mr. Dixon.

MR. AMOS F. DIXON: Mr. President, I have a resolution to present which I wish to hand the Secretary to read.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourns, it agree to meet at 10:00 A.M. on Tuesday, August the 19th."

MR. DIXON: Mr. President, I move the adoption of the resolution.

FROM THE FLOOR: I second it.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted. We will meet tomorrow at ten o'clock.

Is there any unfinished business to come before the Convention? . . . If not, may I ask if there are any further amendments to be offered, and in doing so may I suggest that we consider first amendments to the Judiciary? . . . Dean Sommer.

DEAN FRANK H. SOMMER: Mr. President: Mr. Nathan Jacobs, vice-chairman of the Committee on the Judiciary, will introduce in my name certain proposed amendments to the Committee Proposal No. 4-1.

I would now place upon the record of this Convention note of the fact that I have, with the consent of the committee, designated Mr. Jacobs as the person in charge of Committee Proposal No. 4-1. I make this designation of Mr. Jacobs in grateful recognition of and in tribute to his untiring, broad-visioned and far-seeing endeavors as a member of the committee, and as its vice-chairman and, at times, acting chairman. I would have the record of the Convention note the fact that Mr. Jacobs, as vice-chairman, relieved me in a large measure of the details of the work of the committee, details

that would have otherwise overwhelmed me, and made it possible for me to limit my efforts in a large measure to a thinking part, the part of counsellor and guide, and on the insistence of a member of the committee, I add, gyroscope or stabilizer. I would have credit go where credit is due. Mr. Jacobs.

PRESIDENT: Mr. Jacobs, we will recognize you.

MR. NATHAN L. JACOBS: Mr. President and delegates: I wish to call the attention of the delegates to Amendments Nos. 8 and 9 to Committee Proposal No. 4-1. You will find them attached to the material on your desk now. I may say that I am speaking not only on behalf of Dean Sommer, but also on behalf of all the members of the Judiciary Committee, with the exception of one.

Several days ago Chancellor Oliphant expressed strong support for the Judiciary Committee's Proposal No. 4-1, and submitted certain recommendations which he believes were in furtherance of the aims sought to be achieved by the committee, and which would increase acceptance of its Proposal by the general public as well as the members of the bench and the bar. These recommendations were found to be constructively helpful, and they are embodied in the proposed Amendments Nos. 8 and 9.[1] With your permission I shall list them at this time, so that you may consider them together with Committee Proposal No. 4-1.

Amendment No. 8 will restore to the County Court its civil jurisdiction. You might note that this amendment is substantially identical with proposed Amendment No. 3 introduced by Judge Stanger, and with proposed Amendment No. 5 introduced by Judge Smalley.

Proposed Amendment No. 9 is intended to effect the following changes:

1. The name of the General Court is to be changed to Superior Court, and the name of the Equity Division is to be changed to Chancery Division.

2. A new provision is to be added which will permit a presiding Justice designated in accordance with rules of the Supreme Court to act temporarily as Chief Justice where the Chief Justice is temporarily absent or unable to serve.

3. The Superior Court is to have general jurisdiction throughout the State in all causes, without any exclusion.

4. A change in punctuation is made in Section III, Paragraph 4.

5. In lieu of the provision which allows direct appeals on certification by the Supreme Court to any court, such appeals will be confined to certifications by the Supreme Court to the Appellate Division of the Superior Court, unless the Supreme Court by rules includes the inferior courts.

[1] The full text of these and other amendments appears in the Appendix in Vol. II.

6. Section V, Paragraph 5, which allows the Governor to retire a Justice or Judge in certain specified situations, is expanded so as to provide that the retirement shall be on pension as provided by law.

7, 8 and 9. These are intended to grant to the Superior Court the jurisdiction of the Prerogative Court; the appellate cases to be heard generally in the Appellate Division and the original cases to be heard generally in the Chancery Division.

10. This is designated to provide that until the entire Judicial Article takes effect on January 1, 1949, no changes shall be effectuated, except that the Governor may fill vacancies in the new Supreme and Superior Courts, and that preparatory work may be done in anticipation of the effective date of the Article.

I might say that this morning I was given a copy of a letter from Vice-Chancellor Bigelow. The Vice-Chancellor lists certain recommendations, substantially all of which are included within those submitted by the Chancellor. I would like, however, to read the first paragraph of Vice-Chancellor Bigelow's letter:

> "The Judicial Article and accompanying schedule prepared by the Committee of the Constitutional Convention of which you are Chairman [this was addressed to Dean Sommer] seems to me admirable. I especially like the power given to the Legislature and the new Supreme Court to fill in the details, and I like the omission of any definition of the jurisdiction of the law and equity branches of the General Court. I hope the Convention will approve your work without substantial change."

PRESIDENT: Are there further amendments to be offered to the Judiciary Article?

SECRETARY: Nos. 10, 11 and 12 by Mr. Jorgensen, have been received.

PRESIDENT: Are there amendments to be offered to any of the other Proposals?

If not, we'll proceed with the consideration of the amendments to the Judiciary Proposal. Amendment No. 1 is that offered by Justice Brogan, who, I trust, is not expected to read it. . . . Justice Brogan.

MR. THOMAS J. BROGAN: I move the amendment.

PRESIDENT: The amendment is now open for discussion.

MR. BROGAN: Mr. President and ladies and gentlemen of the Convention:

I have in mind, in this amendment which I have offered, the accomplishment of one very material principle which I think would improve the Judiciary Article. That principle is the permanent

assignment of equity judges, for a very salutary purpose—the continuance of our equity jurisprudence on the high level on which it now stands among the courts of equity of this nation, and which high level, I think, was accomplished by the permanent assignment of equity judges.

Before I get to that, there are two or three matters that ought to be referred to in passing. The idea of an integrated court is in the air. Everything is to be streamlined. Well, streamlining for streamlining's sake is not an important thing.

My idea of proper judicial machinery for the expeditious, just and complete determination of all causes seems to me to be able to be worked out within the structure that we already have. I do not, of course, mean without substantial change, but I do mean this: We ought to have a court of last resort that is utterly and completely independent of all other judicial duties. We ought to have a court of last resort that has no other duty except appellate work. We ought to have an appellate court, a court of last resort, that is small in number. Now, I agree with the Committee Report in that respect. It does call for a smaller number. But I do not agree that that court doesn't have duties other than appellate work. It has the rule-making power; it has a superintendency power over other courts; it has a power that will indeed, if lodged in the Chief Justice alone—and most of it will have to be—keep him busy with superintending and supervising the courts, and I submit that that is not properly a part of his function.

I think, generally, the courts should make their own rules, subject to supervision, and I have so provided in the amendments which I have prepared.

This Article of the committee has called the court of last resort the Supreme Court; and has called, up to this morning, the court of general original jurisdiction a General Court, which is now changed to Superior Court. I find no reason for these changes whatever. We have for 100 years been used to a Court of Errors and Appeals, and I submit that a Court of Appeals would be more in keeping with that to which we have been accustomed.

The neighboring State of New York calls its court of last resort a Court of Appeals. The Supreme Court, which is the new name for our court of last resort, has for 100 and odd years been a court in this State of original and appellate jurisdiction, and we have a hundred odd years of judicial decision vindicating the jurisdiction of that court. In the amendment which I have prepared, I have retained the Supreme Court in its present state, except for denuding it of any original jurisdiction. It remains a court of intermediate appellate jurisdiction, and we have been, as I said, used to that for more than 100 years.

I now come to the court of general original jurisdiction. In the amendment, as distinguished from the Committee Report, there is a Chancery and a Law Division. The judges in the Chancery Division, as has been provided by the amendment, shall be permanently assigned.

Now, this idea of permanent assignment is not mine alone. In looking through the testimony, or minutes, that were taken before our committee, I find that Mr. McCarter, representing the New Jersey State Bar Association, was for an idea which I think I have embodied—at least I tried to—in the amendment which I have prepared, calling for the permanent assignment of judges.

I don't know how many lawyers there are in the State Bar Association—incidentally, there are about 8,000 lawyers in the State of New Jersey—but most of the men who take their profession seriously are members of the State Bar Association and have registered their vote and their ideas generally about this matter. The committee of the State Bar Association, I think, reflects the thinking of the membership of that association and the committee has recommended the permanent assignment of judges. So, too, have other Bar Associations.

Judge William Smith of the Circuit Court, of our Circuit Court, who is one of the seasoned judges in the State, expressed the thought that any change to be made in our system which would remedy the defects that we have all recognized should be made within the system itself. Mr. Lasher, speaking for the Bergen County Bar Association, came out for Law and Chancery Divisions, with the Vice-Chancellors to be appointed by the Governor and, I think, permanently assigned. Mr. Stryker appeared before our committee and, of course, he was for the retention of the Court of Chancery as such. Whether he would be satisfied with the amendment which I have drafted, I do not know; but at any rate, fundamentally his notion was in favor of the permanent assignment of equity judges.

So, too, the Mercer County Bar Association was for the permanent assignment of equity judges, as were the Monmouth County Bar Association, the Ocean County Bar Association, the Camden County Bar Association and Hunterdon likewise—a small association but, nevertheless, there it is. Judge Madden, a federal judge who appeared before our committee, voiced the opinion and the conclusion, which he defended very, very ably, that the New Jersey system is much superior to the integrated federal system. And George McCarter, of Essex County, speaking again for the State Bar Association, or its committee, appeared before us a second time and spoke to the same effect.

I mention this to show that the idea which has been embodied in the amendment on this very important principle of the perman-

ent assignment of judges, is not one that is peculiar to me, nor is it one that is peculiar to those who practice in the main in the Court of Chancery, but it is the considered view of many of our Bar Associations, including the State Bar Association.

Now, ladies and gentlemen of the Convention, opposed to this notion is the idea that the indiscriminate assignment of judges from law civil to law criminal, to probate, to equity, produces—and this must be the idea—produces as sound an equity jurisprudence as does that equity jurisprudence which comes from the hand and mind of men who devote their entire time, who devote their entire study and their entire examination of questions that arise before them, to equity. If any man defends the view that the integrated system, so-called, produces as good an equity jurisprudence as the permanent assignment system, my only answer is, if he is sincere in that belief, that I just do not understand him.

I am not going to prolong what I have to say by citing analogies. I am not going to bore you with pointing out that specialty seems to be the science of crafts and professions. I am just going to say that if anyone claims that it is an improvement to have the indiscriminate assignment of judges for law and equity—because integration seems to have as its basis the quick rotation of judges—why he is just saying something that I do not and cannot understand.

We have had many great equity judges in New Jersey. We still have some great equity judges in New Jersey. I shall not mention any of the living. But the Camden County delegation, I dare say, is very proud of a man like Leaming. In our day and generation there was no finer equity judge. I do not intend an encomium to him. This isn't a tribute of words. Everybody knew the kind of equity judge he was. I wonder, would he have been half as capable in the matter of equity jurisprudence if he were in an integrated rotating court?

The delegates from Mercer will remember what a great equity mind was developed in the late Vice-Chancellor Backes. He was one of their neighbors. Many of us remember the splendid contribution made by Chancellor Walker of Mercer County, especially to the adjective side of the law, and the lawyers among us are very familiar with his opinions, powerfully done, in many of our historically important cases in Chancery. Going back further, our official reports reveal the broad comprehension, skill, and power of analysis displayed by the men who have gone many years before, from Van Fleet forward, particularly Green and the Pitneys. Strange as it may seem, Vice-Chancellor Pitney has been referred to—whether the article I read is completely true, I don't know—as having been quoted more in our reports than any other Vice-Chancellor in the history of the Court of Chancery in the State of

New Jersey. I visualize him as a great personality—a distinctive character with a passion for justice, and with a courage equal to any occasion.

All these equity judges, and many more, were great equity judges. I put the question to you, ladies and gentlemen, do you think that these gentlemen would have been the outstanding legal scholars in the field of equity that they were, had they been in a court in which the indiscriminate assignment of judges was not only permitted but was the order of the day?

I need spend no time, except the time it will take to utter one sentence, on the matter of the reputation of our State in the field of equity jurisprudence. No lawyer in the Convention—and I say this for the benefit of those who are not members of the bar—no lawyer in this Convention, no matter how opposite his view may be from mine on this point, will venture to say that the State of New Jersey doesn't stand at the very top of the list of all the states in the field of equity jurisprudence.

What has happened, ladies and gentlemen in those states which have gone over to the so-called integrated court system? I would like anyone who differs to cite me an outstanding decision in equity jurisprudence out of the State of New York in the last 50 years. It is about 50 years, more or less, since New York embraced the so-called integrated system. Does any lawyer here know of any outstanding decision in equity that has come out of our integrated federal court system? There may be some, but I know of none, and none has ever been brought to my attention.

We have had magnificent jurisprudence on the equity side. That's not a mere figure of speech. If I were so minded and had the time, I would read a compendium I have here containing the tributes to New Jersey equity by the courts of other states, by judges, by textwriters, which register proper appreciation of the great work which has been done in the years that have passed by our specialists in equity. And those specialists were permanently assigned equity judges.

There is one other matter which is quite apart from that to which I have addressed myself, in which the amendment differs from the recommendation of the majority. I heard Mr. Jacobs this morning say that the committee had sat down with the Chancellor, or the Chancellor had come to the committee and made some suggestions which the committee accepted. I was unaware of any such meeting. I had no notice of it. Consequently I do not know the scope or the importance of the suggestions which came from the Chancellor that the committee has accepted. What they accomplish, I do not know. However that may be, I would think that they should have been brought to the attention of each

member of the committee before they were offered. Perhaps I would have agreed with some and sponsored those.

I now wish to discuss a difference in the matter of the Schedule. The Governor, under the Schedule of the committee, has the appointment of a court of seven. Ladies and gentlemen of the Convention, I do not think any other provision in the Schedule is quite as important as the matter to which I now address myself.

The court of seven is to be drawn from the present Supreme Court Justices, the present Chancellor and the Vice-Chancellors, and the present Circuit Court Judges. So the committee's Schedule provides. There is no one in this hall who has any more respect for our Governor than I have. Indeed, he has not only my respect but my admiration. At the beginning of his term he started out on a courageous path of getting things done, and if they are not done the fault will certainly not be his. Regardless of the respect and admiration I have for the Governor, he should not have the power of appointment and disposition which is given to him under this Schedule. There is nothing personal in this. I don't mean that he, Governor Driscoll, shouldn't have it. I mean that no Governor should have the privilege, at this transition period, of selecting the entire membership of our court of last resort.

Let us consider the personnel of the existing court and examine the cross-section of opinion, and the political complexion of the Governor's office through the years, whence the selections came. Some of our judges on the court of last resort were first appointed by Governor Stokes more than 30 years ago. Some were appointed or re-appointed by Governor Edwards, by Governor Silzer, by Governor Moore, by Governor Hoffman, by Governor Larson, by Governor Edison, by Governor Edge, and by Governor Driscoll. This court was assembled, ladies and gentlemen, by a line of Governors, some Republican; some Democratic. The men composing the court were selected for reasons that appealed to the appointing power; perhaps it was a Governor's political philosophy or his judicial philosophy; perhaps a judge was appointed because he was considered a liberal, so-called, or a conservative. However all this may be, we have a court of last resort in which the people of the State have confidence. The judges composing it are men of integrity and learning. It is a satisfactory court in its personnel.

I submit to you that it would be a wise thing to leave the court as it is, to leave the Supreme Court Justices and the Chancellor as the court, even though temporarily it makes a court of nine or eight, and let the number be reduced to seven by death or resignation. Under the Article prepared by the committee and under the amendment, there are some men in the Supreme Court, and I won't name them, who could not serve because of the age limita-

tion. By the time the judicial amendment takes effect, some of the judges will have passed the 75-year mark. At least one has passed it now. Taking these details into consideration, we will find ourselves with a court of nine at the most, for a short period. If the compulsory retirement regulation remains, the court will be down to seven by the time January 1, 1949 rolls around.

What argument justifies my position? This,—it is not based on sentiment. I carry the torch for no man or group of men. The things that I have proposed represent a conscientious conviction based on some experience and a desire to give the people of the State in this fundamental law, under which our children's children must live and strive, the best we can possibly do with it.

Is it fair, think you, to permit the Governor by direction or indirection to demote men who have served 14, 18, 20 or more years in the court of last resort, and send them back to the lower court, perchance to try automobile accident cases? That can happen; no doubt about that. Some of these judges could, of course, go to the Appellate Division to be constructed from the main line court, or they could go to a court of original jurisdiction, either law or equity, or they could be sent, perhaps, to the County Court to try the criminal list of homicide, atrocious assault and battery, or whatever comes up in that court in the hurly-burly of its every day program. Is there anything right about such possible demotions for the judges of our top court under the Schedule proposed?

This isn't an argument from sentiment. This is an argument which I think is based on just treatment. Now, these judges from our Court of Errors and Appeals have borne the heat and labor of the day, for many years. I sat in that court for 14 years and, ladies and gentlemen, whether you know it or not, you did your work solo. If I wanted to find out what the rule in *Naumberg* vs. *Young* or *Schreiber* vs. *Public Service* was I had to go and look for it. No law secretaries were provided by the State. The judicial work was a 365-day-a-year task. To get ready for conference days was not possible without hours and hours of night work, night after night.

Now, suppose you have this court hand-picked by the Governor. I intend no reflection whatever, because that's what it would be in truth and in fact, a hand-picked court. Suppose within 60 days after this court is selected, or within 90 days or within six months, action by the Governor is brought into the court of last resort for review. We amended the Executive Article the other day to provide for just that. Suppose the court agrees with what the Governor has done, and affirms. Suppose it's a close question. How much confidence, think you, will the people of our State have in the judgment of such a court? Will it have any?

The people of this nation some years ago—and I don't mean too

many, maybe ten—were exercised about what was referred to then, but I do not use the term as applicable here now, as court packing. Ladies and gentlemen of the Convention, I ask you to turn your face away from such a principle, and I ask that on the ground of what I consider fundamental fair play to those law judges in the Supreme Court and the Court of Errors and Appeals who have borne the heat and the labor of the day, not for a month or a year, but some of them for a generation.

I have a very little more to say and I shall have done in a few moments. With regard to retirement, the Judicial Article provides that retirement shall be at 70, except in the case of those presently in the court system, who may serve out the balance of their present term. I provided in the amendment that the retirement age should be 70 if the judge so desired, but he shall be retired at 75. In other words he must go at 75. Under the amendment, he may go at 70, if he so desires.

I have also provided for retirement. I put that in the Constitution, ladies and gentlemen, because you know, if you have thought about the matter, that the Legislature, with all due respect to it, has done very little for judges. I don't think judges generally are popular. I think that if they are going to get any relief, or the benefit to which they are entitled, they will have to get it here, from us. So I provided in this amendment that they should retire at 100 per cent of their pay and should be subject to call when needed. They could be used when there is a vacancy in the court of last resort or in any place else, or they could hear a matter, any *nisi prius* matter. And they could be very useful to the court in a number of ways, all to be provided by rule.

It may be that there are those among us who think that that retirement age, that amount of compensation on retirement, is extreme. I put it in for what it was worth. I believe that if you are to retire judges unceremoniously at 70, you should provide for them. I believe, further—and I hope that this matter will arise and be taken care of—that there should be introduced in the Legislature a proper system of retirement, based on an actuarial plan, to which the beneficiary would contribute through the years as they have in other states and which has worked out so magnificently elsewhere, so that the retirement provision would be a contract and couldn't be altered at will by the Legislature.

These are the chief points upon which I differ with my brethren of the committee. None is put in for any unworthy purpose. Each is put in based on a conscientious conviction that it is superior to the provision made in the Report of the committee. I urge support for the changes. I urge for the permanent assignment proposition, for the manner of selection of the court of last resort, and for the

retirement proposition the earnest and candid consideration of this Convention.

This Convention, if it accepts the one and rejects the other, or whatever it may do, will have done so with its eyes wide open as to the facts.

PRESIDENT: Mr. Jacobs?

MR. JACOBS: Mr. President and delegates:

I shall not attempt to speak for all members of the committee, because they are going to speak for themselves. I do, however, want to outline for you some of the big issues. First, let me make one thing clear: Our committee has sat for two months. We believe in certain basic principles. We believe that our Article accomplishes those principles. I tell you now that every one of those principles has been excluded in the Brogan proposal.

What are these principles? First, we believe in a strong administrative organization at the top. You each individually voted for a strong executive, for a strong Legislature. We think more than ever, you need a strong judiciary at the top. The United States Supreme Court is the top of the federal system. It has powers similar to those which we give to our top court, notably the rule-making power, the power to make rules of procedure and practice. That is out of the Brogan proposal.

The administrative head is at the top where you can see him. He has the power and the responsibility, just as in any decently run organization, whether it be business or government. That is taken out completely.

I want to mention at this point one of the Chancellor's remarks:

> "The article as now proposed will, I believe, give to the people of this State a workable, efficient court system, embodying among very desirable features an independent court of last resort. It will provide swift justice, a strong administrative provision and fair treatment for those charged with administering justice, all of which will redound to the benefit of all the people."

He saw it. Vice-Chancellor Bigelow sees it. I am sure you see it—the need for giving that power and responsibility to the top of your structure, not to some subordinate.

The second issue, and I will show you the consequences of what has happened in the Brogan proposal, is flexibility at all levels. Mind you, this is not just the committee talking. This morning I read Vice-Chancellor Bigelow's letter to you. What does he say?

> "The Judicial Article . . . seems to me admirable. I especially like the power given to the Legislature and the new Supreme Court to fill in the details, and I like the omission of any definition of the jurisdiction of the law and equity branches of the General Court."

The Brogan proposal deliberately eliminates that and straight-jackets your children and your grandchildren, in accordance with the ideas of one or more delegates here. We haven't done that. We

have done exactly the contrary. We don't profess to know what will be more desirable 10 or 20 or 50 years from now. One of the difficulties we now have is that we are tied down by a Constitution which doesn't permit us to grow. The main virtue of the United States Constitution is that it has grown, because it is flexible. Can you visualize the due process clause if it had been attempted in detailed fashion, if they had tried to enumerate what is or what isn't due process, if they had tried to tell you that in this situation you are protected or that you are not? As the years have gone on, we have gotten new liberties. Now the due process clause includes your freedom of speech, your freedom of religion, and ever so many freedoms that are now contained within one phrase, two words, simply because they had the foresight, when they passed the amendment, to put it in flexible terms.

Now, specifically, what do I mean by "flexibility" as contrasted with the Brogan proposal? We say that there shall be a Superior Court with three divisions, one of which will be an Appellate Division. Within that Appellate Division you can use as many or as few judges as the future need requires. Some day we may need only one court; some day we may need two courts; some day we may need three. That depends entirely on the volume of business. We in our recent history have seen what can happen to judicial business. In the early '30's the Court of Errors and Appeals had a docket of 885 cases at its peak. They have gone below 200; they are still below 200. Mind you, 20 per cent of the business that it had in the early '30's. Our Court of Chancery had over 26,000 cases in the early '30's. They dropped to over 13,000, and while there has been some rise recently, it hasn't been nearly what it was at the peak of the early '30's. I give you these illustrations to show you that no one here knows what future judicial business will be. The most we can do is set a structure in such fashion that it can grow or the number of judges can be reduced if the business needs of the court so permit.

Under the Brogan proposal you will always need at least nine judges sitting in that intermediate appeals court. I might point out to you that the seven at the top and the nine in between make at least 16 appeals judges under the Brogan proposal. We don't provide any such thing. We have seven at the top. We have an Appellate Division; if one can do it, fine; if two can do it, fine; and if more are needed the court will be in a position to have more.

I want to show you one other thing that would happen just at this juncture. The Brogan proposal says that there shall be nine judges of this intermediate appeals court, and that there must be at least 24 judges of the next lower level, which gives you a minimum of 33 judges. We now have ten Vice-Chancellors, eleven Circuit Court Judges, and five lay judges, excluding the one who

isn't a lawyer, who would go into the intermediate appeals court and to the law and equity courts under the Brogan proposal. That totals 26, which would mean that the day you adopt the Constitution the Governor will be obligated to appoint seven new judges beyond what we now have. Those of you who have followed judicial business know very well that there are vacancies in our judicial system because the Governor believes that our judicial staff is sufficient to take care of all the judicial business we now have. We are not here to create new, additional judgeships. We are here to set forth certain basic constitutional principles and to set them forth in such fashion that the various branches of government can work within them.

I want to give you another illustration as to how this inflexibility of the Brogan proposal would hamstring our court system, and I have tried to indicate that the judges themselves know that it would. For illustration: Our present Supreme Court handles, occasionally, important criminal cases. The Justice of the Supreme Court charges grand juries, and on occasion we have had a Justice of the Supreme Court sit and try an important criminal case. For example, the Hauptman case, as I recall, was tried by a Justice of the Supreme Court. Under the Brogan proposal, that is excluded; they have a flat restriction that under no circumstances can this general court that they create under the name of Circuit Court ever hear a criminal case.

I would like to point this out: Even if we hadn't thought of that problem—it happened that we had—but even if we hadn't thought of it, I think I could sit back and say to you that our Article has been so flexibly drawn that those situations can be taken care of as they arise. And I think I can do that right down the line, paragraph by paragraph. Under the Brogan proposal, that couldn't be accomplished. Now, that is one of the things that the Chancellor mentioned in his recommendations, and it is one of the things that is touched upon in our amendment, although even without the amendment, if you look at our Article you will see that we have allowed it to be flexible. In our original Article we provided that the Legislature may give this additional criminal jurisdiction to this General Court, as it originally was called in our Proposal.

Now, as to unification: We have tried to achieve unification. In large measure, we have. The Brogan proposal nullifies that almost completely. For illustration: It takes this intermediate court and makes it a separate court, wholly apart from the others.

I might at this juncture mention something that Dean Pound has said on that very point:

> "It is easy to make branches in a single court cooperate towards the ends of justice. It is not so easy to make independent courts work together smoothly, speedily and effectively. Cooperation enforced by

appeals and prerogative writs is a different thing from the harmonious operation of a unified system under a responsible head."

Another thing—if you read the Brogan proposal carefully, you will see that even though they have given you the form of unification of law and equity, they have included provisions which in turn will raise all over again the jurisdictional disputes that we have tried so desperately to eliminate. If you look at our Article you will see that we have deliberately avoided any jurisdictional statements with respect to law and equity. We did it because we wanted to make certain once and for all that litigants are not thrown from court to court, that time isn't wasted and money isn't wasted, and judicial power isn't wasted. We know that you will see it when you read the Article and contrast it with the Brogan proposal. Vice-Chancellor Bigelow saw it specifically, if you recall, and said: "I like the omission of any definition of the jurisdiction of the law and equity branches of the General Court."

But what does the Brogan proposal do? It says: "The law jurisdiction of the present Supreme Court shall go to the law division. The equity jurisdiction of the present Court of Chancery shall go to the equity division."

Now, what would that do as a practical matter? It would probably stifle any attempts to avoid these jurisdictional conflicts in cases where you have new modes of procedure. One of the difficulties that has arisen by virtue of our complete separation of law and equity has been that when we have a new type of procedure—for example, the declaratory judgment—you take your case into an equity court and the equity judge says, "I'm afraid that's for the law court." And you take it into the law court and the law judge is afraid that it is something for the equity court. Under our proposal, that couldn't be. Under the Brogan proposal, it will probably arise all over again.

As to the Schedule—incidentally, when we talk about the Schedule we are not talking about the Constitution itself, which will last for all time until a new Constitution or constitutional amendments are adopted—we are talking about the transitional period in passing from our present status to that under the new Constitution. I would like you to see what the Brogan proposal does under that. First of all, it tells the Governor that he must appoint either the Chancellor or the Chief Justice to be the Chief Justice of the new Supreme Court. I think that that is a usurpation of the executive function. We are not here to exercise the executive function; we are here to draw a Constitution. I don't think that we have any right to tell the Governor that he must appoint A or B. I might call your attention that no such recommendation has been made to us by any of the witnesses before us. The Chancellor has not recommended it; Chief Justice Case did not recommend it, although

he did say that he thought the new Supreme Court should be selected from the members of the present Supreme Court.

There is another peculiar provision, and I wonder whose original idea this might have been and against whom it might have been drafted? I will give you its effect: It provides that all judges who have been holding office for 14 years shall be entitled immediately to life tenure, without further appointment. I don't know where the 14 years come from. We never have had it, I think, in our judicial history. We have seven-year terms, and lesser terms. It wasn't raised at any time by anybody in committee. Its effect would be this: A certain group of judges would be given life tenure but other judges, perfectly competent judges, who presumably would be in office at the time this Judicial Article takes effect, and who will then have served seven or more years, will not get life tenure. What possible justification is there in saying that a certain group of judges shall have life tenure and other judges who serve, say, eight years, shall not have life tenure? If you are talking about a trial period, I certainly think that one full term is ample for a trial period. It is interesting to note that these men who have had seven or less years are appointees of Governor Driscoll, Governor Edge, Governor Edison. I am not suggesting that it was aimed at them. I am just pointing out that that is the effect of that type of draftsmanship. I don't want you to forget for a minute that we are talking about constitutional draftsmanship. We battled on the gambling issue to exclude undignified language that didn't belong in the Constitution. I think we did exclude it. But contrast that with this type of draftsmanship.

There is provision for full pension. You might recall that that issue came up in the public press some time back. Some of us may well believe in full pensions as a matter of legislative authority. I see no place whatever for it in the Constitution, and it relates again to the principle of flexibility. Could you go back to your people in depression days and justify a constitutional obligation to pay judges $18,000 a year on pension? Think about it! A constitutional requirement is for all time, until further constitutional change. Depressions do not change it; emergencies do not change it; things that you fail to foresee now do not change it. It's there.

There is one final provision in the Schedule which I want to mention that again concerns us when we talk about constitutional draftsmanship, and that is the provision that not more than a majority of one be from one political party. I have tried to find some constitutional precedent for it in any English-speaking country. I haven't, although there may be. A good many of us came here substantially as independents. A good many of us have spent many years trying to attain some system which would give us

real, independent, judicial appointments. Governor Driscoll expressed himself in favor of that during our committee hearings. He said that if some plan, possibly the Missouri plan or some other plan, could be evolved which was satisfactory to the public at large, which could insure independent appointments, not bipartisan appointment but non-partisan appointment, he would be for it. All students of judicial organization are for it. We haven't attained it; our Article doesn't attain it; but at least we do not take a step backwards. We at least permit future development so that maybe some day we will have real non-partisan appointments to the judiciary.

Now, there are a few things which Mr. Brogan stressed that I would like to mention in passing. One, the appearances of certain bar associations before our committee. Those appearances were entirely for the purpose of supporting a separate Court of Chancery. It is true that a committee of the State Bar Association in its report recommended permanent assignments, so-called. But on a vote of the membership, the result was hopelessly confused. Committees of bar associations, including the Essex County Bar Association committee, have opposed permanent assignments. So far as this problem of permanent assignment is concerned, I don't think we are at it yet. We may have a later amendment which will deal with it directly, and other members of our committee will discuss it. But I would like to point out to you that nowhere in our Article do we recommend the indiscriminate transfer of judges. We recommend that judges be transferred as need appears. They are assigned to a particular division and are only transferred as need appears.

I have never head of any well-run governmental organization or any well-run business which doesn't permit assignments as need appears. It is inconceivable to me that any of you who really believe in the principles of unification should suggest that it's bad to have in the top court, or in the top administrator, the authority to transfer as need appears. All that means is this: You have a man in law or in equity. He stays there, unless some special cause arises for directing him to serve elsewhere. We have had, in the course of our own history, the illustration of a Vice-Chancellor who was quite unhappy in his work and who said he would have much preferred to have worked in a law court with juries. We will have other men who will be unhappy in trial work and will prefer appellate work, men whose aptitude will indicate that they will be better men at appellate work rather than at trial work.

What the Brogan proposal does is to have the Governor designate somebody for a particular division. When the Governor appoints that man, he doesn't know what his future aptitude will be. It is

only as the result of experience that he becomes a great equity judge, a great law judge, or a great appellate judge. It was interesting to me to have the Chief Justice refer to Green, one of our great Chancellors. May I also refer to Green as one of our great Chancellors? He was a great Chancellor at a time when our equity doctrines were being formulated. I would like to read the following description of Green in the book by Keasbey on *Courts and Lawyers of New Jersey*:

> "Chief Justice Green [he was Chief Justice before he was Chancellor] was brought up in the straightest sect of common law lawyers. He had studied out and mastered the principles of the common law. His mind delighted in the logic by which they were worked out and applied; but with a strong sense of justice and practical knowledge of affairs, he had adapted the principles of the common law to new conditions, and when he came to deal with questions of equity, he did so with the same thoroughness of research and the same accuracy of reasoning, and the equity system as worked out and applied by him in New Jersey was based upon the precedents and established principles of the English court. It was perhaps the common law training of a mind so strong and so self-reliant as his that brought it about that his decisions as Chancellor worked out the system of equity as a logical system based upon precedent. Without it, his decisions might have been just but they would not have rested so firmly upon established principles or have formed so safe a basis of authority for the guidance of his successors."

Now, I am talking about a great Chancellor who had a major part in developing this great equity jurisprudence we have. His training was brilliant, but it was brilliant as a law judge, and it was his excellent training as a law judge that qualified him to become one of the great Chancellors of New Jersey.

All of us know we have had appointments that unexpectedly have turned out brilliantly, and we have had appointments that unexpectedly have turned out poorly. We know that there have been situations where, if the top administrator had had the administrative authority, he would have been able to correct certain evils that have plagued Chancery and continue to plague Chancery. Those evils weren't corrected, at least not in their entirety, and largely because we have never had this top administrative authority that we are suggesting to you.

In my own experience, we had a similar problem. I refer particularly to the Department of Alcoholic Beverage Control, which has been referred to by previous speakers as one of the best state administrative agencies. I attribute that to one thing only, and that is that the agency is set up on the principles that I have mentioned to you today. Every one of the principles that you have before you is embodied in the administration of the State Alcoholic Beverage Act. We had a top administrator, with a comprehensive rule-making power, with complete assignment authority. For illustration: When Newark failed to handle its liquor problem adequately, he transferred all of its authority. I think that lasted a year, and

by that time the situation had been corrected and he transferred it back again. As a result of that one experience, there has been very little occasion for the exercise of similar authority, but the fact that that authority exists has been sufficient to make certain that it will not happen again.

I am not suggesting that this assignment authority is going to be exercised generously. It will not. After all, who is going to exercise it? The same men we now have in our judicial system are going to exercise this assigning power, and their tradition leads them to having men work in their specialty indefinitely. I am for that. Don't for a minute believe that I don't believe in specialization. But I believe, with Dean Pound, that what we want is a specialist judge, not a specialist court; we want a specialist judge who exercises his specialty generally but who is subject, in accordance with the needs of the court, to assignment elsewhere, to take care of situations as they arise. It is very significant, I think, that neither Vice-Chancellor Bigelow nor the Chancellor in the recommendations submitted to you touches at all upon this assignment power. I think the virtues of the assignment power overwhelm whatever possible arguments there might be advanced against it.

There is one final thing that I want to mention in connection with the matter of fairness to present judges. I might point out that that issue has come up in almost every constitutional convention throughout the United States. In the Illinois Convention held recently, a member of the bar spoke in behalf of giving judges designated appointments. The Convention voted that down; in fact, the Convention provided that the judges could not even serve their unexpired terms without further executive approval. Our report has an express provision which permits every person in our judicial system to serve out his unexpired term, so that that issue is not before us. What we are now talking about are these other provisions which would tie the hands of the executive power completely. One of the Illinois delegates said,

> "I tell you, gentlemen, that the people have an interest in this thing, and they will hold not only the members of the bar but every individual in this Convention responsible for the manner in which we form this system of courts. If there was one thing above all others the people expected when they called this Convention, it was the reform of the Judiciary Department of the State. The time to apply the proposed changes is when this Constitution is adopted."

We have tried in our Schedule to deal with all alike. You will notice that all judges serve until their terms expire. Then, the executive function comes into play. We have not tried to select any one group as against any other. I haven't any idea how it affects any particular individual. I tell you that all judges serve out their terms; the executive function is then exercised, and all judges then receive life tenure. For the future, all top judges

receive life tenure, and all judges of the lower court receive a term of seven years and life tenure thereafter. Those are basic principles that we can defend. We can't possibly defend the discriminations that are before you in the Brogan proposal.

I might point out to you that the only thing before us at this juncture is the Brogan amendment. Anyone who votes for the Brogan amendment votes for all these incidents that I have outlined. I have not covered many other issues largely because other members of the committee expect to cover them, and, with your permission, I shall leave those issues to them.

Thank you.

PRESIDENT: Justice Brogan . . .

I am a little bit confused here by Rule 46 which says that no delegate shall speak twice on the same question until the other delegates have all spoken, but I notice that the Rule gives me authority to recognize such a delegate with the consent of the Convention. Unless there is a dissenting voice, I am assuming the consent of the Convention to again recognize Justice Brogan.

(Silence)

MR. WILLIAM J. DWYER: I move he be recognized.

MR. BROGAN: Mr. President, ladies and gentlemen of the Convention:

I shall take only a very few minutes, probably five, in what I consider to be a rebuttal. Mr. Jacobs has given you what he thinks is wrong with the amendment, and I would just like to reply.

In principle, I think he agrees with me on the permanent assignment of judges. He will not, however, submit to you language which commits him or the committee to that proposition. He says that the Chief Justice with the assigning power, when he finds a good man in the court of equity, will leave him there. My question to him is: How does he know that he will leave him there? How does he know whom he will put there? This indiscriminate assignment of judges seems to be the motivating principle of an integrated court, and if men are to get the greatest benefit from this indiscriminate assignment, why, of course, they will have to be assigned and reassigned frequently. Now, if you will take out your pencils and add up—although it isn't necessary, you can do it mentally—in the top court today we have 16 judges, in the Circuit Court we have 14, and in the Court of Chancery we have ten, and that totals 40. Now, if you will take and add up a top court of seven, a Supreme Court of nine, and a trial court of 24, as I have left it, you will find that there are no new places created at all.

He speaks about a limitation of the Governor's power—that he must appoint either the Chief Justice or the Chancellor. All right, I will yield on that, but the appointment of the Chief Justice should

come from the men who have been selected, as I have pointed out to you, by all manner of Governors—and I am talking now about his politics and his thought and his estimate of the importance of the judiciary. I say that the Chief Justice should come from that group and that a Circuit Court Judge, as much as I respect them, should not be put in at the head of this top court at this time, with the possibility that these men now in the Court of Errors and Appeals who, as I said, have labored for years and years, should be demoted. I say that that would not be fair.

Now, we talk about a non-partisan judiciary. Why, of course, that's the great ideal, but, you know, no man has come to the court unless he was espoused by his political party or unless his political party had at least approved him. Let us be realistic about it; let us be honest with ourselves about it. You just don't go out when you are a Governor and find a good man and require of him that he must be neither a Democrat nor a Republican in order to be in that court. Everybody knows that the political parties have espoused A or B, or at least approved him before he got his judicial berth. Especially is that so in the lower courts, in the county courts, which are very important courts.

My learned friend also said: "Why, it is a terrible thing you are putting on the Governor to ask him to appoint an equity judge as a law judge—how does he know the aptitude of that man?" Well, of course, that isn't a logical argument because in the preceding breath the gentleman had told us that the Governor's power of selection of seven men for the top court should not be preempted. How does he know anything about them? I was very much amused at the approval which we have gotten now from certain sources by letter. If these gentlemen had desired to be heard, they could have been heard before the committee. This eleventh-hour-and-fifty-ninth-minute imprimatur of the Article, well, at least, leaves me wondering.

Mr. Jacobs didn't say anything about the other Chancellors and the other great equity scholars, judges and Vice-Chancellors whom I have mentioned, but took Mr. Green, and he takes the word of Mr. Keasbey, for whom I have a great deal of respect. I have read his contributions from time to time, but, after all, this opinion is just Mr. Keasbey's opinion, and Mr. Jacobs would, of course, have us regard it as a sacrosanct. He said be believes Keasbey's quotation that Chancellor Green became a great Chancellor and became a great student of equity jurisprudence because, and only because, he had been raised in the common law tradition. Well, I submit that leaves much to be desired in the way of proof, and I also suggest that that is just Mr. Keasbey's view. I would just as leave have Mr. X's view, if he were a lawyer who had worked at his

profession and who had studied the opinions of the courts and especially of the Vice-Chancellors.

Now, with regard to the chairman's criticism of the proposition that we should not have a top court of seven Republicans any more than we should have a top court of seven Democrats. His approach is that he doesn't know of any constitution that has such a provision. Well, of course, I will agree that, so far as I know off-hand—and I haven't looked—I will agree that I don't know of any either, but that's without examination. But do you ladies and gentlemen of the Convention think that if we had a Democratic Governor, let us say, that he should appoint seven Democrats to the court of last resort? If you do not think so, then I submit you do not think either that Governor Driscoll should have within his prerogative the right to appoint seven judges of his own choosing from his party.

PRESIDENT: Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. President, ladies and gentlemen of the Constitutional Convention:

I am opposed to the transfer of judges as need appears, and my views on that are basic. We don't know how this will function. We can assume that if we had a top judge—Justice Case, or the Chancellor, or the former Chief Justice, a member of our delegation—in that court they would exercise the right to transfer judges sparingly, and they would do it properly so that a law judge would not be thrown into an equity case and an equity judge thrown into a law case indiscriminately. I think we all must admit that a man who is appointed to the bench, and let's assume that he is the average man and not a Roscoe Pound or a Learned Hand, probably could do a good job on both cases. But I am taking the average man, and he is the man that we are dealing with. When he is appointed to the equity branch of the court or the law branch of the court, he becomes a specialist. I think the people are entitled to try their cases before a judge who is experienced in that field of law.

I think it is entirely possible that in years to come, the top judge may not do his duty as he should. I think situations have arisen in this country where the judges haven't performed their duties properly. I can visualize in ten or twenty years from now—and this is a Constitution which we hope will last for many years—that the superior judge will be under certain influences, and he may desire to have a certain judge try a particular case. It may be that the judges in that particular branch of the court may not be the kind of judges he would like to have try that case, and he may, for good or bad reasons, take a judge out of an entirely different branch and transfer him to the law or equity branch for the purpose of handling that case. I think the result would be disastrous.

I think it would be detrimental to our whole judicial system, and I think it will result in no benefit to our State or our courts.

I even go further. I believe we ought to have a separate equity court. I think that the court of equity and the law courts are diametrically opposed to each other. In the law courts you get a money judgment; in the equity court you get a decree *in personam* directing the defendant or the complainant to perform certain acts or things. From this fundamental difference, as well as from equity principles drawn from morals and applied in opposition to common law rules, a conflict results. Equity compels the defendant to forego the exercise of legal rights where fairness, good faith and conscience dictate that they should not be enforced. Law and equity cannot be blended. One strives for predictability and treats cases as belonging to a generalized type; the other strives for individual justice and treats cases as being unique.

I think we have seen what has resulted in other states where they have merged law and equity, and I think of Connecticut because I happened to be in Connecticut a few months ago trying a case. There judges sit in law and equity, and after we got through with the trial, I was amazed and expressed my amazement to counsel at the manner in which the judges had been conducting themselves. One of the lawyers, one of the most outstanding lawyers in Connecticut, said that equity has been diluted ever since there was a merger of law and equity.

Gentlemen, I think we are making a mistake. We can't go that far. There is no amendment offered to the Article which would permit of a separate court of equity and a law court, but I think we are making a mistake if we permit the indiscriminate exchange of judges as occasion may require.

PRESIDENT: Mr. Smith.

MR. GEORGE F. SMITH: Mr. President and ladies and gentlemen of the Convention:

I am one of the layman members of the Judiciary Committee. I shall have some comments to make on the remarks of my friend, Delegate Emerson. I should like to speak first to the Brogan proposal.

It was my privilege over a period of many weeks to sit with Chief Justice Brogan on the Judiciary Committee, and I learned to like him as a friend and to respect him for his knowledge of law. I should like to say in passing that I doubt that there has been a committee of laymen and lawyers who have spent as much time and as much concentrated study on the subject of the court structure as was spent by our committee, of which Chief Justice Brogan and I were members.

I am a little startled and a little amazed to find the interpretation

that the Chief Justice draws from the testimony we all heard over this period of weeks. I heard nothing that conforms to his interpretation. Instead, there was a persistent demand by all, particularly from the laymen, from most of the lawyers and many of the judges, for a simplified court structure, a flexible court structure, one that could be made efficient and made to dispense justice without the extravagant waste of time and money that is so typical of the court structure we have today. The Committee Proposal was painstakingly drawn and provides such a court structure and equips it with the means to put an end to the merry-go-round of extraordinary waste of time which has taxed the patience of everyone—and as I have learned here in this Convention, not only of the laymen and not only of the lawyers, but of many of the judges as well.

I shall leave to the lawyers the discussion of the legal aspects of this subject, although, as I have said to some of my friends, I believe that I qualify now for at least a half of a law degree after these weeks on the committee. I would like to talk now about those things that I think I know more about, and that is the question of administration and organization. Some of you may wonder about the applicability of organizational and administrative principles to a court structure. I wondered a little bit, too, when we first went into meeting back in June. But I can assure you now—and this I direct not to the laymen particularly, but to the lawyers—that when you strip the subject of its legal nomenclature, you discover that the principles of organization and administration are just as applicable to a court structure—and, in our case, very desperately needed—as they are to any other type of organization, business or otherwise.

Now, the first basic principle that Chief Justice Brogan's proposal violates is the failure to put the administrative authority and responsibility where it belongs and where it can only be, and that is at the top of the court. Can you imagine, you businessmen and you lawyers who have had contact with corporate affairs, can you imagine running a business organization with the responsibility for its administration anywhere except at the top of the heap? Mr. Brogan has in one provision in his amendment provided that his top court—he calls it the Court of Appeals—shall have the rule-making power as it applies to administration, but where do you suppose is the administrative head? Not in the Chief Justice, as you would imagine, but it resides in one of the department heads, the presiding judge of the intermediate appellate division.

I should hate to think about the troubles in our organization if the vice-president in charge of manufacturing or some other department head laid down and administered the rules of administration in my company. I can't imagine anything but chaos and

confusion and conflict with an empty provision that says that the rules of administration shall be laid down by the top court and the administrative head shall be one of the department heads. Moreover, the administrative authority is vague. It is not clearly defined, as you have found it in our Article. As a result, I suspect again that we will be on a merry-go-round, perhaps a little different from the ones in which we are now experiencing some strange sensations, but a merry-go-round nevertheless.

In the Committee Proposal we purposely freed the justices of our highest court of all but certain important types of appeal and eliminated the incidental duties to which the Chief Justice referred. There is no direct comparison of the work load, but just for the fun of it I took the New York State situation, where the top court has as its appellate work substantially what we provide in our Article, and I applied that to what might have been in 1946 true in New Jersey. You will be interested to know that based upon that New York comparison and assuming seven justices in our top court, there would be but 12.43 appeals per justice; and that, interestingly enough, compares with 61.3 per judge in the New York Court of Appeals, exclusive of motions, which average 66 per judge in the New York highest court. In the intermediate court of appeals, where Chief Justice Brogan proposes to place the administrative responsibility, there is even on his nine-man court 48.3 cases per judge per year. So I call your attention to the fact that he is putting the work load in the court where the load is already four times as great as it is in the highest court.

Our committee decisions have stripped the top court of all extraneous duties. To limit its work was to provide a practical basis for the administrative job that should be there and must be there if we are to have in New Jersey an efficient court system. Beyond that, as you have heard before and as you have seen in the Article, we have provided for an administrative assistant who can take care of the detail work, in substance doing all of the paper work for the Chief Justice, submitting only to him the opportunity for decision.

This diversion in arithmetic should not steer us away from the fundamental principle. Let us remember that we are dealing with a very impressive court structure. I don't know how many of you will be surprised, but I was, to discover that the costs of the county courts alone in 1946 were over two and a half million dollars. I was also surprised to find that when we consider the cost of all the courts, except for those inferior to the county court, we have a cost of something between four and five million dollars. I am sorry that no one can define the exact cost any closer than that, because indicative of the lack of business conduct, the lack of efficiency in our court system, is the fact that no one can tell

exactly what the costs are in any segment of the courts in the State. So, we are dealing not with a peanut stand; we are dealing with a business that represents in terms of expense something between four and five million dollars, and if there is any question in anyone's mind about the need for businesslike administration, simply look at the costs that we, the taxpayers of the State, are now sustaining.

There is a good deal more to be said on this subject, but I don't want to belabor an obvious point. Many laymen and all of you lawyers and judges know from your own experience that there can be no compromise on this basic issue. There is a manifest need for clear-cut authority, fixed responsibility, and able administration of the court system, and, not by any means least, the spotlight of responsibility on one man, so that if we, the people, and you lawyers and you judges do not like what is going on, at least you will be able to look with unerring eye upon the man who is failing in his job.

Chief Justice Brogan and my friend, Sig Emerson, have spoken about fixed assignments. Particularly in view of the life tenure, which everyone seems to approve, it is unthinkable that permanent assignments are mandatory. In the first place, I believe it is an effrontery to demand efficiency of a chief administrative officer and then, in the next breath, specify the personnel of his organization and require no reassignment for any reason whatsoever. No one can possibly know, when a judge is assigned to a particular division, that he is, in fact, best suited to it or that he will be happy in that assignment. To suggest that a judge may never be transferred even if he desires it is a gross violation of common sense. I can imagine no businessman, no banker, no lawyer, or even a college president, permanently and irrevocably assigning any person to any specific post. To do so would be a presumptuous undertaking; to do so is an omniscience that no mortal possesses.

As a judge, the Chief Justice has spoken of, and Mr. Emerson has also referred to, the possibility of indiscriminate assignments. I suppose the suggestion is that the time may come, or may even be here now, when the Chief Justice would improperly or capriciously move judges about. If that were to be done, I would believe that the Chief Justice would be derelict in his duty and subject to removal from his post. I can imagine no one in New Jersey—layman, lawyer, government people, or anyone else—standing for the reassignment of a man who had, for example, been assigned to the court of equity and was doing a good job there, and replacing him for anything other than very proper purposes.

Our vice-chairman has spoken of the flexibility that the committee has sought. I submit to you that there should never be and that there will never be a situation wherein the flexibility repre-

sented by the possibility of reassignment if a judge proves to be unsuited to his post or reassignment if he is unhappy in his post, I submit to you that that is never likely to occur. I can see nothing but dangers and troubles ahead if we adopt the Brogan resolution. I urge you with all the sincerity that I possess that it be rejected.

Thank you very much.

PRESIDENT: Mr. Dixon.

MR. DIXON: Mr. President, ladies and gentlemen of the Convention, fellow delegates:

Together with several other members of this Convention, not learned at all in the intricacies of the law, I have had the very unusual opportunity, seldom made available to laymen, to sit as a member of the Judiciary Committee through a period of two months with a group of illustrious judges and lawyers who, during the proceedings and in final conclusion, translated into constitutional language the multitude of ideas and suggestions which have been made by laymen and members of the bench and bar for an improved court structure. In evolving my own point of view in regard to many suggestions and criticisms, these suggestions and criticisms have been plotted against my particular background of experience as a trained engineer and a major executive in one of the largest and most successful corporations in the country. It is as a layman, however, with that background, that I wish to speak to you and give you my views on the matter that we are discussing this morning. In this capacity I have had to do with litigations in both simple and involved cases in several state courts and in the federal courts, so that I am not an entire stranger to court procedure as seen through the eyes of the layman, not through the eyes of the lawyers.

Our country today stands preeminent in the whole world for its prosperity, high standard of living and its financial and its military strength, all of which stem from the tremendous progress during the last century in organization and management in every phase of business that is carried on in this country. This progress has come from looking forward, not from looking backward. Tradition has had no place in this forward march. The management of business had not held as sacred the things that were done in business either in this country or abroad a hundred years or five hundred years ago, nor fifty years ago nor ten years ago. The businessman, the business management of today, looks forward, not backward, and it is because management has thrown this tradition to the wind and thrown precedent to the wind in establishing our great industries that America has reached this point of supremacy in the world. Simplification and flexibility have been the slogan, and that slogan has been followed by action.

But the State of New Jersey has lagged in the organization of its courts, as the layman sees it. We have not kept pace with the progress in industry and commerce. The courts exist today to a great extent in the pattern of the English courts as they existed in 1844 when our Constitution was adopted. England abandoned this rigid and unsatisfactory system in 1873, and all of her colonies with the exception of one, New South Wales, has followed her example. As I look at the courts through the eyes of a layman whose only wish is to see justice dispensed in a simple manner, I see them wrapped and tied with tradition and precedent, held as sacred, not to be broken or tampered with. That adverse opinion is held by others more qualified to speak than I.

In my home work, which I have done a great deal of as a member of this committee, I find a quotation from Professor Borchard of Yale who, in speaking of the many barriers to the administration of justice which the current legal system tolerates, says:

> "These obstructions are cherished by many judges and lawyers as indigenous to the system and to the judicial process. They are inclined to forget that both bench and bar are merely servants of the people, the bench to enable the administration of justice to be accomplished."

I can add to that, that as a layman sees the court procedures and reads the accounts of these court procedures in the paper, how often the only conclusion that can be drawn is that there is too much based on precedent and on tradition and on rigid conformity with rules which certainly do not dispense justice.

Realizing the necessity for a change, my natural inclination has been to pattern the court structure on the pattern of successful, flexible and efficient business administration. It is conceded, it has been conceded by the great majority of witnesses appearing before the committee, that the present court system presents an astounding picture of inefficiency, injustice and useless expense to the litigant and the taxpayer. I would like to emphasize that this is a criticism of the system and not a criticism of the lawyers or the members of the bench.

Do you doubt what I say? Am I exaggerating? Just take one story as an example—and I doubt whether if all of us searched through the annals we could find anything worse than this. This was presented by one of the witnesses before our committee: *Urback* vs. *Metropolitan Life Insurance Company, 138 N. J. Equity Reports, 108* (1946) reports the case of a widow suing to collect $2,500 life insurance, which had been placed on her husband's life. From the start to finish it took eight years and eight trials and appeals for her to get a judgment. How much do you suppose was left to her after lawyer's fees and court expenses were paid? How much did it cost the taxpayer? And don't forget the taxpayer.

Many similar cases were mentioned. However, as I say, I hope this is the worst.

Try to convince the layman if you can, regardless of the merits of such a case, if there is any justice at all for stringing a case through eight years, or even through two years, and through eight trials and appeals.

Now, I wish to speak directly on the amendment to the Judiciary Committee's Proposal—to the Brogan Amendment. The provisions of this amendment, to my mind, violate every principle of flexibility of organization and the definite placing of administrative responsibility in a single head of the system. That is the thing which the previous speaker emphasized so strongly—a man with long experience in executive work in one of the successful businesses I was speaking of and that have made our country so great. These two principles of flexibility of organization and administrative responsibility are absolutely essential to the efficient and successful management of the court system, as well as to a business.

Mr. Brogan's amendment, as I read it, provides for multiplication of courts and for a change of name—more courts, more judges. My figures don't add up the same as the Chief Justice's, with all due respect to him—more judges whether needed or not, more attendants and more expense to the taxpayer.

The court labelled the Supreme Court is not the top court. There is one that is more supreme, which is to be called the Court of Appeals. There are other courts of appeal, inferior to that one. What a mix-up! The layman doesn't like it. He can't understand it. To the layman "supreme" means "supreme." There's nothing higher.

Gentlemen of the bar and bench, I plead with you to recognize that after all, the courts are for the people, and that the procedures should be made as simple as possible so that the people can understand them.

The amendment also provides for a Circuit Court and permanent assignment of judges. I would like to give my view on that and to emphasize the views of those who have spoken before me.

The amendment provides for a law division and an equity division, and it provides for permanent assignment of judges to these divisions.

Now, let me add to what the speaker preceding me had to say in regard to the application of permanent assignment to business. Any industry, any department store or bank which would follow out a policy of permanent assignment would be doomed to failure. Flexibility is the key to success in this matter. It is flexibility which keeps the best men where they are best fitted to be, but at the same time it provides for transfers where such are indicated to be wise.

In an efficient court system provision must, it seems to me, be made to allow for transfers of personnel to equalize loads of work, and to take advantage of a specialization which I certainly am very, very strong for in business or in court work. The Judiciary Committee's Proposal, of which Mr. Brogan's proposal is an amendment, provides for this by the administrative power given to the Chief Justice of the court of last resort—a responsibility definitely placed.

I cannot, in my wildest imagination, imagine a Chief Justice of a court in the State of New Jersey who would not, in order to keep his own prestige, put equity experts in the Equity Division and law experts in the Law Division and make such transfers only under conditions where they were indicated to be a very wise thing. I think that if the layman really subscribes to the opinion of Chief Justice Brogan that we could not trust our Chief Justice to do that kind of a job, I am sure that the confidence of the layman in our courts would be shaken much more than it is shaken now.

This permanent assignment, it seems to me, is a strangling proposal if, after a man is assigned, regardless of how much he may wish to be in another department and regardless of how much his development in these courts may indicate that he would do better work in another department, he is permanently assigned and he cannot move. He is imprisoned.

A provision is also found in the proposed amendment for the appointment of judges in the higher courts on a bipartisan basis. My esteemed friend made a strong plea for such an arrangement. It seems to me that the members of the bench should not be selected on the basis of party politics, but that they should be selected on the basis of their judicial qualifications, regardless of whether the administration during the appointing period happens to be for one party or another. I am sure that each party, with a pride in its reputation and a pride in its performance, is going to select on the basis of judicial qualifications rather than on the basis of the adherence of the appointee to either one party or the other.

In regard to the retirement age, which the amendment raises from 70, as proposed by the Judiciary Committee, to 75 years, I would just point out that the great bulk of industry, big industry today, has adopted the age of 65 as a proper age for retirement of its executives. There is no question but that with this limit industry loses some men who have not, by any means, lost their usefulness at that time; but surveying the situation as a whole, from a standpoint of over-all results, the industry sticks to the age of 65 as a general proposal. If that did not work out, they would have no other motive but to extend it if they felt that that was a wise thing to do, but in my own experience, where I have seen many many men retired at the age limit, I have come to the conclusion that

industry has reached the proper conclusion in regard to the age of retirement.

The matter of pensions should certainly be left to the Legislature and not frozen in the Constitution. The fallacy of putting such matters as salary and pension in our Constitution has been very apparent and has been carefully avoided by this Convention, which has removed the salaries of legislators, for instance, therefrom and have refused to incorporate in their proposal for a new Constitution certain proposals to freeze into this Constitution the matter of pension rights of teachers, policemen and firemen. These are legislative matters and should be left to the legislators, and I am surprised when I hear that the Legislature doesn't like judges. I can say for myself that, as one member of the Legislature, I have learned to become very, very fond of some judges, and particularly fond of my friend, Chief Justice Brogan. And I feel quite sure that with a proper proposal, our Legislature is going to give the judges a fair hearing and a fair deal.

Now, this amendment also, in effect, proposes—this has been spoken of before, but I would like to emphasize it—that this Constitutional Convention definitely select and appoint specifically named judges to the new courts. Our Judiciary Committee has pointed out, through one of the previous speakers, that the committee recommendation takes care of all present judges and court attendants without reduction in compensation, and provides for placing them in similar positions to those now held, where they can serve with dignity and efficiency. I think that all of us can be quite sure that every effort is going to be made in the changing of our court system as recommended, to do a fair and equitable job for everyone involved.

The court system of New Jersey is big business. It is big business operated by the people of the State, and it should be simple, understandable, flexible and efficient. It can be made so by following the pattern of successful business, with a single line of responsibility stemming from a single responsible head down through cooperating departments responsible to their heads. To my mind, the only way to attain that simple, understandable, flexible, efficient court system is to set up that definite responsibility. That, Mr. President and ladies and gentlemen of the Convention, is the pattern of the Judiciary Committee Proposal, which the Brogan amendment proposes to change to fit the traditions and the precedents of the past. That amendment, in my mind, violates the fundamental principles of unification and flexibility which the committee has so carefully woven into its Proposal.

Therefore, fellow delegates, it is with great reluctance, considering the sponsor of this amendment, that I still urge you, strongly,

to vote against this amendment.

PRESIDENT: The chair recognizes Colonel Berry.

MR. FRANKLIN H. BERRY: Mr. President and fellow delegates:

I am strongly in favor of the adoption of Amendment No. 1 to Committee Proposal No. 4-1, the adoption of which would result in the approval by this Convention of the Judiciary Article proposed by Justice Brogan.

Of course, I shall not attempt to cover the whole field of argument on this amendment. The previous speakers have indicated some of the reasons why this amendment should be adopted, and I shall endeavor to confine myself principally to discussion of that feature of the Article which provides for the permanent assignment of equity judges to a Chancery Division.

Now, I ought, in all honesty, to say to you that I do not support this proposed Article because I think it is perfect. My personal belief has been, and still is, that the best judicial system which might be established for the State of New Jersey is one which would include a separate Court of Chancery, as it presently exists. I stand four-square on that. However, I do support the Brogan amendment because it makes possible the preservation of a separate body of equity jurisprudence by specialists in that field, and because I believe it to be immeasurably superior to the Committee Proposal.

Both Chief Justice Brogan and Mr. Emerson have talked to you, to some extent, concerning the need for permanently assigned equity judges and the result to be accomplished by such a system. As indicated before, I also desire to speak concerning that feature, but first, I should like to discuss another matter which I believe is important, to demonstrate to the members of this Convention, and particularly to the laymen and to the women who are delegates, how far the supporters of the Brogan amendment have gone toward meeting the advocates of complete integration.

One of the big arguments advanced by the supporters of the committee plan, and I think it's safe to say that the argument which has been repeated most often, most vociferously and given the most publicity, has been that the present system involves a tremendous waste of judicial man-power, and they say it with perfectly straight faces. The assertion has been made that one-third of the time of the Court of Chancery is wasted on jurisdictional disputes.

In his testimony before the Judiciary Committee on July 1, Judge Richard Hartshorne, of the Essex County Court of Common Pleas, made this statement, and I quote:

> "I think—since I can't go through the records and give you by any names the multitude of cases that appear in the records and can only pick out here and there—but what Senator Hendrickson told you, I believe, a week ago, cannot too often be stressed, that out of the recent

> 119 opinions filed in the Chancery Court, and I think the same thing applies in the common law courts, out of the last 119—"

Now get this; these are Judge Hartshorne's words—

> "a third of them went off on jurisdictional questions."

I tell you, friends, that would be a horrible situation if that were true. Later on in his testimony, Judge Hartshorne, in response to some comment by Mr. Dixon, a member of the Committee, said:

> "If you have a third of the court's time taken up with jurisdictional cases that get nowhere on the merits, then if you didn't have them, you could go along with a one-third less force."

Of course, the impression sought to be created and, no doubt, the impression actually created, was that the taxpayers of this State would be saved a tremendous amount of money by the abolition of the Chancery system. There couldn't have been any other object to be obtained by such a statement.

Now, ordinarily I would have the highest respect for the opinions of Judge Hartshorne, but I tell you that in creating such an impression the learned judge was far removed from the facts. The fact that he had testified that one-third of the Chancery judges' time was spent on jurisdictional questions was, of course, given plenty of publicity. It also was included in the weekly newsletter that is sent to each of us delegates by the New Jersey Committee for Constitutional Revision, and I suppose they knew what they were doing when they included such a statement in that newsletter. For I have no doubt that the average laymen, and perhaps even some lawyers, would accept such a statement coming from a person of the standing and reputation of Judge Hartshorne as an absolute fact.

For the purpose of showing the premise on which Judge Hartshorne's statement was made, I refer to the testimony of Senator Hendrickson. And incidentally, the Senator, having been chairman of the 1942 Commission for Constitutional Revision, was the first witness to appear before the Judiciary Committee of this Convention. Senator Hendrickson said that of the 119 opinions contained in Volume 137 of the *New Jersey Equity Reports,*

> "14 dealt with the right of Chancery to take jurisdiction in preference to the law courts; 2 considered the right of the Court of Chancery to remove administration of estates from the Orphans' Court; and 20 involved the removal of fiduciaries and instructions to them, where the estates in other respects were being administered by the Orphans' Court. Thus, one out of every three of these reported cases illustrate the persistent, recurring and irrevocable conflict between the Court of Chancery and the various law and probate courts."

Now, obviously—and I think it is immediately apparent to any lawyer—the 20 cases involving removal of fiduciaries and instructions to them, do not constitute cases which, in the words of Judge Hartshorne, went off on jurisdictional grounds. Those cases were

decided on their merits, in accordance with a jurisdiction as to which there was no question.

Since these references to Volume 137 of the *New Jersey Equity Reports,* an analysis of the contents of that volume has been made for my personal satisfaction; and I can tell you that of the 119 cases reported in that volume, there are a maximum of ten cases in which a real question of jurisdiction was raised, and relief was denied on the ground of lack of jurisdiction in only three instances—three out of 119. Does that sound like one-third? The facts certainly do not support the statement that one-third of the cases reported in this volume went off on jurisdictional grounds.

But even assuming, for the sake of argument, the truth of the factual premise on which Judge Hartshorne based his conclusion that one-third of the court's time is wasted in disposing of jurisdictional questions and that, accordingly, if the reason for such a situation is removed, we can get along with one-third less judges, the completely fallacious reasoning by which such a conclusion is reached should be apparent to anyone on the slightest reflection. Surely, no one knows better than Judge Hartshorne that the volume of a judge's work is not measured by the number of his opinions which are reported. Anyone having the slightest familiarity with the operation of the courts knows that formal opinions are written in only a fraction of the matters which are decided.

Furthermore, an analysis of the opinions written by the vice-chancellors over a number of years discloses that only a small percentage of those opinions have been published in the official equity reports. The result is that the public has been fed a lot of untrue propaganda based on non-existent facts and the most specious kind of reasoning, and I should hate to think that any delegate to this Convention should be misled by it.

However, and in spite of this undeserved criticism of our present system, we are willing, in a spirit of compromise, to support an integrated court system as detailed in the Brogan amendment. By this amendment we feel that we have given the proponents of integration all that reasonably can be asked, including the vesting in the Governor of the sole appointing power of all the judges in the State. What more can honest and sincere proponents of integration want than is provided for in this amendment? What more is necessarily encompassed in the idea of a modernized court?

A streamlined court—that seems to be the word lots of people like to use these days. If this does not satisfy them, what do they want? Do they expect judges to fly through the air with the greatest of ease, like the daring young man on the flying trapeze? I suspect, ladies and gentlemen, that that may be what some people do want; otherwise, there could be no real opposition to the vital

feature of this amendment, which provides for permanent assignment of judges to a Chancery Division of a court of state-wide jurisdiction. Otherwise, surely there would not remain an insistence upon the right to rotate the judges at will.

I don't care how many times you repeat on the floor of this Convention the statements which have been made this morning, that although the power is there, it won't be exercised. How do you know it won't be exercised? What is the purpose of a Constitution? It is to lay down something permanent, is it not? It's to lay down guarantees that the people can depend on for the future; and to say that we will give someone this power to rotate judges but he won't exercise it, seems to me almost an insult to your intelligence.

I believe that if we are to retain the benefits of our New Jersey equity jurisprudence, it is absolutely essential that the judges assigned to the Equity or Chancery Division be permanently assigned, in order that continued specialization of such judges may not only be anticipated but guaranteed.

The strongest proponents of integration give at least lip service to our equity jurisprudence. At this point I should like to quote from the testimony given by Dean Pound to the Judiciary Committee:

> "Now, I taught equity for a great many years, and the New Jersey Equity Reports were a joy forever to the teacher of equity. Johnson's Chancery of New York—"

and I interrupt the quotation here to remind you that those reports consisted of only seven volumes covering the period 1814 to 1823—

> ". . . and the New Jersey Equity Reports were the reports to which a teacher of equity has always turned. I should feel very badly if I thought that any judicial organization which you might work out here would result in any diminution of that splendid equity that is going on here, because after all, equity is the most important part of the Anglo-American system of administering justice. It is increasingly important today, but after all I don't believe it is necessary to have a separate independent court of equity to achieve that. It is not only possible, but I think it is necessary in any unified judicial organization, to permit of divisions in the court."

Now, that is exactly what is proposed by the Brogan amendment, an Equity Division of a court of state-wide jurisdiction in which judges who have become specialists in equity jurisprudence may continue to so specialize. I say that there is no good to be accomplished by making possible the transfer of judges from one division to another. I honestly believe that such a system contains vicious possibilities, should the power to make such transfers some day be placed in the hands of the wrong individual.

Apparently there are those who believe that some men are born to be equity judges and that others are born to be law judges. I do not subscribe to any such theory. On the other hand, it is suggested

that if a man should be appointed as a judge of the Equity Division, and if he should turn out to be an unsatisfactory equity judge, that someone should have the power to transfer him to another division where he might render better service. Conversely, it is also said that a man who is not a good law judge might be transferred to the Equity Division and there render excellent service. For reasons such as these, we are told, it is essential that some higher authority have the power to transfer judges from one division to another. In my humble opinion there is no substance whatever in these arguments.

If I may be pardoned a reference to a personal experience, I think I can give you an illustration of what I mean. In 1944 and 1945 it was my privilege to have the responsibility for the administration of military justice in a large area of the European Theater of Operations. Not only was the geographical extent of our jurisdiction tremendous, but at one period it was reported by the Theater Judge Advocate that the volume of our work exceeded the volume of all similar jurisdictions in the Theater combined. During that period several hundred people assisted in the discharge of that obligation. They included lawyers from almost every state in the Union, with a wide variety of backgrounds and experience. There were men but recently out of law school, and there were men who had been lawyers and judges for 30-odd years. At first it seemed to me necessary to try out a number of these men in various fields of our work, but I soon learned this vitally important fact, and it was a fact—a man who was a good man in the first assignment given him was a good man anywhere he was put. On the contrary, one who was unable to render the kind of service essential in one job, was equally deficient no matter where he was placed.

By this illustration I do not mean to say that there are not differences between individuals. A man who would make a good engineer might be a complete failure as a doctor; the best lawyer might make no chemist at all; and so on. Nor do I mean to imply that there are not differences in the capabilities of lawyers. We all know one lawyer shows to best advantage before a jury while another is best doing office work. What I do mean to emphasize is that a man who has the qualities to make a good judge will make a superior judge in whatever branch of the law is assigned to him, if he is allowed to specialize. If a lawyer has a judicial temperament, an analytical mind, and the right kind of a heart, he will make a good judge. I think Mr. Jacobs' citation of Chancellor Green is an example of just what I have been trying to bring out. Chancellor Green had had experience in the law court and he was a good law judge. He later became a good Chancellor. But when he was Chancellor he wasn't trying negligence cases.

A man who is a good judge will make a better judge if he is allowed to specialize. So I say to you, it is utterly silly to suggest that a man who is a failure in the trial of negligence cases might turn out to be a first-class judge of an Equity Division, and that therefore the Chief Justice, or any other person, should have the right to transfer him.

The advantages to be gained from specialization of judges in the field of equity should be manifest to all. I hesitate to mention the many fields of human endeavor which are growing more specialized year by year. They are obvious to everyone. The advantages of specialization in the field of medical science are so recognized that no one ever raises the slightest question. Why then should any person question the advisability of specialization in the various branches of the administration of justice.

Judge Learned Hand said before the Judiciary Committee that he thought a judge could administer law and equity equally well at the same time. Well, perhaps Judge Hand can do that. But those who know him, know him to be a genius. They know him to be recognized as the greatest federal judge in many generations. While I certainly wouldn't deny that we have superior talent in New Jersey, I think it absurd to set up a system of courts on the assumption that every man who will participate in the administration of that system will be a man of the caliber of Learned Hand. It just isn't so. Other federal judges, including Judge Biggs of the Circuit Court of Appeals, and Judges Fake and Madden of the United States District Court of New Jersey, have expressed to the Judiciary Committee their admiration for equity as administered in New Jersey, and their firm belief in the propriety of and necessity for specialization of judges in that field in order to obtain the best results.

In examining the record of proceedings before the Committee on the Judiciary, I notice the omission from the appendix of a number of letters which were presented to that committee by Judge Kremer of Asbury Park on July 24th. When Judge Kremer testified on that day, he told the committee that he had written to reputable lawyers in the various states whose names he had picked at random from a leading legal directory, and asked if they would give him their experience with opinions of the New Jersey Court of Chancery in their states and to answer the question whether the opinions of our court were looked upon with any particular degree of respect. Judge Kremer did not receive answers to all his letters. Naturally, it may well have been that many of the people to whom he wrote had had no experience one way or another on the subject. However, he did receive 16 letters from 16 different states, and he filed those with the secretary of the Judiciary Committee. He stated that each of these letters was to the effect that the opinions of the Court

of Chancery of New Jersey are looked upon almost as gospel in those states, and that no court cited is accorded more respect and authority than the New Jersey Court of Chancery. Now, it should seem clear that when a body of law has been established in this State that is respected throughout the country in this fashion, and when it is realized—and this is the truth—that the erection of that body of law has been made possible by the specialization of able judges in that particular field, would it not be the height of folly to set up a system which would not guarantee such continued specialization?

I think many of us have talked with members of the bar in New York or Pennsylvania concerning their experience in a court in which the judges rotate in the trial of various types of litigation. I have personally talked with a number of New York lawyers and I have a great many personal friends among the bar of Philadelphia, and I have yet to find one who speaks with pride of the administration of equity in New York or Pennsylvania. Certainly, equity has deteriorated in these and other states; and yet, according to Dean Pound, equity is more important today than ever before. Why not, then, I ask you, insure a system that will make possible the continuance of what today is recognized at the best equity jurisprudence in the world? Why not?

Of course, I suppose you have all read the Associated Press item reporting a statement said to have been made last Friday by the present Chancellor approving the Article proposed by the Judiciary Committee. Knowing the Chancellor as I do, I feel sure he would not expect any delegate to change his vote on this subject solely because of this change of attitude by the highest judicial officer of the State. I sincerely hope no member of this Convention will do so. I should like to read from the Associated Press report: "That the delegates to the Convention do not agree with my point of view on retention of Chancery," Oliphant observed, "is evidenced by the fact that neither the Judiciary Committee nor any delegate has proposed such a court in the judicial structure."

Well, now, that suggests to me that the Chancellor's decision to approve the Committee Proposal is based upon the failure of the Brogan amendment to provide for a separate Court of Chancery, with the Vice-Chancellors appointed by the Chancellor and under his exclusive control. I consider it a matter of regret that apparently sight has been lost of the fact that while the Brogan amendment does not preserve the office of Chancellor, it does guarantee the continued administration of equity jurisprudence by specialists in fact as well as in name. Accordingly, I urge you, the delegates to this Convention, to vote upon this proposition in accordance with the dictates of your individual consciences. I urge you to disregard personal factors of every description. What is involved here and

what we are trying to preserve and maintain, is not an individual office or benefits to any particular individual, but a system for the administration of true justice.

In conclusion, I should like to say a word with reference to an impression I received from Mr. Dixon's remarks. It seems to me that Mr. Dixon was bothered by what he ascribes to this amendment—as fathering rigidity of performance and decision, adherence to precedent and tradition. Frankly, what we hope to accomplish by this amendment is exactly the opposite. We don't want rigidity of performance and decision—blind following of precedent. I ask you on that point to recall the condition which existed back in the early '30's, during the depths of the depression, when harrassed and oppressed home owners not only lost their homes by foreclosure, but after those properties had been sold, been bid in by the holders of the mortgages at sheriff sales on nominal bids, then the holders of the mortgages turned around and secured deficiency judgments against the harrassed and oppressed for the full amount due on the bond less the $100 bid, giving no credit whatever for the value, the real value of the property. Was any relief available in the courts of law? There was not! Were the courts of New York able to give their citizens any relief from such a situation? They were not! But did those people get relief in New Jersey? They most certainly did, from the New Jersey Court of Chancery, which was not bound by any rigid set of principles or any lack of precedent.

In the case with which all the lawyers here are familiar, *Federal Title and Mortgage Guarantee Company* vs. *Lowenstein,* relief was accorded and the mortgagees were required to give credit to the mortgagors for the value of the property which was bought in at sheriff sale. How was that relief accomplished in other states? By the legislative process, and you know the time that it takes for anything of that sort. The poor man in this State got his relief immediately through a system of jurisprudence exercised by specialists in that field who are not bound by hard and fast rules, who are not at a loss if there is no precedent. The court followed the ancient maxim—I don't recall the exact words of it, but it is to the effect that let the hardship be difficult enough and equity will find a way. And equity did. And we don't want to lose that guarantee.

PRESIDENT: Mr. McMurray?

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen of the Convention:

I should like to speak today just a few minutes on behalf of the lay viewpoint concerning a proper Judicial Article. My remarks will be of interest to the members of the bar of this Convention only

insofar as they feel that they shed light on the viewpoint of the average citizen.

The public in New Jersey has lost confidence in its state courts. It has not lost confidence in those courts because of the personnel of the courts, but it has lost confidence in them because of the cumbersome system under which those courts are organized. Litigation had become so complicated that the average citizen fears to go to court, instead of welcoming a chance to go to court and having a legal determination of his legal problem. I make no claim to any knowledge of law. I do, however, make some claim to some knowledge of what the public is thinking; and I do not think that what the public is thinking can be ignored. After all, the bench and the bar comprise hundreds of individuals, but the public comprises hundreds of thousands of individuals, and I do not think that any one of those people can be ignored, and certainly that group taken as a whole cannot be ignored

First of all, the public, if you will talk with the average citizen, wants a unified court system. The public thinks in terms of business organizations and military organizations, where unification is carried to a very high degree. No business could prosper without unification and centralized control. No business could prosper if the president and general manager and all the vice-presidents had equal power. It is a cardinal principle in every successful business that there is one top executive who is responsible for all the activities of the business and who can overrule disagreements among lesser executives. How could any army function if all the top officers had equal authority? We just merged the War and Navy Department, and we have merged them for the sole purpose of unification and centralized authority. There must be a single final authority somewhere. Business recognizes it. Military men recognize it. And we are coming, throughout the country, to recognize it in our courts.

This virtue of unification and efficiency is found in the report of Dean Sommer's committee. It is not only lacking from the amendment which is now before you, but rather it is rendered impossible. The top court is no longer the top court under Justice Brogan's amendment. Its administrative power over the court system is given to the next lower court. The Chief Justice is denied the authority to assign judges where they may be needed. Judges are appointed to a Law or a Chancery Division for the duration of their term. A judge appointed to one of these divisions who proves incapable or might find himself unhappy in his work could not be assigned to another division where his talents might be better employed. The principle of unification under the Brogan amendment is reduced to a pious hope, if even that.

Now, the public wants a simplified court system. The Court of

Errors and Appeals, the Court of Chancery, the Prerogative Court, the Supreme Court, the Orphans' Court, the Juvenile and Domestic Relations Court, the Court of Oyer and Terminer, the Circuit Court, the Court of Quarter Sessions, Special Sessions, and the Court of Common Pleas—is it any wonder that the average citizen in New Jersey is utterly bewildered when he contemplates his court system? If the deliberate intention of the organization of the present courts was to confuse the average citizen or keep him in the dark about his own legal matters, it is hard to find a better way to do it.

On the other hand, the average citizen has no trouble whatever in understanding the federal system of courts. There is a Supreme Court at the top. There is a District Court at the bottom, and in between an intermediate appellate court. He can understand that, and don't mistake it—he not only understands it, he respects it. A long step toward this simplicity which we find in the federal courts, will be found in the Committee Report. One top court is provided, which has the power to supervise the whole judicial structure of the State, and one General Court, or Superior Court, with Law, Equity and Appellate Divisions; the judges to be assigned on the basis of their qualifications, not by the Governor, as would be done under the Brogan amendment, but by the Chief Justice who best knows their qualifications and their special desires. They are to be assigned also in direct relation to the size of the calendar of each division.

Now, a simplified court system is an impossibility under the proposed amendment. The proposed amendment proposes four constitutional courts, and such other courts as the Legislature may create. The Committee Proposal creates two constitutional courts and makes the top court really a top court in administrative matters. New courts created by the Legislature are under the administrative direction of this top court. The system is simplified.

Under the amendment, however, these lower courts are not necessarily under the administrative direction of the top court. It's not clear, from a reading of the amendment, under just whose over-all supervision they would fall. The amendment now before you creates an additional nine-judge court which may sit in parts, but each part must have at least three judges, even though the work of the court might be satisfactorily done by one or two. Nine extra judges provided for in the amendment before you, at a cost of some $162,000 a year, is not economy or efficiency.

I have said that the public wants a court system set forth in the Constitution in simple, direct language. The Committee Report does this in a thousand words; the amendment before you takes more than 1800 words. Even the foes of the Committee Proposal

will admit that they know what it means. The debate on the floor this morning, even from the opponents of the Committee Report, indicate that they know just exactly what the Committee Report means. I doubt if even the friends of the amendment will claim as much for that document.

Now, a simplified court structure, written in simple, direct language, means public support, not only in November but it means public support in the years to come; and anything less, in my opinion, means public confusion that finally will degenerate into indifference on the part of the public.

The public also desires capable, non-political judges, and it's willing to follow the traditional procedure and rely upon the integrity of its Governor and its Senators to make and confirm such appointments. It desires high type men on the bench, whose presence there will be a guarantee of justice, and whose presence there will lend dignity to the courts. That system is provided for in your committee's Proposal. In the amendment, political affiliation is dignified and made a qualification for appointment. Under the amendment it is possible that a party hack might get a judgeship, but an independent, no matter how outstanding his qualifications, would be denied appointment.

In the appointment of judges the public wants the best men possible named to the bench. It likes to think of its judges as being above party lines. The Committee Report seeks to have a judge named for his judicial ability. The amendment may make that a qualification, provided the party affiliation is satisfactory.

The public also wants independent judges, and it is willing to render them free of financial pressures and is willing to see them adequately paid and adequately pensioned. The public is willing to pay any necessary sum to maintain a proper court structure; but it is not willing to pay salaries to needless judges, nor pensions that are out of line with general practice.

The Committee Report holds the number of judges to the minimum required for efficient administration of justice. It does not freeze nine un-needed judges in the Constitution. The Committee Report leaves the matter of pensions to the Legislature, where it belongs. The amendment freezes pensions at the salary the judge was receiving when retired, and he draws that full pension for life. This is not a good proposal. Who knows that in some time to come, with depression staring the State in the face and thousands of our citizens needing the necessaries of life, it might not be advisable to alter the pension structure? But under the amendment, though others might be starving, retired judges would draw their full pay for as long as they live. I should certainly, for one, dislike to campaign for the adoption of this Constitution and run the risk of be-

ing asked to answer that question in public debate.

The legal technicalities of a court system will be debated *pro* and *con* by others in this Convention—people who by special training are equipped to participate in such a debate—but my purpose has been simply to delineate the public viewpoint as it has come to me. This question of discussing courts is not a new one. It has been in the air for many, many years. I have talked to the public over a long period of time, and I think I have some knowledge of what the layman desires. I can conscientiously say that the Committee Report follows, as far as I can learn, the trend of the public's thinking; and I can say with equal earnestness that the amendment now before you does not follow the trend of the public's thinking and should be overwhelmingly defeated.

PRESIDENT: Is there further discussion on this amendment? If there is further discussion, I'd like to ask the wishes of the delegates with reference to our recessing at this time for lunch and reconvening at 2:15.

FROM THE FLOOR: So move.

PRESIDENT: All in favor of that proposal please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Before adjouring may I ask the chairmen of the standing committees to recall their meeting for luncheon today. I'd like also to comply with Judge Carey's request, for members of the Convention who are members of the Rotary Club to meet him at the platform immediately upon our adjournment here.

The meeting is recessed.

(The session recessed at 12:55 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Monday, August 18, 1947

(Afternoon session)

(The session started at 2:15 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats?

I would like to remind, and I trust with all courtesy, those of you who are present and who may not be members of the Convention or members of the press, that the privileges of the floor are extended only to the delegates and to the members of the press, and to the official employees. Other are requested to take their seats in the balcony.

The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present.

PRESIDENT: The Secretary reports that there is a quorum present. May I ask if there are any further amendments to be offered at this time? . . . Mr. Schenk.

MR. JOHN F. SCHENK: I offer an amendment to Section 19, Rights and Privileges, which I have given to the Secretary, and which I request he read.

SECRETARY: Proposed amendment to Proposal No. 4-1, Rights and Privileges; "All judges and courts—"

MR. SCHENK: No. That isn't mine, sir.

SECRETARY: No. 1-1, Rights and Privileges. Section 19, Rights and Privileges *(reading)*:[1]

[1] Amendment No. 21 to Committee Proposal No. 1-1.

"After the word 'impaired' place a semi-colon and add the following: 'The exercise and use of the labor rights herein set forth are and shall be subject to, and may be regulated by, the law.' "

PRESIDENT: Are there any other amendments to be offered? . . . Senator Milton.

SENATOR JOHN MILTON: Mr. President, I have furnished the Secretary with copies of two proposed amendments to Committee Proposal No. 4-1.[1] The first one requires that the members of any court established or authorized by the Constitution shall be so appointed that the members of any one political party shall not constitute a majority of more than one in the entire membership in each court. The other is a bit longer but can be summarized by the statement that it requires the Governor to select the Chancellor and the Chief Justice and the Associate Justices of the Supreme Court in office on the adoption of the new Constitution, as members of the new Supreme Court, leaving the Governor free to pick the Chief Justice of the new court from among them.

SECRETARY: Amendments Nos. 13 and 14 by Mr. Milton.

PRESIDENT: Are there other amendments to be offered? . . . The chair recognizes Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President and ladies and gentlemen of the Convention:

I am reporting for the Committee on Arrangement and Form. Your committee has been at work ever since the drafts of the Committee Reports were available and it has completed its work on the draft of the Executive, Militia and Civil Officers Article. We have followed the instructions laid down for us in the Rules of the Convention and we have leaned over backward, I hope, to make no substantive change in the Articles. Where we have made changes in phraseology they have been made either for what, in our opinion, are purposes of clarity, or else in order that the Articles may all be written more or less in the same style, so that the completed document may be a coherent document and not five separate, distinct Articles written in five separate and distinct styles.

We have consulted with the chairman of the Executive Committee—with the Committee on the Executive—in an effort to ascertain just what this committee intended and to make sure we made no substantive changes. Without seeming in any way at all not to agree fully with the Report of the Committee on Arrangement and Form, I do want to state that 90 per cent of the work was done by other members of the committee. While I am very happy to take full responsibility for their work, I want them to have the credit that is due them. I have felt, at times, slightly out of place

[1] Amendments Nos. 14 and 13 to Committee Proposal No. 4-1. The text of these and other amendments appears in the Appendix in Vol. 2.

in presiding over that committee, inasmuch as it is composed of six members of the Bar and one lone layman. I was, I hope, of some value in occasionally casting a deciding vote.

Mr. President, I submit herewith the Report of the Committee on Arrangement and Form for the Executive Article and move the adoption of the Report.

PRESIDENT: Mr. Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: Mr. President and fellow delegates:

I wish to rise to second Mr. McMurray's statement. I and the technical advisor of our committee met with the Committee on Arrangement and Form on Friday afternoon. I want to admit that in some instances they certainly improved the language and shortened a few sentences. I also want to say that they were exceedingly gracious; when we pointed out a number of places where they had changed sentences and possibly might have changed the substance, they gave way and put the wording back as it was.

The point I want to emphasize, however, is that we have had a meeting with them and—I'm speaking for myself and not for the committee, since we have not had an opportunity to meet yet —I and our technical advisor feel that as far as we can tell the substance has not been changed. I therefore hope this motion carries. On the other hand, I think it only fair to state that the rest of my committee has not had an opportunity to read this draft. I want to state, assuming this motion does pass, that in accordance with the 48-hour requirement under the Rules of this Convention, I wish to give notice that I'm going to bring Proposal No. 3-1 up for third reading and final passage on Wednesday, at which time, if it's a question of verbiage and phraseology, we might have one or two points that we might ask to be changed with unanimous consent.

PRESIDENT: Is there any discussion on this motion?

The question is upon the adoption of the Report of the Committee on Arrangement and Form of Proposal No. 3-1, the Executive, Militia and Civil Officers Article. Are you ready for the question? All in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is adopted . . . Mayor Eggers.

MR. FRANK H. EGGERS: Mr. President: On Friday, following the adoption of Senator Lewis' amendment to the Legislative Committee report, I introduced a resolution which we laid over for further action of the Convention. I would like to call that up now for the consideration of the Convention, if I'm in order.

PRESIDENT: Mayor Eggers calls up for consideration at this time his resolution which was presented on Friday, I think, was it not?

MR. EGGERS: On Friday.

PRESIDENT: It has been mimeographed and distributed to the members of the Convention. Do you care to comment on it, Mr. Mayor?

MR. EGGERS: All I care to say is that each of the members here have a copy of the resolution on their desks now, and I believe the resolution speaks for itself. It simply follows the purport of Senator Lewis' amendment to the Legislative Committee Report and memorializes the Legislature to enact legislation permitting bingo and other games of chance and to submit it to the people in 1948.

PRESIDENT: Mayor Eggers' resolution is seconded and is open for discussion . . . Mr. Peterson.

MR. HENRY W. PETERSON: Does this resolution of Mayor Eggers provide that volunteer firemen have the same provision? It may seem inconsequential but I think—

MR. EGGERS: I will accept such an amendment.

MR. PETERSON: All right, sir, Mr. President, I move that the volunteer firemen be—

PRESIDENT: I raise a point of order, on which I really seek advice more than attempt to offer an opinion, as to whether the Convention feels that resolutions of this kind should be considered individually or whether they should be considered by the Convention after the Constitution itself has been adopted. It would seem to me that by proceeding before final action is taken, we might possibly take action on one of these recommendations to the Legislature which might overlap or conflict inadvertently with some provision in the Constitution itself.

Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: I am not aware that this Convention has adopted any provision for the taking effect of any Article of the Constitution that may evolve from this Convention. I think that we are all of the understanding that the Judicial Article will take effect at a much later date than the other parts of the proposed Constitution, but as yet I'm not aware that we've acted to the effect that the other parts of the Constitution will become effective January 1, 1948. This resolution proceeds on the premise that that is so. I think that from that standpoint it may be a bit premature, and I think it might await the action of the Convention with respect to the other effective date, as I've suggested.

PRESIDENT: Any further discussion? . . . Mayor Eggers.

MR. EGGERS: This resolution, Mr. President, says:

"Whereas, the Constitutional Convention by the adoption of this amendment . . ."

and I call attention to the fact that the Legislative Article has been moved to third reading and cannot again be amended without unanimous consent of the Convention. Then I go on:

". . . has authorized specific kind and control of gambling when submitted to and authorized by a majority of votes cast thereon at a special or general election."

Now, we assume this will not be effective upon the Legislature if the Constitution is not adopted by the people of the State of New Jersey. And we assume that if it is adopted, that the Legislative Article and the amendment which Senator Lewis has inserted will be a part of that new Constitution and, therefore, this resolution would be effective then and only then.

PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: Without wanting to make a mountain out of a molehill, I am inclined to agree with some of the thinking you expressed from the chair. Through you, Mr. President, if I may address myself to Mayor Eggers without being at all out of sympathy with the purpose that you have in mind here, it does seems to me that we would better accomplish our purpose if all such resolutions, or we'll say memorializations, to the Legislature were referred to the Committee on Arrangement and Form and presented at the same time. It seems to me it would be a more orderly procedure and that we could vote on all of them together in a more intelligent manner.

MR. EGGERS: Well, I'm afraid that wouldn't be the right way to do it. I believe this Convention should consider each resolution as it comes up in connection with the Article to which it is offered; otherwise there is going to be a confusion of issues, Senator, with a great many memorializations being taken up at the wrong time, or at one time.

MR. VAN ALSTYNE: I don't pretend that I can know the answer on the floor.

Mr. President, through you again, I just thought that there might be a number of messages that this Convention might want to give to the Legislature; and if all this business were coordinated through one committee and then presented at the same time, we would have better sequence. I'm just expressing my personal opinion.

MR. EGGERS: I agree with you in principle, but you must understand that if this resolution is adopted by the Convention, it will then be referred to the Committee on Arrangement and Form to be coordinated with all future resolutions which may be adopted.

PRESIDENT: Is there further discussion?

(Mrs. Katzenbach, Second Vice-President of the Convention, took the Chair at this point)

MR. CLOTHIER: I don't think I can impart any wisdom on this, but a question does arise in my mind and perhaps also in the minds of others. I'm sure the members of the Convention will be entirely agreeable to the spirit of your resolution as presented here. I wonder, however, whether inadvertently, and perhaps unintentionally, we seem to be giving a mandate to the Legislature to enact certain legislation. Would it be agreeable to you, and to the Convention as a whole, if we should amend the phrasing to memorialize the members of the New Jersey Legislature of 1948 to *consider* legislation which will permit the playing of games of chance or bingo? I merely raise that as a question. Speaking for myself, if I had a vote I wouldn't hesitate to vote for that. I do have some qualms about voting for the present phrasing.

MR. EGGERS: Well, if you feel, Doctor, that we would be, in effect, giving a mandate to the Legislature and directing them to do something, I'm perfectly agreeable to any such amendment that you care to make along those lines.

MR. CLOTHIER: My amendment would be to memorialize the members of the New Jersey Legislature of 1948 to *consider* legislation.

MR. EGGERS: We can amend it to read that we request the Legislature to do that.

MR. CLOTHIER: "Request the Legislature to consider legislation."

MR. EGGERS: Yes, I'll accept that amendment.

SECOND VICE-PRESIDENT MARIE H. KATZENBACH: Is the amendment to the original resolution seconded?

(Seconded from the floor)

SECOND VICE-PRESIDENT: All those in favor of the resolution and the amendment, please say "Aye."

(Chorus of "Ayes")

SECOND VICE-PRESIDENT: Contrary?

(Silence)

SECOND VICE-PRESIDENT: Carried. The resolution is adopted.

(President Clothier resumed the chair)

PRESIDENT: Is there any other business on the floor before we proceed to further consideration of Justice Brogan's Amendment No. 1 to the Judiciary Proposal? . . . If not, we will proceed with the consideration of that amendment. I'll recognize Mr. Winne.

May I request, too, if Mr. Winne will permit me to interrupt,

that it will be very helpful to the chair if those delegates about to speak who know that they will wish more than 15 minutes, will in accordance with our amended Rule 46 provide the written slips of authority so that the Secretary may be governed accordingly.

Mr. Winne.

MR. WALTER G. WINNE: Mr. President, I'll relieve your mind at once. I will not require more than 15 minutes.

Ladies and gentlemen of the Convention: I am, as you may probably all know, a member of the Judiciary Committee. I suppose, like every one of the 81 delegates to this Convention, I'm not so much interested in proving I'm right on any particular subject as I am in being part of a Convention that writes the Constitution to be adopted by the people of the State of New Jersey in November.

I was very glad the President appointed me to the Judiciary Committee. I've been practicing law for 35 years and have had considerable experience in government. I thought I could perform useful service to this Convention and to the people of our State on that committee. I hope my efforts in that direction have been of some value and will be hereafter in this Convention—on this subject which I should know something about, and I hope I do know something about, rather than on subjects where other persons are infinitely better qualified to speak than I am.

It is probably not a surprise to anyone to have me say that I was elected as a friend of the Court of Chancery. In fact, I think it would be very strange if any active practitioner of the law, a member of this Convention or otherwise, was not friendly to that great court. And I became one of a committee of 11 with pretty definite convictions. It just happened that I was an officer, as a matter of fact the President, of the State Bar Association at the time of the election and as such appointed the committee that has been referred to.

I suppose all the lawyers of this Convention are members of a local bar association, the American Bar Association and State Bar Association, and like them I am very proud of my profession and very anxious in every act and word and deed, through the whole conduct of my personal and professional life, to be creditable to the great profession of the law. So I was interested in what bar associations wanted to do, and I'm happy to say that this Committee Report is almost verbatim the request of the New Jersey State Bar Association made through its committee, in the one respect as to how the Court of Chancery is treated. I will speak briefly of this before I conclude.

Now, what did our committee do? Look at the record of the committee on your desk, the biggest of those three bound volumes of committee proceedings which I suppose each of us will preserve

somewhere so that it will be a memento of this occasion in New Brunswick. The committee heard the most distinguished persons in the field. They heard persons like the Governor, the Attorney-General, members of the Supreme Court, the Chief Justice of the Supreme Court, Chancellor Oliphant, Circuit Court judges, federal judges, experts from out-of-town, theorists, laymen. And the committee labored over every page, over every paragraph, over every line, almost over every word in the Article that was reported here to this Convention.

After the Committee Report was rendered and published, a few people came down to a further public hearing, at which nothing of any great difference or consequence was said. About the only thing that was labored to any extent was this—because the Convention might be slightly interested in my own personal thought on the matter. During this period of time, I made the motion in the committee—and I guess that's a permanent record, for all time—that an independent Court of Chancery be recommended by the committee. Unless I'm mistaken I received no support for the motion in the committee. I pressed it no further in order to accomplish our purpose, namely, ending the job some time, but I was somewhat of the same opinion through the hearings. However, little by little, I must say, my opinion changed, until now I am entirely in accord with the Committee Report and opposed to the amendment proposed by Justice Brogan.

I would like to say, excluding myself for the moment, that no persons could have tried harder to reconcile different points of view and bring a document before this Convention which we believe the Convention could accept and which would be acceptable to the people, than did the Committee on the Judiciary.

I had another strong conviction which I expressed in the committee and which has been accomplished a hundred per cent, and that was that the County Court, which I considered most important to the welfare of the individual citizens of the State, should be preserved substantially as it existed. And that is in the Judicial Article as recommended.

I rather take it that this Judicial Article is one that the people of the State are as much interested in as they are in any other one thing. I said that at lunch and one of the delegates thought the people were more interested in bingo. I really don't know whether that is so or not. I am rather inclined to think that by and large throughout the State they are tremendously interested in the Judicial Article. As I said before, there were two outstanding things that we could do, and if we did those I thought the people generally didn't care too much about the detail. One was to get rid of the

cumbersome Court of Errors and Appeals, for whom no one has a good word, I'm sorry to say. I don't mean that about the individual members of the court, but the court itself. I never heard anybody justify that large and unwieldy body of men, called the New Jersey Court of Errors and Appeals; and everyone today seems satisfied that that has been rectified in both the original draft and the amendment. The other thing which everyone I know seems to think we were compelled to do was to get rid of the various names under which the County Court is set up. It has been referred to here as the Oyer and Terminer, the Common Pleas, Quarter Sessions, and so forth.

Most everything else, ladies and gentlemen of the Convention, were subjects on which the committee could agree one way or the other—no matter of great principle. Whether we should put in there more than we did about pensions may be debated. I don't think the amount of the pension or percentage of the pension belongs in the draft.

I brought down with me the *New Jersey Law Journal* of June 12 with a story on the New Jersey Bar Association committee report, and that committee recommended that there should be a separate court of appeals in the last resort with permanent membership of not more than seven, all to be learned in the law and to have no other time-consuming duties. That is in the draft.

There should be one great state-wide court of original and intermediate appellate jurisdiction, exercising jurisdiction now vested by the present Constitution in the Supreme Court, the Court of Chancery, and the Prerogative Court, and sitting in a Chancery Division and a Law Division, to each of which judges would be permanently assigned, but with power to do full justice in any one cause. That is accomplished, with the exception that the judges are not permanently assigned.

The present county courts should not be merged with or enter the great court of original jurisdiction, but together with all inferior courts should remain subject to legislative control. That is in the Article, exactly as recommended.

To the end of minimizing future litigation over jurisdiction, the Constitution should, wherever possible, instead of taking a fresh start, refer to and take over the well-understood jurisdiction of the existing courts.

The Constitution should not go into too much detail. Therefore, the mandate, if you call it that, the recommendation of the New Jersey Bar Association is carried out with but one exception: we have recommended a General Court, now the Superior Court, with an Appellate, a Law and a Chancery Division.

Now, I suppose that even the lay members of this Convention know something about the difference between law and equity, but every speaker who addresses you on this subject will give his reasons and illustrations and come to his own conclusions. All I can say to those who have not made up their minds is that I think the recommendation of this committee, arrived at after two months of intensive study—the recommendation in writing before you, for weeks studied and publicized all over the State—is entitled to much more consideration than this draft of 13 pages that I never saw until a day or so ago, and which I venture to say not half a dozen members of this Convention have read in its entirety to this moment. I urge you to show your belief in and respect for the work of the committee; support its Proposal and oppose the amendments.

There are other amendments, and Senator Milton just presented a couple. Mr. Emerson has one which deals with subjects on which people may differ. But I am surprised that any substantial sentiment of this Convention should be aroused to a document longer than the original Proposal of the committee, drawn some time, I don't know when, but lengthy enough and confusing enough so that I admit I haven't attempted to digest it. It would be just impossible to do so.

What we should do, if we are going to consider the Brogan amendment, is recess for two months and let the committee study it for two months, and then we'll know something about it. But you can't tell anything about that kind of a document in a few hours.

I would like to make two comments about why a specialized court of equity is something not too important in the present posture of things. I have nothing but favorable comment to make about our experience with the Court of Chancery in New Jersey, but it is a little foolish to speak as though these individual gentlemen who constitute the Court of Chancery are the people who are responsible for the equity law of the State of New Jersey. Equity law of the State of New Jersey, my friends, has been written by the Court of Errors and Appeals of New Jersey, on which not a single member of the Court of Chancery can sit when the opinion is considered and written.

All the serious matters in equity are appealed to the Court of Errors and Appeals. When the Court of Errors and Appeals hears an equity case the Chancellor retires, so that the case is decided by law judges. The great equity decisions which fill the volumes in our libraries, and about which such complimentary remarks have been made, are volumes of equity decisions written by law judges and not by equity judges, in the main. Consequently, and similarly, in legal history the great equity judges have been men who prac-

ticed in both law and equity.

I suppose the outstanding name in America is the name of Justice Story of the Supreme Court of the United States, who got his entire reputation as a judge who heard both law and equity. He is still the outstanding authority on equity. Similarly, a man like Learned Hand. He is an exception, you say. So is every District Court judge in the federal practice who hears equity and law. So are the judges in Pennsylvania, so are the judges in Massachusetts, so are the judges in New York, judges who hear equity cases and law cases. I have no doubt at all that there will be, in effect, permanent assignments to the Chancery Division of the Superior Court. I think it very preferable that they should not be made permanent in the Constitution.

Justice Brogan spoke of appointments to the top court. There may be some merit in it and it probably will be debated separately, but to get that involved in all of these other things in his 13-page amendment, so that one must vote either "yes" or "no" on the amendment, causes me to come to the conclusion that any considerate person will be compelled to support the committee in this matter and vote against the proposed amendment.

PRESIDENT: Is there any further discussion on Amendment No. 1?

FROM THE FLOOR: Question!

PRESIDENT: Mr. Schlosser.

MR. FRANK G. SCHLOSSER: Mr. President and fellow delegates: I am going to say something in answer to Prosecutor Winne's statement that the Brogan draft isn't brief. I don't want to alarm you. I intend in making those statements to be quite brief myself.

Now, brevity isn't always wise. If it were, the Judicial Article could come out in one page instead of some eight pages. There are two significant omissions from the Judicial Article as reported out by the committee that I want to bring to the attention of my fellow delegates, and they are both the result of brevity.

In the 1844 Constitution the drafters of the instrument were very careful to limit appeals to appeals from final judgments. That simply meant that every time a lawyer lost a motion in the lower courts, he couldn't go rushing up to the Court of Errors and Appeals. It had the virtue of bringing about speedy disposition of cases. But in the Judiciary Committee draft you will notice on page two that appeals may be taken to the Supreme Court, appeals may be taken to the Appellate Division of the General Court. There isn't any indication at all as to what kind of appeals can be taken, and should the committee think that if this Constitution is adopted in the form it is in now the Legislature can constitutionally restrict

the Supreme Court or the Superior Court from hearing interlocutory appeals, I think the committee will be very, very wrong. There is too much brevity in the Judicial Article there.

I heard Mr. Dixon this morning speak of the *Urback* case, and the eight years it took to complete it. I want to assure you, my fellow delegates, that eight years will be nothing compared to the length of some of the appeals unless this Judicial draft is restricted in permitting appeals on the law side to appeals from final judgments—otherwise we will have the case of *Jarndyce* vs. *Jarndyce* all over again. Brevity here is no virtue at all.

Secondly, the criminal cases will be tried, at least until the Legislature decides otherwise, in the county courts, and due to brevity the Judicial Article, while it provides an appeal from the General Court, as they originally called it—the Superior Court as I think they now intend to call it—it does not provide an appeal at all from the county courts. Just think of it! A man may be mulcted of damages, his pocketbook may be hurt to the extent of a couple of hundred dollars in the Superior Court. Under the Constitution of New Jersey he can appeal that case. He is entitled to one appeal. He may take that one up to the Superior Court. But consider, now, the county courts. On an indictment there is tried a defendant who may be innocent. He is convicted of an offense, sentenced to 30 years, we'll say, in prison and the Constitution is too brief to give him the right to an appeal! Now, what kind of a Constitution are we asked to adopt that will protect the pocketbook and turn its back upon liberty?

There is an old saying, I think it comes from Shakespeare, to the effect that he who steals my purse steals trash, but when you take away my good name . . . I would like to paraphrase that and say he who steals my money steals something that may be very important to me but I can get along without it, but he who takes away my liberty illegally and deprives me or any other citizen of the State of New Jersey of the same constitutional right to appeal that would be given to a civil litigant, isn't doing justice as I see it. Accordingly, on those two grounds, I oppose the adoption of the Judicial Article.

PRESIDENT: Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. President: I would like to answer one statement made by Mr. Winne. He said that our Court of Errors and Appeals, and the judges of our Court of Errors and Appeals, none of whom are equity judges, have decided our equity cases and laid down the rules of equity in this State. I don't think that statement is necessarily a wholly true statement. The Vice-Chancellors who are presently sitting in the equity court have a

conception of equity, so that they can apply equitable principles to new facts as they are presented. The Court of Errors and Appeals merely determines whether or not the Vice-Chancellor resolved the proper question of equity.

It is like the inventor. After Mr. Bell invented the telephone it was easy for the jury, the people in the country, or court of appeals, or whatever it might be, to say that is a good invention. Our Court of Errors and Appeals does the same thing. The initiative comes from the court below, and the court evolves the principles and applies them to the facts as presented. I don't think any of the credit for the development of equity in this State goes to the Court of Errors and Appeals. They either approve or they disapprove of what a Vice-Chancellor has done. It is very simple if someone else initiates and develops and applies the equitable principles to new facts to say whether he is right or wrong, and I don't think the credit goes to the Court of Errors and Appeals.

PRESIDENT: Senator Milton.

MR. MILTON: Mr. President: This Convention has been most patient and most generous in allowing time to various delegates who have spoken on either side of this question. Last week, when I wasn't mopping my brow, I was mentally repeating to myself *"mea culpa, mea maxima culpa,"* and if the peripatetic photographer from Plainfield wants to know what that means, it means "So sorry."

(Laughter)

Perhaps it was I who opened the flood gates that nearly swept all of us out into the Raritan River. I seek atonement. Originally, I had determined not to file any assignment of time, so that the Convention if it chose could figuratively, I hoped, cut my throat so that no more words of wisdom could fall upon their ears. Their ear drums were sufficiently assaulted last week. I have a new idea, that the Article itself and the Brogan amendment should be very thoroughly swept out of this room.

I hope in a very few minutes and in a very simple way to debunk this movement for judicial reform which is the child of progaganda and nothing else. I think we must concede that we should have a separate court of appeals, that perhaps we should limit the number of appeals, and that out of a consideration for quieting legal hysteria over an alleged abuse of the prerogative writs, we should abolish them. The chief difficulty in the administration of the prerogative writ practice is that the lawyers don't understand it. Beyond that, in my humble judgment, there is no need for judicial reform. As I say, it is the demand, the result of propaganda.

I see no useful purpose served in throwing out the old merely because it is old, nor do I see any value in blasting that which is

new merely because it is new. I am interested a great deal in the perspicacity of newspaper editors. I marvel at their ability to interpret public opinion. My own view and concept is that the people at large have little if any interest in this alleged demand for court reform. I don't think they care a hoot whether there is a separate Court of Chancery or whether equitable principles are to be administered by a uniform court.

Simplification, when over-simplified, in my judgment becomes confusion; and I have, so to speak, a living witness to attest that. It will no doubt surprise Mr. McMurray to learn that under the simplified practice which we now have in the federal courts, through the connivance or interposition of the civil rules of procedure, we are building up a body of law almost as large as the law on the fundamental questions involved, and that great body of law has to do with construing the simplified rules of procedure that the committee which developed this simplified procedure gave us. Federal judges today are spending an unconscionable amount of time in construing the simplified rules of procedure. Lawyers are unable to apply them. I hope we won't have a repetition of that in this State.

When I spoke of a demand for court reform being stimulated by propaganda, I had in mind the Ubrecht case which Mr. Dixon referred to. He called it the Urbank case. I got a sheaf of paper issued by this New Jersey Committee for Constitutional Revision and that's about as good a sample of propaganda as I've seen. The one that my eye caught—and I tried to read everything that bore upon the questions which concerned us—had as a head, "Who won the Ubrecht Case?" Well, I was like the schoolboy when he was asked to state the date George Washington died. He said he didn't know George was even sick. I had never heard of the Ubrecht case. In our office, we have legal bloodhounds. They search out these questions. One of the most promising of them is a very bright young woman. You will understand how bright she is when I tell you that she started out obtaining her wisdom from Dr. Cullimore. She soon determined, however, that engineering was not for her. There possibly couldn't be any money in it so she came over to the law and she is now in my office learning how to be a conniving, crafty, Hudson County lawyer.

(Laughter)

I am sure as I happened to look at my friend, Judge Drewen, his lips moved and he said, "She's in the right place."

(Laughter)

So, when I read this "Who won the Ubrecht Case?" I sent for

this girl—who is as pretty as she is smart—and I said, "Who won the Ubrecht Case?"

She said, "Hmph?"

I said, "Now, wait a moment, that's my privilege. You have the answer."

She said, "I never heard of it."

Well, she left my room with her nose high in the air like a young dog sniffing for clues. When she came back she had the Ubrecht case. This article, which we both read together, was written in the best sob sister style and portrayed the despair of a widow at not being able to collect the proceeds of her life insurance premium. Well, I have an interest in widows—it is a mild one.

(Laughter)

Nothing Franklinesque about it. It isn't like my friend from Bergen County who confessed to a hankering for Governors.

(Laughter)

So I said to my assistant, "What happened?" We read the two important cases and we came to this conclusion: that Sadie Ubrecht had made a mistake that is common to women. She picked the wrong man. In her case, however, unlike other women who pick the wrong man for a husband, she picked the wrong lawyer; and nothing that happened to Sadie Ubrecht under the separated system couldn't happen under the unified system.

(Laughter)

It's just the bunk—this jurisdictional clash about which so much is made. I took the liberty of talking to two of the members of the Chancery Court about that question. You heard Colonel Berry this morning debunk the statement that a particular volume of the Chancery reports contains some ungodly number of cases which had gone off on the jurisdictional point. Each of these Vice-Chancellors has served 14 years in the court. One told me that he had but one such case which required a reference to a court of law. The other one said he had but two. So that out of a united 28 years of trial work in the Chancery Court of this State, you find but three of such cases.

I had seven reports analyzed, from 133 to 139 Equity. The figures are startling. I think there were 787 equity decisions contained in those seven volumes. Of course, you must understand that lawyers like myself and such as this young lady is going to turn out to be, now that I have rescued her from Dr. Cullimore, invent fine-spun theories by which we may get into the Court of Chancery and keep out of courts of law, and we suggest grounds which are very tenuous. Nineteen cases out of 787 had bona fide reasons for claiming there

was jurisdiction in the Court of Chancery to the exclusion of a court of law. So much for this jurisdictional clash.

There are two fundamental differences, as I see them, between the Brogan amendment and the Committee Report. One is upon the method of selecting the initial court of appeals. To me court packing in the instance of the highest court of this State is just as objectionable as it was in the instance of the highest court of this land. I for one want to stand here and go on record as opposing the grant of power to any one individual, whoever he may be, to select the complete highest court of this State at any time.

The other point of difference is in the administration of the principles of equity by men who are specialized judges. Many of the speakers, I think, as I listened to them this morning, missed the point of a prohibition upon the transfer of equity judges from the Chancery to the Law Division. The point is that just so sure as equity and law are combined, you will find an attenuation and a derogation of the principles of equity. I call upon an experience which I had supplemented by thinking—my ability or my opportunity to observe what went on in the depression years. In 1932, 1933 and 1934, there were 50,000 suits started in the Court of Chancery to foreclose mortgages. If you care for it, I have the exact number which I obtained from the Clerk in Chancery.

You know, all of you, I assume, that accompanying each mortgage is a bond usually, rarely a note; and under the statutes of this State, when property is foreclosed and sold at a sheriff's sale and a deficiency is realized, the obligor—to put it in plain, simple language, the person who borrowed the money and signed the bond—can be called upon to pay the balance due. In 1931, I tried a case in the Essex County Court and, as is usual when I go out of my own county, I lost it. That case involved the liability of a young man who had given a mortgage to a building and loan association in Pennsylvania to secure the payment of sum of money which he borrowed to enable him to buy a home. The company which employed him changed its base of operations and he was required to move to New Jersey. He sold his home and moved over into New Jersey. He heard no more about that property and thought he was through with it for the rest of his life, when suddenly he woke up to find that the person who had bought the property from the person to whom he had sold it had, in the early days of the depression, neglected it, didn't pay taxes, didn't pay interest upon the mortgage. The mortgage had been foreclosed. There was a deficiency, and suit was brought in the courts of New Jersey against this New Jersey citizen to make him pay a deficiency upon a Pennsylvania mortgage which had been determined in the courts of Pennsylvania.

I examined the law of Pennsylvania and found it to be this:

By statute—because equitable principles had died out in that State —by statute and statute alone, was there any attempt to protect a mortgagor against the greed, if we may call it that, of the mortgagee, because the mortgagee not only recovered the pledge but he had the judgment for the balance of the debt; and the statute was limited to the protection of persons who occupied farm lands and those who occupied their own homes.

In New York, where this unification occurred some 70-odd years ago, equity became so attenuated that it was completely lost sight of. The statute of New York provided that only where there was a default in the payment of principal or a part thereof would the arm of the court be extended to prevent a foreclosure, so that in the case of failure to pay interest or failure to pay taxes there was no protection given to the mortgagor.

What happened in New Jersey? Colonel Berry told you what happened in New Jersey as a result of the decision in the *Lowenstein* case, and it is an outstanding example of the manner in which courts of equity came to the rescue in this State of the citizens of this State and preserved not only the rights of the mortgagor but, as well, the right of the mortgagee.

I venture to predict, sir, if we live long enough to see it, and if this Convention should adopt the Committee Article, equitable principles and their administration will rapidly deteriorate and disintegrate. I make no dire predictions, as I said before, with respect to the effect upon the ultimate success of our effort as to how this particular question will be resolved. I am satisfied that this committee displayed great patience, great industry. I think, however, it has made a mistake. That it calls to witness the efficacy of its effort two members of our judiciary is of no particular importance in my mind. I know both of the gentlemen. They are excellent lawyers and very competent judges. They are both friends of mine. I dismiss them.

I have in mind an experience which I recently enjoyed with my good friend, Dr. Cullimore. He and I recently took a little trip to the eastern part of Monmouth County to a small village there; I think the name of it is Oceanport. We were studying, the Doctor and I, a problem in logistics. We had before us certain data and when the Doctor got through with his analysis of that data he said, "I think that race must be thrown out, it was run on a muddy track."

(Laughter)

One of these judicial gentlemen occupies a unique distinction. I may be wrong once with respect to this Judicial Article; he's been wrong twice. In the mind of the committee, he was wrong when he

came before it to advocate the retention of the Court of Chancery, and in the mind of Chief Justice Brogan and his associates, including me, he's wrong when he now advocates a unified court. So, I dismiss his conclusions as a race that should be thrown out. I don't challenge his sincerity nor do I challenge the sincerity of the Vice-Chancellor who wrote the letter. I have known him many years and admired him. However, when I differ with him in respect to a particular cause, I don't hesitate to take him to the Court of Errors and Appeals and tell it why I think he is wrong. I think he's wrong now; I think that the principle of unification will be a serious mistake for this State to embark upon. I recommend that the Convention do what I'm going to do, and you'll pardon the seeming egoism when I make that statement or request. I am going to vote for the Brogan amendment. Whether it is adopted or not, I am going to vote against the Committee Article in the hope that it will be buried, and in the few intervening days I know there is ample legal and executive intelligence in this Convention to write a simple change which will streamline our practice and that's all we need.

PRESIDENT: Mr. Cullimore.

MR. ALLAN R. CULLIMORE: I ask the privilege of the President and the delegates of this Convention to correct a statement which I believe is in error, and I believe the man who made the statement knew he was in error when he made it. Since Delegate Milton has alluded to a young lady in his office and has, moreover, coupled her name with mine, for the record I should like to make this statement. The statement should, I think, be in writing and I have reduced it to writing. The young lady mentioned represented Hunterdon County for, I think, two terms in the Assembly. She was also, as I remember, a member of the legislative committee which dealt with constitutional revision. I think that tasting of the cup of politics, and perhaps looking forward under some slight degree of intoxication to the very ultimate heights of political glory in the State of New Jersey, she is where she is because under the tutelage of a master in this particular field she has shown undue perspicacity.

(Laughter)

PRESIDENT: Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President, ladies and gentlemen of the Convention:

I speak not as a member of the Judiciary Committee, but merely as a delegate who has listened with much interest to the *pros* and *cons* of this argument relating to our court structure. In 1944 I had the good fortune to have the opportunity of making a comparative study of our New Jersey judicial system. I had the opportunity

and occasion to examine the judicial articles of the several constitutions of the 47 other states of the Union. I also had the good fortune of reading that very celebrated book on the panorama of the world's judicial systems. After much study I arrived at this inescapable conclusion,—that the judicial system of New Jersey was the most confused, most complex, most disorganized system not only in the states of the Union but of any modern country in the world. And why?

By the way, I might mention, for the benefit of our distinguished Senator from Hudson County, I reached that conclusion, not as the result of propaganda but rather, if I may quote Churchill, as a result of very much "blood, sweat and tears." Now, what was wrong with our system? The lack of simplicity and the lack of integration.

I am a strong advocate of our Court of Chancery. Of all the courts in our system, I have the highest respect for our Court of Chancery. If the Judiciary Committee had produced to this Convention an article or a proposal that would eliminate or abrogate or extinguish entirely the Court of Chancery, I say I would oppose that report because I feel there should be a recognition of our Court of Chancery. I was very happy to see our Committee Report come forward with a provision in which we are retaining our Court of Chancery. The committee proposes a Court of Chancery in an integrated court system. I submit that you can retain your Court of Chancery as part of your Superior Court system and still have your Court of Chancery. You have everything that the Court of Chancery can give you today. You merely integrate that court into an integrated court system.

Over the week-end I tried to analyze the Brogan proposal as well as the Committee Proposal. It seems to me that this Committee Proposal, the original Proposal of the committee, subject to very few corrections—and I feel that the proposed amendment mentioned here this morning by Delegate Jacobs meets any doubts in my mind as to necessary correction—is not only good but excellent and can stand comparison with any judicial system in the United States. I'll go further than that and I'll predict that the Proposal can even become exemplary, for other states to follow. The most important thing in this discussion, as I have listened to it, is this: If you vote in favor of the Brogan proposal, you vote to adopt that proposal with all of its blemishes, willy-nilly, *ipso facto*—the whole works. I say you should vote that proposal down; then let us take up the Committee's Proposal, and if there should be blemishes here or there that should be extinguished, we can do it.

This Brogan proposal is really not an amendment; it is a complete Article. And I say, by all means, we must not vote in favor

of the Brogan proposal, and I say that with all respect and deference for the man, the author of that proposal.

PRESIDENT: Mrs. Miller.

MRS. GENE W. MILLER: I just want to get back to the pretty young girl in Senator Milton's office for one minute to say that had Senator Milton said, instead of the Ubrecht case or the Urbank case, the *Urback case,* she might have known what he was talking about.

(Laughter)

PRESIDENT: Is there further discussion on Amendment No. 1? . . . Dean Sommer?

MR. FRANK A. SOMMER: Mr. President and members of the Convention:

Ben Franklin in *Poor Richard's Almanac* said, "He that speaks much is much mistaken," and again he said, "You may talk too much on the best of subjects." And another has said, "One who knows most about the subject talks the least." I shall endeavor to keep these admonitions in mind as I proceed.

I want this Conveniton to understand clearly what the proposition is that is before you here. It involves substitution of a misnamed amendment for the Proposal that comes before you from this committee. Instead of designating it as an amendment we ought to refer to it as a sadly belated minority report which there was ample opportunity to present weeks ago.

I want also to declare, in answer to the gentleman from Hudson, that I am not a victim of propaganda nor are the members of this committee the victims of propaganda. I want to state that the reference to debunking the movement for judicial reform which is said to proceed from propaganda is wholly without foundation. As far back as 1892 I took a modest part in proposing judicial reform, and I had a modest part in connection with every movement or judicial report since that time, and my action was neither the result of propaganda nor was it propaganda. My action was induced by my belief that these reforms were required, and I am glad to have lived to see every one of the reforms suggested finally adopted.

I have no fear of the dire results that are prophesied from the proposed changes in the judicial structure. In every step that I have taken in judicial reform, I have found the same dire prophesies coming from certain members of the bar, and those prophesies have not proved verities.

Mr. President and gentlemen and ladies of the Convention: Notwithstanding what I have said, I think the bringing forward of this amendment in the form in which it was presented has served a good purpose. It put it in sharp contrast to other theories with respect to the reconstruction of the judicial system of this State. I

warn you, however, that the amendment proposed goes far beyond what has been indicated by the gentleman from Hudson. That it goes far beyond the point that he presented is evidenced by the analysis of the amendment and the Committee Proposal made by the vice-chairman of the committee. I have been told on the floor of this Convention, in the course of the discussion of this subject, that the Brogan amendment gives to this committee 90 per cent of what it seeks. I challenge that statement. As a matter of fact, the Brogan amendment strikes at the very heart of the Committee Proposal; it strikes at the fundamental principles underlying that Proposal. Please write the program of that committee in all of its essential parts.

Yes, it is true that the Brogan amendment does, as does the Committee Report, reconstruct the court of last resort; but the amendment leaves us far from a court of last resort as the committee envisioned that court—a strong court, a court in which there was centered the power of administration carrying with it responsibility for administration.

May I ask for a three minutes' recess?

PRESIDENT: I declare a three-minute recess.

MR. SCHENK: Why don't we declare our usual five minutes?

PRESIDENT: The chair will declare a recess until a quarter of four.

(Recess. The delegates reconvened a few minutes later.)

PRESIDENT: Will the delegates kindly take their seats?

Dean Sommer, will you continue?

MR. SOMMER: The point that I was making was that the proposed amendment did not give us a court of last resort that the committee envisioned. True, it gives us a smaller court; but it fails to confer upon that court powers of administration; it fails to confer upon that court what all those who have given thought to this subject believe is essential, namely, a broad rule-making power. It is true that there is conferred by this amendment upon a court of—another court—rule-making power, but the rule-making power that is conferred is restricted to the making of rules relating to the internal administration and the mechanism of the courts. The Proposal of the committee is broader; it makes a distinction between mere rules of administration and rules of broader aspect relating to practice and procedure.

The next great objective of the committee was to produce a simplified judicial system or structure. The Proposal of the committee does just that. The proposed amendment, on the contrary, creates greater complexity in the structure of the courts than now exists.

The purpose of the committee was to produce a unified court.

The Proposal of the committee will give us a unified court of original jurisdiction. The amendment gives lip service to that principle. It does not create a unified court, but in the guise of creating a unified court it in fact creates two courts within one. Why do I say two courts? Because provision is made that the appointments to the Chancery Division shall be made separately; provision is made that appointments to the Law Division shall be made separately. And then, remembering that the Committee Proposal and this amendment contemplate life tenure, the amendment provides that appointed to the Chancery Division, appointed to the Law Division, the appointee shall continue to serve there throughout his term, which may be the term of his life.

If I believed that the plan which the committee proposes would result in deterioration in the system of equity jurisprudence, I would oppose it to the bitter end. I do not so believe. So far as the provisions of the Committee Proposal are concerned, they leave the Chief Justice free in the administration of both parts of the court. They leave him free to make assignments, leave him free to permit one who has been assigned to the Equity Division and who is performing the work of that division effectively, to remain there indefinitely; but the Committee Proposal carries with it the proposition that failing effectively to perform his duties in that part, the Chief Justice may assign him elsewhere.

Now, I have heard a lot about the high repute in other states of the decisions of the Court of Chancery. I know that the decisions of the Court of Chancery deserve high repute. But I say to you that the decisions of our Court of Errors and Appeals likewise stand in high repute abroad, and deservedly so. I say to you that some of the leading cases in equity that are cited abroad are cases in which no equity judge took part, cases in which the equitable principles were worked out and applied by the law judges of the Court of Errors and Appeals.

The decisions of our Court of Chancery stand high, not because it is a separate court, but they stand high because of the ability and capacity of those who have served in that court. Now I am told that deterioration in equity will result through this combination. To me it is a strange thing to keep constantly referring to the great repute that the opinions of our Court of Chancery have in the neighboring states or in our sister states. In almost all of them we find that, notwithstanding the high repute of these opinions that have come from a separate Court of Chancery, the movement for the integration of the courts has proceeded to the point where there is practically no state except this State in which equity is administered in a separate tribunal. And it is a strange thing to me that if the opinions of the Court of Chancery are so highly

regarded as they are in the sister states, that it should follow, as Mr. Milton says, that in those sister states, notwithstanding the admiration they have for the opinions of our Court of Chancery, equity has deteriorated. There is something inconsistent in that line of argument.

I have some other things that I would have liked to have said to you. I shall refrain. Perhaps I will have an opportunity to say them in connection with the proposed amendments.

I want to close by simply submitting to you this proposition: You symbolize justice as a fair lady holding the scales of justice even. You symbolize that lady as blindfolded. I want that lady to continue to hold the scales of justice even, making certain of the equality of all before the law. But I want to take, and I think the Committee Proposal does take, that blinding band from off her eyes so that she can clearly see the end to her objective. At the present time that lady must tread a maze, a maze in which she sometimes becomes lost, a maze in which at least she has difficulty in finding her way out. The amendment makes the finding of that way out somewhat easier, but the Committee Proposal destroys that maze and lays out at the feet of this lady of justice a broad and plain highway. It avoids the detours that in the accomplishment of her objective she is required to take under our present judicial system—detours that she will be continued to be required to make under the proposed amendment.

I submit that the amendment should be defeated.

(Applause)

MR. WILLIAM J. ORCHARD: Mr. President, I call for the question.

(Chorus of "Question")

PRESIDENT: The question is called for. I will ask the Secretary to call the roll. All those in favor of the amendment will please say "Aye" as their names are called. Those opposed will please say "No" as their names are called.

SECRETARY *(calls the roll):*

AYES: Berry, Brogan, Camp, Delaney, Eggers, Ferry, Hansen, Jorgensen, Lord, Milton, Murphy, Naame, O'Mara, Schenk, Schlosser—15.

NAYS: Barton, Barus, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Emerson, Farley, Feller, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Morrissey, Murray, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty,

Randolph, Read, Sanford, Saunders, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young—63.

SECRETARY: 15 in the affirmative, 63 in the negative.

PRESIDENT: The amendment is not adopted. The chair now declares a five-minute recess.

(Recess until 4:10 P. M.)

PRESIDENT: Will the delegates kindly take their seats?

We will proceed with consideration of Amendment No. 2 of the group, which was introduced by Mr. Rafferty *(reading):*

> "Amendment proposed to Proposal No. 4-1, Article , Judicial, Section III, paragraph 3.
>
> Proposal No. 4-1, Article Judicial, Section III, paragraph 3 is amended to read as follows:
>
> '3. The General Court shall be divided into an Appellate Division, a Law Division, and an Equity Division. A Matrimonial Court having original jurisdiction in matrimonial causes and the incidentals thereof shall be included within the Equity Division. Each division shall have such Parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court.' "

Mr. Rafferty?

MR. JOHN J. RAFFERTY: Mr. President and delegates to the Convention:

The amendment which I propose would insert a sentence in paragraph 3, Section III of the Committee Report. It would expressly set forth within the Equity or Chancery Division a branch or part especially set aside to deal with matrimonial causes and the incidence of these causes.

The matter to which I speak is as much a matter concerning the field of human relations or the social sciences, so to speak, as it concerns the field of law. It would assure that those cases having to do with the marriage relationship would have original jurisdiction and be confined, except in the appellate stages, to a court of specialists in that field.

We have discussed specialization in the courts, and I think in no instance does it apply more than it should apply here. It has been estimated for the year 1945-1946 that there were 12,000 matrimonial cases introduced into the courts, and for the current year it has been estimated that this number has increased to approximately 18,000. You may compare this number of cases with the number, for instance, 15 years ago in 1933 when there were 3,600 matrimonial cases before the courts. I respectfully submit that there is no indication that the number of these causes will decrease in the immediate future. Certainly the most hopeful of those engaged in this work cannot predict at all that the number will decrease to the number of 3,600 that occurred in 1933.

Prior to the improvement in the administration of these affairs

in the courts, the matters were referred to an officer of the Chancery Court called a "special master," and with 3,600 cases there was a list of 200 "special masters" who heard these cases. The trial of these cases in those days was a most undignified procedure. Men who were not at all specialists in the marriage and divorce laws would arrange to hear these causes at a time convenient to them and not to the litigants. More often than not, these causes were heard in the offices of the special masters. Very frequently the special master himself was not present when the cause was being tried, but left it to a stenographer to take down the testimony and then at his convenience he reviewed the testimony and made a recommendation. The recommendation of this "special master" had to go to an Advisory Master of the court, and oftentimes it led to confusion, it led to lack of respect for courts if anything ever did lead to such lack of respect, and it led to injustice and general indignities in the law. This situation was remedied, and the Chancery Court set up within itself the system that is now called the Advisory Masters' courts.

I am not making any plea for the retention of the Advisory Masters' court, nor am I urging upon these delegates that any special form of procedure in dealing with these cases be set up. I am not urging anything other than that because it is in the field of human relations, and because there is such a great number of these cases, and further because there is every indication that this number will largely increase.

I respectfully urge upon the Convention that Article III, paragraph 3, be amended to recognize this tremendous situation in our social structure, to recognize that the history of nations has indicated that the breakdown in the marital relations, the breakdown in the home which is the unit of society, has always preceded the destruction of that nation. I respectfully urge upon you that it becomes our duty here and now, not alone with respect to the matters concerning the structure of courts, not alone with the science of law, but having in mind that this is the science of human relations in the law, that the Convention accede to the amendment which I suggest and that it determine here and now that it will recognize this situation and will assure that there is set up within the Equity or Chancery Division of the courts this division or this part.

Insofar as the administration of the divorce laws is concerned substantively, it is a simple matter. The law is not difficult. The law is clear and simple. More often than not, perhaps in the very, very great majority of cases, the issue is factual. There is seldom dispute about the law. Sometimes a jurisdictional dispute will occur, but that is not as between courts in this State, but rather as to

the status of one of the parties as to his residence in the State. Here is a field of law, of course, that is difficult and knotty. Sometimes these cases are carried to the United States Supreme Court on the question of residence and on the jurisdiction of the court that tried them.

It is not the design of my proposal to reform human relationships. Indeed, it is not, perhaps, within our power except as we may show by example to give any assistance in the reformation of human relationships, but the design is to insure stability, uniformity and certainty in the administration of this important phase of the law by setting up this court within the Equity Division of the court. This branch of equity, if you will, will tend to insure uniformity in the practice of this phase of the law. We will assure uniformity in the *quantum* and the quality of proofs that are presented to the judges who shall determine these cases.

I urge upon you, my dear friends, most respectfully that you give consideration to this amendment which I propose and that you assure that in this extremely important field there shall be this specialization in the administration of our judicial procedure that we have been discussing.

PRESIDENT: Mr. Jacobs.

MR. NATHAN L. JACOBS: On behalf of the Judiciary Committee I wish to oppose Amendment No. 2. The Committee Proposal leaves divorce cases exactly as they are now. They are now controlled by a statute which provides that they shall be heard by Advisory Masters within the Court of Chancery. We provide:

> "The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of the Constitution shall, each for the period of his term which remains unexpired at the time the Constitution is adopted, continue to do so as Advisory Masters to the Equity Division of the General Court, unless otherwise provided by law."

It is not our purpose to change that procedure in any degree. We haven't. The proposed amendment, however, will change it in a very significant degree. It will change it so as to avoid any future change, and raise jurisdictional problems within the court that is supposed to be stripped of these jurisdictional conflicts.

No one before our committee had suggested that we make a constitutional court of the court which hears matrimonial proceedings. This, as far as I know, is the first suggestion to us by anybody. I think it directly violates the purpose of the committee in permitting these things to remain flexible so that, as we grow, the court system grows with it.

I am not suggesting for a minute that we go back to any old system. That was bad. We have a much better system of handling divorce cases than we ever had before. Possibly some day the Chancery Division may evolve a better system. If so, I think it

should be permitted to do so within the structure that we set forth in our Judicial Article. On behalf of the Judiciary Committee I urge that you vote "No" to Amendment No. 2.

PRESIDENT: Any further discussion? . . . Judge Stanger?

MR. FRANCIS A. STANGER, JR.: May I address through you, Mr. President, a question to Dr. Jacobs? I notice it says the Advisory Masters shall be continued for the terms for which they were appointed. I am asking because I don't know, and not in an effort to make a point of some kind. What are the terms for which they are appointed, Dr. Jacobs?

MR. JACOBS: Seven-year terms. They are appointed by statute and we permit this to be regulated by statute.

MR. STANGER: Thank you.

PRESIDENT: Any further discussion? . . . Mr. Cowgill?

MR. JOSEPH W. COWGILL: Mr. President and members of the Convention:

I rise to support the amendment of the gentleman from Middlesex. While it is true that today the status of the Advisory Masters, or whoever hears matrimonial cases, is regulated by statute, it is equally possible that we can, under the Committee Proposal, revert to a system of special masters. If you revert to the system of special masters it would be a distinct step backward. I have heard it said that the Convention proposes to make amendments easier. The matrimonial courts are now, as has been said, only protected by statute. It seems to me that it is of sufficient importance that it go into the Constitution, and if the method can be improved upon by the simpler and easier method of amendment, that situation could be taken care of.

I do recall that at the time the last Chancellor was appointed there was considerable rumor that got into the press in my county to the effect that the Chancellor was going to recommend a return to the system of special masters. Fortunately, he did not. It seems to me that this Convention should realize the seriousness of this matrimonial case situation and put these Advisory Masters, or whatever you want to call them, into the Constitution. Certainly, if there can be an improved method it can be changed by amendment, and I urge your support for the amendment of the gentleman from Middlesex.

PRESIDENT: Mr. Clapp?

MR. ALFRED C. CLAPP: Mr. President, I cannot imagine that any delegate to the Convention disagrees with any of the sentiments expressed by Judge Rafferty. But does it follow that we need to establish a matrimonial court within the Chancery Division? A Constitution is necessarily an abbreviated instrument and some abbreviations require a glossary. What is meant by the word "parts" in this

very division that we are discussing? What is meant by the provision that the "Law Division and the Chancery Division shall each have such parts as may be provided by rules of the Supreme Court"?

I was the first to insert this idea in this language while working on the draft of the Hendrickson Commission report. The idea and language have been carried down to the 1944 proposed Constitution of the Legislature, and from there to this Proposal. I am not proud of the contribution, because it is awkward if you set up a court and divide it into divisions and then subdivide those subdivisions into parts; but it seems necessary, so to speak, to set up division within divisions if we are to preserve a separate Chancery Division and still provide for specialization within the division. I think it would go almost without saying that the proposed Chancery Division would sit in two or three parts. First, a general Equity Division; second, if there was enough business to warrant the setting up of a separate part, a Probate Division to attend to the work of the Prerogative Court and the construction of wills and trusts and the instruction of fiduciaries; third, a matrimonial part in which the Advisory Masters would sit.

It is, as I said a minute ago, rather awkward to say that a case is brought in the matrimonial part of the Chancery Division of the Superior Court, but how much more awkward is it so say that a case is brought in some part of the matrimonial court of the Equity Division of the Superior Court? The proposal bears against the committee's scheme. There is no need for it at all if there is set up, as there surely will be, a matrimonial part in the Chancery Division.

I am very critical of a system such as we have whereby the trial of property rights is relegated to superior judicial personnel and the trial of personal rights such as matrimonial rights is relegated to an inferior group. That, of course, was not the scheme of the 1844 Constitution. Under that Constitution the Chancellor himself must handle such business as contested matrimonial business. The force of historical circumstances with which you are all familiar has distorted our court scheme. I am hopeful that over the years this situation can be corrected. To my mind a divorce case is even more important to the State than a foreclosure suit. Certainly the judges handling divorce matters should be placed on the same plane as other equity judges, but the matters have come to such a pass that we would be foolhardy to attempt to reform matters at this point. The best we can do is to leave it as the committee has done, for legislative rectification in the future. This improvement, which every intelligent lawyer must look forward to, would not be aided but hindered by placing a matrimonial court within the division of another court. I urge the defeat of the proposed amendment.

PRESIDENT: Any further discussion on Amendment No. 2? . . . Judge Rafferty?

MR. RAFFERTY: I am to understand from the remarks of Mr. Jacobs and Mr. Clapp that it is the view of the committee that the matrimonial part or division, as we may call it, definitely is to be retained within the Chancery Division, and that, definitely, it is the view of the Committee on Judiciary that there is no thought or desire or purpose of return to the old special master system? I assume that is what they say.

PRESIDENT: Mr. Jacobs?

MR. JACOBS: On behalf of the committee, I can say that that is absolutely correct. It is not our purpose at all to go backward. We agree entirely with Mr. Rafferty that the present system is infinitely superior to the old system, and we hope it will be continued. However, possibly some day they will have a better system. We leave it to future developments.

PRESIDENT: Are you ready for the question? . . . Mr. Jorgensen?

MR. CHRISTIAN J. JORGENSEN: I would like to ask a question of Mr. Jacobs.

PRESIDENT: Mr. Jacobs.

MR. JORGENSEN: I notice from a reading of the pertinent section of your draft, sir, that you have provided that the Chief Justice shall assign judges of the General Court to the divisions and parts. Now, it seems to me from a clear reading of the language that your Schedule, as you have it set up, in which your Advisory Master shall be a judge of the part, is in contradiction to the direct clause of your Article.

MR. JACOBS: No, our purpose was to continue them exactly as they are now, namely, Advisory Masters to the Chancery Division of the Superior Court, leaving to legislation the permanent framework, which we assume will be enacted at an early date.

MR. JORGENSEN: I understand your purpose, Mr. Jacobs, through you, Mr. President, but I still say that from a clear reading of the language, the constitutional language will defeat the parts of your Schedule. I seriously doubt that what you prefer to have done, according to your Schedule, you can have done under your Article. That is the reason I raised the question.

MR. JACOBS: I have no doubt, Mr. Jorgensen, through you, Mr. President, that the Schedule will not fall by virtue of the Constitutional Article. They are adopted together.

PRESIDENT: We will call the question on this. All in favor of Amendment No. 2, please say "Aye."

(A minority of "Ayes")

PRESIDENT: Opposed?

(Loud chorus of "Noes")

PRESIDENT: The amendment is not adopted.

We will proceed, then, to consideration of Amendment No. 3 by Judge Stanger, which I shall read *(reading):*

> "Amend paragraph 4 of the Schedule on page 5 by striking out the words on lines 3, 4, 5 and 6 thereof, 'save that, until otherwise provided by law, the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished when the Judicial Article of this Constitution takes effect'; and also by striking out the word 'and' and the word 'further' on line 6, so that the paragraph shall read as follows:
>
> 'Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraphs 2 and 3 hereof, shall continue as if this Constitution had not been adopted, save that the Orphans' Court, Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each county shall thereafter be designated the County Court of that county. Until otherwise provided by law, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraphs 2 and 3 hereof, and the employees of said officers, clerks, surrogates and courts shall continue in the exercise of their duties, as if this Constitution had not been adopted.' "

Judge Stanger?

MR. STANGER: Mr. President, the reading certainly is self-explanatory of the proposed amendment. The exact purpose is to give Common Pleas Courts continued civil jurisdiction. I think, however, a further provision should be inserted, because if this amendment is adopted it leaves the litigant without appeal from the County Court. With the permission of the Convention, I should like to have inserted after the word "county," the words "Appeals may be taken from the County Court to the Supreme Court in capital causes and in other causes to the Appellate Division of the Superior or the General Court," whatever name shall be established. I mean, I am adding those words—either to "the Superior or the General Court" as the Committee on Arrangement and Form shall provide.

Now, Mr. President, with permission to insert those words, I am calling to your attention, as I think you mentioned, that Amendment No. 5, as proposed by Judge Smalley, is to the same effect—with the exception of the new addition that I have placed in there, and which has been placed in after conference with Mr. Schlosser, who called my attention to the fact that the right of appeal from County Courts was not present—as in Amendment No. 8, as introduced by Dean Sommer. I understand these amendments, all being of the same import, have the approval of the Judiciary Committee. I yield now to Dr. Jacobs who speaks for the Judiciary Committee.

PRESIDENT: Mr. Jacobs?

MR. JACOBS: I might suggest that we defer consideration of these amendments until after the other amendments are considered, primarily because I haven't seen the additional language. From the brief reading I don't think that our committee in any wise objects to them, but I would like to see how they fit into the proposed amendments. So if it is agreeable, I suggest that we go on to Amendment No. 4 and defer Amendments Nos. 3 and 5 until the committee amendments come along, which will be Amendments Nos. 8 and 9.

PRESIDENT: Unless there is some objection, we shall proceed to the consideration of Amendment No. 4. Judge Stanger?

MR. STANGER: Mr. President, the purpose of this amendment—

PRESIDENT: Do you care to have me read it, or is it all right?

MR. STANGER: Shall it be read? I will be glad to have it read from the platform, Mr. President.

PRESIDENT *(reading):*

> "Amend the Schedule to Proposal No. 4-1 beginning on page 6 by adding a new paragraph to read as follows:
>
> '6A. All Special Masters in Chancery, Masters in Chancery, Supreme Court Commissioners and Supreme Court Examiners shall, until otherwise provided by rules of the Supreme Court, continue respectively as Special Masters, Masters, Commissioners and Examiners of the General Court, with appropriate similar functions and powers, as if this Constitution had not been adopted.' "

MR. STANGER: Mr. President, I move the adoption of this amendment, feeling that I need not call to the attention of the lawyers present the necessity for it; because it is very necessary, as they well know, in all law offices and in the administration of the work of the Supreme Court and in the work of the Court of Chancery that Special Masters, Masters, Supreme Court Commissioners and Supreme Court Examiners be continued. It is not included in the draft of the Judiciary Article as now presented to this Convention and I understand it has the approval of the Judiciary Committee. Without further words, I move its adoption, Mr. President.

PRESIDENT: Mr. Jacobs?

MR. JACOBS: On behalf of the Judiciary Committee, I might say that we approve Amendment No. 4. It was not our intention to terminate the authorities of the Masters referred to.

PRESIDENT: Are you ready for the question?

All in favor of Amendment No. 4, by Judge Stanger, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is carried.

We will proceed then to Amendment No. 6, submitted by Judge Carey *(reading):*

> "Paragraph 3, Section 5, (page 7) of the report from the Committee on the Judiciary shall be amended in this respect: Wherever the words '70 years' appear in said paragraph, said words shall be stricken out and in place thereof shall be inserted the words '75 years.' "

Judge Carey?

MR. ROBERT CAREY: Mr. President, I am going to talk to you for just a moment—I have been watching the clock—on a very, very simple note. It's so simple that sometimes we step overboard without realizing just the type of a mistake we are making.

I am here to advocate that the retirement age of judges of our higher courts, particularly, should be fixed not at 70 years, as reported by the Committee, but at 75 at the lowest.

I want to say this: In all my experience at the bar—I have been practicing law for 53 years—I have been before all the courts in this State during these years, I have met all the judges, and I have found that invariably the judges who have made a dent and an impression upon me and upon the community were the judges who had reached a matured life or a matured time in life and who have the judgment that comes with the years. Back in the early days we used to say: "Three score years and ten"—that was 2,000 years ago. The insurance men today say that the man of 70 is not a day older than the man of 60 of 40 years ago, and we see that in all our relationships. But there was never a better demonstration ever presented to a body of men, that what I am arguing for is correct, than the demonstration we had here today when one of the greatest lawyers of our State, now just about to reach the age of 75, coming here from a sick bed to help out in the work of this Convention, steps up here and he puts all the rest of us, no matter what our years, to shame by the splendid picture he presented when he finished that oration on the floor today. Oh, if he were a judge on the Supreme Court bench today, away from the forensic activity of the arena, up in the quiet and the seclusion of the bench—is there a single man or woman in this place who would want him then, even at 75, removed from his place on the bench?

That's a wonderful argument. No better speech have we heard in this Convention than he gave after his slight physical ailment had disabled him for a few moments. As I look over the picture of things, who have been the great judges in the United States in our time? Men like Charles Hughes were writing their opinions until they were 80. Men like Holmes, who wrote his finest opinions between 80 and 89. Great men all of them. Can we look back to a little while ago when almost every judge on the Supreme Court bench of the United States was over 70 years of age, and a distin-

guished President who is now gone said: "The nine old men must go." Well, they went in the course of the years and we have a new age down there now. Oh, don't we all wish we could have the old court back again, with men like Charles Hughes sitting there giving justice to the people of our land?

I have never yet heard a complaint from anybody about any judge on account of his age, if he's in his right health and in his right mind. A judge who is not in his right health or right mind, no matter what his age, should not be kept upon the bench of our high courts.

I can speak freely thus, Mr. President, because it means nothing to me. I can never be a judge in New Jersey again. The Dean and I celebrate our 75th birthdays together in September. It means nothing to us, this 75-year proposition that I make. But I think it means an awful lot to the high courts of our State. The average man doesn't get up in the high places until he is over 60 years of age. He hardly gets to find his moorings before his 70th birthday comes. See what's going to happen now? Put this law through with a 70-year limitation and men like Clarence Case, our present Chief Justice, one of the ablest lawyers in the State, full of youth, full of vigor, what will he become in the course of the next year and a half? Just a lazy out-of-work lawyer who has finished his job on earth. And there are lots of others just like him. Vice-Chancellors and other judges in all the courts. There are a lot of them, 65 and 68 and 69 years old now—some of them right here in this room, for whom those few years will slip rapidly by. It will make lazy, legal loafers of all of them.

Oh, gentlemen, let's change this; let's use our heads; let's use our brains. There are half a dozen delegates in this Convention right now who are over 70 years of age, and most of them are not altogether impracticable and silly fools. Let's keep our good judges where we can use them. Thomas Edison didn't stop at 70. Benjamin Franklin didn't stop at 70. The Dean didn't stop at 70. And the Dean's friend hasn't stopped yet. I'm getting ready for my last 25 years. I am practicing law ten hours a day and I feel just as healthy and serene in the practice of my profession as I did when I passed my 70th birthday. It doesn't mean much to you today. It can mean a lot to you in the future,—even those of you who are hopeful, perhaps, of filling the places that these 70-year-old men may have to lose.

Let's look to the future. It's the same for all of us. God's been good to America. He has been good to our bar. New Jersey is a wonderful State, isn't it? Let's keep things going as they have been. Let's not retire men like Bill Read or don't even retire me. Thank you very much.

PRESIDENT: Mr. Jacobs?

MR. JACOBS: Mr. President: Dean Sommer wanted especially to talk on this particular issue and told me that by no means should I pass him if I could avoid it. In the light of that fact and in the light of the fact that he will not be able to speak this afternoon, I would like to have the matter held over until tomorrow, and I move that we adjourn for today.

PRESIDENT: Will the Dean be here tomorrow morning, Mr. Jacobs?

MR. JACOBS: The Dean expects to be here tomorrow morning.

(Motion seconded by a number of delegates)

PRESIDENT: There is a motion to adjourn until tomorrow morning at ten o'clock. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed "No."

(Silence)

PRESIDENT: We stand adjourned.

(The session adjourned at 5:05 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Tuesday, August 19, 1947

(Morning session)

(The session started at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats?

The Reverend G. M. Plaskett, who is a friend of Mr. Randolph and who is Rector of the Epiphany Episcopal Church in Orange, was to have pronounced the invocation this morning. However, he inadvertently took a train from Newark that made its first stop at Trenton, so he will not be with us, much to our regret. Judge Stanger has agreed to pronounce the invocation in his place. Judge Stanger . . . Will the delegates and the spectators please rise?

MR. FRANCIS A. STANGER, JR.: I am wondering this morning if we cannot each one in his own way, as we reverently bow, thank God for the success of our undertaking thus far, and ask divine guidance until we shall have completed a Constitution of which this State and its people will be proud. Shall we do it in a moment of silence, if you please?

(Silence)

Our Father, we thank Thee for the lives and the integrity of these delegates and for their interest in our State and in the lives of other people. May the work of our hearts, our minds and our hands, not transgress Thy law of love, and may the document that we shall create prove a blessing for today, for tomorrow, for ourselves, and for lives yet unborn. Amen.

PRESIDENT: The next order of business on the docket is the reading of the Journal.

FROM THE FLOOR: I move it be dispensed with.

FROM THE FLOOR: Second it.

PRESIDENT: You have heard the motion. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following persons answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Feller, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: A quorum is present, sir.

PRESIDENT: The Secretary reports a quorum present. May I ask if there are any petitions, memorials or remonstrances to be presented?

(Silence)

PRESIDENT: Or motions and resolutions? . . . Mr. Dixon.

MR. AMOS F. DIXON: I have a resolution, which I wish to hand to the Secretary to read.

SECRETARY *(reading):*

> "RESOLVED, that when today's session of this Convention adjourn it be to meet at 10:00 A.M. on Wednesday, August 20th."

MR. DIXON: I move the motion.

PRESIDENT: Motion seconded?

FROM THE FLOOR: Second.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. We will meet tomorrow at 10:00 o'clock. Judge Drewen.

MR. JOHN DREWEN: I have a resolution to offer, Mr. President. It's in process of typing now, and I assume will be ready sometime in the course of the morning, or at the conclusion of the morning session.

PRESIDENT: We'll arrange for that. Are there any more amendments to be offered at this time, to any of the Proposals? Judge Rafferty.

MR. JOHN J. RAFFERTY: Mr. President and delegates:

I propose an amendment to Committee Proposal No. 4-1. The effect of this amendment[1] would be to strike out paragraph 6 of the Schedule, which refers to the retention of Advisory Masters,

[1] Amendment No. 17 to Committee Proposal No. 4-1. The text of this and other amendments appears in the Appendix in Vol. 2.

and transfer that to paragraph 1 of the Schedule, line 7, by inserting after the words "Court of Errors and Appeals" the words "and Advisory Masters of the Court of Chancery"; so that line 7 of paragraph 1 will read,

> "Court of Errors and Appeals and Advisory Masters of the Court of Chancery as have been permitted to practice within this State."

PRESIDENT: Are there other amendments to be offered at this time?

(Silence)

PRESIDENT: If not we will proceed with consideration of the amendments to the Judiciary Article. I'd like to ask Mr. Jacobs whether he cares to make any preliminary statement.

MR. NATHAN L. JACOBS: The only statement I'd like to make is that we would like to have the discussion of the Carey amendment deferred until later in the morning, when probably Dean Sommer will be in position to respond. I suggest that we proceed with the following amendment.

PRESIDENT: We will proceed, then, with the consideration of Amendment No. 7 by Mr. Emerson, which I shall read as follows *(reading):*

> "Amend, page 3, Section V, Paragraph 1, line 4, by inserting after the word 'municipality' the following: 'Judges of the General Court shall be appointed to a respective division thereof and shall not be transferred to any other division except as herein otherwise provided.'
>
> Amend page 4, Section VI, Paragraph 2, lines 1 to 5, by striking out those lines and inserting in lieu thereof the following: '2. The Chief Justice of the Supreme Court may assign judges of the General Court to the Appellate Division from time to time as need appears, for such time as may be fixed by the rules of the Supreme Court, and may reassign such Judges to the division of the General Court to which they were appointed."

Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. President, the object of this amendment, of course, is to have the proper assignment of judges. In the discussion yesterday on the Amendment No. 1, I fully covered the subject matter so far as I am concerned. I don't think that I should repeat what I said yesterday. I'll save the members of the Convention that inconvenience, and I submit it.

PRESIDENT: Is there discussion on Amendment No. 7? . . . Mr. Jacobs.

MR. JACOBS: In behalf of the committee, I wish to point out that this goes to the very heart of our discussion all day yesterday. All of the members of the committee, with the exception of one, are strongly opposed to this amendment, and we urge that you vote "No." I shall not take your time by repeating all of the arguments which were mentioned yesterday, but I'd like to recall to you that we stressed the issue of flexibility, which this completely removes

insofar as the assignment of judges is concerned. It straight-jackets the future administration of the courts, so that regardless of how compelling the reason, the judge must be assigned, and mind you, under the life tenure provision, ultimately for life, to the particular assignment which he first received. We urge that you vote "No" on this amendment.

PRESIDENT: Mr. Jorgensen.

MR. CHRISTIAN J. JORGENSEN: Ladies and gentlemen of the Convention:

It has become apparent now that the Committee Article has no appendages other than a heart, because every time something is suggested by way of an amendment, whether some of us believe it to be an improvement upon it or not, we are warned that we are striking at the very heart of this Committee Proposal.

I want to say at the outset, ladies and gentlemen, that so far in this Convention we have all been very fair to each other. We have tried, and I think honestly and sincerely, all, to do a good job. Most of the Proposals so far from committees have received floor amendments, and I think without question that those amendments as adopted by this Convention were substantial improvements upon the original drafts. It has been said in this Convention that we are here to break tradition. I submit, ladies and gentlemen, that that is a correct statement, but we are not here to break tradition except where tradition would shackle progress. We should not ignore tradition; we should not throw away a great heritage and quite possibly destroy a very essential part, not only of our jurisprudence, but of our way of life, just for the sheer sake of breaking with tradition.

Our right to seek equity and to have equity done is traditional. In this State of ours it is one of our greatest heritages. Let us do nothing here in this Convention that can possibly weaken its full continuation. No doubt we need a well-rounded court system, one that will provide for expeditious treatment of all matters, but even more important, one that will provide for full and complete justice by jurists learned in the law and specialists in their division.

There is no secret formula, of course, for the making of equity judges. Many of our very able equity judges came from the law courts. I venture to say that if these men were questioned, most of them, if not all of them, would tell you that they found the administration of equity difficult at first, until they had had the experience in that capacity to benefit them. I don't believe that anyone here would dare to contend that specialization is not advantageous, that specialization is not productive of better decisions. Certainly a judge sitting permanently in the Appellate Division, or the Chancery Division, or the Law Division becomes more expert,

more efficient, more proficient, and necessarily more respected. This is the age of specialization. It is possible, I suppose, that we can adapt ourselves to do a passable job in different capacities, and in more than one field, but no one can be an expert, a specialist, in all branches of the law.

I say to you, ladies and gentlemen, that the benefits of the division of labor must be obvious to all but the wilfully undiscerning. Dean Roscoe Pound, one of the invited witnesses to appear before the Judiciary Committee, in speaking for unification, called the *New Jersey Equity Reports* "a joy forever," and he expressed concern in his testimony before that committee lest any proposal would, and I quote him, "result in any diminution of that splendid development of equity that is going on here." As he pointed out, "After all, equity is the most important part of the Anglo-American system of administering justice. It is increasingly important today."

The Dean in his work on the organization of courts condemned as wasted judicial power the rotation of judges, pointing out that each spent valuable time in learning the art of handling special classes of judicial work, only to be assigned to some other special class where it was necessary to learn a new art. To quote the Dean again, "The specialists would act with assurance and decision; one who came fresh to a special field had to proceed painfully and cautiously."

It must likewise be apparent that the Appellate Division should be on a higher level than the trial courts. By that I don't mean necessarily that the system of having it as a division is bad, but we should not permit of the possibility that the trial judge in a certain cause might, by virtue of this assignment or rotation, appear on the appellate bench in the same cause. Lawyers and litigants both like to feel that in an appeal they are going to a higher court, and not just to another room in the clubhouse. Wouldn't it be a horrible situation if there developed within the walls of this clubhouse—an unconscious development, perhaps—a mutual admiration society? Or even the converse, with the personal friction that might develop. In my opinion, it is of tremendous importance that this Appellate Division be protected. After all, this Appellate Division is going to be the court of last resort in most cases. New York has the freedom of assignment, or the rotation plan, and those of us who have had experience in the law in this State and experience with transferring causes to be handled by lawyers in New York, we know that very often they jockey their cases around so that they will inherit a different judge in another term. The reason is obvious.

Would not assignment and transfer at will permit of this further danger, or at least a threat of danger? Suppose that in the future a matter was coming up in one of the divisions and powerful forces

or individuals did not want the then assigned judge or judges to hear it. I say they *might,* and please note the emphasis on the "might," be able to succeed in having an assignment or transfer effected. Permanent assignment would prevent any such possible court manipulation.

In my statements I do not want to be misunderstood by anyone. I do not challenge the integrity of any future judge or any future Chief Justice, but in cautioning you against leaving the door open let me quote Dean Sommer when he addressed this Convention the other day on the possible danger of submitting the gambling alternatives. The Dean stated, and I quote him, "I have a profound respect for our courts, but they are human." The Dean questioned, at that particular time, whether their interest, to quote him, "will not color their determination." I say to you, ladies and gentlemen, that flexibility may be an admirable attribute in many things, but human flexibility and responsiveness can be highly undesirable. Abrupt about-faces are always viewed with skepticism.

Integration and permanent assignment for specialization are not inconsistent. If permanent assignment is at all dangerous, or if it is at all inadvisable, then please tell me why the committee permanently and for life assigns the men to the top court without any trial period. Certainly, this is an inconsistent position. It does this notwithstanding that the appointee to the top court may never have had any previous judicial experience. If a judge is incompetent—and the fact that he may be incompetent is urged as one of the reasons for permitting the Chief Justice to transfer him at liberty—would he be any less incompetent in any of the other divisions?

Notwithstanding intimations to the contrary, let me tell you this: permanent assignment does not invite jurisdictional problems. Is it the committee's intention that no matter what type of suit is started, and no matter in what division that suit is started, that it shall then and there be determined? I doubt that, but that's a possibility under their plan. We must be very careful that we do not make New Jersey a haven for sloppy practitioners.

By way of conclusion, let me remind you that whether in business or in court administration, there is no more effective way to break the morale and force the resignation of a worker or a judge than to put him on a merry-go-round of assignments.

The committee says that they mean by the words "as need appears" in their draft, only to take care of temporary situations. I say to you, if that is what they mean, why don't they say so?

PRESIDENT: Mr. Smith.

MR. GEORGE F. SMITH: It has been well said this morning, Mr. President and ladies and gentlemen of the Convention, that

this subject was well covered yesterday. I submit to you that Delegate Jorgensen has drawn some strange conclusions from the Article as submitted by the committee.

I oppose the amendment on a different ground. We have talked at some length about the need for flexibility and for ample authority in the Chief Justice, and I oppose the amendment on those grounds. But I also oppose the amendment because it, in fact, endangers the Chancery Division which we all cherish and hold dear. The problem specifically in respect to the Chancery Division is, as you all know, that there is no reservoir of equity judicial experience from which to draw our Chancery judges. They're drawn, and have been drawn, from the law division or from the bar. Not until the appointee is assigned to the Chancery bench is there anyway to know whether or not he meets the qualifications of that assignment.

Now, since human judgment is not infallible, and since mistakes in such appointments may be made, is it to be suggested, as this amendment proposes, that a misfit on that bench is to be frozen there for seven years, the term of the initial assignment, or worse still, if he shows his unfitness after he has qualified for life tenure, is he to be frozen on the Chancery bench for life? I submit to you that that will be seriously jeopardizing the Chancery Division.

I listened with considerable interest yesterday to the views on both sides of the question about the remarkable work of Chancellor Green who, you remember, came from the law division. Is it proposed, as in fact the amendment does provide, that hereafter judges from the Law Division may not be assigned to the Chancery Division? That's what the amendment proposes. In fact, the language as spelled out in the amendment says in substance that hereafter the judges in the Chancery Division must be drawn from the bar and from the inferior courts, and that the judges who have wide experience, those who will be in our Superior Court in the Law Division, the future Chancellor Greens, shall not be considered. It is simply another illustration of the half thought-through proposal that we have before us.

I submit again to you that this amendment will seriously jeopardize the future of our Chancery Division, and I urge its rejection.

PRESIDENT: Colonel Walton.

MR. GEORGE H. WALTON: Mr. President and fellow delegates:

To my mind the Emerson amendment is the main point that I was opposed to yesterday in the Brogan amendment. It destroys the flexibility which I think is a very important part of the Committee Proposal. I don't think that there is any necessity for a great deal

of debate on the subject, because I think we covered it yesterday, but I intend voting against this amendment and I hope the other delegates will do likewise.

PRESIDENT: Is there further discussion on Amendment No. 7?

(Silence)

PRESIDENT: Are you ready for the question?

(A number of the delegates answered "Yes")

PRESIDENT: All in favor of the amendment, please say "Aye."

(A minority of "Ayes")

PRESIDENT: All opposed say "No."

(Chorus of "Noes")

PRESIDENT: The amendment is lost . . . The chair will recognize Judge Drewen.

MR. DREWEN: The amendment[1] I referred to not long ago is now in the hands of the Secretary, and I move its adoption.

SECRETARY: Do you want me to read it for you?

MR. DREWEN: Yes, please.

SECRETARY: Resolution proposed by Mr. Drewen *(reading):*

"RESOLVED, that Committee Proposal No. 4-1 be amended to read as follows:

Change Section I, paragraph 1, so that the same shall read as follows:

'The judicial power shall be vested in a Supreme Court, a General Court, County Courts and Inferior Courts of limited jurisdiction. The Inferior Courts and their jurisdiction may from time to time be established, altered or abolished by law.'

That Section V, paragraph 2 be amended by inserting after the word 'Court,' in line 2, the words 'and the Judges of the respective County Courts.' And by adding to Section I additional paragraphs which shall read as follows:

'2. There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and such other jurisdiction consistent with this Constitution as may be conferred by law.

'3. There shall be a Judge of each County Court and such additional Judges as shall be provided by law.

'4. Each Judge of the County Court may exercise the jurisdiction of the County Court.

'5. The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered or transferred by Legislature as the public good may require.' "

PRESIDENT: We will proceed to the consideration of Amendment No. 8, introduced by Dean Sommer, which reads as follows *(reading):*

"Amend page 5, paragraph 4, lines 3 to 9, after the word 'adopted' by striking out the following:

"save that, until otherwise provided by law, the jurisdiction of the Courts of Common Pleas over civil actions at law shall be abolished

[1] Amendment No. 16 to Committee Proposal No. 4-1.

when the Judicial Article of this Constitution takes effect; and save, further, that the Orphans' Court, Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each county shall thereafter be designated the County Court of that county.'

And in lieu thereof, insert the following:

'From and after the taking effect of the Judicial Article of this Constitution and until otherwise provided by law, the Court of Common Pleas, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions and Orphans' Court of each county shall be designated the County Court of that county.'

Amend page 6, paragraph 7, sub-paragraph (e), lines 16 and 17, by striking out the following:

'and, until otherwise provided by law, all civil actions at law pending in the Court of Common Pleas.' "

Mr. Jacobs?

MR. JACOBS: I may say that this amendment is in substance identical with the amendments heretofore introduced by Judge Stanger and Judge Smalley. Judge Stanger yesterday submitted an additional sentence which we would like to offer as an amendment to the amendment, which reads as follows:

"Amend page 5, paragraph 4, line 9, by inserting a sentence after the word 'county' reading:

'Appeals may be taken from a County Court to the Supreme Court in capital causes and in other causes to the Appellate Division of the Superior Court.' "

In brief, the original Committee Proposal continues the County Court, subject to law, with criminal and probate jurisdiction, but provides that the civil jurisdiction shall not be exercised by the County Court unless otherwise provided by law.

The amendment now proposed by the committee is to restore to the County Court its civil jurisdiction. The net result will be that the County Court will exercise all jurisdiction, as heretofore.

The additional sentence which has just been included provides that appeals from the County Court may be taken to the Appellate Division of the Superior Court, and in capital causes directly to the Supreme Court.

I move the amendment.

(Motion seconded)

PRESIDENT: You have heard the amendment to the amendment. Is there any discussion?

(Silence)

PRESIDENT: Will all in favor please say "Aye"?

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The amendment to the amendment is adopted.

MR. JACOBS: I would like to move the amendment itself.

FROM THE FLOOR: Question!

PRESIDENT: Is there any discussion on Amendment No. 8, as amended?

FROM THE FLOOR: Question!

PRESIDENT: Are you ready for the question?

(A number of the delegates answered "Yes")

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT : The amendment is adopted.

The chair recognizes Mr. Smalley.

MR. RALPH J. SMALLEY: Mr. President, in view of the fact that Amendment No. 8 in substance covers entirely what I propose in No. 5, I would like the privilege of withdrawing Amendment No. 5.

PRESIDENT: We shall then proceed to the consideration of Amendment No. 9 presented by Dean Sommer, which I shall read if requested. It is fairly long, but you all have copies in your hands and I shall not read it unless requested.[1]

Mr. Jacobs?

MR. JACOBS: Amendment No. 9 is a series of amendments which was referred to yesterday.

The first changes the name of the General Court to Superior Court, and the name Equity Division to Chancery Division.

The second inserts a special provision to the effect that in case the Chief Justice is absent or unable to serve, a presiding Justice, designated in accordance with rules of the Supreme Court, shall serve temporarily in his stead.

The third amends Section III, paragraph 2, so that it now reads: "The Superior Court shall have original jurisdiction throughout the State in all causes." That is intended primarily to take care of the occasional cases in which the state-wide General Court exercises criminal jurisdiction—for example, charging the grand jury and other related matters—and also to take care of occasional cases where probate jurisdiction is exercised in the General Court.

The fourth is a correction in punctuation.

The fifth is a modification of the provision relating to certification of appeals directly to the Supreme Court. It was suggested to the committee that in its original form the Supreme Court might be overburdened with many certifications from lower courts, including district courts and other courts of that nature. It has been

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

rephrased to provide that the Supreme Court will entertain direct appeals on certifications to the Appellate Division and, where it provides by its own rules, to the inferior courts.

The sixth inserts the provision "on pension as provided by law," to the paragraph which relates to retirement by the Governor pursuant to action of a commission after certification by the Supreme Court.

The seventh, eighth and ninth relate to the change which turns back to the Superior Court the jurisdiction of the Prerogative Court.

The last one amends the final paragraph in the Schedule so as to provide that until the entire Judicial Article takes effect no changes shall be made except that if vacancies occur in the new courts which are created then the Governor may fill those vacancies; and except, further, that such preparatory acts as may be necessary may be done prior to the effective date of the Article itself.

I move the amendment.

(Motion seconded)

PRESIDENT: Is there any discussion? . . . Mr. Jorgensen.

MR. JORGENSEN: Through you, Mr. President, I would like to question Mr. Jacobs on the provision in paragraph 6 of the amendment.

I take it that it is the intention of the committee that that shall be flexible and the Legislature may from time to time provide the pension. I am wondering whether or not the insertion as it is presently, "on pension as provided by law," may not perhaps freeze the present law with respect to judges' pensions, and I am wondering whether or not it would be agreeable to accept an amendment to that so as to read: "on pension as may be provided by law."

MR. JACOBS: I have no objection to that amendment.

PRESIDENT: May we have that wording again, Mr. Jorgensen?

MR. JORGENSEN: It's "on pension as may be provided by law," instead of "on pension as provided by law."

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted.

MR. JACOBS: Mr. President, I think Dean Sommer is ready to speak on the amendment which had been deferred for later consideration.

PRESIDENT: Was that Amendment No. 6, Mr. Jacobs?

MR. JACOBS: That's right.

PRESIDENT: We shall then proceed with the consideration of Amendment No. 6, submitted by Delegate Carey, which reads as follows:

> "Paragraph 3, Section 5 (page 7) of the report from the Committee on the Judiciary shall be amended in this respect: wherever the words '70 years' appear in said paragraph, said words shall be stricken out and in place thereof shall be inserted the words '75 years.'"

Dean Sommer?

MR. FRANK H. SOMMER: Mr. President and members of the Convention:

I regret that I did not hear the supporting statement made by Mr. Carey, but I can surmise because of his emotional nature the lines that that amendment took—the lines that that statement took because of his sympathy for old and young alike. But, Mr. President, I offer Robert Carey of Hudson, and myself as Exhibits A and B as to why this amendment should not be adopted. If we provide for voluntary retirement at 70, assuming that he and I occupy judicial positions, can you imagine our resigning voluntarily on our own conviction of our incompetency to continue? Oh, no! We'll wait until 75.

But just a word or two more. Seriously, I think this amendment ought not to carry. I base it upon my own administrative experience in educational affairs. I came upon a most unhappy situation where heartstrings pulled one way and duty the other, where there ought to have been a removal and the removal was not made, where there was no arbitrary rule for termination of service. Well, I framed the rule for retirement in that educational institution. I fixed the age of voluntarily retirement at 65, and I fixed the age of mandatory retirement at 70, and I was the first victim of that rule.

I know you have talked about Justice Beasley and Justice Gummere in this State, and Hughes, Holmes and Brandeis, on the federal courts, serving effectively beyond seventy. Yet they are the exceptions to most cases.

Now, Mr. President, twice in the history of this nation failure in the Constitution of the United States of a provision for retirement brought this nation to the verge of the chasm of disaster. Twice when grave questions were presented to the United States Supreme Court the decision, for all practical purposes, rested in the hands of a man whom his associates upon the bench regarded as mentally incompetent. In the first of these cases a judge of the court, a close friend of the judge whose mentality was in question, was delegated by the court to see him and persuade him to step aside. He refused. Some years later this same judge, who had been

designated to use his powers of persuasion in this matter, likewise became mentally incompetent and a friend of his upon the court was assigned to talk to him, to persuade him to withdraw. That friend called his attention to the fact that years previously he had himself under like circumstances gone and asked an associate on behalf of the court to retire, and his answer was, a characteristic answer: "Yes, I did, but I never did a dirtier day's work in my life." That's human reaction in these situations.

It's that situation I would avoid. But I would avoid that situation for another reason. I would avoid it in the interest of the younger men. The life span is growing. You find more and more men attaining the age of 70 years, and the age of 75 years, with all the attending ills that come with advanced age. What I would like to see is the age for retirement fixed at 70 so as to bring in some instances at least five years nearer the possibility of a younger man rendering his service on the bench.

I hope that this amendment will not be adopted.

MR. WILLIAM T. READ: Mr. President.

PRESIDENT: Mr. Read.

MR. READ: Mr. President and fellow delegates:

I rise first for a point of information for you, not for myself. Driving up this morning I listened to radio station WOR. I heard that radio station broadcast its birthday greeting to one Bernard M. Baruch on his 77th birthday. I could not help but think of this amendment when I came, and I felt that there was a man young and virile at 77.

However, to put a personal note into this matter, I want to call your attention to a fairly young State Treasurer who back in 1928 said he did not choose to run. Unfortunately, another gentleman in the White House said the same thing and the State Treasurer's words were drowned out or forgotten. Calvin Coolidge's words go on and mine did not prevail—so much so that although I tried to retire back in 1928, at a fairly advanced age, every four years the Republican Party goes back in the stable and takes off the blanket and trots me out to a Republican National Convention. So much so that when I meet Ollie Randolph there, as I have here, I say: "Ollie, we now have conventionitis all over again."

Now, I am afraid if you don't keep the blanket on permanently what will happen is that your men between 70 and 75 will have a brief on one side and be an exhibit on the other.

I suggest, delegates, that we defeat this amendment in order that those over 70 may enjoy the things which Cicero in his *De Senectute* so nicely hands out for the fruits of old age for ourselves.

PRESIDENT: Judge Carey.

MR. ROBERT CAREY: Gentlemen, I feel that I have got to make a response to some of the things that have been said. I don't know whether I am exhibit A or exhibit B, but that is a matter of absolutely no consequence here today because under the Constitution, as I stated yesterday, no matter how it's fixed, exhibit A or exhibit B will be on the sidewalk.

Now, let's look at this picture just a little further. I read the Scriptures last night when I went home. I thought I might get some help there, to see what the exercise of wisdom of the delegates of this Convention ought to be. I find this Scripture says: "Young men for action, old men for counsel and for judgment."

Mr. Chairman, you are probably the only man in the room who will know whether I am quoting the Scripture rightly or not. But outside of that, that's what was said in the old Biblical days—older men, and they were meant for judges in the olden days. All the great judges in the olden days were the old men of the time, and they rendered judgment and wisdom at the time they were supposed to be moved away from the age of passion and the age of prejudice. They were getting toward that part of life where maturity was making them characters in the development of civilization.

Now, I hear my friend from Essex say the three great justices of the Supreme Court of this State, whom I mentioned and he mentioned—Beasley, one of them; Gummere, another; Depue, another—everyone of them served long periods of time as Chief Justice of this State. They made their fame, every one of them, after they were 70 years of age. Justice Gummere, the great judge from Essex, gave up his job when he was 80; Brandeis, one of the great judges of the Supreme Court of the United States, almost had reached his 80th year before he retired.

Oh, I think we are going too fast. Let me tell you something. I said yesterday that there were 10 or 12 men at least in this Convention now past 70 years of age, all of them elected by the people of this State to come here and draw their Constitution, the biggest job that could be given them. I want to tell you, coming here to prepare the Constitution is harder than being a judge in any court. I know from experience in one of them. Being a judge is the easiest job in the world. Today they listen; they say "decision reserved," and then they work out that cause all in the confines of their libraries. Sometimes they tell their secretaries to look up the law and see if it is right.

Now, let's look at things as facts. None of these men on the bench is dying from overwork or anything like that. They keep living on in their usefulness. They keep growing, getting better and better. We will never have great judges of record in the his-

tory of our courts unless we let them stay there long enough to be worthwhile.

I look at you, Mr. Chairman. You are a young man yet. Your hair is beginning to get gray. Every one of us is getting either bald or gray. Look at Winston Paul, he has lost nearly all of his hair. We are all getting toward 70, even though some are not there yet. Oh, if I were down in Atlantic City at the race track now I would make a bet with you all, but I can't make that bet with you here because it's illegal to bet in this part of the world. There's no gambling in Middlesex.

(Laughter)

But I would bet $2.00 with every one of you who are near your seventies that if you vote against this 75-year proposition, when you reach 70—all of you; it won't be far away, some will reach it next year, some the next—when you reach it, particularly if you don't have a job on the public payroll of this State, how you will say, "Oh, how sorry I am I ever said that a man must become legally dead when he is 70 years of age."

No—we all vote for race tracks because we need their $8,000,000 a year, don't we? The State needs money. Here we are laying down a plan, Mr. Chairman, to put about 20 men a year on the pension list of the State, a good fat pension, and they will be there for the rest of their days. But we immediately fill their jobs and we then add about another $100,000 a year to the expense of running the State. Just because we have been silly enough to place a deadline on man's ability to serve the people, and a limitation that doesn't stand the test of modern reason.

So, I say, you men who are over 70 all vote today for those who have not reached that figure. Vote for them. Here is your chance. You who are under 70 think of the days ahead. This is going to be for all time. Maybe 100 years. All the insurance companies will have to change their records because they will say New Jersey had decided that 70 is the deadline of a man's life.

I thank God He has let me live beyond 70. I never realized I would be 70. I never saw it coming until it came, but thank God I could give up my vacation to come down here to have this discussion at this Convention. I have tried to take part in it all. I figure that I have been sent here for some useful purpose. I may be wrong at times, but my mind and heart are right in the matter. I know just what I am doing, even though the age of 75 is ahead.

My mother lived to be 99. She was the most wonderful woman I ever knew. I will never forget my last talk with her; I'll never forget when she called me in. What do you think she did? She said: "I have been saving something for you for 50 years and I want

to give it to you now, Bob." Ninety-nine she was, full of vigor, reading the newspapers every day, never using a pair of glasses. She said to me: "All I want to do is to hand you your father's Masonic apron." I have many pictures like that in life and it makes me feel that there is something more in life than this laying down of rules, hard and fast, without philosophical application to anything before us. The man who says he should make 70 the rule has demonstrated here again today, as he did yesterday, that 70 is never the rule of application in a picture like this. Let New Jersey stand as proud as she always has. Let our judges go on in their majesty, in their usefulness.

I didn't mean to go on like this. Time is short and we all want to get through this week. But I certainly hope every man and woman in this room will just think hard, think hard. This isn't going to hurt a soul here on earth. I know of nobody in the world who has ever been hurt by a judge 75 years of age, and none of you does either. Our greatest judges, we keep their photographs in our law offices. Now, why? We like to point to them with pride in our profession. They are the leaders, the Charles Hugheses and the rest of them, the leaders of our profession—a wonderful profession. You who are not lawyers help us maintain the fine stability of the legal profession in the interest of all of the people of the State.

FROM THE FLOOR: Question on the motion!

PRESIDENT: Dean Sommer, do you ask for the floor?

MR. SOMMER: I simply want to add a personal word. Time does take its toll and memory does fade after 70, and I can refer you to the record as establishing that fact. You will find that yesterday I referred to the time of my beginning activity in law reform as the year 1892. Of course it was not 1892. It was 1902, and the record should stand corrected. But you have here upon the floor evidence of the slip of memory which comes and which may be fatal to court work after 70.

PRESIDENT: Have you a question, Mr. Peterson?

MR. HENRY W. PETERSON: I would like to make an observation as a layman member of the Judiciary Committee, since Judge Carey has so very ably presented his remarks and called attention to the amount of money that would be necessary to maintain the pensions of the judges. On the question of 70 and 75—70 permissive and 75 mandatory—those of us who have had business experience and those of us, as in my particular case, who are municipal officials and who must go before the taxpayers to support the budget and explain why it goes up year after year, felt thoroughly confident that the taxpayers of the State of New Jersey would not at all question the advisability of rewarding the services of the men who

have served in the judiciary by making sacrifices over the years. We did not think that we should demand their services until they had reached 75 and would be denied the privilege of some enjoyment as a reward for their faithful services.

The 70-year provision, sir, is a tribute to those who serve and it is a reward on the part of the people. And no matter what that cost is, the people of the State of New Jersey are always perfectly willing to pay for services rendered so long as they know they get value received. Therefore, sir, I recommend the defeat of the amendment.

FROM THE FLOOR: Question!

PRESIDENT: The question has been called for . . . Mr. Pursel?

MR. JOHN H. PURSEL: I rise to support Judge Carey's amendment. I think it has been overlooked by the delegates that paragraph 5 of Section V provides that the Governor may appoint a commission and remove men who have become disabled in any way. That would solve your problem of getting rid of men who have felt the ravages of age.

PRESIDENT: Senator Farley?

MR. FRANK S. FARLEY: Mr. President, I would call the attention of the delegates to the fact that there is no provision in our proposed document limiting appointment to key positions to any particular age. I call to their attention that we have some very capable executives, such as the Secretary of State, able legislators and able Governors. In reading the medical predictions by the American Medical Association of the last three or four years I find they anticipate and contemplate that within a reasonable period of time man's life will be prolonged. I certainly think it is unfair to try, in this particular document, to limit a man to the age of 70 years. I think the amendment proposed to you at this time, ladies and gentlemen, is fair. I want you to stop and think—you have very able and qualified delegates on this floor today who are over 70 years of age. I ask that all the delegates sustain this present amendment.

PRESIDENT: The question has been called for on Amendment No. 6 by Judge Carey. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: All in favor, please raise their hands.

(Showing of hands)

PRESIDENT: Opposed?

(Showing of hands)

PRESIDENT: I think there is no doubt about it but, for the record, we will have the Secretary call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Berry, Brogan, Carey, Cowgill, Delaney, Drewen, Dwyer, W. A., Dwyer, W. J., Farley, Gemberling, Glass, Hacker, Hansen, Jorgensen, Lance, Lord, Milton, Montgomery, Naame, O'Mara, Peterson, P. H., Pursel, Pyne, Rafferty, Schenk, Schlosser, Smalley, Smith, J. S., Wene—30.

NAYS: Barus, Cafiero, Camp, Cavicchia, Clapp, Constantine, Cullimore, Dixon, Drenk, Emerson, Hadley, Holland, Hutchinson, Jacobs, Katzenbach, Lewis, Lightner, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Moroney, Murphy, Murray, Orchard, Park, Paul, Peterson, H. W., Randolph, Read, Sanford, Saunders, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Winne—41.

SECRETARY: 30 in the affirmative, 41 in the negative.

PRESIDENT: The amendment is not adopted.

We will proceed, then, to the consideration of Amendment No. 10, by Mr. Jorgensen *(reading):*

> "RESOLVED, that Committee Proposal No. 4-1, Section V, paragraph 1, be amended by adding the following sentence:
>
> 'All judges of courts of less than state-wide jurisdiction shall be resident of and reside within the territorial jurisdiction of such courts.'"

Mr. Jorgensen.

MR. JORGENSEN: Ladies and gentlemen of the Convention: I think the purpose of this particular amendment is apparent on its face. There is no conceivable reason, to my mind, why it should not be accepted as written by the committee. I do not know that that is their wish, however, but I would like to urge upon this delegation to adopt this amendment as being only fair and reasonable for incorporation in our Constitution.

We have seen here during the course of this Convention, in the original draft of the Judiciary Committee, the elimination of many powers of the county courts. I think that we can also feel that there may in the future be an attempt to abolish the county courts as we now know them. There may likewise in the future be the opportunity—which may very well be taken by some chief executives, the prerogative not being constitutionally barred—of making their designations from without the jurisdiction of the particular court wherein they may be appointed.

I say to you, ladies and gentlemen, that I think it is very important that regardless of whether we maintain county courts as such or not, it is important that the judge sitting in these lesser courts should reside in and be resident of the territorial jurisdiction of those courts. I respectfully urge the amendment.

PRESIDENT: Mr. Jacobs.

MR. JACOBS: Mr. President, the members of the committee for whom I speak, and I think that includes all with the possible exception of one, are opposed to Amendment No. 10, not because we do not approve the practice of having judges of the inferior courts appointed from within their own residential locality, but rather on the ground that this is not proper constitutional material. This is entirely statutory. It's a typical illustration of the type of material which should remain, as it always has been, statutory.

If you start putting issues of this kind into the Constitution, you raise new constitutional problems, in which none of us wishes to become involved. I do not know exactly what construction will be made with respect to temporary residences; I do not know what construction will be made of removals after appointment. Those are issues that certainly should be left to legislation, as they always have been.

Now, with respect to the remark that the committee has continued the county courts, that is entirely true; they have been continued exactly as they are now and in exactly the same form. I don't see that there is any appropriate place in the Constitution for this type of proposal. I urge that it be rejected.

PRESIDENT: Is there further discussion on No. 10?

(Silence)

FROM THE FLOOR: Question!

PRESIDENT: The question has been called for. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Louder chorus of "Noes")

PRESIDENT: The amendment is lost.

MR. JORGENSEN: May we have a roll call?

PRESIDENT: Mr. Jorgensen requests a roll call, Mr. Secretary.

SECRETARY *(calls the roll):*

AYES: Barton, Berry, Cafiero, Camp, Cowgill, Delaney, Drewen, Dwyer, W. A., Dwyer, W. J., Emerson, Farley, Glass, Hacker, Hansen, Jorgensen, Kays, Lance, Milton, Moroney, Murphy, Naame, O'Mara, Pyne, Rafferty, Schenk, Schlosser, Struble, Wene—28.

NAYS: Barus, Cavicchia, Clapp, Constantine, Cullimore, Dixon, Drenk, Hadley, Holland, Hutchinson, Jacobs, Katzenbach, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Murray, Orchard, Park, Peterson, H. W., Peterson, P. H., Pursel, Randolph, Read, Sanford, Saunders, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Winne—40.

SECRETARY: 28 in the affirmative, 40 in the negative.

(The vote was later changed to 26 in the affirmative and 42 in the negative as the result of the following discussion, Mr. Drewen and Mr. Jorgensen voting in the negative.)

MR. DREWEN: May I, for the record, change my vote to "No." I believe I said "Yes."

SECRETARY: Mr. Drewen voted "Yes."

MR. DREWEN: I would like to change my vote to "No."

MR. JORGENSEN: How am I recorded on this vote?

PRESIDENT: There ought to be no doubt about it, Mr. Jorgensen.

SECRETARY: "Yes."

MR. JORGENSEN: I would like to change my vote.

PRESIDENT: Judge Drewen, what was your request?

MR. JORGENSEN: I would like to move that this particular amendment be laid over for further consideration at a later time.

PRESIDENT: Would you mind waiting just a moment, Judge Drewen? A matter has just come up here. I don't quite understand Mr. Jorgensen's procedure on this. It has just been defeated.

MR. JORGENSEN: I am merely preserving for the record, sir, so that I am not foreclosed before this thing is finally determined, the right to call this amendment up for further consideration, for another vote.

MR. DOMINIC A. CAVICCHIA: Mr. President.

PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: The gentleman has changed his vote. He is with the prevailing side. Under the rules, he has two days in which to move for reconsideration. There is no motion to move for a consideration at a later date.

PRESIDENT: Thank you . . . Judge Drewen?

MR. DREWEN: For the record, I would like to have my vote changed from "Aye" to "No."

PRESIDENT: We will proceed, then, to the consideration of Amendment No. 11, by Mr. Jorgensen *(reading):*

> "RESOLVED, that Committee Proposal No. 4-1, Section III, paragraph 4, be amended by adding the following sentence:
>
> 'In all matters in which there is conflict or variance between equity and law, equity shall prevail.' "

Mr. Jorgensen?

MR. JORGENSEN: Mr. President, ladies and gentlemen of the Convention:

I think it is highly desirable that these particular 17 words be incorporated in our Constitution as a directive to all courts, top courts and divisional courts, that the fundamental law as we know it and have known it shall be preserved, so that in no event will

the letter of the law be considered to become superior through the integration of the courts, and the equity of our State necessarily become subordinated to judicial interpretation. This, ladies and gentlemen, is merely a restriction and a direction upon all courts that in all instances equity shall prevail. I understand that the committee feels that this provision is unnecessary because that is what their intention is anyway, and they feel that it is merely surplusage. I say to the members of this Convention that if it is surplusage it will in the future be the most valuable surplusage ever written into any document.

MR. ARTHUR W. LEWIS: Mr. President.

PRESIDENT: Senator Lewis?

MR. LEWIS: Mr. President and fellow delegates:

It seems to me that the language in this proposal runs directly contrary to one of the most fundamental maxims of equity. It is indeed repugnant to the basic principle of equity. As I recall it, when I went to law school we were taught that equity follows the law. That was a fundamental, basic maxim of equity. It is hard for me to conceive the mischief that could possibly come out of the adoption of any such proposed amendment. I move its defeat.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor of Amendment No. 11, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Louder chorus of "Noes")

PRESIDENT: The amendment is lost. We will proceed to consideration of Amendment No. 12, by Mr. Jorgensen *(reading):*

> "RESOLVED, that Committee Proposal No. 4-1, Section I, paragraph 1, be amended by adding the following sentence:
>
> 'The members of any court, established or authorized by this Constitution, shall be so appointed that the members of any one political party shall not constitute a majority of more than one in the entire membership in each such court or its divisions.' "

Mr. Jorgensen?

MR. JOHN MILTON: May I interrupt, Mr. President, for a moment, to suggest that Amendment No. 14 is identical, or substantially so, with that of Mr. Jorgensen? In view of the fact that he is to discuss No. 12, I am quite willing either to withdraw No. 14 or have its fate disposed of as No. 12 may be disposed of.

MR. JORGENSEN: I would like not to yield to Senator Milton's request, because I am apparently getting into the position that others have gotten into here, perhaps by reason of being the proponent—meeting with the ill effects of the Convention vote. Because of the fact that Mr. Milton has an amendment which fol-

lows, which is substantially in accordance with mine, I will withdraw my amendment.

(Laughter)

PRESIDENT: We will proceed to consideration of Amendment No. 13, by Mr. Milton, which I shall read, as follows *(reading):*

> "RESOLVED, that Committee Proposal No. 4-1 be amended by striking lines 1 to 8, inclusive, and the first eight words of line 9, of paragraph 1 of the Schedule thereto and substituting the following: . . ."

MR. MILTON *(interrupting):* I wonder if I may not save the President's time that would be consumed in reading it—

PRESIDENT: All right, Mr. Milton.

MR. MILTON: —and state the effect of the amendment. First, may I ask if the amendment has been distributed? I didn't receive a mimeographed copy of it. That's not important; I have a typewritten copy of it.

PRESIDENT: May I ask if the delegates have copies of Amendment No. 13?

(Response of "Yes" from the floor)

PRESIDENT: It has been distributed, Mr. Milton.

MR. MILTON: The purpose of the amendment[1] is to require that in the composition of the top court of the State, the court shall be composed of the present members of the New Jersey Supreme Court and the Chancellor. It differs in one point, one particular, from Amendment No. 1, which was debated by the former Chief Justice and by Mr. Jacobs yesterday, and that particular is this: Under Amendment No. 1, the Governor was limited in the selection of the Chief Justice of the new court to choosing either the present Chancellor or the present Chief Justice of the Supreme Court. This Amendment No. 13 leaves in the hands of the Governor the right to choose from among the members of the Supreme Court and the Chancellor such person to be Chief Justice as his discretion may dictate.

Yesterday, when this subject was debated, it seemed to go off on the matter of fair treatment of the present members of the Supreme Court. To me that is not particularly important, although I think it deserves consideration. The more important aspect of it is this: In the formative stages of this new judicial structure, it seems to me that it is in the interest of the State that there should be in the top court, having all of the power which is given to it by the proposed Committee Article, that there should be men of ripened judgment and seasoned experience. It should not be left to chance. We have in the New Jersey Supreme Court today, and in the person of the Chancellor, men who have had long years of experience in the administration of justice. I believe that the

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

amendment is a recognition of a sound policy and deserves support.

PRESIDENT: Mr. Winne.

MR. WALTER G. WINNE: Mr. President, the committee had this amendment before it for consideration. As one of the committee, and I think speaking generally for the committee, the matter was not unfavorably considered. Whether or not this Convention should practically name the members of the top court is certainly something to give consideration to. We could very well, by adopting this amendment, say, just as if we put the names in, that Justice so and so, and so and so, and so and so shall constitute the new Supreme Court. The committee felt otherwise.

The committee felt that the Governor's right to appoint to this top court might conceivably cause him to take a Circuit Court Judge of 10 or 12 or 15 years' experience, instead of a Justice of the Supreme Court of two or three months' experience. It might cause him to take one learned in the law of equity—a specialist, concerning whom we have heard so much—to take a Vice-Chancellor of 10 or 12 or 15 years' experience and put him on the top court, instead of a Justice of the Supreme Court of only a few years' experience. I know, and I think I can say so without it being considered the slightest breach of anything confidential, that the Governor has said that his inclination would be to take the members of the new top court from the Supreme Court. My guess would be that the members of the new top court would all come from the present Supreme Court. I think I can say that the committee would not feel the least bit disturbed about that, if that were the fact.

The committee did feel, however, that by giving the Governor the choice from among the members of the present Supreme Court, the Chancellor, the Vice-Chancellor, and the members of the present Circuit Court, we probably would get a better new top court than if we attempted to name individuals. I might say that in making his selection from among those gentlemen, the present Governor, the Governor who would make the appointments, would appoint persons who themselves had in almost each instance been elevated by some previous Governor. In other words, no matter what his selection would be, it would be a gentleman who had previously been appointed by some other Governor, very likely a great many appointed by some other Governor of a different political faith.

My Bar Association, the Bergen County Bar Association, expressly resolved that there should be at least one member of the highest court who had had experience in Chancery.

I hope that the Report of the committee is sustained and the amendment is defeated.

PRESIDENT: Any further discussion on this amendment? . . . Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor of Amendment No. 13, please say "Aye."

(Some "Ayes")

PRESIDENT: Opposed, please say "No."

(Some "Noes")

PRESIDENT: Those in favor, please raise their hands.

(Minority of hands)

PRESIDENT: Those opposed?

(Majority of hands)

PRESIDENT: The amendment is lost.

We will then proceed to consideration of Amendment No. 14 of Mr. Milton . . . Mr. Milton.

MR. MILTON: Mr. Jorgensen very definitely passed to me a buck, or rather the buck. A buck I would willingly accept. I have been reduced to that by reason of my attendance here in New Brunswick, away from my office.

This amendment[1] speaks for itself. I think it enunciates a sound policy which should be incorporated, if you please, in granite, if not in the Constitution. I move it.

PRESIDENT: Any discussion on this Amendment No. 14? . . . Mrs. Miller.

MRS. GENE W. MILLER: Mr. President and fellow delegates:

There are five short reasons for my belief that a bi-partisan court should not be constitutional material:

First, that no state constitution—of course, not our Federal Constitution either—has such a provision. Now, if I felt that it was a progressive move to have such appointments in a constitution, I would like to have New Jersey be the first to adopt it. However, I think it is a thoroughly bad idea and don't propose to be the first to put such a provision in our Constitution.

Second, bi-partisan courts are provided for by statute in New Jersey in county courts and district courts, I understand. Certainly that should be left to legislation. In our many and lengthy committee hearings, no witness spoke in favor of bi-partisan courts in the Constitution. In our consideration of a court system the goal we sought was an independent judiciary—to put our courts as far as possible from political influence. This proposal takes us directly in the opposite direction.

Third, the proposition in the Milton amendment effectively bars any independent appointment. That probably was the intention, but I submit that judicial ability does not necessarily include

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

membership in a political party. I further submit that the Constitution should not restrict the Governor's choice to party appointments.

Fourth, in thinking of qualifications of judges, the committee considered ability and knowledge to be requisites, but certainly not party affiliations. In other words, is an appointment to the bench a reward for party regularity or judicial ability? And, in that connection, a political party would not be strengthened any by a quick change from Democratic to Republican in order to qualify for judgeship.

And, finally, are the courts for political parties or for the litigants? The man in court wants his case decided by a competent, honest judge. The political party he belonged to at the time of his appointment doesn't belong in the picture.

I urge the rejection of this amendment.

PRESIDENT: Mr. Cowgill.

MR. JOSEPH W. COWGILL: Mr. Chairman and members of the Convention:

It may well be that one of the criticisms that the lady directed against this amendment might have been true regarding a similar provision in the Brogan amendment, but I fail to see, and I don't think it can successfully be established, that the adoption of this amendment would prevent the appointment of any independent. The simple reading of it, it seems to me, discloses that.

I would have one other word to say in support of this amendment: The chief criticism that I have heard of the appointments by the President in the last 16 years of judges in the federal courts is that he appointed too many Democrats.

PRESIDENT: Any further discussion on this amendment? . . . Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen:

I should like to again say a few words expressing what I believe to be the layman's view of the matter now brought before this Convention by this amendment.

Yesterday Senator Milton evinced amazement that an editor should know so much of public opinion in his community. I am glad to have this opportunity to enlighten the distinguished delegate from Hudson, and, in turn I express amazement. I am amazed that Senator Milton finds it strange that a layman, who is also an editor, should have any knowledge of the sentiment of laymen. That is the job of an editor, to recognize public sentiment, and if he fails to do so accurately, he may still be an editor, he may still have a newspaper, but he won't have any readers. I am *not* in that position.

I find it difficult to understand the source of Senator Milton's amazement. I am *not* amazed that he has a great knowledge of law. That is his profession, and in that field he has carved for himself a distinguished career. Gauging public sentiment is my field, and while I do not shed the luster upon journalism that he sheds upon the law, I still feel that I am not unacquainted with my work.

So, at the risk of appalling the Senator instead of simply amazing him, I shall attempt to bring to this Convention again what I think is the average citizen's view of the amendment now before us.

The public does want court reform; the delegate from Hudson is wrong when he said, and I quote from the official transcript of yesterday *(reading):*

> "My own view and concept is that the people at large have little, if any, interest in this alleged demand for court reform. I don't think they care a hoot whether there is a separate Court of Chancery or whether equitable principles are to be administered by a unified court."

I disagree most emphatically, and if the distinguished delegate will take the trouble to attend the meetings of various civic groups to be found in our smaller communities, he will find that my disagreement is founded upon fact and not upon a cynical assumption.

The average citizen wants capable, non-political judges on the bench before which he may some day have to appear. When the average citizen has confidence in the judge who presides at his trial, he may not be pleased with the verdict but he does feel that he has received something approaching justice. But when a judge is known as a political judge, he forfeits the confidence of the average citizen, and even though the citizen may win his case and is pleased thereby, his respect for the courts is not enhanced.

This amendment seeks to achieve bi-partisan administration of justice. The Committee Proposal seeks to achieve the non-partisan administration of justice. That is the difference between the amendment and the Proposal, and it is the only difference.

How will it work? How will the amendment work? Well, when any man seeks high office he usually manages to meet any mechanical qualifications which the job requires. If he has his eye on a judicial appointment under this amendment, he has only to know which party is slated to get the appointment, and if it is not his own, he simply deliberately fails to vote in the primary for one year and then registers in the proper primary the following year. Of course, if he has the perspicacity of really great judicial material, he will not register in either primary, and a governor who really desires to appoint him will find that, *mirabile dictu,* the candidate has been of the proper party all the time!

The public wants judges to be above party lines. It doesn't want party wheelhorses on the bench. It doesn't care what a judge's politics may be if he is a good judge. Oliver Wendell Holmes was a Re-

publican; Louis Brandeis was a Democrat; Benjamin Cardozo was an independent. Who cared, or who cares? Change the party affiliations of each, and they are still a triumvirate of the greatest legal minds that ever served our courts.

Ladies and gentlemen, I ask that you defeat this amendment. Let us say to the people of New Jersey in words that are unmistakable, that this Convention seeks to provide for non-political appointees on the bench. Party lines have their place in the political life of the State; they have no place in the judiciary, and they should not be dragged in through the medium of this amendment.

PRESIDENT: Are you ready for the question on Amendment No. 14? . . . Mr. Jorgensen.

MR. JORGENSEN: At the risk of perhaps condemning what otherwise would be a good amendment, I would like to speak in favor of it. Much has been said here about the fact that under prevailing practices we have bi-partisanship and non-partisanship, but all of us here, as delegates, recognize that there is such a thing as party affiliation, and I doubt if anybody would be here if they were rebuked by either one of the two major parties anywhere in the State.

And the custom is different in different localities, Mr. President. I submit to you as a standing example before this Convention that in the County of Middlesex bi-partisanship means bi-partisanship, whereas in Essex County it apparently had a much more significant and different meaning. The only way that we can talk about non-partisanship and bi-partisanship is to enact it into our law. Governor Driscoll asks that this Convention be one of non-partisanship, but we have seen the various shades of distinction as exemplified by the predominant parties in the various counties. Let us be realists; let us not resort to that euphonious, perhaps, but meaningless word, a political independent. That animal I have yet to meet.

For the reasons as outlined, and for the reason that I think it is about time that somewhere along the line we become realists with respect to our set-up, let us all vote in favor of this amendment.

PRESIDENT: Mr. Paul.

MR. WINSTON PAUL: I wish to read briefly four sentences from an editorial which appeared this morning in one of New Jersey's leading newspapers and which is very apropos of this discussion. I will make no comment except to read these four sentences *(reading):*

> "The proposal is intended to protect the people and the judiciary from political one-sidedness. The intention is excellent, but the prospect doubtful. The assurance of fair representation to the minority party is an established principle in New Jersey in the judiciary and in some of the administrative boards. What we want to achieve in the judiciary is not more complex political control but the elimination of politics."

FROM THE FLOOR: Question!

PRESIDENT: Mr. Schenk.

MR. JOHN F. SCHENK: Mr. Chairman, I wish to oppose the amendment because I feel that in selecting our judges we should get the best material from all sources, and not the best from the two main sources which might be available in the field of politics.

PRESIDENT: The question is called for. Are you ready for it? All in favor of Amendment No. 14, please say "Aye."

(Some "Ayes")

PRESIDENT: Opposed, "No."

(Some "Noes")

PRESIDENT: Those in favor, please raise their hands.

(Minority of hands)

PRESIDENT: All opposed?

(Majority of hands)

PRESIDENT: The amendment is lost.

This will bring us to Amendment No. 15, introduced by Mr. Emerson *(reading):*

> "Amend Proposal 4-1, Schedule, Section 7, by adding at the end of line 21 on page 6, the following:
> 'and in causes where an order or decree has been entered reserving to the parties the right to apply for further relief.'"

Mr. Emerson.

MR. EMERSON: Mr. President: Paragraph 7 in the Schedule provides that causes and proceedings pending shall be transferred to the new courts, and the files of pending causes shall be transferred to the new courts; and in Paragraph 8 there is a provision that all other files, etc., shall be disposed of as shall be provided by law. Now, the last section of Paragraph 7 defines what is intended by "causes pending." I have in mind a number of causes which are now pending in the Court of Chancery involving the liquidation of corporations and the administration of estates. In many of those cases the decrees provide that the parties may apply for further and other relief. My language, perhaps, does not conform with the latter part of Paragraph 7, and I am willing that it should be moulded in such fashion that it will, but I think that those causes should continue in existence.

I am thinking of one corporation which has been in liquidation over a period of 12 or 14 years. There have been hundreds of orders entered in that proceeding, and there will be additional orders entered, and I think it would be an injustice if that file was closed and a new proceeding had to be instituted in the new court, and, therefore, I offer the amendment.

PRESIDENT: Mr. Jacobs.

MR. JACOBS: The committee has no objection to the proposed Amendment No. 15.

FROM THE FLOOR: Question!

PRESIDENT: Any further discussion? The question has been called for. All in favor of Amendment No. 15, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is carried.

We will proceed, then, to consideration of Amendment No. 16, introduced by Judge Drewen.[1] Would you care to have me read it or not? May I ask who do not have copies of Amendment No. 16? Who have not received copies? We will declare a five-minute recess until distribution is completed.

(The Convention reconvened after a five-minute recess)

PRESIDENT: Will the delegates kindly take their seats?

The chair will recognize Judge Drewen.

MR. DREWEN: Mr. President and fellow delegates:

I rise to express the grave concern that I feel over what may be regarded as a strange omission in the Committee Report on the Judiciary. In 1844 the word "inferior" crept into the Constitution, and under its category there fell the inferior Court of Common Pleas and all other county courts that developed in the generations that came after, so that the inferior courts, as they are called, are courts that have been so far overpassed by the industrial and social growth of the people, with its crime problems and all the rest, that inferior courts are the only courts in the State that do now and for generations past have pronounced the death sentence.

Now, in the very first section of the Judiciary Report, the language is:

> "The judicial power shall be vested in a Supreme Court, a General Court and inferior courts of limited jurisdiction."

In that group of inferior courts of limited jurisdiction there are the courts of life and death in this State, and you are listening to one who has spent perhaps the best years of his life at work in the county courts. I have too often stood by at the pronouncement of a death sentence to take this matter lightly, and if in theory or as a matter of cold intellect I am at odds with the committee, I am sorry, but what I have to say on the subject is nonetheless profoundly genuine and sincere.

I heard Dean Pound, when he addressed the committee, make a

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

reference to small cause courts and say that small cause courts did not call for small judges. We will all agree with the philosophy of that observation, and I repeat it because it may be that capital cases require capital judges. The Committee Report is preoccupied with qualifications of the judges of the General Court, but it evinces no concern whatever for the qualifications of the judges in whose hands frequently fall the grave problems of life and death.

Now, this Report of the committee does not accomplish only a merger in the matter of equity and law. It accomplishes a merger of all the county jurisdictions—the Courts of Quarter Sessions, Special Sessions, Oyer and Terminer, Orphans' Court, and all the rest. And with that merger there comes into existence a County Court that has all the civil jurisdiction, as it was restored within the past day or two, of the Circuit Courts, which are presently constitutional. It has all the civil jurisdiction of the Circuit Courts, plus unlimited trial jurisdiction in criminal causes, plus its probate jurisdiction, and yet it has no constitutional status and its judges are measured by no constitutional prescriptions of fitness, as the other judges are. The county courts, ladies and gentlemen, fill—and "fill" is the word —the State Prison, the reformatories, the penitentiaries, and the insane asylums of this State as a consequence of their adjudications. Should there be judges in those courts who comport with some fixed and prescribed standard of fitness, at least in the manner of years of experience, as is written down here in the Committee Report for judges of other courts?

I trust I shall not be regarded as moving aside from the subject if I say that when the "inferior" concept of county courts was born in the Constitution of 1844, there were no crime problems. There was a small State Prison probably, and in each county there was a thing called the workhouse. If the men who wrote the 1844 Constitution were to hear a discussion of the probation and parole system of our modern day, they might regard it as crazy. But we have moved into a time when a great ex-President of the United States, a student of law, a Chief Justice of the Supreme Court, took occasion to say at one time that the administration of the criminal law in America was a disgrace to civilization. Men in 1844 were not concerned with crime that flourished on the darker side of life, concerning which respectable people were supposed to know nothing.

Now, the learned men of the universities write upon the subject, as does Professor Borchard, of Yale, devoting years of time and intellectual talent to the subject. And it occurs to me that if anyone were looking for statistics by way of pointing out the attitude of our constitutional conscience, so to speak, toward the administration of criminal law, they could find an exemplary detail in this committee draft, which doesn't even mention a criminal court, ex-

cept by way of necessity in the Schedule, and provides for no prescribed fitness whatever. So that so far as this Constitution is concerned, judges who have it in their power to pronounce the death sentence, to destroy men and to destroy their families with the vengeance of the law, may come from where they will, and either be fit or unfit, so far as this draft is concerned.

Now, I respectfully submit that if this is to be justified at all, it is to be justified only upon the theory of ultimate adjustment, concerning which I have heard some remarks. It is said that this disposition is made of the County Courts because later on it is designed to transfer the County Courts into the Superior Court, as it is now called, of the State. I submit to you that that is no justification. We are here writing a definite instrument, or we are not. If the County Courts merit constitutional status in some such arrangement as that contemplated for the future, they merit constitutional status now.

Pardon, please, another personal note. I have felt the solemnity of judicial power in county courts as I have felt it in no other court of this State. It requires no stimulus of the imagination to understand, but these courts are the courts from which the great mass of the citizenry gets its first impression and, perhaps, its only impression of the administration of justice.

Now, if I were to say that these courts were entitled to the morale of constitutional sanction, a coldly intellectual person might lift an eyebrow and have the idea that I was moving too far into the realm of spirit. But, may I say to you, ladies and gentlemen, that in its last philosophic analysis, what we labor to achieve here in working out an instrument of fundamental justice, is indeed a thing of the spirit, or we had better never have come here at all.

I know of no reason why this amendment should be defeated, and I know of every reason why it should be adopted. It so happens that the language of these suggested paragraphs were taken from Chief Justice Brogan's draft. I submit to you that they fit admirably into the present purpose. They do not have to pass as they are written. They are subject to compromise and moulding; but the word "inferior" is applied to the courts of which I speak, courts that have a power like that of no other court in the State. In these courts a man can stand before a judge and in the eventful seconds that precede his sentence not know whether he is going away for a period of years long enough to destroy him and to destroy his family, or whether he is going back home to them.

I respectfully submit that the amendment should be adopted.

PRESIDENT: Judge McGrath.

MR. EDWARD A. McGRATH: May I ask Judge Drewen a question which bothers me?

PRESIDENT: Yes.

MR. DREWEN: Surely.

MR. McGRATH: At the present time the county courts are statutory and, of course, can be changed in any way that the Legislature wishes. The Legislature has provided that in the larger counties where there are two or more judges the appointment shall be bi-partisan, and that works out very well because, in the administration of justice, where the prosecutor is of one faith, it would seem that it would be a wise thing and a good thing that one of the judges should be a member of the opposite party, if possible. Now, what worries me is whether, if we make the County Courts constitutional, that will not wipe out the statutes now in effect which provide that appointments shall be non-partisan where there is more than one judge in any county.

MR. DREWEN: All that I can say to you, Judge McGrath, is that I sincerely believe that the adoption of this amendment would not affect that statutory provision.

PRESIDENT: Judge Stanger.

MR. STANGER: Mr. President and fellow delegates:

Senator Wene and I come from one of the less populous counties of this State, but I want to say in mentioning that county, that there is none greater in pride or patriotism than Cumberland. With that plug in, I want to address myself to the amendment offered by Judge Drewen, and I want generally to support this amendment. This is highly important, sir, for the less populous counties, and I think it's important for the larger counties as well.

I think that the Common Pleas Court should be a constitutional court. It's where the person charged with crime gets his first impressions, sir. He receives them not from the appellate court, but he gets them from the judge of the court of his first appearance, which is, of course, a Court of Quarter Sessions or Special Sessions, whatever the case may be, but presided over, however, by the same judge who presides over the Common Pleas Court.

As I said before, I think that the Common Pleas should be a constitutional court. I think that all of these county courts, or the County Court, as it's now named, should be a constitutional court. I think it is highly important that we do that, and I am thinking, Mr. President, that if we do not do that, or even if we should adopt Judge Drewen's proposed amendment, our county courts could be put on a circuit.

At the present time each county has at least one judge. We know where to find him. He is there. He is there, generally speaking, all the days of the week. You know where to locate him even if he is not sitting in the courtroom. Without the amendment, under the suggestion that I shall make, he could be put on a circuit with even

a North Jersey county; and a judge might come down one day a week, or one day a month, and we would have no local court whatsoever.

Mr. President, I stand for keeping the court back home. I stand for keeping the courts where the people are. It's highly important that we do it; but I would like—before I say that, may I say to you that I dislike very much breaking with the Judiciary Committee. I think they have done a splendid job; and I even dislike making a suggestion on the amendment proposed by Judge Drewen, but I would like to offer an amendment, Mr. President, to this amendment, and that is to delete the entire paragraph at the bottom which begins with the numeral five. It says:

> "The jurisdiction, powers and functions of the County Courts and of the Judges of the County Courts may be altered or transferred by the Legislature as the public good may require."

I offer that, sir, as an amendment to the amendment, and call attention to the delegates that if the amendment of Judge Drewen is adopted with that provision in there, it gets us nowhere. We have called them constitutional courts, but they can be abolished at the will of the Legislature, and that is what I am opposing. So I offer this amendment to delete that paragraph, if you please, Mr. President.

PRESIDENT: Judge Drewen.

MR. DREWEN: May I answer Judge Stanger?

PRESIDENT: Yes.

MR. DREWEN: The purpose of paragraph 5 is to permit the Legislature to make such changes in the jurisdiction of the court that would relate, for example, to appeals in compensation cases. That's only an example. The language, I am perfectly willing to admit, might be amended accordingly. There is no purpose here to carry with the language anything that Judge Stanger has objected to. Now, I don't believe, and it is not intended—certainly it would be a matter of repugnance if it were certain—that the court can be abolished. The jurisdiction may be altered or transferred, and that is the purpose, and that is the only purpose.

PRESIDENT: May I ask if you accept the amendment that Judge Stanger has suggested, Judge Drewen?

MR. DREWEN: Yes, within the scope of my remarks, I will accept any amendment that Judge Stanger has suggested.

PRESIDENT: Mr. Jacobs.

MR. JACOBS: Mr. President, I would like to know what the amendment is.

PRESIDENT: Strike out all of paragraph 5 in the amendment . . . Judge Stanger.

MR. STANGER: Mr. President, I am willing, in view of Judge

Drewen's explanation, to state that I believe that if those words "or transferred" were eliminated, it would meet Judge Drewen's thought and certainly meet my thought. If Judge Drewen would permit those words "or transferred"—

MR. DREWEN: All right, that meets with my approval; anything you say, Judge Stanger.

PRESIDENT: Mr. Jacobs.

MR. JACOBS: On behalf of the committee I should like to oppose Amendment No. 16. I want to say that I agree with substantially all of Judge Drewen's remarks, but if you analyze those remarks you will notice that he is talking primarily about nomenclature and primarily about issues which his amendment doesn't cover any more than the Judicial Article does. He talks about the important work of the County Courts. Of course, it's important. He talked about the need for getting good judges, and about the qualifications of the judges. That isn't the issue at all. So that in thinking of the problem that I now present to you, I wish to direct your attention not to the remarks, but to the issue as it is before you.

Specifically, it is this: Up until now, the county court has been a county court subject to legislative control. It has continued for a long time; it will continue for a long time. But, it is within the legislative power to regulate it, control and even abolish the county court as it is now.

Now, I am not suggesting for a minute that the county court will be abolished; but that's as it has been and is now. We, in trying to simplify our court structure, certainly don't want to go backwards and freeze into the Constitution a court which even up until this time hasn't been frozen.

Dean Pound spoke at length about inferior courts and, incidentally, with respect to the word "inferior," I can't understand why people should feel that that's a reflection on the judge. It is nothing of the sort. We have it in our Federal Constitution. Our most learned federal judges are judges of the inferior courts. Judge Learned Hand is a judge of the inferior court, and I assure you that none of us thinks he is an inferior judge in the colloquial sense. The word "'inferior" as used in the Constitution has a certain traditional meaning, having no relation whatever to the capacity of the judges, and I think you ought to eliminate from your mind any notion as to whether that is any reflection upon the judges of our Courts of Common Pleas.

When we discussed this in committee, we had with us a strong advocate of the county courts in addition to a judge of the county courts. We ultimately concluded to leave the county courts exactly as they are now. When Dean Pound testified, he stressed the impor-

tance of a complete study of the inferior court system. He pointed the way towards improving the administration of justice at the lower levels, where, as Judge Drewen says, it is most important—oftentimes much more important than the higher levels. The Judicial Article permits that type of study, permits that type of development and permits that type of improvement, so that some day, when an improvement such as Judge Drewen might recommend may be desirable, they'll be able to do it.

Even the Brogan proposal didn't freeze the jurisdiction of the County Court, but allowed comprehensive alteration and transferance. The proposed amendment, as submitted to you, in effect freezes the County Courts, subject to a judicial interpretation as to the extent of alterations. I think it would be a substantial step backward to freeze the County Courts beyond what they have been heretofore and beyond what has been done in the Judicial Article. The Judicial Article accomplishes everything in Judge Drewen's proposal, except the County Court in the Judicial Article is subject to law, just as it is now.

PRESIDENT: Mr. Peterson, did you ask for the floor?

MR. PETERSON: Mr. President, ladies and gentlemen of the Convention:

I come from a small county, and I am very much interested in the courts being as close to the people as it is possible for them to be. As a member of the Judiciary Committee, I heard every word uttered that is transcribed in those 786 pages of testimony. I read possibly another thousand pages of briefs and pamphlets and letters and other things from eminent authorities on judicial reform. The preponderance of evidence and testimony in that huge volume was toward a completely integrated court system. It was only a few of the members of the Committee on the Judiciary who injected the retention of the county courts as they are, and the final result wasn't arrived at by weight of evidence. If the weight of evidence were the only consideration, there would be a completely integrated court system before this Convention, rather than one that preserves the county courts.

The proposals that came to us from the most eminent authorities for a nearly perfect judicial system provided for one top court, one appellate court and just one other court, a general court of equity and law jurisdiction, and stopped there.

The committee labored many hours on the proposition of how fully to protect the rights of the people who come into courts of the first instance—that great majority of whom Judge Drewen so ably speaks. We found that there was no fault, no error, no criticism attached to the present method of the Common Pleas Court, or the County Court as we now call it. I don't think that the man

on the street, the ordinary litigant who gets into the Court of Common Pleas, has anything to fear from the Judicial Article or what the Legislature will do as a result of this proposal.

The Legislature of the State of New Jersey is very close to the people. They're much closer, of course, than the Congressman is who serves in Washington; and if there should at any time be any Legislature that would entertain taking from the people—the people who come into the courts of the first instance—any of the benefits they have had over the last 104 years, that Legislature would certainly be dealt with summarily by the people.

I oppose this attempt to write into the Constitution something that has not been there for 104 years, particularly after the committee has presented to this Convention a Proposal that thoroughly protects all of the good things that have existed in the court of original jurisdiction, or the lowest, the county court system. I, sir, most strongly advocate the defeat of Amendment No. 16.

PRESIDENT: Mr. Camp.

MR. PERCY CAMP: Mr. President, ladies and gentlemen of the Convention:

In the first place, let me preface my remarks by saying that I have been practicing law continuously in these county courts around our State for the last 21 years. For five years, from 1937 to 1942, it was my privilege to preside over the county courts of Ocean County, and, incidentally, during those years, for temporary periods, in Burlington, Camden and Monmouth Counties. These courts, for the information of the members of the Convention who are not lawyers—and thank goodness all of you are not lawyers—are presently existing in each of the counties of our State. Each county court is held at the county court house in the respective counties, continuously or as necessity requires.

Let me refresh your recollection, and especially the recollection of those delegates who are not members of the bar, that the county courts now have original or concurrent jurisdiction over a multitude of subjects, including those that have been mentioned by previous speakers. They would include civil cases, criminal cases, probate and guardianship matters, adoption of children, naturalization of foreign-born citizens, juvenile matters, appeals from or reviews of justices of the peace and recorders in such matters as civil and criminal trials, municipal ordinance convictions, motor vehicle and traffic appeals, fish and game violations, and a great number of other subjects.

In such courts, especially in the rural counties, they are the first, and for all practical purposes, the last courts of law to which the average citizen has everyday recourse. In my county, which is Ocean County, it is the court to which appeals from judgments of over

50 justices of the peace, and the same number of small cause courts are, of necessity, taken.

In brief, these courts dispose of practically all of the run-of-the-mill or ordinary law work of the county. The only other law judges we have are the Supreme Court Justice and the Circuit Court Judge assigned to our county. Each of these judges is assigned to several other and larger counties. It is true we have a Supreme Court Justice residing in Camden County, a 108-mile round-trip from our county seat, whose predecessor had his office in Atlantic City, which is a 114-mile round-trip from Toms River, our county seat. Our Supreme Court Justice comes to our county for about one hour on the opening day of each term of court, or a total of three hours per year.

The Circuit Court Judge, heretofore assigned to our county, had his office in Newark, which was an 88-mile round-trip from Toms River. Recently, Judge Haydn Proctor of Asbury Park, which is only 25 miles from Toms River, or a round-trip of 50 miles, qualified as Circuit Court Judge for Ocean County, although he has not started to preside there as yet. We are pleased to note now, if Judge Proctor is not disqualified for being a delegate to this Convention, that we lawyers and our clients will have only a 50-mile round-trip to contact our Circuit Court Judge any time we need to go to his office, instead of the 88-mile trip to the office of his predecessor. We still have the 108-mile round-trip to visit the office of the Supreme Court Justice assigned to our county.

Our county is not unique in these respects. Many counties are likewise situated. We must not and do not expect a Circuit Court Judge or a Supreme Court Justice, or both, to be at our beck and call. We have too long been denied. The amount of business in our county for those courts would not justify the expense to the State. Because of the absence of those judges and courts from our county, the people, lawyers and laymen alike, have, perforce, and with good results gone more to the county courts for their redress at law.

Finally, at this time, the county courts are substantially the only courts of law the people know and use in ordinary and daily business. These courts have a long and honorable record. Their worth and necessity have been daily proved in the many years of their existence. It is doubtful if, during the course of discussion on this amendment, we shall hear anyone offer any substantial criticism of the county courts. These courts are close to the people. Everyone knows the location of his county court house and the county courts. To the average person they are permanently joined and inseparable. However, it must be noted that under the Committee Proposal and under the other proposals which have been dismissed, if this pro-

posal is not adopted, we will be deprived, or possibly deprived, of our county courts, or have their jurisdiction stripped.

This amendment, as I see it, makes certain that these courts which are best known to and most used by the people, shall be maintained. The people of every county in this State will approve this provision, and this is especially true in the rural counties.

The present amendment provides that there shall be a county court in each county, and that the county court shall have all the jurisdiction heretofore exercised by the several county courts. The basic principle, however, is maintained that we shall always have a county court and at least one county judge in each of the counties of New Jersey.

I feel that this is my first and last opportunity to make certain that your county courts shall always remain by placing them in the Constitution. I believe sincerely that this amendment should be adopted.

PRESIDENT: Mr. Cowgill.

MR. COWGILL: Mr. Chairman, and members of the Convention:

I guess you'd say that Camden County is in the middle of all this, because we are not as small as some of the counties whose representatives have spoken, nor as large as those of Hudson and Essex. I am at a loss to understand the facility with which Mr. Jacobs and Mr. Peterson change the base of their argument on these judicial amendments.

As I recall it, yesterday, in opposing the adoption of the Brogan amendment——and incidentally, I voted with them—Mr. Jacobs said that we must depart from the past and we must streamline these courts; we must modernize them and bring them up-to-date. And in opposing this amendment he says we must retain them as they are now because that's the way they have been for a hundred years. It seems to me that those two positions are entirely inconsistent.

From my own brief experience as an Assistant Prosecutor of the Pleas in Camden County, I agree thoroughly with the three former judges who have spoken, that it is in the county courts that our people become acquainted with the law and with the administration of justice. It seems to me that it is very important to maintain the county courts as such, and I say we should not, in view of the action we have taken on the courts generally, be afraid to be so bold as to say that the county courts shall not in the future be abolished. I support the amendment.

PRESIDENT: Any further discussion on Amendment No. 16? . . . Judge Drewen.

MR. DREWEN: Mr. President: Mr. Jacobs spoke of the freezing of the jurisdiction, and followed that statement by some remarks

with regard to the necessity for judicial interpretation as to what the word "altered" means in paragraph 5. Well, of course, this Constitution we are writing will call for judicial interpretation in countless respects, of necessity, but there is certainly no freezing in view of paragraph 5.

Mr. Jacobs said further that he couldn't understand the purpose of this proposal with respect to the qualification of judges, saying that it provided no qualification. Well, the intent is, at least—and I believe it certainly does it—to provide the same qualification that the Judicial Article provides in the case of the judges of the other courts.

Then I wish to remark upon the precept that because for 100 years or more these courts could be abolished, they ought still to be in that uncertainty. I respectfully submit that because they have worked as long as they have, because they have discharged the function intended, that they have outgrown that uncertain status and should now be made constitutional.

One word more. It entirely begs the question to say we do not want to go backward. Of course we don't. And we won't!

PRESIDENT: Any further discussion on this amendment? . . . Mr. Winne.

MR. WINNE: I think I should explain my vote. I'm a member of the Judiciary Committee, and I expect to vote for the amendment. In the committee I labored for the county court, and the committee takes the position, as I understand it, that they would continue to work before the Legislature for putting the county court in the integrated system.

The 1944 draft, which was rejected by the people of this State, contemplated putting the county court in the integrated system so that all county judges would be members of the Superior Court. That is not in the proposed draft before this Convention, but I believe that the majority of the committee would like to have it that way and will continue to hope to have it that way before the Legislature. I am opposed to that. For that reason, I shall vote to support the amendment so the county court will be guaranteed its future by being a constitutional court.

PRESIDENT: Any further discussion on this amendment? Mr. Dwyer.

MR. WILLIAM J. DWYER: Mr. Chairman, ladies and gentlemen of the Convention:

Would that I were gifted with the same literary ability of that distinguished layman who speaks on legal matters, Mr. Wayne McMurray of Monmouth. I have not the gift, but I have lived three score years. I had my first knowledge of jurisprudence through an observance of the county courts, because in my younger days I had

long vacations and instead of being a devotee to hanging around the local fire house, I went to the court house and held the hands of the local prosecutor and watched justice being enacted in our county court. And oh, what dignity there was translated to my soul by the Court of Common Pleas! Oh, what a respect I had for America in the working out of justice as it affected the common man and the average citizen!

What does the common man know of jurisprudence except that which he gleans by way of his visit to the county court house where he perceives the dignity of justice as it is enacted in the Court of Common Pleas, or the County Court, as you would elect to call it now? What a very salutary effect it would have upon this Convention if we were to take this very successful committee—that has had everything that it has suggested adopted and which has now attained a certain smugness and a *sang froid,* I might say, in its relationship to those who would dare reproach it in some of its conceptions as to what we should accept from them—if we were to turn them back on one occasion and recognize that in the thinking of Judge Drewen there might be a modicum of logic; and that America might commence to think that in the present state of segregation of justice in the courts, constitutionality commences in the most dignified court of all, in my opinion from the citizen's standpoint, the county court. Let's go along with John Drewen's amendment!

PRESIDENT: Any further discussion? Senator Lewis.

MR. LEWIS: Mr. President and fellow delegates:

I would like to explain my vote on this amendment. I propose to vote for it. During the committee meetings on the Judiciary Article, I submitted a proposal to the committee which briefly and in substance provided that the judicial power of this State shall vest in a Supreme Court, a Superior Court, the County Courts, and such inferior courts as may be provided by law. I still feel—even though I did in substance endorse the Committee Proposal yesterday, which I think is an excellent Proposal—I still feel that if we can make the County Court a constitutional court, it would be an improvement over the Proposal by the Judiciary Committee. Therefore, I shall vote in favor of the amendment.

PRESIDENT: Mr. Jorgensen.

MR. JORGENSEN: Through you, Mr. Chairman, I would like to ask Judge Drewen if he would accept an amendment. Judge Drewen, referring to paragraph 3 of your proposal, "There shall be a judge of each County Court and such additional judges as shall be provided by law," I'd like to add the clause, "and shall be appointed as heretofore."

MR. DREWEN: That is acceptable.

MR. JORGENSEN: I think that eliminates any question as to whether or not the Legislature can continue the courts as they have been.

PRESIDENT: Mr. Cafiero.

MR. A. J. CAFIERO: Doctor Clothier and fellow delegates:

I have not risen often to speak because I have come here to listen and learn, and to vote in accordance with such learning as I might acquire from men and women who are more capable of understanding the problems that confront us.

This particular problem, however, is one in which I feel that I have some little knowledge. The knowledge which I possess, and about which I intend to speak very briefly, is learned from having lived in a small rural county. As you know, I come from the County of Cape May, which is at the extreme southern end of this State. The county court to us is the only court, may I say, with which our people have any real association.

I, as you know, am a judge of the county court, and of course I don't want you to think that because of that my view is colored. It is not. I know I need not say to you, as other speakers have, that I'm prompted by sincerity in speaking. I'm sure you take that to be so. But in our county I preside over nine courts. Very fortunately, there are courts of appeal. In the event errors are made, they can be corrected; but the existence of a county court in each county is a necessity.

Living in a rural county, I can think of one condition which comes to mind. The Advisory Master who sits in our district, and a learned gentleman he is, sits in Bridgeton. You heard former Judge Camp speak of the distance that was traveled to have matters disposed of. Bridgeton is approximately 50 miles from my home town, which means that if there is a motion to be argued in a matrimonial action, however simple it may be, a lawyer must travel a hundred miles. It is true, as it has been indicated to me, we could do something about it by placing a remonstrance or a complaint with the Chancellor, or with some other branches of the court, but who is there among us lawyers who would seek to do a thing such as that? It has not been done to now. We lawyers grumble about it, but we tolerate it.

I recall another situation wherein the Supreme Court Justice who was assigned to our judicial district came from Millburn. You people who know where Millburn is, if you can associate it with Cape May County, it's 165 miles away and about three days of travel. If we had a matter to be disposed of in that particular branch of the court, it was necessary that we leave our homes a day or two ahead of time so that we could arrange to be available at the fixed day and time.

We fear, ladies and gentlemen of this Convention, that although the condition has existed as it has for 104 years, there is no assurance that it will continue thus. There is nothing to prevent some judge, in the event he should choose to, to hold court in some other part of the State. We who live in Cape May County would be obliged to travel that additional distance. It is most unfair to litigants, who are primarily concerned, to say nothing of the inconvenience that may result to lawyers. Lawyers who live in the metropolitan area, where they can just go across the street from their offices to dispose of their matter and then return to it, are fortunately situated. You may say that we who live at such a distance chose that particular locale and we shouldn't be heard to complain of it, but that's not the point.

We're writing a Constitution, as I understand it, to affect the entire State of New Jersey. And the problems of the smaller counties are equally as important as the problems of the larger counties. I think, under the Drewen amendment, you would be gaining a great deal of favor in the smaller counties. You would convince the smaller counties that you have been considerate of their problem and are trying to work out something for the better administration of justice. I intend to support the amendment.

PRESIDENT: Mr. Peterson.

MR. PETERSON: Mr. President, I hesitate to speak twice on the same subject. There has been nothing said here that wasn't said very eloquently by members of the Judiciary Committee or those who appeared before the Judiciary Committee. There is one thing that hasn't been said, and that is the lack of uniformity of sentence, which is very important, to my mind, in determining whether or not the County Courts should be written in as constitutional courts. You only have to pick up the newspaper of, I might say, any small community, and you will see, with the criminal court in session, a man sentenced to jail for a year for stealing a chicken; and on the same page of the same paper, the same court, the same day, you will see a man apprehended by the local police, accused and convicted of breaking and entering, put on probation. You will find criminal cases where there is a similar background for three criminals, accused of the same crime in three different sections of the State. And when those three fellows arrive in the state penitentiary, one is sentenced to one year, the other is sentenced to two years, and the other fellow five years. Those three fellows meet in the penitentiary and then the warden has a problem. The fellow who gets one year is perfectly content. He may even have expected five. From my knowledge of local affairs and local police work, I believe that I state a truth, that when any of these criminals go into court they anticipate receiving a certain sentence they feel that they

deserve. They have a mental reservation that for what they have done they should be sentenced to two years or five years. They get off with one. They don't know why. Therefore, they are prone to continue their criminal life.

In the Judiciary Proposal it was hoped that by putting all of the courts under the administration of the Chief Justice of the new top Supreme Court, these county judges would be brought together for conferences to the end that their decisions would at least approach a degree of uniformity. The people who live in the populated centers, even though they be small, in rural counties outnumber the people who live in the purely agricultural centers. I know their viewpoint. I know that it is very important for the farmer who is without the benefit of local police protection, and has only the State Police to call, that if a person is apprehended stealing his chickens, the penalty should be severe in order to deter the prevalence of that crime. But I submit to you that those people who have come into those neighborhoods, in the center of those communities, utterly fail to understand that lack of uniformity of justice, that lack of uniformity of sentence.

I believe that if the Committee Proposal prevails the County Courts and the people will not lose any of the good things they have had. They will be continued. No one proposes to take from them the close contact with the people in their local communities. That is one of the reasons I, as one who should be supporting this amendment to write in the County Courts—I was of that opinion when I came to this Convention—I changed that opinion by listening to the weight of the evidence and reading the statistics that were given to us as to the lack of uniformity of sentence.

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: The question!

PRESIDENT: All in favor of Amendment No. 16, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: All opposed, please say "No."

(Chorus of "Noes")

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Berry, Brogan, Cafiero, Camp, Carey, Constantine, Cowgill, Delaney, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jorgensen, Kays, Lance, Lewis, Lightner, Lord, Milton, Montgomery, Moroney, Morrissey, Murphy, Naame, O'Mara, Peterson, P. H., Pursel, Pyne, Rafferty, Read, Saunders, Schenk, Schlosser, Smalley, Smith, J. S., Stanger, Streeter,

Struble, Van Alstyne, Walton, Wene, Winne, Young—54.

NAYS: Barus, Cavicchia, Clapp, Cullimore, Drenk, Jacobs, Katzenbach, McGrath, McMurry, Miller, G. W., Miller, S., Jr., Murray, Orchard, Park, Paul, Peterson, H. W., Randolph, Sanford, Smith, G. F., Sommer, Taylor—21.

SECRETARY: 54 in the affirmative; 21 in the negative.

PRESIDENT: The amendment is adopted.

Ladies and gentlemen, we expected to finish the Judiciary Article before luncheon, but it is obviously impossible because we have one mimeographed amendment still before us and additional amendments have been submitted which have to be mimeographed and distributed. So with your consent we will recess now for lunch until 2:15.

(The session adjourned at 12:55 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Tuesday, August 19, 1947

(Afternoon session)

(The session started at 2:15 P. M.)

PRESIDENT ROBERT C. CLOTHIER: May I ask the delegates if they have received copies of Amendments Nos. 18 and 19 to the Judicial Proposal? I understand they have been distributed. Has anyone not received them?

(Silence)

The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present.

PRESIDENT: The Secretary announces that there is a quorum present.

May I ask if there are any further amendments to be offered at this time? . . . Judge Stanger.

MR. FRANCIS A. STANGER, JR.: I have no further amendment to offer but I should like to make a statement for the record regarding Amendment No. 3 which I propose and which was spoken to briefly yesterday afternoon.

I would ask, if you please, sir, that that amendment not be withdrawn. I have no desire to withdraw it. I'd like to have it remain as part of the record, but in view of the action on Amendment No. 8 I do not wish to press it for action.

PRESIDENT: We shall proceed, then, with consideration of Amendment No. 17 to the Judiciary Article.

MR. JOHN DREWEN: May I offer a resolution and give it to the Secretary?

SECRETARY: Amendment[1] proposed to Committee 4-1, Judiciary *(reading):*

> "The County Courts may in any civil case within their jurisdiction, and subject to law, grant legal and equitable relief so that all matters in controversy between the parties may be completely determined."

PRESIDENT: I'll ask the Secretary to have that mimeographed as promptly as possible in order that we may consider it after we consider Nos. 17, 18 and 19.

We will proceed now with consideration of No. 17 *(reading):*

> "RESOLVED, that Committee Proposal No. 4-1 be amended as follows:
> Amend paragraph I of the Schedule thereto, line 7, by inserting after the word 'Appeals' the following language: 'and Advisory Masters of the Court of Chancery,' so that line 7 will read 'Court of Errors and Appeals and Advisory Masters of the Court of Chancery as have been admitted to practice within this State.'
> Strike out paragraph 6 of the Schedule."

Judge Rafferty.

MR. JOHN J. RAFFERTY: Mr. President, and delegates to the Convention:

The amendment which I presently submit is in the nature of a corollary to the amendment which I proposed yesterday. You will recall that yesterday I urged the setting up within the Chancery Division of a Matrimonial Division. As justification therefor, I pointed to the tremendous increase in the case load in the matrimonial court. Mr. Jacobs and Mr. Clapp, of Essex, having assured the Convention that there was no design on the part of the committee to return to the obnoxious system of special masters, that rather it was their intention and purpose that the matrimonial court should continue at least in its present vigor, and that opportunity should be left for even greater perfection—which is not, of course, a large or a long cry—the matter should be left as it is. I feel I have a right to assume on that basis that the Convention decided it would follow the recommendations of the Judiciary Committee rather than that of my amendment. All of which leads me to my present amendment.

I propose now to strike out paragraph 6 of the Schedule of the Judicial Article and to insert in paragraph 1 of the Schedule such language as will bring those who are presently the Advisory Masters in the Court of Chancery hearing matrimonial causes, into the General Court as judges of that court. It would seem that no provision is actually made, except on a temporary basis, for this matrimonial court. Paragraph 6, which I would strike out, is as follows, on page 6 of the Proposal:

[1] Amendment No. 20 to Committee Proposal No. 4-1.

"The Advisory Masters appointed to hear matrimonial proceedings and in office on the adoption of the Constitution shall, each for the period of his term which remains unexpired at the time the Constitution is adopted, continue so to do as Advisory Masters to the Equity Division of the General Court, unless otherwise provided by law."

I am unable to take from that language any purpose to continue these matrimonial judges beyond the term of their present terms of office; but rather do I read into it, and I think properly so, that they shall not extend beyond their present term of office, and that term may even be curtailed if the Legislature should otherwise provide. Now, if that be a strange construction, I must say that I cannot consider it to be such. I must consider the plain implications of that paragraph to be that we will tolerate these Advisory Masters for the period for which they are presently appointed, unless the Legislature shall cut off their term earlier. Else, I see no reason for setting it out in a special paragraph and not including it within paragraph 1, which continues all of the present judges.

It would seem to me that if it was the design of the committee that these matrimonial judges should continue, they would be designated as are all of the other judges, as judges of the General Court; and it might reasonably be inferred from that they would continue in the Equity Division in the matrimonial part. If that is the purpose of the committee, as I have last stated, then I respectfully urge upon you that this may be accomplished by adding the language suggested in my amendment to paragraph 1 of the Schedule, presently reading as follows:

"The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals as have been admitted to practice in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the General Court."

I propose on line 7, after the word "Appeals," to include the words "and Advisory Masters of the Court of Chancery," so that it shall read:

"The remaining judicial officers enumerated and such Judges of the Court of Errors and Appeals, and Advisory Masters of the Court of Chancery, as have been admitted to practice in this State for at least ten years, and are in office on the adoption of the Constitution, shall constitute the Judges of the General Court."

It appears to me logical and proper that if it is the purpose to continue the matrimonial court, in at least its present vigor, especially in view of the tremendous case load in that court which I referred to yesterday, it is indispensable to carry over these Advisory Masters as judges of the General Court. True, they will be assignable as are all of the other judges, and true it is reasonable to infer that the assigning officer will take into consideration their special experience and their special ability and will assign them to the Matrimonial Division, else, the expiration of the terms of these

Advisory Masters, or earlier if the Legislature should determine that it should be earlier, must appear unavoidable. And I'm not arguing the question now as to whether the Legislature can do that, in view of their appointments, but it would seem to be in the realm of probability that they could do it. Whether a contract such as that might be voidable in view of a new Constitution having been adopted, is beside the question here. The question here is that it is necessary that this number of judges be continued. There is no charge or allegation that the judges have nothing to do today. Neither can we reasonably predict that they will have nothing to do tomorrow or next year, but rather the reasonable inference and assumption must be that because of the great volume of work there will be ample to occupy the time of these gentlemen for many years to come.

So I urge upon the delegates of the Convention and the members of the Judicary Committee, in a particular way, to consider my amendment——that we avoid the questionable disposal of the Advisory Masters in paragraph 6 of the Schedule and that we incorporate them into the General Court as I propose in my amendment.

PRESIDENT: Is there any discussion on this amendment? . . . Mr. Jacobs.

MR. NATHAN L. JACOBS: Yesterday, when this issue was discussed, it was pointed out that the entire problem of the Advisory Masters was statutory, and that we continue them in exactly the same form as they have operated in the past, leaving completely, as now, to legislative control their future continuance. I think the Judicial Article as drafted by the committee accomplishes that. The proposed change, in effect, treats these Advisory Masters in the same fashion as Vice-Chancellors and Circuit Court Judges. That was not the intention of the committee.

Specifically, let me point out that under the proposed amendment these Advisory Masters would have life tenure upon their next appointment. The committee had no such purpose. All attorneys are familiar with the fact that these Advisory Masters have had a special status pursuant to law, and we expect to continue that status.

If, in the future, it is desirable that they be made Judges of the Superior Court, in the same fashion as Judges of the Circuit Court or Vice-Chancellors, that will of course be possible. But it wasn't our understanding that we were accomplishing that. It may be completely undesirable to do that. All the committee intended to do, and all it did, was to continue the Advisory Masters exactly as they are, not increasing their authority and not reducing their authority. I think the proposed amendment changes completely the committee's treatment of Advisory Masters. I think it an un-

desirable change and the committee is opposed to it.

PRESIDENT: Judge Rafferty.

MR. RAFFERTY: Will the gentleman from Essex submit to a question?

PRESIDENT: Mr. Jacobs?

MR. RAFFERTY: The gentleman from Essex fears that under my amendment Advisory Masters will have tenure. I would like the gentleman to point out the distinction between the Advisory Master, who is a judicial officer, and other judicial officers, to justify the objection to the Advisory Masters having tenure.

MR. JACOBS: The mere fact that they have always been called Advisory Masters in itself gives distinction. The court, itself, has never treated them as judges equivalent with the other judges. Historically, courts of equity have always had masters. These masters have developed through an historical process, plus this statute. We intended to preserve them exactly as they are, leaving to future Legislatures their complete status, as the Legislature may determine.

PRESIDENT: Are you ready for the question?

MR. RAFFERTY: I would just rebut a moment. I've been rather pleasant all of this time and I'm going to continue to be pleasant. I am not so constituted as to become upset about things, because we are here to do a job, but I would like to point out that the distinction made by my very good and esteemed friend from Essex is a distinction without a difference. He says they are statutory judges, and therefore, because they are statutory judges, they do not approach the dignity of other judges. I would like to say to the delegates of this Convention that the Advisory Master is a judge of the Chancery Court, presently existing, in the truest sense. It is true he deals with only one phase of Chancery administration, and that is as it should be, because as I pointed out yesterday, the matrimonial court and the matters which come within the province of that court are matters of specialty. They are matters involving the field of social relations just as completely and effectively as they involve the field of law. That is one field in the administration of law where the social feature, the social relationships amongst people, going to the very heart of the continued existence of the State, as I pointed out yesterday, exists.

The family is the unit of society, and it is well indeed that we have men dedicated, if you will, for the time being for the term of their office, to administering these laws which are so important to the integrity of the State. So far as their stature in the court system is concerned, an appeal from an Advisory Master is directly to the Court of Errors and Appeals, just an an appeal from a Justice of the Supreme Court sitting in a part or sitting *en banc,* or just as

an appeal from a Vice-Chancellor, goes directly to the Court of Errors and Appeals, and as with the Vice-Chancellor, on a question of law and of fact.

There is the one appeal, thus demonstrating the simplicity of our present Chancery set-up. And therefore, I say to you and urge upon the delegates to this Convention, be not misled by the statement that these are mere statutory officers. These men are judges of the Chancery Court and I say, in view of the argument which I gave before, and especially in view of this rebuttal, these men should be continued—either they or someone else, I don't care; of course, I'm not speaking of personalities—but they must be brought into the General Court in order that their special experience and the special experience of the men who will follow them in that field might be preserved; and they should be given the same tenure that other judges are given.

MR. JOSEPH W. COWGILL: Just one observation, Mr. Chairman. It is my understanding that the Advisory Masters get $16,000 a year, and for $16,000 a year they have a lot of dignity and stature.

PRESIDENT: Mr. Smith.

MR. GEORGE F. SMITH: Mr. President and fellow delegates:

I want to in part subscribe to what Delegate Rafferty had to say, in that I hope that matrimonial causes will continue to be heard in an improved fashion. We've made progress over the years, and I agree with the others who say that the Advisory Masters represent an improvement upon that which existed in the past. However, I object to a provision that would for all time, or for a long time, cause matrimonial proceedings to be heard by Advisory Masters. I certainly think that it is quite out of keeping with the spirit of this Convention to give constitutional status and life tenure to men who are, in fact, fee judges, drawing $16,000 a year on fees derived out of divorce proceedings. I urge the rejection of Judge Rafferty's motion.

PRESIDENT: The question is called for. Will all those in favor of amendment No. 17 by Judge Rafferty please say "Aye"?

(Chorus of "Ayes")

PRESIDENT: Those opposed, "No."

(Chorus of "Noes")

MR. RAFFERTY: Mr. President, I request a roll call.

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Brogan, Cowgill, Dwyer, W. A., Eggers, Glass, Hansen, Milton, Montgomery, Naame, O'Mara, Park, Peterson, P. H., Rafferty, Schlosser—15.

NAYS: Barus, Berry, Cafiero, Camp, Cavicchia, Clapp, Constan-

tine, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Farley, Feller, Gemberling, Hacker, Hadley, Holland, Hutchinson, Jacobs, Katzenbach, Lance, Lewis, Lord, McGrath, McMurray, Miller, G. W., Moroney, Murphy, Murray, Orchard, Paul, Peterson, H. W., Proctor, Pursel, Pyne, Randolph, Read, Sanford, Saunders, Schenk, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young—54.

SECRETARY: 15 in the affirmative and 54 in the negative.

PRESIDENT: Amendment No. 17 is not adopted.

We will proceed, then, to consideration of Amendment No. 18, submitted by Mr. Naame *(reading)*:

> "In Section V, page 3, paragraph 3, on lines 1 and 2, strike out after the word 'Court,' the following: 'shall hold their offices during good behavior,' and add the word 'and.'"

Mr. Naame.

MR. GEORGE T. NAAME: Mr. Chairman, ladies and gentlemen of the Convention:

Up to this point, my comments, except for my vote, have been evidenced by my silence. I am sorry and apologize for breaking that silence. However, I shall be brief.

My proposed amendment to the Judicial Article is a very simple one. It requires no great deal of discussion or oratory. If you will turn to page 3 of the Judicial Proposal, paragraph 3, my amendment simply does this: Justices of the Supreme Court and Judges of the General Court shall hold their offices for an initial term of seven years and upon reappointment shall hold their offices during good behavior. The result is that the words "shall hold their offices during good behavior" have been stricken.

Ladies and gentlemen of the Convention, I see no good reason for preferring the Supreme Court Justices over the Judges of the General Court. The change in our system by this proposed amendment of the committee is so radical that I think it is only fair that in the future we test our new judges to see whether they are fit to preside for life or not. I urge each and every one of you to support this amendment.

PRESIDENT: Is there discussion on Amendment No. 18? . . . Senator Barton.

MR. CHARLES K. BARTON: Mr. President and delegates: In the short time in which I have had this amendment before me, I have tried to conclude for myself the reason for the provision submitted by the committee. This thought escaped my attention.

I cannot see any reason at all for making a difference in the tenure of a judge of the Supreme Court or of the General Court. They are both, of course, high officials. Why they should be distinguished in this matter, I do not know; I cannot appreciate. In

the spirit of fairness which seems to run between the lines of this whole provision, and I might say the other provisions too——in the spirit of fairness which actuates the hearts and minds of all of the delegates in giving and taking and yielding, too, I think this is one, out of general respect for our high courts, to yield on and to treat all of our high judges alike.

PRESIDENT: Further discussion? . . . Mr. Jacobs.

MR. JACOBS: I might say that on this issue there has been considerable difference of opinion within and without the committee. The issue briefly is this: Shall the judges of our courts be given life tenure; and, if so, to what extent? At the one extreme, you might continue the present system which provides that judges shall be appointed for a term of seven years and then re-appointed for an equivalent term. At the other extreme, you might borrow from the federal system and appoint all judges for life tenure upon original appointment.

I, for one, am speaking wholly individually and favor life tenure for all judges on original appointment. However, in our committee deliberations there was a general feeling that we were not ready to have life tenure for all of our judges on original appointment. As a result, you have what amounts to a compromise proposal which in effect states that Judges of the Superior Court shall be appointed for a term of seven years and for life thereafter, but that Justices of our top court shall be appointed on original appointment for life.

I see a basis for the distinction. I think that our top court will without question be the most important court in our structure. Certainly, it will have the greatest responsibility. I hope, as we all do, that future appointments will be outstanding, many of them directly from the bar. I think that we will be in a position to get the outstanding lawyers in the State if they are tendered life appointments as distinguished from a trial term of seven years.

Judge Hand testified before us on this issue briefly. He, of course, was one of the federal judges who, in his own language, has enjoyed life tenure since he became a federal judge. He stated that he doubted very much whether he would have accepted appointment but for the fact that he knew that once having taken federal appointment he would no longer be subjected to the pressures that come up upon reappointment. He knew that while he was sacrificing many material considerations, he at least would have the satisfaction of knowing that he was performing a public service independently, impartially, and free from all political or other improper pressures of whatsoever nature.

I think that is a good system to aim toward. Possibly we are not ready for it yet. I think we are ready for a system which permits

initial appointment at the top for life, looking forward toward some future day when the Superior Court will likewise be appointed for life on initial appointment.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for . . . Senator Farley.

MR. FRANK S. FARLEY: In answer to the delegate from Essex, may I say that the purpose of this amendment is to insure that men who are appointed for life have the proper temperament, background and ability to serve in this most powerful and highest tribunal in the State of New Jersey. It is true from my experience that even great lawyers do not make good judges at times; and all this amendment does is to give the State of New Jersey and the people the authority to determine whether they are qualified as a judge.

I say very frankly that with Circuit Court Judges and Vice-Chancellors having served 20 and 25 years, to compel them under this present document to go through another period of reappointment—I certainly think it is only fair that any new appointments under this new Constitution should go through the trial period of one term. If they are qualified, they have no fear of not being reappointed. If, perchance, there be one individual or two individuals appointed who are not qualified—they may be great lawyers but not have the judicial temperament—you would have them for the rest of their entire days.

I say to you it is equitable, I say to you it is fair, and for the purpose of the record may I say that in the 1944 Legislature this same issue was presented and we felt in our particular section that it should be a trial appointment.

PRESIDENT: Further discussion? . . . Senator Barton?

MR. BARTON: Mr. President: May I just digress again for two or three minutes. I had the pleasure of going through the Hendrickson Committee proceedings and I had the pleasure of serving on the Judiciary Article in the ill-fated Revision of 1944. Many of these problems, many, many of them, practically all of them, were problems then, and on many occasions I firmly resolved to decide my problems in a certain way. These same problems come up today. I am still in a quandary on many occasions—always, I hope, in the end, being guided by what my heart and my head and my hand dictates. This particular matter was discussed at great length, too.

This morning we talked of the Common Pleas Court—to be the County Court—and we spoke of its grandeur, and every word which was uttered along those lines was true. We now hear, at least I heard, that the higher the court the more important. That is not so. This Supreme Court, if it comes out that way, is of no more

importance, and maybe not as much, to the four million people in New Jersey than our county courts. We have records cited to us about the magnitude of the cases before the higher courts, the volume of the cases before them, but one little case before the Common Pleas Court, for one little man, be he in the city or county, is just as important to him—he has every right to feel so—as is the most important litigation to the greatest corporation in the State of New Jersey.

Now, let's forget about this business of the higher they are the greater they are, the better they are and the more holy they are. That is not so. That's why I have risen on my feet a number of times in this Convention to point back to this business of always knocking down the boys, and the women too, who are passing legislation in our Legislature. They are the ones who have to fight the fight and take the brunt of it. The highest courts pass upon our laws. Certainly they do! That's what they're supposed to do. That's what they're being paid for. That's why we respect them. But there are others courts. Take the lowly courts created by the Legislature, and those lowly courts created by the Legislature are just as important as the highest court in our land. They decide many, many more issues and they decide those issues just as well. Those judges of the highest court should be treated in the same manner as to their tenure, I firmly believe.

PRESIDENT: Further discussion?

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. We shall vote on Amendment No. 18. All those in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Berry, Cafiero, Camp, Constantine, Cowgill, Delaney, Drewen, Dwyer, W. A., Dwyer, W. J., Farley, Feller, Glass, Hacker, Hansen, Jorgensen, Lance, Lord, McGrath, Montgomery, Moroney, Morrissey, Murphy, Naame, O'Mara, Park, Proctor, Pursel, Pyne, Rafferty, Schlosser, Smith, J. S., Stanger, Streeter, Struble, Van Alstyne, Walton, Wene, Winne, Young—40.

NAYS: Barus, Brogan, Cavicchia, Clapp, Cullimore, Dixon, Drenk, Gemberling, Hadley, Holland, Hutchinson, Jacobs, Katzenbach, Lewis, McMurray, Miller, G. S., Murray, Orchard, Paul, Peterson, H. W., Peterson, P. H., Randolph, Read, Sanford, Saunders, Schenk, Smalley, Smith, G. F., Sommer—29.

SECRETARY: 40 in the affirmative—

MR. ARTHUR R. GEMBERLING: Make mine "Aye."

MR. WILLIAM T. READ: Make mine "Aye."

SECRETARY: 42 in the affirmative, 27 in the negative.

PRESIDENT: The amendment is adopted by a vote of 42 to 27.

We will proceed, then, to consideration of Amendment No. 19, introduced by Judge Feller *(reading):*

> "Paragraph 13 at the end of line 1, and the beginning of line 2, eliminate the words 'January 1, 1949' and substitute instead, 'July 1, 1948.'"

Judge Feller.

MR. MILTON A. FELLER: Mr. President and members of the Convention:

This is an amendment to the Schedule which provides that the Judicial Article shall take effect on January 1, 1949. I assume the rest of the Constitution, or most of it, will take effect on January 1, 1948. That means that the Judicial Article will not go into effect until one year after at least most of the rest of the Constitution. Now, I know that the committee had good reason for submitting this date, namely, January 1, 1949. I am also cognizant of the fact that some necessary machinery must be set up in order to put the Judicial Article into effect. However, it has been represented to us that court reform is urgent, and I agree with that representation; and if it is urgent, it is my opinion that this Judicial Article should go into effect as quickly as is humanly possible. I personally feel that the necessary machinery could be set up by July 1, 1948, put into effect the following two months, so that the Judicial Article could be put into effect in its entirety in September—or October at the latest—of 1948. I urge the adoption of this amendment.

MR. JACOBS: Mr. President.

PRESIDENT: Mr. Jacobs.

MR. JACOBS: I speak for the majority of the committee when we say we have no objection to the proposed amendment.

FROM THE FLOOR: Question!

PRESIDENT: Question is called for on Amendment No. 19. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted.

Amendment No. 20, introduced by Judge Drewen *(reading):*

> "RESOLVED, that Proposal No. 4-1 be amended so that there be added to paragraph 4 of the Schedule thereto the following sentence: 'The County Courts may in any civil case within their jurisdiction, and

subject to law, grant legal and equitable relief so that all matters in controversy between the parties may be completely determined.'"

Judge Drewen.

MR. DREWEN: The effect of this resolution is to extend and carry out the balance of equity and law relief as planned in the court structure of the Committee Report, by applying it also to the civil jurisdiction of the County Courts. I understand that there is no objection to this on behalf of the committee.

PRESIDENT: Mr. Jacobs.

MR. JACOBS: I do not believe any of the committee members object to the proposed Amendment No. 20.

PRESIDENT: Are you ready for the question? All in favor of Amendment No. 20, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted.

The chair will recognize Mr. Jorgensen.

MR. CHRISTIAN J. JORGENSEN: Mr. Chairman: I move that the vote by which Amendment No. 10 to Proposal No. 4-1 was defeated, be reconsidered.

PRESIDENT: Is the motion seconded?

MR. COWGILL: Second the motion.

PRESIDENT: Any discussion? . . . All in favor, please say "Aye."

(Scattered "Ayes")

PRESIDENT: Opposed?

(Chorus of "Noes")

PRESIDENT: Do you care for a roll call, Mr. Jorgensen?

MR. JORGENSEN: I would like, sir, and I believe that the vice-chairman of the Committee is agreeable to incorporating the general text of this amendment in their suggestions and recommendations to the Legislature for enactment in statutory law.

MR. JACOBS: I have assured Mr. Jorgensen that the committee, when it drafts certain recommendations, will include recommendations to that effect.

PRESIDENT: Are there any further amendments to be offered to Committee Proposal No. 4-1, the Judiciary? . . . Mr. Jacobs.

MR. JACOBS: I move that the Report of the Judiciary Committee be referred to the Committee on Arrangement and Form.

FROM THE FLOOR: Second.

PRESIDENT: Any discussion on the motion? All those in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. Committee Proposal No. 4-1, Judiciary, having been twice read and considered by sections, is referred to the Committee on Arrangement and Form for necessary action and report.

We shall have a ten-minute recess.

(Recess)

PRESIDENT: Will the delegates kindly take their seats?

May I have the attention of the delegates, please? To clarify the record and make sure there has been no misunderstanding, the motion adopted just prior to our recess was that the Judicial Article be approved and sent to the Committee on Arrangement and Form. This is just for the record and a matter of clarification.

We shall now proceed to consider the matter of rights and privileges. I'd like to ask Mr. Schenk if he would open the discussion.

MR. JOHN F. SCHENK: Dr. Clothier and fellow delegates:

You have received a memorandum which is self-explanatory, and I recommend that we consider the various amendments that have been presented in the order that they are listed on the memo. It will provide for an orderly consideration of amendments that relate to the same subjects, and we would also be taking them up in the order in which you find the material in Committee Proposal No. 1-1.

As you know, we had five of the nine articles of the old Constitution assigned to our committee, in contrast to the work of some of the other committees where they had one article, or one or two articles. If we just follow this schedule I am sure that we will save time and save going back and forth, discussing the same subjects.

The memorandum calls for taking the material up in the following order: discrimination; miscellaneous clauses suggested by Mr. Schlosser and Senator Lewis; then the collective bargaining matter; then the two amendments under election and suffrage; then the four amendments under Article IX, the amending process; and finally Amendment No. 18, the question of revision. So I believe if that's agreeable we should discuss the material in that order.

PRESIDENT: May I interrupt, Mr. Schenk, to ask if all the delegates have copies of the Committee Proposal itself. Will those who do not have copies of the Committee Proposal please raise their hands?

(Show of hands. Copies distributed.)

PRESIDENT: Are you ready to proceed, Mr. Schenk?

MR. SCHENK: Under the suggestion, the first amendment to be considered would be No. 20. I believe Mr. Randolph and Mr. Walton introduced it.

PRESIDENT: No. 20 *(reading):*

"Amendment No. 20
Amendment to Committee Proposal No. 1-1
(Rights and Privileges)
Introduced by Messrs. Randolph and Walton

RESOLVED, that the following shall become paragraph 5, Article——, (page 2) of Committee Proposal No. 1-1:

'No person shall be denied the enjoyment of any civil or military right nor be discriminated against in any civil right or segregated in the militia or public schools, on account of religious principles, race, color, ancestry or national origin.' "

PRESIDENT: Who will speak on this? . . . Mr. Randolph.

MR. OLIVER RANDOLPH: Mr. President and fellow delegates:

I will first ask unanimous consent to amend Amendment No. 20. You have Amendment No. 20 before you. In line 4 after the word "schools," I would insert the following:

"nor denied any other civil rights declared by statutes or recognized by judicial decisions or by the common law."

PRESIDENT: Would you mind reading that again, Mr. Randolph, slowly?

MR. RANDOLPH: After "schools":

"nor denied any other civil rights declared by statute or recognized . . ."

MR. THOMAS J. BROGAN: Will the gentlemen identify the line and the page please?

MR. RANDOLPH: Line 4 of Amendment 20. There are no lines enumerated there. Amendment No. 20, Justice.

PRESIDENT: Amendment No. 20, Justice Brogan. Not the original draft. After the word "schools" there is inserted: "nor denied any other civil rights declared by statutes . . ." And what else, Mr. Randolph?

MR. RANDOLPH: ". . . or recognized by judicial decisions or by the common law."

MR. WILLIAM J. ORCHARD: Is that "right" singular or plural?

MR. RANDOLPH: "Nor denied any other civil rights." Plural, Mr. Orchard.

PRESIDENT: ". . . or recognized by judicial decisions . . ." And what was the concluding phrase?

MR. RANDOLPH: ". . . or the common law." Now, Mr. President and members of the Convention, I first ask unanimous consent for amending the amendment.

PRESIDENT: I don't think that's required, Mr. Randolph.

MR. RANDOLPH: Yes . . . No objection, so I'll proceed on the theory that the amendment is amended as suggested. Colonel Walton and I have gone over the amendment with the amendment.

PRESIDENT: Will you submit to a question, Mr. Randolph?

Senator Morrissey.

MR. JOHN L. MORRISSEY: I was going to request that Mr. Randolph read the amendment as it stands.

MR. RANDOLPH: Very well, I will, Senator *(reading):*

> "No person shall be denied the enjoyment of any civil or military right nor be discriminated against in any civil right or segregated in the militia or public schools nor denied any other civil rights declared by statutes or recognized by judicial decisions or by the common law."

PRESIDENT: And the concluding phrase, Mr. Randolph?

MR. RANDOLPH: ". . . or by the common law."

PRESIDENT: And, "on account of . . ."

MR. RANDOLPH: Yes, I'll finish that– ". . . on account of religious principles, race, color, ancestry or national origin." That's the concluding clause. It is desired by myself and Colonel Walton to insert that instead of the committee's paragraph 5. Paragraph 5 reads as follows in the Committee Proposal:

> "No person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin."

We think that the amendment clarifies the matter and makes assurance doubly sure. I trust that the delegates will not think that–I will have to use the language of a former delegate, I think it was Judge Cafiero–that because of my race, my sentiments on this measure are one-sided. I assure you that my motives, the motives that impel me to introduce this, are as broad as your Constitution. It is the purpose of this amendment to clarify and to solve with one stroke the whole matter with respect to discrimination, and to insert it in the Bill of Rights as paragraph 5.

I think, in the talk I made before the Convention a few days ago, that I made this pledge, that if–there was objection made that the amendment to the Militia Article should not be there, but it should be in the Bill of Rights–if I were successful in getting this through the Convention, I would ask unanimous consent to withdraw the amendment to the Militia Article because I think everything will be included here in the Bill of Rights.

Hardly any comment is necessary. The amendment is intended to include all of the statutory rights which have been gained against discrimination; to include the judicial decisions and to include the findings that have been found, that have been searched out, by persons who have made special research along these lines. Furthermore, I will express to the Convention my purpose to withdraw Amendment No. 19 if this is adopted. I consider it too lengthy. It was drawn, as I understand it, by former Supreme Court Justice Perskie, but it is rather lengthy. My idea is that the Convention wants to take an advanced stand, especially in its Bill of Rights.

You gentlemen all know, and you ladies know, that when the

1844 Convention was held and when the instrument was drawn, there was no necessity for such a clause as is necessary now. But since that time, we fought the Civil War, a race has been emancipated, and it's necessary now to include an anti-discrimination clause in the Bill of Rights. Those of you who have been careful enough to investigate the original Constitution know that as far as the right of suffrage was concerned, it was allowed only to white males over 21. So you can see that it is absolutely necessary to protect persons since the last Convention.

Argument no doubt will be made that it is not necessary to have a clause with respect to the public schools. I think it is necessary because a peculiar situation exists in our State. I think it is a situation that should be corrected in the Constitution itself. In one whole section of the State, which we generally refer to as North Jersey, there is no discrimination on account of race in the public schools. In another section, South Jersey, there is discrimination, and separate schools according to races. That does not conform to the statutes. As far as the law of the State is concerned, it doesn't conform to the statutes.

Now, my belief is that if we put it in the Constitution, it will be settled once and for all. There will be no controversy over the subject. It has been the source of quite a good deal of litigation in the courts, and the amendment will avoid the necessity of future legislation. My opinion is that the Convention wants to go on record, especially on the question of the anti-discrimination clause. My opinion is that the Convention wants to go on record as favoring the broadest clause against discrimination on account of race, color, national origin, or religion. I think, and I think the majority of the delegates here agree with me, that we should take a broad stand, as broad a stand as any State in the Union, for absolute equality as far as law can help it. That's my idea of what the Convention wants here, in 1947.

Of course, if I am wrong, I think the Convention should so state, but I don't believe I am wrong. The very gratifying vote that we got the other day on the Militia Article makes me conclude that the Convention means what it says. I think that it is a very good amendment, and it is in line with modern thought, especially in line with everything that we read about and everything that we talk about when we talk about fair play and equal justice and democracy. I trust that the Convention, that all of the delegates without division, will vote for it.

PRESIDENT: Mr. Paul.

MR. WINSTON PAUL: I am very much in favor of the amendment as originally proposed by Mr. Randolph. I wonder, however, about the effect of the amendment that he drafted, "declared by

statutes or recognized by judicial decisions."

I can conceive that some lower court might make a judicial decision which might be disaffirmed by a higher court. I'm not a lawyer, but I am wondering about the effect of the amendment to the amendment, and I wonder whether the proposer would be willing for this to go over until tomorrow so that it could be examined a bit more carefully. I repeat that I am in favor of the principle, and I am in favor of the draft as originally proposed. But this additional amendment, I think, requires a little bit of thought on the part of some of our legal lights in this Convention. Would you object to its going over until tomorrow?

MR. RANDOLPH: I will not object, Mr. Paul, but I would rather have it disposed of by the Convention. My interpretation of judicial decisions means judicial decisions as they exist today. I don't think there should be any misgiving as to that. The great question, the parliamentary situation with regard to letting things go over that way, is whether maybe it would be defeated. I will agree to strike that out, Mr. Paul.

MR. PAUL: You will agree to strike that out—"judicial decisions."

MR. RANDOLPH: "Judicial decisions."

MR. PAUL: When we have so important an amendment to an amendment, Mr. Chairman, I think that we ought to have a chance to read it over and see it before us, and study it. I think the wording of the amendment to the amendment is one of great import, and we ought to have a chance to study it.

MR. RANDOLPH: Well, if the only question that you object to, as you stated when you first got up, is with respect to "judicial decisions," I'll agree to strike that out.

MR. PAUL: It is not an objection, Mr. Chairman. I am wondering about the implications, and how far reaching that clause might be. I also wonder, while I'm on my feet, as to the meaning of the words "declared by statutes." I haven't known of a Constitution where you confirm in the Constitution what might be a legislative act.

MR. RANDOLPH: I don't think there is any confusion about "as declared by statutes."

PRESIDENT: The chair will recognize Mr. Schenk.

MR. SCHENK: Dr. Clothier and fellow delegates:

It seems to me that this introduces entirely new material, and while I am willing to try to debate it, I haven't had a chance to study it, and I move the matter be laid on the table.

FROM THE FLOOR: Second the motion.

PRESIDENT: You have heard the motion that it be laid on the table. All in favor, say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(A single "No")

PRESIDENT: The motion to lay on the table is passed.

We will proceed then, I imagine, Mr. Schenk, with the consideration of No. 5.

MR. SCHENK: I would rather, sir, since it's under the same subject, that you just go down to No. 11.

PRESIDENT: No. 11.

MR. SCHENK: Let us take discrimination up altogether tomorrow, after we've studied this latest amendment.

PRESIDENT: Amendment No. 11, introduced by Mr. Schlosser *(reading):*

> "RESOLVED, that the following amendment to paragraph 7, Rights and Privileges, Article——, be agreed upon:
>
> Amend page 2, paragraph 7, line 5, by adding thereto the sentence following: 'Nothing obtained in violation hereof shall be received into evidence.' "

Mr. Schlosser.

MR. FRANK G. SCHLOSSER: The "search and seizure" clause, as reported by the Committee on Rights and Privileges, is taken verbatim from the Constitution of 1844. Our 1844 Constitution lifted the clause bodily from the United States Constitution. I think we are all agreed that the incorporation of such a "search and seizure" clause in a Bill of Rights is an excellent idea. The difficulty arises, however, over court interpretation as to the meaning and protection afforded under our 1844 Constitution. As the lawyers in the Convention well know, this Convention, in adopting a clause of such hoary antiquity, construed and reconstrued in our New Jersey courts many, many times in the last 103 years, will be adopting along with the section the construction placed upon it by our courts.

In the federal courts of this land the interpretation has been such as to afford to the citizens of the United States the most ample protection under the "search and seizure" clause. There is no doubt about it. Any citizen anywhere in the United States who has the police break into his home without a search warrant, if the case is brought up in the federal courts, under a federal statute, cannot successfully be prosecuted on the evidence unlawfully obtained. The practice in the federal court is to return that evidence upon demand, because it was illegally obtained and, in a word, you might say stolen.

However, in our state courts of New Jersey, the courts have looked upon that "search and seizure" clause somewhat differently. They have said in this State, over a great many years, that violation

of the "search and seizure" clause of our Constitution being laid to one side, it doesn't make any difference to the judges in this State how the evidence was obtained. They care nothing about that at all and, of course, to that extent, when the evidence is received in courts of law in criminal cases, the constitutional protection is considerably diluted.

Only a few weeks ago the United States Supreme Court reaffirmed the federal doctrine, that articles taken by illegal seizure could not be received in evidence. Those of you who have read the opinion in the *Harris* case will note that the decision was five-to-four—the judges divided only because the federal agents who had entered the defendant's home had obtained a search warrant for another purpose and the things that they found were not the things they were seeking. By a five-to-four decision in the highest court in the United States, that practice was upheld. The nine judges, as I recall it, held firm to the old ruling that the "search and seizure" clause meant what it said. Articles and things couldn't be taken by an illegal search and seizure.

In our state courts, beginning some 50 or 60 years ago—looking at the law books, that is the conclusion I came to—it was decided that we in New Jersey would tackle the proposition differently, so we now see the highest court in our State ignoring the constitutional protection against unreasonable search and seizure and saying that papers and things obtained by unlawful search and seizure are admissible into evidence if evidential *per se*. What they mean by that high-sounding phrase *"per se"* I've never been able to understand. I suppose it means "by or through itself," trying to define the words; but it sounds to me just like a legal cloak. In my opinion, and I think in the opinion of many of the delegates, to allow the front door of a citizen of New Jersey to remain locked against the law and to say of that citizen at his front door that "his home is his castle," and then to unbar the back door by judicial interpretation, is the perpetration of an injustice upon the citizens of our State and the carrying out of an idea that the framers of our Federal Constitution and those who framed our 1844 Constitution never had in mind.

In reading the history of the 1844 Constitution I was struck by the fact that Mr. Justice Hornblower didn't believe, and so told the Convention, that there should be any Bill of Rights at all in the Constitution. He didn't think that was necessary. If anything came up that would be wrong, why, the judges would take care of it. However, a delegate with more discernment pointed out to him that these rights should be preserved in the Constitution so there would be no doubt about it, so the citizen would always know by going to the Constitution just what rights he had.

Of course, the courts cannot give to a citizen any right that you delegates do not give him in this Convention. The decisions in our highest courts start in *69 N. J. Law,* and are affirmed in *99 N. J. Law* and *103 N. J. Law.* The principle is too deeply embedded in our jurisprudence to be wiped out, unless we as delegates rip it out here in this Constitutional Convention.

So important is the principle of search and seizure, relied upon so much by the people of this and other states, that the learned gentlemen, the professors who have prepared for us what they choose to call a Model State Constitution, with explanatory articles, have incorporated in their section 104, on page 3, the Federal Constitution protection against illegal search and seizure, the same as in our State Constitution, and they have added to it words meaning the same as the amendment which I offer. My phrasing was "Nothing obtained in violation hereof shall be received into evidence." Their phrasing is that "Evidence obtained in violation of this section shall not be admissible in any court against any person." With verbiage I am not concerned. It's the principle that I'm arguing and striving for.

If the delegates of this Convention, knowing the law to mean—the "search and seizure" clause notwithstanding—that a man's home can be broken into and his property seized and nevertheless admitted into evidence, if the delegates do not change that in this Convention, our courts will say that they intended to approve the judicial decisions which do not grant to the citizen the protection which he should have. We would be more honest, more candid, I say, in such a situation, if we were to go before the people of the State of New Jersey and tell them that the "search and seizure" clause that is in our Constitution of 1947 would grant protection against illegal search and seizure, but that nobody should pay any attention to it. That, as I see it, is just the effect that will be reached if this Constitutional Convention decides to leave the original wording and decides not to supply the protection that the clause needs if it's to mean anything.

How many of us in this Convention would have the effrontery to stand up before the people of our State and say to them, "We're giving you a 'search and seizure' clause, a wonderful thing, a great thing; we're locking the front door of your castle, but we're going to let the police come in the back door"?

Ladies and gentlemen, fellow delegates, I know it will be said, as it has been said to me, "Oh, this will interfere with the police, interfere with the prosecution of crime." I don't think so. The police in many sections of the State already live up to the constitutional provision, and elsewhere they will soon learn to do it.

What kind of dignified law enforcement will we have in our great

State of New Jersey if its basis, if its only basis, can be found in deprivation of constitutional protection by the police, sanctioned and approved by court decision?

I submit to you, ladies and gentlemen of the Convention, that in order to give the people of our State the protection that they will think they are getting when they read this Constitution, but you will know that they are not getting, I suggest that for that purpose the amendment be adopted and that there be added "Nothing obtained in violation hereof shall be received into evidence."

PRESIDENT: Mr. Schenk.

MR. SCHENK: I will ask Mr. Park to speak in opposition.

MR. LAWRENCE N. PARK: Mr. President, and ladies and gentlemen of the Convention:

I have a sorry confession to make. At one time I followed the school of thought advanced by Delegate Schlosser. He appeared before the committee on one of the formal proposals and advanced a proposition of the same character. In our early discussions on this question I had thought that there was much merit to it. When I advanced the problem before our committee I was jumped upon by so many that I thought Mr. Heinz had sent in his pickles. I thought, in view of the criticism of the suggestion that I had first made, and which was later advanced by Mr. Schlosser, that it was about time that I stopped speculating and started to do some research. I have done that. My convictions are contrary to my early opinion, and I believe that this amendment should be defeated.

Mr. Schlosser has stated that some learned professors had drawn or participated in the drafting of this Model State Constitution. I don't know the identify of any of those persons. I don't know their merit. But on the problem of evidence, on the problem of the rationale of the rule of evidence, in any case of doubt I'll put my vote on the side of Dean Wigmore. Dean Wigmore, I must be very frank to say, has furnished me with the information that has been the background for my conclusions on the problem.

Dean Wigmore, in his monumental work on Evidence, in volume VIII, section 2183 and subsequent sections, has analyzed this question very thoroughly. I know it is a matter of very poor salesmanship to start reading to you, and therefore I will limit it to the best of my ability. Dean Wigmore pointed out that this question of the use of what you might call illegally received or obtained evidence was never contradicted in our law until about the latter part of the 1890's. It was the fundamental law of New Jersey and the law throughout the Anglo-American jurisprudence, and I quote:

> "The admissibility of evidence is not affected by the illegality of the means by which the party has been enabled to obtain the evidence."

That was the law of New Jersey. It was the law of the national

government, and it is still the law of New Jersey.

What, then, is the origin of this so-called federal rule wherein the procedure of the national court is different from the state court? Wigmore says that the foregoing doctrine was never doubted until the appearance of the ill-starred majority opinion in *Boyd* vs. *United States.* There in 1885 the doctrine first had its origin. It did not receive satisfactory treatment. It was unquestioned for 20 years and then, after the case of *Adams* vs. *New York* in 1904, the Supreme Court of the United States repudiated the position of *Boyd* vs. *United States.* And there the matter lay for another decade or so until finally, in the *Weeks* case during Prohibition days, it evoked this new doctrine.

Wigmore has given many, many pages to the problem. It would not be of much interest to the average individual to read it, and certainly we should not tire you here with it. I am going, therefore, to summarize the conclusion of Mr. Wigmore and state briefly that he annihilates this doctrine advanced by the federal courts. If you wish to see his readings you may see them later on. He says the opinion was wrong. It was not founded in theory, and it ought not to be followed. I should also digress to state that prior to the time that Wigmore wrote his article Mr. Justice Cardozo of the Supreme Court jumped aboard this doctrine and said there was nothing to it. In summary of Wigmore's view, he says this:

> "The doctrine of the *Weeks* case also exemplifies a trait of our Anglo-American judiciary peculiar to the mechanical and unnatural type of justice. The natural way to do justice here would be to enforce the healthy principles of the Fourth Amendment directly by sending for the high-handed, overzealous marshal who had searched without a warrant and impose a 30-day imprisonment for his contempt of the Constitution and then proceed through the sentence of the convicted criminal. Some day we shall emerge, no doubt, from this trite method of enforcing the law. At present we see it in many quarters."

In summary, Mr. Wigmore said:

> "If there is any merit in this unlawful method in the search and seizure provision, the correction of the evil should lie in the enforcement of criminal interdictions against the offending officers and not the extinguishment of the evidence which has been said to be unlawfully obtained."

Now, Mr. Schlosser, the delegate from Hudson, has correctly reported the law in New Jersey. Notwithstanding the development of the federal rule, we have consistently followed the old common law rule in connection with this problem of evidence. The Court of Errors and Appeals has sustained it, and as a matter of fact it is so well established that seldom have they found it necessary to assign any reason.

If any of you are curious about the problem, I can refer you to the decision of *State* v. *Black,* in *5 N. J. Misc. R. 48.* That was an opinion by Judge Flanagan in one of the inferior criminal courts

of North Jersey, and it is probably the best reasoned opinion upon the subject. He, in turn, followed the theory of Wigmore and Jusice Cardozo and repudiated the doctrine.

Now I say to you people this: This is the law of New Jersey. The Legislature is well aware of it. If the Legislature had thought it necessary to correct it, a simple amendment to the old Evidence Act would have accomplished it. An amendment to the Evidence Act will accomplish it if the Legislature deems that there is any merit in the proposal advanced by Delegate Schlosser.

I say further, in urging the rejection of the amendment, that the argument advanced is predicated upon Supreme Court decisions which are unhealthy in nature, unsound in principle, and ought not to be followed. Those of us who make it our business to follow the Supreme Court decisions know, especially if we are teachers, that we ought to have a ticker tape in the room to find out whether the case that we called up at 10 o'clock is still the law at 10:05. This doctrine is slipping from right to left, and in view of the recent trend in Supreme Court decisions I would not be the slightest bit astounded to open up an advance sheet next week to find that *Weeks* vs. *United States,* like so many other cases, is out of the window.

Therefore, a doctrine of law which has had such recent origin—it really became enforced only in the Prohibition era—ought not to be the foundation of a doctrine which we freeze into our Constitution. If there be any evil, that evil can be corrected by legislation. We should not freeze into our Constitution a principle which, I submit, is basically unsound. I therefore urge upon you the rejection of this amendment.

PRESIDENT: Any discussion on this Amendment No. 11? . . . Mr. Cowgill.

MR. COWGILL: Mr. President and delegates to the Convention:

I feel so strongly about the necessity for suppressing illegal evidence that I want to tell you of an experience I had, if you will pardon the personal reference.

Before I was a lawyer I was a law enforcement officer, a federal law enforcement officer, and I was called upon to go, together with some State Alcoholic Beverage Control agents, to a place in Atlantic County where it was alleged that there was a violation of the law taking place. I was fresh from the federal school. I had been taught that I had to have a search warrant, that I had to have probable cause, and all of the rest of it. Arriving at this place with these ABC agents I asked them if they had a search warrant, to which the ABC agent who was in charge of the group said, "This is my search warrant," and he crashed the door. He found the violation.

He arrested the people. Of course, by virtue of the fact that none of the evidence obtained could be used in a federal court, we who were federal agents had no case. But I say to you that if you endorse the proposition that illegally obtained evidence should be used to convict someone of a crime, you are also saying at the same time that the end justifies the means, and to that doctrine I certainly cannot subscribe.

PRESIDENT: Mr. Schlosser?

MR. SCHLOSSER: Just a moment. To close the debate upon the subject I want to . . .

PRESIDENT: Excuse me. Mr. Randolph wants to be heard on the subject. Mr. Randolph?

MR. RANDOLPH: When this matter was before the Committee on Rights and Privileges, I assured the committee that I would speak against the Committee Proposal, and I want to carry out that promise. The Committee Proposal is in paragraph 7:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized."

If we do not adopt Delegate Schlosser's amendment, we should strike that out of the Constitution because we don't mean what we say. In this paragraph 7 we guarantee to the people certain rights. Yet, evidence seized in violation of that paragraph can be used. It has been well pointed out by Delegate Schlosser that it cannot be used in the federal courts. It can be used in the state courts.

Now, the federal laws are pretty well enforced against criminals and persons accused of crime. The only thing necessary here before an officer can go into a house or break into it—all he needs is probable cause.

During the old Prohibition days, where an agent saw a truck going by and he could smell liquor on it, that was probable cause. He could stop it. If an officer hears a cry in a house and he thinks there is some crime being committed there, that's probable cause. He has a right to go into it. But Delegate Park's proposition is that he should go in there even without probable cause, and that should be admitted as evidence in spite of the constitutional article against it.

Now, the argument is made that it would interfere with the enforcement officers. It doesn't interfere with the enforcement officers in the federal courts. And as far as developing a fine detective force, I think the FBI is practically the ideal detective force that we have in this country. Probably it would be well if the states would have a detective force like that, that would go out and search out the evidence instead of violating the law and then bringing

the evidence into court.

Delegate Park said you would need a ticker with respect to the U. S. Supreme Court to tell whether they will change the decision in the *Weeks* case. Well, we would need—I might pass the joke on to him—we would need a ticker as to his stand, because at the time when this matter was first brought before the Committee on Rights and Privileges he was in favor of this clause.

He cites Wigmore on Evidence. Now, just think of what he asks us to do. He tells us to take Wigmore on Evidence as against the United States Supreme Court—the decision of the United States Supreme Court in the *Weeks* case. Professor Park didn't tell us who the Justices of the Supreme Court were who decided that case, but I think that as between the eminent authority of Wigmore on Evidence and the United States Supreme Court, we should decide with the United States Supreme Court.

I think there is ample opportunity for enforcement officials, if they understand what probable cause means, and they should be taught that, to make quick arrests, even enter houses where there is probable cause. But what they want, what seems to be wanted is to enter even without probable cause. Either we should adopt the Schlosser amendment or we should strike the search and seizure clause out of the Constitution.

PRESIDENT: Mr. Saunders.

MR. WILBOUR E. SAUNDERS: May a delegate ask the proposer of this amendment a question?

PRESIDENT: Yes, Doctor.

MR. SAUNDERS: For a layman to whom this is very intricate, will you answer a question? Whom would this amendment protect, except a person who was violating the law?

MR. SCHLOSSER: The amendment would protect 4,400,000 citizens of the State of New Jersey. Police and law enforcing officials break into places and homes without always obtaining any evidence of wrongdoing. In the particular instance in which the case does come to court, the person there, of course, would be a man who would have some reason for not having that evidence go before the court, and to that extent, I suppose, he would be a law breaker. But basically the amendment will protect each and every delegate in this Convention and each and every citizen of our State.

MR. EDWARD A. McGRATH: Mr. Chairman.

PRESIDENT: Judge McGrath.

MR. McGRATH: I hate to admit this, but I did write a book on evidence once. Somebody might question me about it. And I also taught evidence, and I am familiar with these rules. Therefore, I make bold to speak because there are so many laymen here who may not thoroughly understand the question.

To begin with, we are discussing a question of evidence which can be cured by the Legislature and which has no place in a Constitution. There is nothing in the United States which says that if a house is illegally broken into the evidence obtained cannot be used. That is purely a rule of the United States Supreme Court. In our State we adopt the opposite rule. We say "Yes, the Constitution is there; and it means just what it says. But if there should be evidence of a crime found, we are not going to throw that out; we are not going to let the criminal go free on a technicality or a strained construction of the Constitution which, after all, was not framed for criminals or loopholes." And so the New Jersey courts say, we are going to admit this into evidence.

Now, suppose the police did go into a house—and police are not always equipped to get this probable cause; a lot of them may not know exactly what that means—suppose they do break into a house and find evidence of a murder—let's get away from stills for a minute—they find evidence of a murder, and they find that this murder was committed by a man who doesn't even own the house, who may have broken into it himself for all that we may know, and yet that evidence couldn't be used. I say that's ridiculous and the New Jersey courts say that. And the New Jersey courts, in saying that, must obviously have some reason for it, and the reason is that we have adopted the very sensible rule that these constitutional principles should not be stretched so far that they protect criminals who obviously are guilty—where the evidence found, no matter how it may have been found, shows that they are guilty.

Now, that's the reason behind the New Jersey rules. It's a sensible reason. In law schools, in text books, we find the federal rules very severely criticized; and I think that we here today could be very seriously criticized if we did anything to aid criminals who, after all, are the only ones who may be afraid that their places may be broken into. No honest citizen has anything to fear. No delegate here today has anything to fear if the police should break into his house, because they wouldn't find any evidence of crime. But the criminal whose place is broken into—or he may even be in someone else's place—has a very convenient loophole, because he will say to the court, "Why, there wasn't probable cause"—which is in itself debatable. "There wasn't a note, and the warrant didn't particularly describe the place to be searched and the papers and things to be seized."

I think that our courts have been criticized, our laws have been criticized, because we go too far to protect the criminal class of our society. I shall vote not to open the door any further to any technical defenses to crime. And that's what I think this amendment

would result in, although I know that it is perfectly well intentioned.

FROM THE FLOOR: Question!

PRESIDENT: Is there any further discussion on this amendment?

MR. WILLIAM J. DWYER: Mr. Chairman, may I just have a minute? I would like to recall to my distinguished co-delegate from Hudson County a recent trial held in Hudson County which resulted in a visit to Trenton for a year and a half of a set of buzzards who played upon the gullibility of Republicans who were known to have money and made contributions allegedly to the Republican cause in Hudson County, while in effect they were merely maintaining the prosperity of a set of proven exploiters of the gullibility of Republicans. The result was so fine that whether the police department obtained its evidence by coming through the skylight, burrowing under the lower foundations of the building, or breaking through with a ramrod, I should oppose Brother Schlosser merrily and happily, to the end that for all time we will be able to get evidence against criminals of the type that were even sometimes defended in the sacrosanct circles of certain journals who said that they were working for the great cause of reform in politics.

PRESIDENT: Mr. Schenk?

MR. SCHENK: It seems to me that question has been pretty well explored. I suggest we vote.

FROM THE FLOOR: Question!

PRESIDENT: Mr. Schlosser, you have asked for the privilege of concluding the debate.

MR. SCHLOSSER: I just want to say a word to my fellow delegates. Judge McGrath has told you what the judges think about their own decisions. Naturally they are right—they are the judges. Their decisions are the best possible decisions, in the best of all possible worlds, and to follow out logically my brother from Hudson's reasoning that the end justifies the means, then we should just as logically, as Delegate Randolph of Essex has said, strike out from the Bill of Rights the false protection that we say it gives to the citizen, because without the amendment it gives no protection at all.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor of—. Mr. Randolph?

MR. RANDOLPH: I was very much surprised at the remark of the eminent judge from Union County when he said that it would have the effect of aiding criminals. I wonder if it has that effect in the federal practice? I certainly trust that no delegate here has any idea that I am advocating this for the purpose of aiding crim-

inals. I think there was a doctrine once—"Better a thousand guilty men escape than that one innocent man be punished." Do we want to reverse that rule now?

I want to say a word with respect to the warrant. A great deal has been said to the effect that you would have to wait until a warrant has been obtained. No warrant is necessary if there is probable cause. If the officer sees probable cause, no warrant is necessary. I think the amendment should be adopted.

PRESIDENT: The question has been called for. All in favor of Amendment No. 11, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Those opposed, please say "No."

(Chorus of "Noes")

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barus, Berry, Brogan, Camp, Carey, Cowgill, Eggers, Farley, Hacker, Hansen, Holland, Jacobs, Jorgensen, Miller, G. W., Milton, Morrissey, Murphy, Naame, Orchard, Pyne, Rafferty, Randolph, Schlosser, Streeter, Wene, Young—26.

NAYS: Barton, Cafiero, Cavicchia, Clapp, Constantine, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Feller, Gemberling, Glass, Hadley, Hutchinson, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, S., Jr., Moroney, Murray, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Read, Sanford, Saunders, Schenk, Smalley, Smith, G. F., Sommer, Stanger, Struble, Taylor, Van Alstyne, Walton, Winne—45.

(The final recorded vote was 25 in the affirmative and 46 in the negative, in accordance with the discussion below)

SECRETARY: 26 in the affirmative, 45 in the negative.

PRESIDENT: The amendment is not carried . . . Judge Carey.

MR. ROBERT CAREY: I would like to change my vote to "No."

SECRETARY: That shall be done. The vote is now 25 in the affirmative and 46 in the negative.

PRESIDENT: Mr. Schenk?

MR. SCHENK: Does the Convention wish to continue, or does it wish to adjourn?

PRESIDENT: Unless there is a dissenting voice, let's continue until 5:00 o'clock.

How about Amendment No. 7, by Mr. Lewis? *(reading):*

> "Amend Committee Proposal No. 1-1, page 2, paragraph 8, line 5, by inserting a semicolon after the word 'jury' and adding the following: 'the Legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of jury in any civil case.'"

Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President and fellow delegates:

I would like to appeal to you for a few minutes to give your serious thought and consideration to this proposed Amendment No. 7. The President has just read the proposed amendment. I would like to call your attention to numbered paragraph 8 in the original Proposal and suggest that the language of the proposed amendment follow the semicolon in line 3 of paragraph 8, instead of the period in line 5 of paragraph 8.

Now, this proposed amendment does not in any way conflict with the present provisions of paragraph 8 and the right of a trial by jury as mentioned therein. May I here emphasize four points:

1. The proposed amendment does not nullify or abrogate the constitutional guarantee that the right of trial by jury shall remain inviolate.

2. The amendment would apply only in civil causes, leaving criminal cases, as heretofore, subject to unanimous verdict.

3. The amendment merely provides in substance that five-sixths, or 10 jurors in number, out of 12 may render a verdict.

4. Any such change in the law can only be effected after legislative consideration and statutory enactment.

All the above are merely permissive, and restricted as provided in the proposed constitutional amendment.

Although the origin of the jury system itself is lost in the obscurity of the Middle Ages and has been accepted as part of our democratic philosophy, the substance of this proposed amendment is not a novel thought or idea in legal jurisprudence and, in fact, does not go as far as the states of California, Louisiana, Nevada, Texas and Washington have gone. In those states they have provisions in their constitutions to the effect that three-fourths of a jury, or eight in number, may render a verdict in civil matters. In Montana, Idaho and Iowa, and in truth in over one-third of the states of our Union, we find their basic laws permitting a verdict by less than the unanimous jury in civil matters. And this number of states, incidentally, is constantly increasing as the various states consider constitutional changes.

The State of New York in 1938 adopted a constitutional provision identical with the provision proposed here today. As far as I can learn, it has been accepted as a much needed improvement in the jury system. Statistics that were gathered show that in New York over four per cent of all jury cases resulted in a disagreement, to say nothing of the not determinable number of cases that resulted in an unwarranted compromise or an unjust verdict because of this rule of the Middle Ages that has no rationale or basis in a democracy which recognizes the majority rule.

Now, it is significant to note that as to questions of law, these questions are not decided by an unanimous vote, but rather a majority vote of our Supreme Court, or the Supreme Court of the United States, or any appellate court in any of our states. As a matter of fact, the acts of legislators are adopted by the majority rule. Are not corporations and associations managed by the majority rule of their shareholders, directors, or members? Will not this Constitution be presented to the people and be adopted or rejected by the majority rule? Why then, in civil cases, should we require a unanimous vote of the jury?

After introducing this proposal, my attention was called to an article that appeared in the *New Jersey Law Journal,* I believe under date of August 7. I shall not take time to read that article, but if there is any doubt in the mind of any delegate as to the wisdom of adopting this proposed amendment, I refer you to that article. May I just quote the concluding paragraph of that article, which is entitled, "Shall We Add the Unanimity Rule for Verdicts in Civil Cases"? I now quote the concluding paragraph:

> "At a time when so much thought and effort are being given to the reform of our judicial system so that the administration of justice will be speeded, advanced, and geared to our times, the adoption of the proposed amendment would permit our Legislature to strengthen our jury system, avert unjust verdicts and costly retrials, and avoid congestion in our court calendar."

Mr. President, I submit to you that there is no gainful purpose in pointing out the weaknesses of our jury system. What lawyer, what judge, what party litigant, what juror, or even what citizen, has not experienced or at least witnessed or observed the travesties of justice made possible in civil cases by the so-called "hung jury"? The books are replete with instances where a single abritrary, irrational, or dishonest juror has defeated the very ends of justice.

Fellow delegates, the jury system itself in on trial today. Unless the legal profession, unless constitutional delegates, unless our legislators in a modern world improve that system to overcome its abuses which have been exposed by time and experience, there will inevitably develop throughout this country an overwhelming sentiment to abolish the jury system entirely. Heaven forbid that we should ever live to see the day that that should happen in the State of New Jersey, or that we miss our opportunity now to help improve and preserve the jury system.

By adopting this amendment we merely say to the Legislature, "You study the subject, and if you find, as it was found to be true in other states of the Union, that the jury system can be improved and injustices minimized by a ten-juror verdict, you, the Legislature, have the power to enact such a law within constitutional limitations." If we do not write such a provision into the Constitution,

we cling to tradition for tradition's sake; we ignore that which science and experience impels us to recognize; we make it impossible, without a constitutional amendment, for the Legislature to correct a condition which obviously needs correction. Let us not, as the poet has said, "Be the first by whom the new is tried, nor the last to lay the old aside."

I am confident that the adoption of this proposed amendment will reflect to the credit of this Convention in trying to mould our basic laws to the needs of 1947 and future years, and will bring approbation from all who are interested in good government and the administration of justice, the kind of justice that Cicero had in mind when he said, "Justice renders to everyone his due."

PRESIDENT: Mr. Cowgill?

MR. COWGILL: Mr. Chairman, it seems to me that no useful purpose can be served at this late hour in the day by embarking upon a discussion of something that seems to have some controversial elements. With no disrespect to Senator Lewis, I move that it lay over and that we adjourn.

PRESIDENT: Is the motion seconded?

(Seconded from the floor)

PRESIDENT: All in favor, please say "Aye."

(A minority of "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: The motion is not carried. . . . Mr. Paul.

MR. PAUL: In the July issue of one of our magazines there was a very interesting article on the defects in the court systems of the various states, and particularly calling attention to certain weaknesses in our jury system. I will not quote at length—just one paragraph. In the listing of the reforms that they believe would reimplement and perfect and improve our jury system, they list as Number One: "Abandon the requirement for unanimous agreement of twelve jurors to reach a verdict. A majority of one in our electoral college elects a president."

The majority principle determines the outcome of all elections, and yet it requires the unanimous verdict of 12 to convict or acquit a moron or a vicious gunman. The requirement of the unanimous verdict makes jury service disagreeable. It acts as a possible incentive to corruption. Daniel Webster has said that justice is the great interest of man on earth, and in pursuing this great interest man has established the jury system. As a layman and as one who has served on juries, I believe that Senator Lewis' amendment would perfect and improve our jury system and make it more effective as an instrument for better justice.

PRESIDENT: Mr. Schenk.

MR. SCHENK: I will be very brief. This matter was never introduced as a proposal at this Convention and was never discussed by the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. It is entirely new material to every committee member.

That about concludes what I have to say except to make a personal observation as a layman. I can conceive of many civil matters that are just as important as any criminal matter, and if you start modifying the principle of a unanimous agreement of a jury, where do you stop? Five-sixths looks plausible today. A few years from now two-thirds might look very plausible, and then three-fifths. I just think, as a layman, we shouldn't modify the principle. As I said before, the committee never discussed the matter, and I think there are members of the committee who wish to speak on the other side of the matter.

PRESIDENT: Mr. Park.

MR. PARK: Dr. Clothier, ladies and gentlemen of the Convention:

The remarks that I will make will be so brief that we can vote on the question this afternoon. I support the proposed amendment. I think the principle is sound, and I need not repeat what he said about it. What appeals to me most is the fact that this does not compel the Legislature to act, but that they may examine the matter in greater detail and may come to the conclusion that it ought not to be five-sixths. My own judgment is that upon examination the Legislature will come to the conclusion that five-sixths is the proper thing to do. However, we do not bind the Legislature to act, and they can consider the problem. After experience and experimentation, if it does not work out, that legislation can be repealed. It would give them the power to act. Having the power to act themselves on their own judgment, they have the power to repeal the law if it is not satisfactory.

I urge the adoption of the previous question.

PRESIDENT: Senator Morrissey.

MR. MORRISSEY: Will the Senator from Burlington submit to a question?

MR. LEWIS: He will, Mr. President.

MR. MORRISSEY: Senator, just what does this amendment do that cannot be done under the terms of the present clause of the Bill of Rights?

MR. LEWIS: Through you, Mr. President, in answering that question, I will say that under this amendment it is possible for the Legislature to provide by law that a jury of five-sixths, or 10 in number out of 12, may render a verdict in a civil action, whereas

without this amendment it will be impossible for the Legislature to pass such a law.

MR. MORRISSEY: Through you, Mr. President, don't you think, Senator, the right of trial by jury should remain inviolate? Do you take that to mean that it is necessary at all times to have a complete vote of 12 persons? Don't you think that the fact that they guarantee a jury trial does not necessarily mean it has to be by the entire jury?

MR. LEWIS: Through you, Mr. President, I answer the delegate from Camden by saying that that language refers to a right of trial by jury. The proposed amendment does not in any way mitigate, abrogate, or nullify the right of a trial by jury. It merely goes so far as to say that five-sixths in number may render a verdict.

MR. MORRISSEY: What I am trying to point out is that up to the semicolon, "The right of trial by jury shall remain inviolate;" —this Constitution as drawn does not say that it is necessary that 12 people agree on a verdict. What's to stop the Legislature, even with this clause as it now stands, from making five-sixths, or three-fourths, or two-fifths, or anything else as the deciding factor?

MR. LEWIS: The first sentence relates to the right of trial by jury which, as I have heretofore said, is not affected by the proposed amendment.

MR. MORRISSEY: Now, my question is: Why can't the Legislature, with this clause, say three-fifths is enough to determine a civil matter; and why is it necessary for the amendment to be placed in here at all?

MR. LEWIS: By tradition you have an established trial by jury system, which is not to be affected except insofar as the proposed amendment permits a lesser than a unanimous vote of the jury.

MR. MORRISSEY: On the question, Mr. Chairman, and briefly —I see no purpose in incorporating this in the Constitution. I think if Senator Lewis and the rest of the Convention feel as though this is the step to be taken, to memorialize the Legislature is sufficient. Do not have it written in as a basic law of the State.

MR. LEWIS: Mr. Chairman, it is significant that the laws of this State have been carried over from the laws of England originally, where they had the common law that recognized a trial by a jury of 12 and the unanimous verdict of the jury as necessary. If we do not amend the Constitution as I have proposed, then the common law still carries on into this Constitution, and I submit the Legislature would not have the right to pass any such law as indicated in the proposed amendment. It is necessary that we have this amendment written into the Constitution.

PRESIDENT: Any further discussion?

FROM THE FLOOR: Question!

PRESIDENT: Are you ready for the question? We will take a vote on Amendment No. 7. All in favor of adopting this amendment, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Those opposed, please say "No."

(Chorus of "Noes")

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barus, Berry, Clapp, Constantine, Dixon, Drenk, Dwyer, W. A., Farley, Jacobs, Jorgensen, Lance, Lewis, Lightner, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Murray, Naame, Orchard, Park, Paul, Peterson, H. W., Proctor, Rafferty, Sanford, Smith, G. F., Sommer, Taylor, Walton—29.

NAYS: Barton, Brogan, Cafiero, Carey, Cavicchia, Cowgill, Delaney, Drewen, Dwyer, W. J., Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Katzenbach, Kays, Lord, McGrath, Milton, Moroney, Morrissey, Murphy, O'Mara, Peterson, P. H., Pursel, Pyne, Randolph, Read, Saunders, Schenk, Schlosser, Smalley, Smith, J. S., Stanger, Streeter, Struble, Van Alstyne, Wene, Winne, Young—42.

SECRETARY: 29 in the affirmative, 42 in the negative.

PRESIDENT: The amendment is not adopted.

MR. SCHENK: I move we adjourn.

FROM THE FLOOR: Second.

PRESIDENT. There is a motion that we adjourn until tomorrow at 10:00 o'clock. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

(The session adjourned at 5:00 P.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Wednesday, August 20, 1947

(Morning session)

(The session started at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the members of the Convention to rise while Father John C. Body, of St. Ladislaus Catholic Church, pronounces the invocation.

FATHER JOHN C. BODY: O God, the Protector of all who trust in Thee, without Whom nothing is strong, nothing is holy, increase and multiply upon this gathering Thy mercy that Thou, being the Ruler and Guide, may so be able to work for the benefit of the people of the State of New Jersey that we should obtain Thy temporal blessings upon the new Constitution; that through it we may not lose those blessings which are eternal. Grant that the affairs of this State be peaceably ordered through our labor, thus obtaining upon this work Thy blessing through Thy Son, Jesus Christ, our Lord, Amen.

PRESIDENT: The next item of business on the docket is the reading of the Journal. May I ascertain your wishes in the matter?

FROM THE FLOOR: I move it be dispensed with.

FROM THE FLOOR: I second it.

PRESIDENT: It has been moved and seconded that it be dispensed with. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried . . . The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H.,

Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present.

PRESIDENT: The Secretary announces that a quorum is present.

I don't want to be officious, but this is going to be a hot day, and I would like to suggest to those who might have some hesitancy that they will make the chairman feel more comfortable if they too will take off their coats and neckties—those who feel like it.

Are there any petitions, memorials or remonstrances to be presented?

(Silence)

SECRETARY: I have an announcement from Mr. Saunders, but there aren't enough of his committee here to justify making it.

PRESIDENT: Well, we'll take it a little later . . . Are there motions and resolutions to be presented? . . . Mr. Dixon?

MR. AMOS F. DIXON: Mr. President, I have a resolution to present to the Secretary.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourns, it be to meet at 10:00 o'clock on Thursday, August 21st."

FROM THE FLOOR: Mr. President, I move the adoption of the resolution.

FROM THE FLOOR: I second it.

PRESIDENT: You have heard the resolution as seconded. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: We shall meet on adjournment, tomorow at ten o'clock.

Are there any other motions or resolutions to be presented?

(Silence)

PRESIDENT: If not, may I ask whether any delegate or delegates have further amendments to offer to any of the Proposals? . . . Mr. Read?

MR. WILLIAM T. READ: Mr. President and delegates, or more particularly, the delegates who are on the Committee on Taxation and Finance:

I wish to announce that there will be a meeting of the Committee on Taxation during the luncheon period. The Rules prevent committee meetings during the sessions of the Convention, so dur-

ing the recess—our luncheon recess—the Committee on Taxation will meet in private dining room A, in the regular Commons, as you go in. The Committee on Taxation will lunch together in private dining room A.

PRESIDENT: Is there any unfinished business to come before the Convention at this time? And once again, are there any other amendments to be offered to any of the Proposals?

(Silence)

PRESIDENT: If not, we will proceed with the consideration of the amendments to Committee Proposal No. 1-1. Mr. Schenk, the chairman, requests that we now consider Amendment No. 13.

Mr. Schenk, do you care to open the general discussion before we call upon the mover of No. 13?

MR. JOHN F. SCHENK: I have nothing particular to say, Mr. Chairman. I think we can proceed by having the sponsor put in his case.

PRESIDENT: Amendment No. 13, which has been introduced by Mr. Schlosser *(reading):*

> "RESOLVED, that the following amendment to paragraph 10, Rights and Privileges, Article——, be agreed upon:
> Amend page 3, paragraph 10, line 2, by striking out the words: 'presentment or.'"

Mr. Schlosser, will you discuss this?

MR. FRANK G. SCHLOSSER: Mr. President and fellow delegates:

The amendment I propose is a simple one; it won't result in any wretch who should be imprisoned being freed. It's simply to strike out of the indictment clause in the Constitution the two words "presentment or," so that the clause, as amended, will read:

> "No person shall be held to answer for a criminal offense, unless on the indictment of a grand jury. . . ."

Presently it reads "presentment or indictment of a grand jury."

Historically, under the old law, the grand jury proceeded in two ways. First, if the victim of a crime came before it, he had to come in with a bill of indictment that he had to have his own solicitor draw. If another case was considered by the grand jury without any complaint, the grand jury would make a presentment, and that was an instruction to the prosecuting authority to draw an indictment.

In adopting this language, "presentment or indictment of a grand jury," in 1844, our Constitutional Convention was simply using the old language that had come over to us, practically on the Mayflower. But of late years, the presentment has degenerated into a license to libel citizens with whom some of the grand jurors disagree. I have prosecuted many cases before grand juries; I have attended grand

jurors at their social affairs, and in the main they're a fine, decent body of men and women. But there is something about those juries that on occasion, when two or three "smart alecks" get on them, somebody's axe is being ground at the expense of a citizen who hasn't done anything wrong, because if he had he'd be indicted. And the first thing you know, a presentment is handed up to the court and someone else's character assassinated.

It's getting so bad here lately that when word goes around the court houses in some of the counties, as I understand it, that a presentment is about to be made, the hurricane shutters go on the windows and some of the citizens make a speedy dive into the tornado cellar. Now, I think it grossly unfair for a body of men and women temporarily taken out of anonymity, put into positions of authority, to be urged by some misguided individuals among them to bring out a presentment in order to tear the hide off someone who couldn't be indicted.

The unfairness consists in that the victim of these libels has no way of showing his innocence. If he were indicted, he could come into court, plead "not guilty," stand trial and demonstrate his innocence; but when he's presented and has his flesh thoroughly lacerated, his character destroyed, his wife often in tears, the neighbors wondering whether or not there can't be something true about this—otherwise the grand jury wouldn't say it—there isn't anything he can do about it. He can't sue the grand jury for libel, because the grand jury has the right to make a mistake, the courts say. They have to pass upon whether or not they can issue a presentment, and if they mistakenly think they can, well, there isn't anything the law chooses to do about it.

I attended an institute in New York City in March of 1946, conducted to explain the new federal rules, and there former Chief Judge Crane of the New York Court of Appeals spoke upon this subject, and gave it as his opinion that the grand jury had no right whatever to make such a presentment.

Perhaps the most practical method of handling those libelous attacks upon citizens was the one devised by the late Justice Bergen. They tell the story that some years ago the grand jury was coming in with a blisterer against one of the leading citizens of this county, and that it was handed to Justice Bergen before he would permit it to be read. And then the sensible and learned judge took the presentment, read it very, very carefully, and before the eyes of the startled jurors tore it up and threw it in the waste paper basket, and said, "Gentlemen, that is none of your business."

As the clause in our present Constitution stands now, it may be impossible for the Legislature at a later date, if it chooses to regulate the subject of presentments, to stop grand juries from bringing

in libelous attacks upon citizens. The amendment that I propose will take nothing away from the indictment clause of the Constitution. No citizen is ever tried upon a presentment, and if the amendment is adopted by this Convention it will allow the Legislature at a future day to regulate this most vexing subject. I respectfully ask for your support.

I'd like to close the debate, Doctor.

PRESIDENT: Any discussion on this Amendment No. 13? . . . Mr. Park.

MR. LAWRENCE N. PARK: Dr. Clothier, and ladies and gentlemen of the Convention:

The proposal this morning by Delegate Schlosser of Hudson County, was presented before the Committee on Rights and Privileges with just as effective a presentation. We were very favorably impressed with the manner in which he presented his problem, but we found ourselves in this position: almost half, maybe more than half of the committee, are laymen. As this problem is basically a legal problem, the laymen said in effect, "Well, gentlemen, you members of the bar will have to work this one out." Now, approximately half the members of the bar shrugged their shoulders—and I was one of that group—and said, "I don't know anything about it."

The evils which may exist by way of presentment, to my knowledge, have not developed in South Jersey, and, therefore, I had no factual information. Delegate Schlosser presented his position so firmly, we thought, that we tentatively agreed to adopt the proposition. But in view of the uncertainties as to how this might operate on the question of the administration of criminal law, we thought it wise to seek the advice of other individuals. I was the secretary of the committee, and therefore I addressed a communication to the Attorney-General of New Jersey. The letter written to him is on your desk, if you have the book, and I suppose that probably you haven't read our minutes any more than we have read the details of the minutes of other committees. But, if you are so minded, you can look about the middle of the book, citation C1-10, page 2, and there you will find the letter which was written to the Attorney-General. On the following page, C1-10-3, is the reply of the Attorney-General. I shall summarize these two communications the best that I can to save time. The letter written to the Attorney-General presented, or posed, these questions:

Will the adoption of the proposal by Delegate Schlosser prevent a grand jury from making an independent inquiry and bringing in an indictment even though the county prosecutor might not want it or be opposed to it? The answer on that point, as Delegate Schlosser has stated himself, the answer from the Attorney-General

was "No."

The next question: Could it limit the function of grand juries to only those matters formerly brought before the body? The answer to that question was, "No."

The other questions were of a practical nature, and without reading from the text I think that we put it to the Attorney-General this way: Will the adoption of the Schlosser amendment interfere with the administration of criminal justice? The Attorney-General in reply said that this matter had been given very thorough consideration by his office, and that his office had unanimously agreed that it would be a hindrance to the administration of the law of New Jersey. I think he pointed out that many individuals are harmed, or could be harmed, by presentment, but many individuals are also harmed by an unwarranted indictment, even though they are found not guilty.

The opinion of the Attorney-General is quite long; it will do no good for me to read it to you, and possibly Delegate Schlosser in closing the debate may analyze this opinion and tell us wherein he feels it is wrong. After we received that opinion, the committee decided unanimously that in the absence of any better evidence, except the evidence of one attorney versus another attorney, the matter should be submitted basically to the Convention as a whole. I think I am correct in saying that no member of the committee had any violent opinion one way or another on the proposition. I think it is an open question. Personally, I do not feel strongly one way or the other. I do not feel strongly in favor of it, because I have not had personal experience in any abuses of presentment. Of course, each of us, on this open question, will have to follow the dictates of his own conscience. Personally, until I hear a more extended debate upon the question, I am inclined to follow the advice of the Attorney-General.

I think I speak for the committee when I say that our view is this: This is a problem for your own decision.

PRESIDENT: Any further discussion on Amendment No. 13? . . . Mr. Schenk.

MR. SCHENK: I thought I might note just one or two points in the letter we did receive. I think the entire department participated in its preparation, including Mr. Backes, who had had long experience in the field of law.

Quoting, "You ask the question as to whether I know of instances where persons have been harmed by the procedure of returning a presentment. I do, in rare instances." In other words, ending the quote, he apparently feels that it is the exceptional occasion.

"You then ask the further question as to whether or not the

Department of Law believes the proposal would help or hinder the administration of justice. It would hinder the administration of justice in this State and would not be in the best interests of law enforcement." I was quoting then also, of course.

Then, finally, "Our grand juries are, of course, an arm of the court and therefore an essential part of the administration of justice. In view of the fact that as such they have a fundamental inherent right to return a presentment, either with or without the constitutional provision of which we are speaking, certainly no harm could come to the individual by leaving the provision in the Constitution in the exact language in which it now is. I repeat, to change this provision by taking out the words 'presentment or' would take out of our Constitution a provision of the common law which had been in force in this State from colonial times and would tend to weaken the administration of justice." That's the end of the quote, and the end of my statement.

PRESIDENT: Any further discussion on Amendment No. 13? If not, I'll ask Mr. Schlosser to conclude the discussion.

MR. SCHLOSSER: I'm very sorry that I made so much work for the Attorney-General's office in this hot summer.

Now, we had an illustration here a few days ago about the sanctity of the opinion of the Attorney-General. I think Mr. Van Riper gave one opinion to Dr. Saunders' committee, and Mr. Russell Watson gave another. One of those cases of "You pays your money and takes your choice." Dr. Saunders' committee didn't take the opinion of the Attorney-General, and I don't see any reason why the delegates should either.

Concededly, it won't interfere with the administration of the criminal law at all. It will simply make it possible for the Legislature, if it so chooses at a later date, to regulate the subject of presentment so that evil will be avoided and any good that can come out of a presentment can be retained. I say that notwithstanding the opinion of the Attorney-General, the proposition is a fair one, it won't harm law enforcement in this State at all, and I think it should be adopted.

PRESIDENT: Are you ready for the question on Amendment No. 13?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Those opposed, "No."

(Chorus of "Noes")

PRESIDENT: Those in favor, please raise their hands.

(A minority of hands)

PRESIDENT: Those opposed, please raise their hands.

(A majority of hands)

PRESIDENT: The amendment is lost.

We will proceed now with the consideration of Amendment No. 12, also introduced by Mr. Schlosser *(reading):*

> "RESOLVED, that the following amendment to the Bill of Rights, Article——, be agreed upon.
>
> Amend page 4, after line 7 of paragraph 19, by adding thereto a new paragraph reading:
>
> 'Prosecution for common law crimes is abolished and no person shall be held to answer for any criminal offense unless, before commission of the fact, such crimes shall have been created or defined by statute.' "

Mr. Schlosser.

MR. SCHLOSSER: I should have stayed here, Doctor.[1] I would have saved time. In the arrangement brought about by the committee, I have the unfortunate experience now of addressing you twice in succession, but if it hadn't been for the good graces of Chairman Schenk it would have been much worse. I was first scheduled to come up three times in a row. I want to thank him for giving me that brief respite.

The purpose of this amendment is to bring over into the criminal laws of this State the excellent idea adopted by Senator Van Alstyne's Committee on the Executive Article. Of course, when it was introduced, I had no idea that the Senator was going to come out with the Article he did. I am just pointing out to you, now, the events that took place. The support for this proposition is found in the Executive Article, as reported out by the committee of which Senator Van Alstyne is the chairman.

In the Executive Article there is a provision that the rules of administrative agencies must be filed with the Secretary of State, because, you see, they have the force of law and every citizen must be put on notice of what the law is. That is a radical departure from the present law. At the present time administrative agencies make their own laws and generally file them with nobody. With the principle of the Executive Committee I am in thorough accord, and expect to support it when it comes to a vote.

Now, this is the same principle applied to the criminal law. As a matter of common fairness, no person ought to be subjected to criminal prosecution and imprisonment in the State Prison, unless informed in advance of doing the act that certain conduct on his or her part will amount to a crime. This isn't the state of the law in New Jersey today. Here a horde of crimes evolved in England in the early centuries are punishable by imprisonment for as long as three years in State Prison and/or a fine of as much as $1,000.

[1] Mr. Schlosser refers to his having left, and then returned, to the microphone-equipped reading desk in front of the Convention platform.

Many of those crimes are not even named or defined in our statutes.

For 171 years this State has taken the lazy man's way of enforcing the criminal law, and it was done by providing that the laws of England, the common law of England, should be, in effect the criminal law of New Jersey. But the citizen of our State can't go over to England and see what the laws are or were over there. He has to be apprized of the existence of laws in our own State. That isn't done under the present system.

Many of our citizens are of foreign extraction. They don't understand our statutory laws any too well and, of course, they have no way of knowing what the common law crimes are. Many of the native-born citizens don't know them, either.

Among the common law crimes are those known as barratry, bribery, buying and selling office, common law conspiracy, in which although the act done by one person may not be criminal, if it's done by two people it's a State Prison offense under the laws of England and, of course, under the laws of New Jersey.

Common scold—that is an offense confined to the female sex. Any lady who on three, I think it is, or more occasions scolds her neighbors, is a common scold and she can be sent to State Prison for three years and fined $1,000.

Contempt of court—that may surprise many of you. You may not have known that you could go to State Prison for three years for contempt of court. But you can, if the grand jury wants to indict you for it.

Eavesdropping—that means hiding under windows at night to find out what the inhabitants of the houses are talking about.

Election offenses, extortion, forcible entry and detainer, libel, malfeasance, the obstruction of justice, sedition, and here are three unique offenses: forestalling, engrossing, and regrating.

When New Jersey broke away from the English Crown in 1776 it may have been necessary to provide generally for crimes, but after 171 years it's high time all crimes were created and defined by our Legislature, and those found unsuitable to our conditions abolished.

There is a worse aspect of the situation found in the decisions—a decision of the Supreme Court of this State, adopting a ruling by Lord Mansfield, in England. The decision indicates that anything the judges deem wrong, though never made criminal by the Legislature, can be prosecuted as a crime and the citizen sent to prison for as long as three years and sentenced to pay a fine of as much as $1,000. Think of that, ladies and gentlemen of the Convention! Anything any judge deems morally wrong, against the public weal, can result in your being sent to State Prison for as

long as three years, even though you never knew that it was a crime, which it wasn't until the judge had you brought into court.

With that proposition I thoroughly disagree. The 14th Amendment to the Federal Constitution, I think, prevents that kind of judicial legislation. But the laws are on the books, and the courts can rule, and have ruled, as I have explained to you.

Now, it's only right that the little fellow in our State should be able to find out what the law is. Don't bring him up to the court house and read an indictment to him that he can hardly understand, charging him with a crime that he never heard of in his life. I say to you delegates, that the Legislature can very easily select any of these crimes—they are not serious crimes—it can select any of these crimes that it feels suitable to our conditions and incorporate them into statutory law. It should be done, and this Constitution should provide the giving of a new birth of freedom to the little fellow in this State by enacting that prosecution for common law crimes is abolished, and no person shall be held to answer for any criminal offense unless, before commission of the fact, such crime shall have been created and defined by statute.

I think that's only fair, and I want to say to you that the State is ill-governed, indeed, when its citizens, as now, cannot find out what the laws are.

PRESIDENT: Is there any further discussion on Amendment No. 12? . . . Mr. Schenk.

MR. SCHENK: I will ask Mr. Park to speak against the amendment.

PRESIDENT: Mr. Park.

MR. PARK: Mr. President, and ladies and gentlemen of the Convention:

The proposal advanced under Amendment No. 12 by Delegate Schlosser was also presented before our committee. Our committee by a vote of 11 to 0 agreed not to include it in our draft, and the reason that we did so was because we felt that there was no pressing evil.

Delegate Schlosser has presented his case effectively this morning. He presented his case before us very effectively. I say this about it. He has outlined a number of crimes. He has listed such crimes as barratry. Of course, he did not define it, but barratry was the crime of buying and selling public office, or buying and selling church office.

He mentioned the fact that nowhere in the statute was the offense of bribery defined. I don't think I need labor the point to get over to you people the idea of bribery, or the idea of conspiracy, or the idea of a common scold, or the problem of eavesdropping, or the question of contempt, or the question of extortion, or to go on with

all of these propositions.

What I say to you people about these particular crimes is this: Do any of you doubt, in your own mind, that it is wrong to do these things? It is perfectly true that these things have not been defined by statute. But it is also perfectly true, I think, that the average individual recognizes that these things are wrong and needs no book ahead of time.

Now, upon the question of this little fellow, this little fellow who is supposed to do things and doesn't know whether or not they are legal or illegal. Let us just ask ourselves this practical question: How many persons grab a law book before they commit a crime, to find out whether their conduct is proscribed or not? I say, as a matter of fact, that people go ahead and do these things, willing to take the risk, and then they hope their lawyers will later on grab a law book to find a way out.

Nowhere in the statute is the offense of murder defined. While our statutes classify the degrees of murder and make distinctions between first and second degree murder, nowhere is it defined and, therefore, we must look to the common law rule. By the common law definition, murder is the willful killing of another, with malice aforethought. But how many individuals, how many little fellows, have any real concept of the legal aspects of murder?

There is so much the law students have to learn about what is meant by "malice aforethought." What is meant by "willful"? What is meant by the expression of "another"? What is, in effect, "a killing"? There are many legal technicalities in that problem. But let's ask a practical question. Does not any person of average mind know that to kill another is wrong? Therefore, I say to you that even though there is a difficulty in not knowing some of these offenses, as far as the lawyer's definition is concerned, few of us have any difficulty in knowing whether they are right or wrong.

Now, in the attempt to write into the Constitution of this State the requirement that all of these offenses must be defined, I submit that you still run into the same difficulty as far as the little fellow is concerned. If you want, for instance, to define the term "murder" and write into the law all the implications, you would have to write a text book into the statute, and the little fellow would not be helped at all unless you had the text book in the statute.

I submit that when a person does things, he doesn't do them because he first examines the law. He does something because he wants to do it, law or no law, and hopes that some criminal lawyer can get him out of it.

Putting the law into codes has been no cure for this condition. We felt, therefore, that there was no pressing evil; that in the adjudications on code law there is always the need to go back to common law to find out the meaning. We say that the amendment, as

proposed, does not cure an existing evil. We say that when people do these things for which they can be indicted, that they know, or should know, that they are wrong, and that they have no need for any particularization of them.

I have no familiarity with this except for one crime I came across in a study I once made, the crime of suicide. I would not have known about it, except that it once happened to have been a bar examination question. You look in our statute books and you can't find suicide. Of course, when a man has committed suicide, it is hard to punish him. It is not at all hard to punish him for attempting to commit suicide. But do we need anything in the law books to tell us that we should not commit suicide, or attempt to commit suicide? Our religion is against it.

I say to you people that the evil here is a theoretical evil; that it has been greatly magnified out of its proper proportions; that putting it in the law books will not induce anyone to look first, and I see no need for this amendment. I urge its rejection.

PRESIDENT: Mr. Murphy.

MR. FRANCIS D. MURPHY: Did you say that there was "no precedent" for this?

MR. PARK: I probably said "there was no pressing evil."

MR. MURPHY: I beg your pardon.

PRESIDENT: Is there any further discussion on Amendment No. 12? . . . Mr. Schenk.

MR. SCHENK: Just a brief comment from the committee's minutes. We discussed this question, of course, exhaustively. I am quoting now from the committee minutes:

> "A member at this point inquired if this matter could not be taken care of by legislation. Mr. Schlosser said: 'The Legislature can provide for same, but it never has, and probably never will.'"

I think we are really in the field of something that does overlap with legislative action, but I do not want to dilute Delegate Park's very able argument, and I therefore make just this brief comment.

PRESIDENT: Is there any further discussion? If not, I will ask Mr. Schlosser to conclude the discussion.

Mr. Ferry.

MR. LELAND F. FERRY: Before Mr. Schlosser concludes the argument, I would like to say a few words on this.

I am a member of the Rights and Privileges Committee, and take a great deal of pride in our Proposal, the result of our labor. I remember when Mr. Schlosser's amendment came up, and, I believe, I voted against that amendment.

Now, I feel that in streamlining this Constitution we should leave no stones unturned. It has been my privilege to be in the criminal law field for a number of years, as a judge and as an assistant prosecutor, and I know that on many occasions situations have

arisen whereby there has been a great deal of confusion by reason of the very cases that Mr. Schlosser's amendment seeks to cure. After further consideration, I feel that I am going to vote for the amendment.

To the laymen of the Convention this may not seem very clear. But to the men who work with these laws every day I think it should be self-evident that if anything can be done to clarify it, it should be done so that the man in the street knows what is a crime and what isn't a crime, so that the lawyer will clearly know when his client is charged with a crime whether he can go to a statute and find it, or whether it means that he has to search through the decisions over the years, through legislation and decisions in this country and also in England.

I think this is something that our sister State of New York took care of many years ago, when they codified their laws, and I think it's time that New Jersey did something about it. I therefore urge the adoption of this Schlosser amendment.

PRESIDENT: Dean Sommer.

MR. FRANK H. SOMMER: Mr. President and members of the Convention:

I want to call the Convention's attention to the situation that will exist if the proposed amendment is adopted. We have a provision in the proposed Constitution that the Constitution shall be self-executing. Read this proposed amendment in the light of that fact:

> "Prosecution for common law crimes is abolished and no person shall be held to answer for any criminal offense unless, before commission of the fact, such crimes shall have been created or defined by statute."

We now have common law and statutory crimes. The moment we adopt this Constitution there will be no "common law crimes," and the result will be a field day for the complete commission of common law crimes until when? Until the Legislature does what, in my judgment, it should long ago have done, namely, codify the criminal law.

I am opposed to an amendment which will have the effect of throwing the doors wide open to the commission of common law crimes until the Legislature acts.

PRESIDENT: Is there any further discussion on Amendment No. 12? If not, I will ask Mr. Schlosser to conclude the argument.

MR. SCHLOSSER: I would like to reassure Dean Sommer that my quarrel isn't with the crimes. My quarrel is with the method. There is plenty of time, as I see it, for the Legislature to take hold of these few common law crimes, to see if they fit our conditions, and to provide by statute that they shall be criminal. There is nothing wrong with that. My principle is that the citizen should be told what is wrong before he does it, not be hailed into court

and made to answer for a crime he may have known nothing about. If the principle is sound in the Executive Article, on the administrative agencies, and I think it is, it's sound here. No great harm will come from this; nothing but good. Every citizen can know the law, and there is plenty of time to take care of these few offenses. The Legislature can very easily do it in a short while.

I am not saying that the people who commit those offenses, if the Legislature wants to continue them, should go free. I am only saying that the man who commits them should be told first that if he does the forbidden act he will be punished.

I would just like to answer Mr. Park on two points. First, I want to give an illustration that the little fellow in the street can't possibly know what these crimes are, because Mr. Park gave you the definition of "barratry" as being the offense of buying and selling office. I think that if Mr. Park looks up the definition of "barratry" he will find that it's a fellow who stirs up law suits and quarrels among the people through the country on three or more occasions. Now, if Delegate Park didn't know that point—I don't blame him for not knowing it—how can the little fellow know it all? He hasn't gone to law school.

Mr. Park dragged a lovely red herring through this gathering. The operation was very, very adroit. He waved the bloody shirt, in effect. I don't mean anything by that, Mr. Park, except as a synonym or metaphor. Murder, he asked, what's going to become of murder? Murder isn't defined by statute, he said. I think that if Mr. Park looks up our statute, he will see that murder is defined by the statute.

These common law crimes are just small, minor, unknown crimes that in a great State like New Jersey, with 4,400,000 people, should be brought to the attention of our citizens, so that their liberty will not be taken away from them for offenses that many of them, including perhaps some of the delegates here today, never knew were wrong.

I ask that the amendment be supported.

PRESIDENT: Mr. Park.

MR. PARK: I should like to make a brief reply to Delegate Schlosser.

When his first proposition was presented to us, I gave it consideration and I followed the precedent of one of our distinguished members, Senator Barton—in case of doubt I looked up Webster.

Now, we are not here to haggle about the point. Perhaps Webster and I are both wrong, but I have quoted Webster correctly. Even if I quoted him wrongly, and even if we are both wrong, and even with this "fancy" offense that Delegate Schlosser has defined for you, I still submit that all of us would know what it was wrong to

do in the first place, even if we hadn't read a book.

PRESIDENT: Would you care to reply, Mr. Schlosser? Or is the argument closed?

MR. SCHLOSSER: I do not want to belabor the point, Dr. Clothier. I wish to thank the chair and the delegates for listening to the ideas that I have brought down from my county to be presented to the delegates of the Convention, and to thank them from the bottom of my heart for the nice reception they have given me.

PRESIDENT: The question is called for. All in favor of Amendment No. 12, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Those opposed, say "No."

(Chorus of "Noes")

PRESIDENT: All those in favor, please raise their hands.

(Raising of majority of hands—22)

PRESIDENT: All those opposed, please raise their hands.

(Raising of minority of hands—21)

PRESIDENT: There is only one hand difference, ladies and gentlemen, but the rules provide that an amendment must be adopted by 41 votes, so the amendment is lost.

I have an announcement from Mr. Saunders to read, which I shall read at this time lest I forget it: The Committee on Submission and Address to the People will meet for lunch this noon in the private dining room adjacent to the usual delegates' dining room. The committee is asked to meet promptly on adjournment. Important matters are to be considered . . . The Committee on Submission and Address to the People.

Do I understand, Mr. Schenk, you now wish us to consider Amendment No. 20?

MR. SCHENK: That's correct, sir.

PRESIDENT: The chair will recognize Mr. Randolph.

MR. OLIVER RANDOLPH: Mr. President and delegates to the Convention:

Since the discussion of yesterday, I have decided to withdraw a part of Amendment No. 20—the words which were inserted after the words "public schools." It will leave the amendment in its present form, as it is mimeographed. I daresay all of the delegates have the amendment on their desks.

PRESIDENT: May I suggest that you read it, Mr. Randolph?

MR. RANDOLPH: The amendment will read as follows *(reading)*:

> "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in any civil right, or segregated in the militia or public schools on account of religious principles, race, color, ancestry or national origin."

The remarks I made yesterday are applicable today. Objection has been made to the insertion of the words which I had inserted. I don't think that they are of very much consequence, and I therefore make the same argument to the Convention that I did then. I repeat that I believe that the adoption of this amendment will put the Convention four-square on the question of anti-discrimination.

PRESIDENT: Colonel Walton.

MR. GEORGE H. WALTON: Mr. President and fellow delegates:

I think it was the week before last that this amendment, as it affects the militia, was placed in the Executive section of the Constitution, in the militia portion of that Article. There were those of us who opposed it—not that we did not believe in the principles there, but rather because we thought that it was the wrong place for it to be in the Constitution.

The members of the Executive Committee, as I recall, were unanimously in favor of the principle here set forth, but they felt it should be in the Bill of Rights.

I think those of us who were against it before, just because of the place it was put in the Constitution, are now in favor of this amendment, and we hope that you will vote for it. Delegate Randolph has agreed that should this amendment pass, he will ask unanimous consent to take it out of the Executive section, where it does not belong.

I hope you will all vote in favor of this amendment.

PRESIDENT: Mr. Schenk.

MR. SCHENK: At this time I would like to call on Mrs. Katzenbach in opposition to the amendment.

PRESIDENT: Mrs. Katzenbach.

MRS. MARIE H. KATZENBACH: Mr. President and fellow delegates:

I am speaking against Amendment No. 20 to Committee Proposal 1-1. In doing so, however, I would not have anyone present think that I do not realize the feeling of compelling necessity for a forceful expression of rights which prompts Mr. Randolph to submit this amendment, hoping thereby to speed the recognition so long due to those for whom he speaks.

However, when the committee framed paragraph 5, it was done only after the most careful deliberation and consideration of not only what is contained in Amendment No. 20, but also in Amendment No. 19. The problem of enumerating all civil rights not now enjoyed by all persons was thoroughly discussed. It was felt that in the advocacy that "no person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right,"

there was enunciated the broad principle of a Bill of Rights and Privileges. To be specific, to name some would be at the cost of the exclusion of other rights.

It must be remembered that it is only relatively recently that the people have been made more acutely aware that in a democracy any limitation of civil rights for all people is inconsistent with our fundamental theory of government. Civil rights increase with social expansion, and the rights so enumerated today may be greatly augmented tomorrow. The only provision in the Constitution which can provide for the present and yet for the future is paragraph 5.

There are now on the statute books laws covering many of the rights sought to be put in the Bill of Rights. If these laws are ineffective, and I know they are, will inclusion in the Bill of Rights of such a right really make it mandatory? I think not.

Mr. Randolph's proposal states that:

> "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in any civil right or segregated in the militia or public schools . . ."

There is not, I believe, any law relative to the militia, but surely that right was earned in the last war.

In regard to discrimination in the public schools, Revised Statutes 18:14-2, as amended, forbids the exclusion of any child between the ages of four and twenty years from any public school, "on account of his race, creed, color, national origin or ancestry." And again, "A member of any board who shall vote to exclude from any public school shall be guilty of a misdemeanor," and the punishment is thereafter prescribed. That is the law—not permissive, but mandatory. Will the clause as suggested by the amendment effect anything further? Unfortunately, I must answer "nothing whatever." The answer lies in the necessity to implement the law by giving the Commissioner of Education the power to enforce the law, now so manifestly lacking.

I earnestly believe that paragraph 5 gives the moral impetus to quicken the will of the people to implement a just and fair consideration of all existing rights, and I hope the amendment will be rejected.

PRESIDENT: Any further discussion? . . . Mr. Schenk.

MR. SCHENK: Fellow delegates, I oppose, for our committee, Amendment No. 20. We feel emphatically that if its philosophy is accepted, the sponsors will have won a battle but will have lost a war—lost a major war with adverse results to the cause for which they so sincerely and plausibly, but I feel so incorrectly, plead.

In effect, we are being asked to limit a broad, all-inclusive guarantee of tremendous worth to every minority group, and to constitutionalize two or more specific civil rights of the many hundreds of them. In our committee's opinion, great damage is unwittingly

being done to the purpose of all who seek to write into the Constitution a completely broad, a completely general, and a completely inclusive clause on discrimination.

The clause we have recommended was exhaustively considered for hours and hours, and adopted by us almost unanimously. In our decision we had the benefit of Delegate Randolph's thoughts on the point at all times, since he was a member of the Rights and Privileges Committee. Our recommendation meets completely these major tests: "No person shall"—meaning everyone shall not; "any civil right"—all of them—hundreds of them; "on account of religious principles, race, color, ancestry or national origin"—every proper and important word in the field of discrimination today. Our clause meets the test completely of "by whom," "which forms or types," and "because of."

Delegate Randolph is asking us to put in two specific forms or types of discrimination which should be included in a legislative code setting forth all of the hundreds of various civil rights clearly, together with clear-cut legislative statements as to who shall not discriminate. The committee contends that the question of the form or type of discrimination, the place, the time, and by whom, all run to legislative material, and should therefore not be grafted on a broad, all-inclusive statement of principles, or projected into the Executive Article, or kept there temporarily to try to implement its transfer to another Article where it does not belong either if the principle is wrong.

To particularize a bit—if we state the case as indicated, why not also include, as one witness wanted to in discussing these matters, and I am using his words, "the right to a useful and remunerative job; the right to earn enough to provide adequate food, clothing and recreation; the right of every farmer to raise and sell his products, with a return that will give him a decent living; the right of every business man, large or small, to trade in an atmosphere of freedom from unfair competition and discrimination by monopolies at home or abroad; the right of every family to a decent home; the right to adequate medical care; the right to achieve and enjoy good health; the right to adequate protection from the economic fears of old age, sickness, accident or unemployment; the right to a good education," and, I suppose, to go to the really ridiculous as far as constitutional provisions go, not the legislative implementation, perhaps why not include the right to swim in public pools? I see there is presently a controversy in New Jersey concerning this point. Or the right to use the boardwalk at the seashore, or the right to go to the motion pictures and sit where you please.

Mr. Bustard, connected with the Division against Discrimination, recommended by implication the inclusion of no specific types or forms of discrimination. That suggested clause reads:

> "No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination against his civil rights by any other person, or by any firm, corporation, or institution, or by this State or any agency or subdivision of this State."

We were told by Mr. Bustard that his committee wanted the basic idea only included, with the wording up to the committee. We did just that. We gave you the basic idea. I think we improved upon his recommendations.

For instance, we eliminated the surplusage of the first sentence, which is included in the Federal Constitution. We struck the ambiguous word "creed" out of that recommendation, which can mean communism, or as Mr. Lett of the same Division as Mr. Bustard wrote me recently, can mean just an off-shoot of a particular religion. We added the words "ancestry or national origin," and we broadened the word "religion" to "religious principles," to include agnostics and non-believers. We included the two points found in the words in our recommendation "shall be denied the enjoyment of" and "nor be discriminated against," as compared to only the one recommendation by the State Council of one thought, namely, "discrimination against." The two clauses are not synonomous exactly, and in including both we feel we have done all minority groups a real service.

Finally, we left out of our draft the State Council's recommendation on the question of discrimination "by whom," since this question and this point is indubitably not constitutional material, but legislative material. We left out such words as, "person," "firm," "corporation" or "institution." One has only to look at the mixture of constitutional material and legislative material in Amendment No. 19, on this same subject, to see how dangerous it is to try to list all of the "by whoms." No. 19 includes "group" and "association," and leaves out others of other proposals. You cannot catch them all, and in failing to catch them all you leave out some, and thus help to destroy a broad, all-inclusive statement of principle, because the specific becomes the general, quite often, by narrow court interpretation.

The language of Amendment No. 20 is even more defective for the purposes of the sponsors, in our opinion. Let me read it:

> "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in any civil right."

They leave out the word "military" in the discrimination. "Or segregated in the militia or public schools"—now, the clear inference of putting that in the middle of the statement is not only to destroy the statement, but to infer that segregation in the militia or public schools, the act of subjecting a person to it, is not a denial of a civil right. Therefore, we contend the language is defective, and to mean what the sponsors mean it to mean it should read:

> "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in any civil or military right, on account of religious principles, race, color, ancestry, or national origin, including the right of non-segregation in the militia or free public schools."

However, we maintain—and as the argument I have given proves, in my opinion, beyond a doubt—when you transpose the words to their proper order and meaning, you only show up more obviously the fatal weakness of Amendment No. 20 and similar propositions, because it becomes immediately apparent that you are grafting two of hundreds of specifics as to civil rights on a general, all-inclusive, constitutional clause and, therefore, providing the means of destroying the general by including the specific.

We of the committee earnestly recommend defeat of Amendment No. 20, and similar amendments, and reconsideration of the specific in the Executive Article to the end that our all-inclusive, completely general statement of principle on discrimination will not be modified or restricted, so that thereby the way will be pointed to win the war against discrimination in civil rights by anyone, anywhere, in any form.

PRESIDENT: Judge Stanger.

MR. FRANCIS A. STANGER, JR.: Mr. President and fellow delegates:

If you refer back to Proposal No. 9 that was made to this Convention,[1] it is a proposal combining the words now in this committee's Report, except that the word "color" was added. That proposal was written by me after considerable thought on the subject, because the racial interest had not been covered in the previous Constitution, and I thought in my reckoning that "color" was included in the word "race." But there seemed to be a difference of opinion on that subject, so the word "color" was included.

As has been so forcefully said here, our committee, after a great deal of consideration and deliberation, wrote the provision that now appears before you in the recommendation of the Rights and Privileges Committee. However, Mr. President, I believe that this Convention has voted that there be no discrimination in the military. Of course, the Convention having voted, it is binding upon me, and even upon my thought, and if it is a question of merely arrangement as to where that provision shall appear in the Constitution I am perfectly willing, as one member of the Rights and Privileges Committee, to accept it in this provision. I believe I sensed the wish of this Convention the other day when the matter of the schools was presented, when a vast majority of the delegates wished something said about the matter of schools—an anti-discrimination clause so far as segregation in the schools is concerned. If that is true, if a majority of the delegates here assembled desire to

[1] Proposal No. 9, by Mr. Stanger, and the text of other Proposals, appears in the Appendix in Vol. 2.

have that included, I have no personal wish to have it placed in some other provision. I think it belongs in the Bill of Rights and not elsewhere.

But, Mr. President, I think the proponents of this amendment are losing by having those things written into the Constitution. I agree emphatically with our chairman, Mr. Schenk, that when we say "any civil right" we have covered the vast domain without going into the various matters that will make up the particular items entering into civil rights. I think that would leave our Legislature free to define, in particular instances, what "civil rights" are. Until the Legislature so defines it, I think we would generally accept that "civil rights" means exactly what it says: all rights to which people of other races are entitled. I feel that it is a mistake to pass the amendment as it is now presented, because I think it is a denial of the privileges sought to be attained by the proponents of the amendment.

However, as I say, I feel bound by the vote of this Convention and by what I interpreted to be the intention of the Convention on the matter of public schools, and if the matter comes to a vote in its present form I shall break with the members of my committee, notwithstanding the fact that I prepared the original draft. I still believe it is the best draft, but I shall stand with my fellows of this Convention and vote for it, which will be inconsistent with my previous votes. I still say to you, Mr. President, it is a mistake to pass this amendment in its present form, notwithstanding previous action.

PRESIDENT: The chair recognizes Mrs. Hacker.

MRS. MYRA C. HACKER: Dr. Clothier, distinguished delegates, and interested citizens:

I feel very much like Mrs. Streeter did the other day when she rose to object to Mr. Rafferty's proposition. I think in this problem of discrimination we are entering into a field of uncharted courses. I share with Mrs. Katzenbach a profound admiration for the accomplishments of Delegate Randolph from Essex County, for what he has done for his people and his magnificent objectives through the years. But what I do think we have to consider in asking for the rejection of this amendment are three main points: first, I think it will fail to accomplish the desired objectives of Mr. Randolph and all of the groups that he seeks to protect. Secondly, from the constitutional viewpoint, it is unthinkable. And thirdly, unwittingly, I feel, we have introduced into our Bill of Rights and our fundamental law a totalitarian concept that is most unfortunate, not only for one class, but for the entire American people.

We have the example, first, that the failure to achieve the desired objective may create racial animosities instead of eliminating them. We had the example in New York recently, when it decided to turn

down its recently proposed anti-discrimination bill. It is a wholly new, uncharted course, and even specialists in race relations are not sure of all the answers—which makes it far more dangerous to freeze any proposition in our fundamental law. Then, we have the problem of social prejudices that are centuries old and cannot be solved in one fell swoop. You distinguished gentlemen, who have had so much experience, realize that all government is the product of wisdom and experience, and there has been little in our experience of recent years to justify the efficacy of any of these so-called anti-discrimination problems. It is a time to make haste slowly. I believe that Margaret Halsey in "Color Blind" feels it is a problem of slow adjustment that must be solved from below and not imposed from above. It is a problem of education and rejuvenation of the spirit, that can only be solved by the people themselves by having the right intellectual, moral and social perspective.

From a constitutional standpoint it is unthinkable. As we all know, a constitution guarantees rights, and rights as experience enlarges and restrains power in governmental bodies. It is not a code. The provisions take on the detailed statements found in legislation, and they are far more suitable for legislative enactment.

Secondly, we have tremendous confusion, I believe, in trying to put together a problem of political rights and social rights. Political rights, as I understand them, are those inalienable rights that belong to all citizens, and to all the people. As I understand it and have been told, social rights are something that cannot be established by law.

To come to the situation that I think is most difficult in the whole problem, there is the beginning of a totalitarian concept that comes in with the use of the word "discrimination." Unfortunately, we in America are very fond of catch words. We used the words "war for democracy," without having too much conception of what they meant. That was World War I. Because we failed in that knowledge of the real meaning of the words, the war ended with a dictatorship in practically all of the countries of Europe. We had a program which we all subscribed to in this World War of the Four Freedoms, and, in some degree because of our lack of knowledge of its basic significance, we have an iron curtain over a great part of the world. We have to remember that after World War I the three post-war dictatorships were built on class, race, and national fanaticism. Unwittingly, I believe, this is an opening wedge.

When I spoke before the Committee on Rights and Privileges I raised an objection to the use of the word "discrimination," since it denotes motives rather than overt acts, and I felt it was not a wise choice for use in a legal document. This is a very dangerous

thing because it forces the individual to defend motives, not overt acts. I believed, prior to this—and you good gentlemen of the law will, perhaps, explain to me—that hostilities in war were directed at actual or overt acts.

Now we can be prosecuted for something in our minds. Everyone is liable to prosecution on a trumped-up crime, and would have to defend his motives. In the problem of discrimination you would have to bring your thoughts and emotions before the law, which is a violation of privacy and one of the worst forms of totalitarianism. An individual is put on the defensive. Even our thoughts are not private. Freedom of thinking is denied. Freedom of press would mean little. It would mean suppression of our intellects and of our emotions. It would also limit the right of the person to make judgments, and deny that freedom of body and mind, and the inviolability of our natural rights, which are our American heritage. It would give enormous power to any organized pressure group to prosecute and persecute anyone of a different belief. We must not forget that in any totalitarian philosophy independent thinking is one of the gravest crimes. Freedom depends upon the ability to criticize.

The Bill of Rights exists *in toto* or not at all. It is our protection of the individual's rights against not only the violence of his neighbor, but also of the State. Our Bill of Rights is the proudest expression of our Anglo-Saxon heritage. We all realize that freedom and liberty are two of mankind's most poignant aspirations. It would be the height of irony that having progressed along the paths of freedom, having produced for every man an opportunity to work out his own destiny with dignity and honor, that through sheer inequities or indifference we dissipate our birthright by abrogating our individuality to a Frankenstein of our own choosing.

We have 300 years of history behind us, belief in the rights of man and of liberty. We have our concept that means freedom and hope, and the ability of men to make their own destiny. I ask you to reject this amendment.

PRESIDENT: Mr. Schenk.

MR. SCHENK: On the point that Judge Stanger raised—I covered it, but I think I should reiterate it. You will recall I said that I felt that specifics should not be grafted on a broad, all-inclusive statement of principles, or projected into the Executive Article, or kept there temporarily to try to implement their transfer to another Article where they do not belong either; that the principle is wrong. Now, I certainly do not feel I am bound to vote for this amendment because this Convention by a vote of 45, or some other vote, some time in the past might have done something it would care and should care to reconsider. Such reconsideration is possible if it

does not belong there, and if it does not belong in the Rights and Privileges either.

PRESIDENT: Is there any further discussion? Colonel Walton.

MR. WALTON: Mr. President, fellow delegates:

In this discussion there are several little points that I think have been lost sight of and should be called to the attention of the Convention. In the first place, when this matter was considered under the Executive section, Delegate Randolph scored very heavily by pointing out, and as yet I've heard no answer to it, that this clause did not cover service in the militia because service in the militia was not a right, but rather a duty. That point to date has not been answered in the previous arguments and it has not been answered this morning.

Secondly, I think the committee, with the possible exception of Judge Stanger, has missed the point completely and has lost sight of the fact that the question has already been passed on by the Convention. This Convention has decided to include in the Constitution that portion of the amendment dealing with the militia, so that it becomes merely a question of where it shall be put—in the Executive section, where it does not belong, or in that portion of the Constitution dealing with the rights and privileges of the citizenry of this State.

Finally, I would like to point out to the chairman of the committee that there is no pride of authorship on the part of Mr. Randolph or myself for this paragraph. Perhaps we erred in following too much the wording of the committee. We didn't want to change it any more than was necessary to be sure that this point that the Convention had already passed on concerning the militia was taken care of. Accordingly, if our wording is not exactly as the Committee on Rights and Privileges thinks it should be, it is still proper to change it, not as to substance, of course, but as to form when it comes before the Committee on Arrangement and Form.

I hope that we will be consistent, that having once passed on this matter, we will continue our consistency and pass this amendment affirmatively.

PRESIDENT: Mr. Schenk.

MR. SCHENK: I have a question to ask Colonel Walton, through the chair. He makes the point that we have passed on this question. Colonel, have we passed on the question of public schools?

MR. WALTON: No, we have not. We have passed on the question of segregation in the militia, and I believe we were about to pass on the school question, and it was referred to your committee with the thought at that time that your committee would come forth with an amendment on the subject.

MR. SCHENK: In other words, we have not passed on the question of schools.

MR. WALTON: That is correct. It was referred to the Committee on Rights and Privileges.

MR. SCHENK: Now, Mr. Chairman, to the point that our clause does not cover service in the militia, you can ask good authorities who will also tell you that a militia right is a civil right. We merely maintain that in introducing two specifics of the hundreds and hundreds of them, you are going to get into the situation where a court with a narrow viewpoint can interpret it to mean that since the Constitutional Convention did not put in more than two specifics, their intent was to give the right only on those two specific points. And further, I still do not go along with the fact that if we made a mistake in another Article, we should not correct the mistake, and that the way out is to transfer the error.

PRESIDENT: Judge Lance.

MR. WESLEY L. LANCE: Mr. President, my interest in at least one of the minorities that might be protected by this is intense. When I was a member of the State Senate I introduced a bill providing for scholarships for Negroes at state expense, and in doing that I realized that I came from the county which probably has the smallest percentage of Negro population of any in the State. I'd like to see this difficulty resolved. I don't know whether service in the militia is a civil right or not. Perhaps it's a military right. To that end, I would like to ask Colonel Walton a question.

PRESIDENT: Colonel Walton, will you take the microphone?

MR. LANCE: On page 2, paragraph 5, would our difficulties be resolved by the insertion of merely two words in paragraph 5 so that it would read as follows:

> "No person shall be denied the enjoyment of any civil or military right . . ."

and then the rest of the paragraph go ahead as is?

MR. WALTON: Mr. Lance, I originally proposed that to Mr. Randolph, and his objection was this: that service in the militia was, in effect a duty and not a right, and that the problem was not taken care of unless the words were specifically used prohibiting segregation in the militia. That had been my original suggestion to Mr. Randolph.

PRESIDENT: Is there further discussion on Amendment No. 20? Are you ready for the question? . . . Oh, Mr. Randolph, I'm sorry.

MR. RANDOLPH: Mr. President and delegates to the Convention:

I dare say I should make some general remarks in a very brief way. I think my parliamentary comment yesterday, and wanting the matter disposed of at that time, is borne out by the fact that

a great many prepared addresses have now been submitted. That's just what I was afraid of—that overnight we'd have a great deal of thought on the subject, and the opposition seems to be fortified with strongly prepared addresses.

I said yesterday, and I hope the Convention will take me in all sincerity, that I trust my color will not have anything to do with the submission of this paragraph. I deeply regret in a way that it was not proposed by a member of the other race. I said yesterday that the motives are not personal, and my motives are not purely racial, and reference to my accomplishments and all that are not appreciated by me, I must say. I appear here simply as a delegate, and I think, in view of the progressive legislation and constitutions not only here but throughout the nation, especially in the northern states, that we should keep pace. Here in New Jersey, I think, we should carry the torch.

I have the highest opinion of even those who disagree with me on this proposition. I entertain the highest regard and respect for such splendid delegates as Mrs. Katzenbach, a lady who has given great thought to every question in the Convention. I wouldn't ascribe to her any prejudice at all because of what she's proposing. It's only an honest difference of opinion. I have the highest regard for our chairman, Mr. Schenk, and for his arduous duties as chairman of the Rights and Privileges Committee. But I do think, ladies and gentlemen, that our very purpose here is to give our honest thought on these matters, and what strikes me as so fundamental in the discussion of this paragraph is this: that it transcends party lines, so far as partisanship has been concerned, Democrats and Republicans alike—I noticed that the day the paragraph with respect to non-segregation in the militia passed. I wasn't surprised, but I was heartily encouraged by the unanimity of progressive thought on this subject.

I won't attempt to answer the individual arguments. I think that some of them were not in place. For instance, there has been some fear that the enumeration of the two rights, the militia and the public schools, would impair the usefulness of the amendment which I have submitted. But we take care of that in paragraph 20:

> "This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people."

The enumeration—just by mentioning the militia and the public schools—does not impair other rights, as practically all members of the legal profession know.

I appeal to you, ladies and gentlemen, to pass the amendment which Colonel Walton and I have offered.

I might say, with respect to Mr. Bustard, since his name has been mentioned, that he now sits there in the visitor's gallery, and he is

behind the amendment which I have proposed, and he heartily endorses it.

I appeal to you, in the interest of fair play as against making declarations which are purely hypocritical. I appeal to you, if you want to insert a real clause in our Constitution which cannot possibly be misconstrued by the courts, I appeal to you to vote for this.

PRESIDENT: Mr. Read.

MR. READ: Mr. President and delegates of the Convention:

I have listened very intently to all of these arguments, and I have come to the conclusion that Delegate Randolph is in error. I know what he is trying to accomplish, and I agree with him thoroughly; but I feel that in adding certain words he is limiting what he wants to obtain instead of getting what he wants.

I think Delegate Paul had that idea yesterday when there was a very long amendment offered here—that those words, instead of enlarging what he wants to get, will be words of limitation.

You may recall the Constitution that was presented in 1944. There was an exemption added to the tax clause for the first time, exempting soldiers, sailors and marines, and so forth, from a tax on $500 of their real estate. It was felt at that time, that the provision was a limitation on all other exemptions, and therefore a great many people voted against the Constitution of 1944 because of that.

I feel that Delegate Randolph, in offering something further than what the committee has offered, is limiting his rights rather than extending them; and I think the committee is perfectly correct, except that I will agree with Delegate Lance. I think there may be a distinction between the civil and the military because there are times when the military is supreme to the civil, especially in times of war. I think if we put in "any civil or military right" on the first line, or have the words "or military" in the second line, right after the word "civil," in each case that would take care of the amendment which was offered to the Executive Article, where it does not belong. But it does belong here, and the military right may not be entirely coincident with the civil right.

I think with that, there would be an extension of what he wants to have; but I am afraid that, by putting in these other words, he's going to limit the rights that he now seeks to have.

PRESIDENT: Is there further discussion on Amendment No. 20, or do you wish the question put?

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor of Amendment No. 20, presented by Messrs. Randolph and Walton, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Those opposed, "No."

(A few "Noes")

PRESIDENT: Those in favor, please raise their hands.

(Majority of hands raised)

PRESIDENT: We'll take a roll call.

SECRETARY *(calls the roll):*

AYES: Barton, Barus, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Drenk, Dwyer, W. J., Eggers, Emerson, Farley, Feller, Glass, Hadley, Hansen, Holland, Hutchinson, Jacobs, Lance, Lewis, Lord, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Morrissey, Murphy, Murray, O'Mara, Orchard, Peterson, H. W., Proctor, Pursel, Rafferty, Randolph, Sanford, Saunders, Schlosser, Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young—51.

NAYS: Brogan, Camp, Delaney, Dixon, Ferry, Gemberling, Hacker, Katzenbach, Kays, McGrath, Milton, Naame, Park, Peterson, P. H., Pyne, Read, Schenk, Smalley—18.

SECRETARY: 51 in the affirmative and 18 in the negative.

PRESIDENT: The amendment is adopted.

The chair declares a five-minute recess.

(*The Convention reconvened after a five-minute recess*)

PRESIDENT: Will the delegates kindly take their seats? . . .

Will the young man standing by the door kindly advise the delegates standing in the lobby that we are about to reconvene? . . .

May I inquire whether any delegates have any further amendments to submit?

MR. WALTON: I would like to bring in an amendment on the amending process, which in effect provides that it may be by a three-fifths vote of all members of both houses of the Legislature, or by a majority vote of all members of both houses in two successive legislative years.[1]

PRESIDENT: Have you an amendment, Senator Farley?

MR. FRANK S. FARLEY: I would like to ask Delegate Walton from Camden to yield the disposition of his amendment until I have ascertained the record on the amendment that I proposed last Friday to the Rights and Privileges Committee Proposal.

MR. WALTON: I just brought in my amendment to have it printed. No action is being taken.

MR. FARLEY: I'm sorry.

PRESIDENT: No action is being undertaken at this time Senator; it is just being printed.

MR. FARLEY: While I'm on my feet, Mr. Chairman, I would

[1] Amendment No. 23 to Committee Proposal No. 1-1. The text appears in the Appendix in Vol. 2.

like to have the record on the Amendment, called 20A, I believe, to the Rights and Privileges Committee.

PRESIDENT: May I ask if there are further amendments to be offered?

MR. ALFRED C. CLAPP: I have a technical amendment to submit, continuing the statutes, rules and regulations, and rights and action, and following the 1844 Constitution. I think it's non-controversial.

MRS. JANE E. BARUS: Mr. Chairman: An amendment which I proposed before, under the Legislative section, was withdrawn and is now being entered with new wording as an amendment to Committee Proposal No. 5-1, Taxation and Finance. It has been handed in. It is substantially the same thing, but I had supposed it died when the Legislative Article was moved for third reading.

PRESIDENT: The Secretary has a copy of it.

SECRETARY: No. 14, Mrs. Barus.[1]

PRESIDENT: Are there any further amendments?

The chair recognizes Senator Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: Mr. President and fellow delegates:

Last Monday I gave notice that we would bring up the Executive Article, Committee Proposal No. 3-1, for third reading and final passage. That takes care of the 48-hour notice as required in our Rules. Starting off, I would ask you to recognize Delegate Randolph.

PRESIDENT: Mr. Randolph?

MR. RANDOLPH: Mr. Chairman and delegates: In view of the action of the Convention on Amendment No. 20, which has just been adopted, I now ask the unanimous consent of the Convention to delete, on page 6 of the Executive Article, Section III, paragraph 1, the last sentence, because that is now included in the Bill of Rights. If Senator Van Alstyne will read that clause, the last sentence—

MR. VAN ALSTYNE: Turn to page 6 in the Proposal as submitted on Monday, Proposal No. 3-1, as submitted by the Committee on Arrangement and Form.[1] You will see in Section III, the last sentence reads:

> "Discrimination on account of race, color, religion or national origin in organizing, inducting, training, arming, disciplining and regulating the militia is prohibited."

MR. RANDOLPH: I ask the unanimous consent that that be stricken out.

MR. WALTON: Second the motion.

---

[1] The text of this amendment appears in the Appendix in Vol. 2.

[1] The Report of the Committee on Arrangement and Form of Committee Proposal No. 3-1 appears in the Appendix in Vol. 2.

FROM THE FLOOR: Question!

PRESIDENT: Motion made and seconded. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Unanimously adopted.

MR. VAN ALSTYNE: Mr. President.

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: Since receiving this Report from the Committee on Arrangement and Form, I have consulted with the committee chairman and the secretary and I have just a few small changes to make in verbiage and phraseology which do not change the substance at all. I would like to ask unanimous consent of the Convention to make the changes at this time. I would appreciate very much if you would all take your Report of Proposal No. 3-1, submitted by the Committee on Arrangement and Form, and turn to page 2.

PRESIDENT: Will you give us just a moment, Senator, while we get our papers? Has everybody this Report in hand? May I ask now if you have a Report in your hand?

(Additional copies of the Report were distributed)

PRESIDENT: All right, Senator.

MR. VAN ALSTYNE: Thank you. Page 2, paragraph 6, line 2. We think it clarifies the English a little bit to insert the word "the" in front of "death," so it will read:

> "In the event of a vacancy in the office of Governor resulting from the death, resignation, etc. . . ."

In the same paragraph, the last phrase, starting in line 10, "until the election and qualification of another Governor," is the same type of phraesology used in the last phrase in the next paragraph, but there the phraseology is changed and reads "until a new Governor shall be elected and qualify." We think the phrases should be the same, and because we have to use the phraseology in paragraph 7, I would like permission to substitute the last phrase of paragraph 7 for the last phrase of paragraph 6.

Page 3—

PRESIDENT: Will you read that, Senator, so we can write it in our copies?

MR. VAN ALSTYNE: Paragraph 6, the last phrase would read as follows: "until a new Governor shall be elected and qualify," instead of the wording that is there.

Page 3, sentences 5 and 6. The present wording is, "or shall have continued to be unable . . ." I think that is a very clumsy phrase

and we would like to cross out the words in line 6, "continued to be," and substitute therefor the words "been continuously," so that it would read: "or shall have been continuously unable to discharge the duties of his office."

FROM THE FLOOR: Will you locate that again?

MR. VAN ALSTYNE: Page 3, lines 5 and 6, the new wording would be, "or shall have been continuously unable to discharge the duties of his office."

Two other very minor changes. On page 4, paragraph 13, line 8, it says, "no ad interim appointments to the office . . ." We want to put "same" in front of "office"—"the same office."

PRESIDENT: Would you mind stating that again, Senator? "No ad interim appointments to . . . "

MR. VAN ALSTYNE: " . . . the same office." "Same" in between the words "the" and "office."

FROM THE FLOOR: Will you locate that again?

MR. VAN ALSTYNE: Page 4, paragraph 13, line 8.

And then the final minor change. You will notice paragraph 14 is a very long paragraph. Very long. We would like to suggest that we divide it alphabetically into sub-paragraphs, or headings "A" and "B." In other words, put "A" after "14" and before "Every," and then on page 5, line 25, put the letter "B." That's for clarification.

I would like unanimous consent to the adoption of these changes in phraseology.

PRESIDENT: Colonel Walton.

MR. WALTON: Mr. President and fellow delegates:

Through you, Mr. President, I would like to call to Senator Van Alstyne's attention the small substantive change made in the militia clause. The Senator requested yesterday that I was to call it to his attention, and I am doing so.

MR. VAN ALSTYNE: Thank you very much, Colonel Walton. I apologize, Mr. President and delegates, that I did forget that. If you will now turn to page 6, Section III, the third line, you will notice that we have changed from the original Proposal of the Committee on Executive, Militia and Civil Officers, which appears on page 6, Section III, line 3, and we have cut out the word "federal" and inserted the word "applicable." The reason for that is that it is believed to be practically impossible for the militia of any state to conform absolutely to the federal standards established for the armed forces of the United States of America. When you consider that the Federal Government has troops constantly under arms, that are training every day, and all the standards that they have, you can readily imagine that it is not possible to make it absolutely the same. So we have cut out the word "federal" and used the word

"applicable," to read as follows: " . . . applicable standards established for the armed forces of the United States." We think that it accomplishes the same purpose, but it doesn't mean that you will constantly have constitutional interpretation.

PRESIDENT: Mr. Orchard.

MR. WILLIAM J. ORCHARD: May I ask Senator Van Alstyne, through you, sir, in view of the resolution just passed unanimously on motion of Mr. Randolph, do we now delete the rest of that paragraph we are talking about, beginning with the word "Discrimination"? Is that correct?

MR. RANDOLPH: That is deleted. Yes, sir.

MR. VAN ALSTYNE: I am talking about the sentence just above that, Mr. Orchard.

PRESIDENT: Any further comment, Senator? . . . Mr. McMurray.

MR. WAYNE D. McMURRAY: Senator Van Alstyne's suggestions are in the nature of amendments to the Report of the Committee on Arrangement and Form, I believe, and as such they have been taken up with the committee and we find them wholly acceptable. We wish at this time to thank the Senator and the members of his committee for the cooperation they have shown in a rather difficult task.

PRESIDENT: It has been moved and seconded that these changes be adopted by unanimous consent. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

I would now like to bring up Proposal No. 3-1 for third reading and final passage.

PRESIDENT: All those in favor of this proposed action will please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Adopted.

MR. VAN ALSTYNE: Is it necessary, Mr. President, for the Secretary to read the Proposal on third reading?

MR. SCHENK: Mr. President: Would that be in order? I thought today we were considering Rights and Privileges.

PRESIDENT: That's a good interpolation and a very brief one, I think.

MR. SCHENK: Would it be agreeable to the delegates if the Secretary reads the title?

FROM THE FLOOR: I so move, Mr. Chairman.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

SECRETARY *(reading):*

> "A PROPOSAL relating to the Governor, Militia, State administrative organization, public officers and employees, adding new articles on the Executive and on Public Officers in lieu of Articles V and VII of the Constitution of 1844.
>
> Resolved, that the following be agreed upon as part of the proposed new State Constitution:"

MR. VAN ALSTYNE: Mr. President and fellow delegates:

Last week the various articles and sections and paragraphs of this Proposal were debated at considerable length. I will not take any more of your time to go into the substance of this Proposal. I would just like to tell you that I feel, and I think I speak for the committee, that we have in the main accomplished here the general purposes that we set out to do. I feel very strongly that, although we have strengthened the powers of the Governor to a very considerable extent, we have set up balances by putting in certain places of the Legislative Proposal a check to some of those additional powers.

Without further discussion, I would like to move Proposal No. 3-1.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: I second it.

PRESIDENT: All those in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Adopted.

MR. VAN ALSTYNE: Mr. President: I would like to move that Proposal No. 3-1, having been passed on third and final reading, now be resubmitted to the Committee on Arrangement and Form.

FROM THE FLOOR: I second the motion.

PRESIDENT: Mr. Read.

MR. READ: As a point under the Rules, a final Proposal must receive 41 votes on third reading. It has been unanimously passed, and if the Chair will announce it has received more than 41 votes, that will comply with the Rules. I think the record ought to show that.

PRESIDENT: The Rules require it apparently, Mr. Read. We'll ask the Secretary to call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Barus, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Dwyer, W. J., Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Murphy, Murray, Naame, Orchard, Park, Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young—64.

(This vote was changed to read 65 in the affirmative by the added vote of Senator Lewis, as will be noted below)

NAYS: None.

SECRETARY: 64 in the affirmative, none in the negative.

PRESIDENT: The Proposal is adopted by unanimous vote . . . Senator Van Alstyne.

MR. VAN ALSTYNE: I would like to move that Proposal No. 3-1 be referred to the Committee on Submission and Address to the People.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: I second it.

PRESIDENT: All those in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

MR. ARTHUR W. LEWIS: Mr. President: Was I recorded on that roll call? I wish to vote in favor of the Article.

When this Article, the Executive Article, originally came before this Convention on second reading, I opposed one particular part therein relating to the power of the executive to succeed himself. I did that because I honestly and sincerely thought that there may be some danger in vesting too much power, or centralizing too much authority, in one man. I have no reference to our present Governor because I know him, I have confidence in him, and I know he would not abuse authority. I was thinking of possible Governors in the future, that we know not and have not met, perhaps Governors that are not yet born. But, Mr. President, I wish to bow to the majority of this Convention and from henceforth I am not entertaining any doubt whatsoever. I'm not a doubting Thomas any

longer, and I'm going to, if necessary, argue for it, defend and fight for the right of the Governor to succeed himself.

I'm satisfied we have the best possible Executive Article that this Convention can produce, and I'm for it 100 per cent. I want to be recorded in favor of it.

PRESIDENT: Thank you, Senator.

The chair recognizes Mr. Schenk.

MR. ORCHARD: Are the rest of us going to have the opportunity of hitting the sawdust trail?

PRESIDENT: A little later.

MR. SCHENK: Quite a little later, I hope. It seems some time ago that we were discussing Rights and Privileges, but we still are on the question of paragraph 5.

PRESIDENT: Paragraph or Amendment 5?

MR. SCHENK: Paragraph 5 of Rights and Privileges, of Article I. I would like to ask Mr. Randolph a question. Did you, Mr. Randolph; permanently withdraw Amendment No. 5 to Proposal No. 2-1, and Amendment No. 19 to Proposal No. 1-1?

MR. RANDOLPH: Yes, I did. I understood that I had already withdrawn them.

MR. SCHENK: Thank you.

We still have before us Amendment No. 5 which was presented by Mr. Farley during the debate on the Legislative Article and which by vote of this Convention was referred to the Committee on Rights and Privileges.[1] I believe it is now in order for Mr. Farley to be heard on his suggested amendments and perhaps I better read them. I do not know whether the delegates even have them before them.

PRESIDENT: Mr. Schenk: May I ask a bit of information? No. 5, according to the sheet before me, was introduced by Mr. Taylor. Is there some confusion in numbers?

MR. SCHENK: No. It's No. 5 to Proposal No. 2-1, not No. 1-1—2-1 the Legislative. Should I read it, sir?

PRESIDENT: Please do.

MR. SCHENK: Amendment to Amendment No. 5 by Mr. Randolph. I think we should clear the record on this; perhaps it should have been taken up with Mr. Randolph. It does not relate exactly to the same subject. It is in the same field of philosophy. Now, reading—

> "No person shall be denied the equal protection of this State or any subdivision thereof. No person shall because of race, creed, color, or religion be subject to any discrimination in civil rights granted to any other person or by any firm, corporation or institution or by this State or any agency or subdivision of this State."

[1] The intended reference is to Mr. Farley's amendment to Mr. Randolph's Amendment No. 5 to Committee Proposal No. 2-1.

Then there is a second paragraph which reads as follows:

> "Property taken for public use shall be enjoyed without discrimination because of race, color, religion or national origin."

I know Mr. Farley will comment, and I can only say that this material is included in Amendment No. 19, which has been withdrawn by Mr. Randolph.

PRESIDENT: Senator Farley.

MR. FARLEY: Mr. Chairman and delegates: I think the subject matter was covered in my presentation last Friday and I move the adoption of the amendment.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any discussion on this amendment?

MR. SCHENK: I feel that in the interest of clarity I should make a brief statement. Delegates do not have this on their desks, but it is my opinion that the subject matter has been thoroughly covered by the recent adoption of Mr. Randolph's proposal and that therefore we should discard the two propositions and vote against them.

FROM THE FLOOR: Question!

PRESIDENT: Are you ready for the question? . . . All in favor of the amendment, please say "Aye."

(Minority of "Ayes")

PRESIDENT: Opposed, "No."

(Majority of "Noes")

PRESIDENT: The amendment is not adopted . . . The chair recognizes Mr. Schenk again.

MR. SCHENK: I hope I do not wear out my welcome . . . I believe we now come to the question of collective bargaining.

PRESIDENT: May I inquire, Mr. Schenk, whether you have disposed of Amendments No. 5 and No. 19 on your list here—Amendment 5 and 19?

MR. SCHENK: To Proposal No. 1-1?

PRESIDENT: No. 1-1. Yes.

MR. SCHENK: We have disposed, sir, of all material under the discrimination clause. In other words, we have disposed of these amendments on the list: No. 20 under Proposal No. 1-1, No. 5 under 2-1, Amendment to No. 5 under 2-1, No. 19 under 1-1. We have also disposed of No. 11 under 1-1, No. 7 under 1-1, No. 13 under 1-1 and No. 12 under 1-1, and we now take up No. 21 under 1-1, under the subject of collective bargaining.

PRESIDENT: We are now considering Amendment No. 21, introduced by Mr. Schenk, amending paragraph 19, Rights and Privileges, as follows *(reading):*

"After the word 'impaired' place a semi-colon and add the following: 'The exercise and use of the labor rights herein set forth are and shall be subject to, and may be regulated by, the law.'"

MR. SCHENK: I wish to comment only to this extent: The amendment was submitted so that the delegates could see that the purpose of the language in the Committee Report, as submitted, was to state that the right should not be impaired—not the exercise and use of the right. At this time I wish to put Amendment No. 21 on the table and hear from the sponsor of Amendment No. 14, Mr. Orchard, who I think will have something to say about his two amendments.[1]

We have before us Amendment No. 5 to Proposal No. 1-1, as an amendment to that amendment, which perhaps we should discuss first. If the sponsors of these other amendments care to put their amendments on the table as I have done . . . ?

PRESIDENT: Mr. Orchard?

MR. ORCHARD: Mr. President: I have proposed two amendments, both applying to paragraph 19 of the Article on Rights and Privileges. Amendments also have been proposed by Delegate Taylor of Essex, Delegate Lightner of Bergen, Delegate Miller of Essex, and other delegates. Conferences have been held.

With your permission, sir, and that of the Convention, I would like to table proposed Amendment No. 1 and Amendment No. 14, subject to action on the amendment to Amendment No. 5, reserving the privilege to keep my proposals before this Convention until I formally withdraw them.

PRESIDENT: Mr. Schenk?

MR. SCHENK: I would like to call on the other sponsors of the various amendments. What we are endeavoring to do here is to work out in your minds, I think, and in the minds of all of us, the right language to implement the philosophy of the vote which we took the other day.

Now, when we come to the amendment to Amendment No. 5 I have some comments on it and some questions and some criticisms and some suggestions. It does not mean that when we get to the amendment to the Amendment that we are going to clear the matter and go to lunch; we are still going to have to probe into the philosophy of the language of the suggestions. I think Delegate Miller, though, will speak for himself on his point.

PRESIDENT: Mr. Miller?

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Convention:

In the light of what Delegates Orchard and Schenk have said,

[1] The reference is to Amendments Nos. 1 and 14 to Committee Proposal No. 1-1, both by Mr. Orchard. The text of these and the other amendments referred to in the discussion which follows, appears in the Appendix in Vol. 2.

I should also like to reserve the privilege of laying Amendment No 9 on the table temporarily, because it is the hope of the members of the delegation and particularly the committee that, as the result of some conferences which are now going on, it may be unnecessary to press for consideration on this amendment. I should like, therefore, the privilege to reserve the right to decide whether to withdraw the amendment completely or to discuss it at a later time.

PRESIDENT: Which specific number, Commissioner Miller, are you referring to?

MR. MILLER: No. 9.

PRESIDENT: No. 9.

MR. SCHENK: I do not want to bore you with this procedure, but we will hear from Mr. Taylor now.

MR. WESLEY A. TAYLOR: Mr. President and delegates:

I think Mr. Lightner has an amendment in mind which I have accepted and I will at this time ask Mr. Lightner to speak on his amendment.[1]

PRESIDENT: Mr. Lightner?

MR. MILTON C. LIGHTNER: I just heard the comment made that the situation appears to be getting very complicated. I am inclined to think that perhaps that is true. I do not know whether my contribution to this discussion will help to straighten it out or will still further complicate it.

If we go back to the time that this Proposal was brought before the Convention, we had a vote to strike out the committee's proposal on the subject of collective bargaining. The vote taken by the Convention at that time was to defeat the motion to strike out. We, therefore, still have pending in the Proposal the language suggested originally by the committee.

Many of the delegates have indicated a great deal of dissatisfaction with that language and that dissatisfaction has resulted in this, may I call it, torrent of proposed amendments.

The amendment offered by Delegate Taylor was objected to by some of the others who had offered proposals, on the ground that that amendment, while it used language which is very common with respect to the right to organize and bargain collectively, divided the subject into two sections: one, privately employed labor, and the other, publicly employed labor; and with respect to publicly employed labor it injected the words "subject to law." This has been thought by many to contain a probably entirely unintentional negation of the right of the Legislature to pass a law with respect to the right of privately employed labor to organize and bargain collectively.

[1] The text of Mr. Lightner's amendment to Mr. Taylor's Amendment No. 5 to Committee Proposal No. 1-1 appears in the Appendix in Vol. 2.

The amendment which has been offered here over my name is an effort to meet that objection. I might say that the principal criticism which has been made of the committee's proposal is the use of the words that the right "shall not be impaired." We feel that that is unfortunate and entirely improper language to use in connection with such a proposal. I think there is fairly general agreement on that and I will not consume the Convention's time to debate it.

My own proposal was that of the New York Constitution and the Missouri Constitution which simply set forth affirmatively the right of employees to organize and to bargain collectively. There seems to be a great deal of objection to that because the language in those other state constitutions includes "all employees," which necessarily includes employees of the State, municipalities, and other governmental subdivisions and bodies. In an effort to meet that objection this proposed amendment to Amendment No. 5 has been drawn and offered. Over-night a certain clarification of the language was felt necessary, and therefore the delegates unfortunately have two pieces of paper on their desks. I would like to read for clarification the amendment which is now offered:

> "Employees shall have the right to organize and to bargain collectively through representatives of their own choice concerning wages, hours and other conditions of employment. In the case of employees of the State or any of its political subdivisions, or other public agencies, the right to bargain shall only apply to such wages, hours and other conditions of employment as are not fixed by law and in respect to which such public employers may under law negotiate with such employees."

PRESIDENT: Mr. Glass.

MR. RONALD D. GLASS: Mr. President and fellow delegates: As a member of the Rights and Privileges Committee who has heard the testimony of many witnesses on this particular subject and who participated in many long discussions regarding it, I would like to summarize briefly the philosophy behind the inclusion of such a clause in the record and briefly to discuss the language in Mr. Lightner's amendment to the Amendment.

First, I would like to submit to you for the record the list of organizations and individuals who recommended the inclusion of such a clause. I know that many delegates agree with the philosophy behind the inclusion of such a clause and I would like to summarize for you. First, the New Jersey League of Women Voters, certainly a splendid women's organization motivated by high ideals of public service; their capable former State President, Mrs. Jane Barus, is a delegate and you know her. The New Jersey Committee for Constitutional Revision asked for a clause of this nature, and I am sure that Winston Paul could tell you about the several important organizations affiliated with this group that played such an

active part in appearances before all major committees. The Joint Committee on the Constitutional Bill of Rights asked for a clause on this subject. Many State Government officials appearing before our committee asked for such a clause; many of them who had had extensive experience in matters concerning revision of our State Constitution asked for it. The State CIO asked for it; the CIO asked for it and the AF of L; the State Federation of Women's Clubs; the New Jersey Association of Real Estate Boards; the New Jersey Taxpayers' Association; the New Jersey Council of Churches; the Farmers Union; and at least a half dozen other important organizations I could name.

Bob Carey, my good friend from Hudson County, used always to ask in committee hearings: "Who asks for this thing?—Who?" Well, those are the people who ask for it, some million and a half to two million persons represented by organizations in this great State of ours.

Now, if we adopt a clause of this nature, we are not sailing off on an unchartered sea. In the past ten years only two states have revised their constitutions through constitutional conventions, Missouri and New York. The Bill of Rights of both of those constitutions gave labor the right to organize and bargain collectively. The Model State Constitution has a like clause. The 1942 Revision Committee recommended such a clause. We are creating no earth-shattering precedent when we include such a clause in the new Constitution of 1947. These rights are well-established basic rights, and any delegate to this Convention who opposes inclusion of this clause doesn't understand the new world in which he lives, the highly industrialized world, so vastly different from the world he lived in only a few decades ago when sweat shops and 72 hours a week and other abuses were the order of the day and labor had no recourse. This right to organize and bargain collectively is a deep, inalienable right, as inalienable as the right of free speech and the freedom to worship the way you please.

As to the actual language of the clause, I feel that it is in the proper place in the Constitution in the Bill of Rights. It follows the language in the Constitution—if you will turn to page 3 of the draft, Committee Proposal No. 1-1 draft, paragraph 19—it follows the language in paragraph 19 at the bottom of page 3 of the draft beautifully:

> "The people have the right freely to assemble together to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances."

And then following, the right to organize and bargain collectively.

Now, I cannot speak for the committee, but I would like to say for myself that this amendment to the Amendment does the neces-

sary job. I was privileged yesterday to sit down with a representative group of delegates who worked out this amendment to the committee clause through the very orderly, democratic process of sitting down and talking over our differences. Labor was represented in that group, management was represented, and this amendment is the result of their combined thinking on the subject. I am sure, I am quite sure, that Mr. Lightner's amendment will be acceptable to both labor and management, and I suspect that if the Convention passes this amendment to the Amendment all other amendments will be withdrawn.

I earnestly urge the passage of Mr. Lightner's amendment as it is worded.

PRESIDENT: Mr. Schenk?

MR. SCHENK: Is it the desire of the chair that we shall now adjourn for lunch, or continue the discussion?

PRESIDENT: The chair would recommend that we continue for about 12 minutes.

MR. SCHENK: Very good. I would like to be heard, as chairman of the committee, on Mr. Lightner's amendment, and I regret that I will have to differ very much with Delegate Glass.

You will notice that in the first sentence of the amendment there is a period after the words "conditions of employment." This is an absolute grant of right to private employees and public employees to organize and bargain collectively and therefore the construction of the limiting clauses is wrong. In other words, it should read: ", provided that in the case of employees of the State,"—all one sentence. Then you would have no conflict between the absolute and the qualified. That is a very minor point, of course. I have others, however, that I wish to raise for the delegates to think about when we come back.

I emphatically oppose, and recommend to this Convention that it emphatically oppose, any grant of equal bargaining rights to public employees with their employer, the public, the majority of the people, on anything. I maintain that only equals can truly bargain, and if we go beyond the rights of public employees "to organize and present to and make known"—to use the committee language—if we grant them the right freely to bargain collectively, we forever tie the hands of the public, the vast majority of the people, to deal with problems relating to public employees, because the superior authority of the people, the majority authority of the people, will not be able to maintain the sovereignty of the State and the processes of an orderly society.

Now, it is a commonly known fact that the United Public Workers of America is a union with a pro-communist record. Groups like that, I think, would be pleased to see the people of

New Jersey tie the hands of their public representatives, from the Governor down, because it would give them an unexpected ally in the New Jersey Constitution of 1947 to the end that they could confuse or hamper or obstruct or divide or upset or try to destroy the American governmental process in New Jersey if they should care to do so.

As to the words "conditions of employment"—what does that mean? What's a "condition of employment" that I find in the Lightner proposal? I suppose he intended to mean working conditions, but a "condition of employment," in the opinion of a representative of a union, might have a purpose that was other than proper. It could be anything. That word could mean anything. I think it is defective.

In my opinion, the Committee Report avoids the fatal error of going too far on the question of public employees and still recognizes and guarantees the correct degree of the right. If the word "impaired" is subject to a double construction which confuses the "right" with the use and exercise of the right—a viewpoint that I do not completely agree with—we can quickly solve that by adopting Delegate Orchard's word "recognize." Or we can say this—and I would like you to think about this language instead of the language of the Lightner proposal, and I am going to recommend that Mr. Lightner and all the other proposers of the various amendments sit down together again and give me a chance to be with them; I was not able to be there yesterday:

> "Privately employed labor shall have the right to organize and bargain collectively, and publicly employed labor shall have the right to organize, present to and make known to the State or any subdivision thereof grievances and requests through representatives of their own choosing."

or:

> "Private employees shall have the right to organize and bargain collectively, and public employees shall have the right to organize, present to and make known to the State or any subdivision thereof grievances and requests through representatives of their own choosing."

I feel that puts in clear language the fact that we must recognize, namely, that we cannot grant complete and equal bargaining rights to public employees of the State or its subdivisions on anything, if you agree with my point that we have to maintain an orderly society by maintaining the superior authority of the State.

I think that covers my point. Like Mr. Lightner, I have no pride of authorship in language; we are all trying to reach the same thing. I have dropped my objection to the word "employee" which I made in committee. If I have not said it, I think you might know it now. I was wondering if "labor" wasn't a better word, because it is just the opposite of "management." "Labor" suggests "capital" and an "employee" can be part of "management." Then you are in that

thought about unions and foremen and whatnot. I am not pressing that point.

I stress only one point of philosophy—does this Convention want to tie forever the hands of the State and limit its sovereignty to deal with questions which may in the future be very important in this age of stress and strain? I do not think we ought to do it, because I feel the language of the Lightner proposal is obscure. I suggest that the alternates which I have just read be considered by a group of the delegates again. I have worked over the Lightner compromise language and since it does not hit me, as a layman, quickly—just what it means—I feel that I should raise objection to the language, just as the objection was properly raised, perhaps, to the Committee Proposal on the word "impaired."

Thank you.

PRESIDENT: With the consent of the delegates, I am proposing that we now adjourn for luncheon, and give Mr. Schenk, Mr. Lightner and any others who may be concerned an opportunity to confer. In the meanwhile, it has been a long and hot morning and a thunderstorm is coming up, and it occurred to me that you might like to get across the street before it breaks.

MR. STANGER: Mr. President.

PRESIDENT: Judge Stanger?

MR. STANGER: May we have the words just proposed by Chairman Schenk typed or mimeographed during the noon hour so we may have them this afternoon?

PRESIDENT: We will arrange to have that done . . . Senator Lewis?

MR. LEWIS: I beg leave to introduce a proposed amendment to paragraph 8 of the Article on Bill of Rights.[1]

PRESIDENT: We will recess until 2:15.

(The session adjourned at 1:00 P. M.)

[1] Amendment No. 24 to Committee Proposal No. 1-1. The text appears in the Appendix in Vol. 2.

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Wednesday, August 20, 1947

(Afternoon session)

(The session started at 2:30 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats?

The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present, sir.

PRESIDENT: The Secretary reports that a quorum is present.

May I say that we are entertaining the hope of finishing the Rights and Privileges Proposal this afternoon. It has been suggested by one or more of the delegates that if we should fail to finish this afternoon it might be well to continue on this evening after dinner. I don't know what the wishes of the delegates are in that connection, nor perhaps is it appropriate to offer a motion, but I throw it out for such reaction as it may get.

The chair recognizes Mr. Schenk.

MR. JOHN F. SCHENK: Mr. Chairman, resuming the discussion on collective bargaining, the delegates should now have on their desks Amendment No. 25, to amend Committee Proposal No. 1-1; and at this time, before proceeding any further, I should yield to Mr. Lightner, who had a proposal of his on the floor when we went to lunch.

PRESIDENT: May I interrupt again just long enough to say that word has just come to me from Mr. Tondini, who is our caterer across the street, saying that if we are to have supper this evening

he wants to know for practical reasons, so that he can make preparation. May I inquire what the wish of the Convention would be with reference to having dinner tonight, if necessary, and continuing on this evening.

MR. WILLIAM J. ORCHARD: I move that we continue the discussion and try to finish up Proposal No. 1-1, even if it is necessary for us to remain for dinner.

(Motion seconded from the floor)

PRESIDENT: You have heard the motion. Is there any discussion on it? . . . Judge Carey?

MR. ROBERT CAREY: Mr. President.

PRESIDENT: Are you speaking to this motion, Judge Carey?

MR. CAREY: I speak to the motion.

PRESIDENT: As to supper tonight, you mean? As to staying over for dinner?

MR. CAREY: No. As to the amendment.

PRESIDENT: All in favor of this motion of Mr. Orchard's that we remain for dinner and continue on this evening if it seems important, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: All in favor will please raise their hands. All in favor of staying over will please raise their hands.

(Showing of hands by delegates)

PRESIDENT: All opposed, please?

(Lesser showing of hands)

PRESIDENT: The motion is carried. Of course, we will stay over only if necessary. I am not quite sure what this will do for Mario [Tondini].

Mr. Schenk?

MR. SCHENK: Mr. Lightner.

PRESIDENT: Mr. Lightner.

MR. MILTON C. LIGHTNER: Mr. President: Immediately before the luncheon recess, when the chairman of the committee in charge of the Proposal on the Bill of Rights was on the floor, he stated that they desired to confer further and see if they could evolve another form of this sentence on organizing and bargaining collectively. The chairman of the committee has now introduced a new amendment.[1] While it is not under discussion at the moment,

[1] Amendment No. 25 to Committee Proposal No. 1-1. The text appears in the Appendix in Vol. 2.

if I may do so I would like to make the comment that as far as I am concerned the amendment which has now been introduced by the chairman of the committee accomplishes precisely the same purpose that I had in mind in offering the amendment which is now before the Convention, in that it states the right to organize and bargain collectively in positive language, omits the cloudy expression of impairment of right, and includes the suitable provision with respect to public employees.

In order to determine whether it is the desire of the Convention to enact this matter in the form submitted by the chairman of the committee, I would like to have the amendment which is now on the floor laid over so that it can be taken up again if the Convention should choose for any reason to reject that amendment. I would like to have this laid over with no action on it.

PRESIDENT: With the consent of the Convention, then, we shall lay over Amendment No. 5 . . . Mr. Schenk.

MR. SCHENK: Fellow delegates: This clause of Amendment No. 25 represents the considered opinion of various delegates. I believe all the delegates who introduced amendments to the Committee Proposal participated in its consideration. I think it is self-explanatory. It preserves the basic principle, in my opinion, of the Committee Report that in the case of public employees we must treat the matter somewhat differently at this time, in this age, than in the case of private employees. It meets the objection to the language of the Committee Proposal in two respects—the criticism of the word "impaired" and the suggestion that the language should be positive rather than negative, to have more of a self-implementing factor. I offer this amendment and hope it will be adopted.

PRESIDENT: Mr. Orchard.

MR. ORCHARD: Mr. President and fellow delegates:

I have offered two amendments to Proposal No. 1-1, both dealing with paragraph 19. Amendment No. 14 was submitted in an effort to get rid of the indefinite language "shall not be impaired." Amendment No. 25 gets rid of that language in a positive fashion. If Amendment No. 25 passes, I shall withdraw Amendment No. 14.

I also submitted Amendment No. 1, providing that "publicly employed labor and privately employed labor in public utilities are prohibited from engaging in strikes or work stoppages." In submitting that amendment I am confident that I reflect the views of many delegates to this Convention. It has been pointed out to me, however, that the question of employees of public utilities is now covered by law in this State, and that without mention of it in this Constitution that law will continue to have its full effect.

Legal talent in this Convention, in whom I have the greatest confidence, have told me that striking by public employees is now

forbidden by general law; that that general law applies to employees, public employees, in the State of New Jersey; that there is no need in reemphasizing the condition that exists by specifically mentioning it in this Constitution, and that to do so would do no specific good but might direct opposition to this document that we are laboring so hard to achieve. If my information that strikes by public employees are prohibited by general law is correct, and I have assurance to that effect on the floor of this Convention, and if Amendment No. 25 is adopted, I shall move to withdraw Amendment No. 1.

PRESIDENT: Judge Stanger?

MR. FRANCIS A. STANGER, JR.: Mr. President and fellow delegates:

I believe that Amendment No. 25, as now presented, is substantially the same as the amendment we adopted last week. The objectionable words have been eliminated. I think it is the same amendment reconstructed in a very satisfactory manner. I trust that we shall pass this amendment.

FROM THE FLOOR: Question!

PRESIDENT: Is there further discussion on Amendment No. 25? . . . Mr. Jacobs?

MR. NATHAN L. JACOBS: Mr. Orchard referred to assurances from the floor. I don't know just who is in a position to give him such assurances, but I would like to express my personal opinion as to the two issues which he raised.

First, in so far as the right of the State to regulate public utilities is concerned, I don't think there is any question that it has that right now. It has exercised it; that right will continue, and will not in any wise be altered by the proposed Amendment No. 25.

In so far as the issue as to whether publicly employed persons have the right to strike against the State is concerned, whatever law there is on the subject is uniform to the effect that publicly employed persons have no right to strike against the State. I am certain that proposed Amendment No. 25 will not in any wise alter that phase of the law as it now exists.

PRESIDENT: Any further discussion? . . . Senator Pyne?

MR. H. RIVINGTON PYNE: Mr. President and fellow delegates:

I feel that I owe it to myself, perhaps, to ask for a moment of your time to explain my position in this matter. I consider that this proposed Amendment No. 25 is very far superior in every way to the original committee proposal. I would like very much to see it incorporated in what I would believe to be the proper place in the Constitution. I find, however, that I cannot get over my prejudice, if it may be such—and I may be in a minority of one—in

writing special groups into the Bill of Rights. For that reason I shall have to oppose it. Thank you.

PRESIDENT: Is there further discussion on Amendment No. 25?

FROM THE FLOOR: Question!

PRESIDENT: Are you ready for the question? The question is called for . . . All in favor of Amendment No. 25, please say "Aye."

(Loud chorus of "Ayes")

PRESIDENT: Those opposed, please say "No."

(Faint chorus of "Noes")

PRESIDENT: The amendment is adopted . . . Mr. Schenk.

MR. SCHENK: At this time, do we still have Amendment No. 9, introduced by Mr. Miller, before us? Mr. Miller will undoubtedly tell us.

MR. SPENCER MILLER, JR.: Mr. President and delegates:

Amendment No. 9 was originally introduced to see to it that the ground was not cut out from under the new law providing for arbitration in the matter of a labor dispute in public utilities while we were engaged in writing a new clause on collective bargaining into the new Constitution. This law provides a new approach to the matter of labor disputes in public utilities; it is not a perfect statute and will probably need to be amended as we proceed, yet it is, on the whole, a promising beginning. It now appears from the amendment which has been adopted and from our conferences on the matter that Amendment No. 9 will not be required.

Let me reinforce what Delegate Jacobs has said, that this new arbitration law does not deny the right of collective bargaining in public utilities, but it does spell out a procedure that must be followed in the case of threatened work stoppages or labor disputes in public utilities. This is now the law and the policy of this State.

While no one will argue that public employees have the right to strike against the Government, it is equally clear that if they are to be denied this right to quit in concert, the State has a positive obligation to provide the orderly procedure for the adjustment of grievances. This general position was stated by a special Commission on Public Employees appointed by Governor Edison in 1945 under the chairmanship of Mr. Justice Heher. In view of those circumstances, sir, I ask permission of the delegates to withdraw this amendment.[1]

PRESIDENT: Amendment No. 9 is withdrawn . . . Mr. Lightner.

MR. LIGHTNER: I would like to withdraw the amendment which was just laid over; that is, the amendment which I offered to Amendment No. 5. If Mr. Taylor will cooperate with me, we

[1] The text of this amendment, No. 9, to Committee Proposal No. 1-1, and that of the amendments referred to in the discussion which follows, appears in the Appendix in Vol. 2.

can withdraw Amendment No. 5 itself.

MR. WESLEY A. TAYLOR: I would like to withdraw the original Amendment No. 5.

PRESIDENT: Amendment No. 5 is withdrawn.

MR. LIGHTNER: I would also like to withdraw Amendment No. 16.

MR. SCHENK: I think, to clear the record, we should have an affirmative action from Mr. Orchard. Or did we have it, sir?

MR. ORCHARD: I think the record will show that I have prevously withdrawn Amendment No. 1 and Amendment No. 14. If it does not so show, I confirm such withdrawal.

MR. SCHENK: And, finally, I confirm my willingness, and I offer the suggestion to the chair, that Amendment No. 21 be withdrawn.

PRESIDENT: May I interrupt long enough to ask Mr. Lightner—his was No. 16, am I right? The withdrawal? Is Mr. Lightner on the floor?

MR. LIGHTNER: Yes. It was No. 16.

PRESIDENT: Mr. Schenk?

MR. SCHENK: According to my records, that clears the material at this time on Rights and Privileges.

Next on the schedule we have "Elections and Suffrage"—two amendments. I request that they be called in the order in which they are on the schedule. Amendment No. 2, I believe, would be the next amendment to be considered.

PRESIDENT: Amendment No. 2, introduced by Delegates McMurray and Montgomery *(reading):*

> "Be it resolved, that Paragraph Three of Article——, 'Elections and Suffrage,' be, and the same hereby is, amended to read:
> '3. Every citizen of the United States, of the age of *eighteen* years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.' "

Mr. McMurray, will you speak to this?

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen:

I should like to begin my presentation with that phrase which Judge Proctor tells me has become the standardized opening of each non-member of the bar: "Of course, I am a layman." May I add, however, Mr. President, that I offer that as an explanation, not as an apology.

I am not going to *tell* you that I am going to be brief—I *am* going to be brief. I have borrowed no time from any other delegate. And, in this tempestuous age, while I may be living on bor-

rowed time, I am not speaking on it. I am going to take much less than the allotted 15 minutes, and for that gesture of friendliness and consideration on my part and on the part of Mr. Montgomery, I venture the hope that you will vote favorably upon the amendment that we offer.

We are all proud of this nation as a democracy; at least we say so. Mr. Randolph eloquently reminded us of that just a few days ago. And it is to strengthen our democracy that this amendment, reducing the voting age from 21 to 18, is urged upon your favorable consideration.

Every authority on government agrees that citizen participation in government is essential to a vital democracy. Lowering the voting age will achieve that increased participation—not alone because it will automatically add thousands of names to the list of eligible voters, but for another and far more powerful reason.

Eighteen is the age when most young people graduate from high school. It is a time when their interest in public affairs is at a high level. The modern high school with its courses in modern democracy, the modern trend to have high school boys and girls participate in the government of their community by acting as public officials, whets the young person's appetite in government as at no other time in his life. Boys' State and Girls' State have been in operation this summer, and inspection of governmental units, including this Convention, was part of the program.

The young person of 18 today is much further along the road to maturity and considered thinking than were the young people of greater years only a few decades ago.

Youth is also a time for idealism—a time when we really believe that life can be made better and we are willing to work toward that end.

There is a freshness of viewpoint; there is a lack of cynicism; change is regarded by youth as something less than catastrophic. For this reason alone, it would be of great benefit to New Jersey to add these young people to our electorate.

But there are other reasons:

At 18 young people are deemed old enough for military service. Now, I am well aware that it will be said that while 18 may be old enough to become a soldier, it does not necessarily follow that 18 is old enough to assume all the burdens of public responsibility.

A Governor, a Senator, a judge, it will be validly argued, should be older. And I agree. But that is beside the point. Young people who are old enough to fight on the battlefield may not be old enough or experienced enough to be Governor, but I submit it as my considered opinion that they *are* old enough to fight at the polls for the sort of government that they desire.

I'll stack up any young person old enough to join the army against thousands of citizens twice their age whose political intelligence consists of the ability to take orders.

One more argument and I'm finished—and this is an important argument in my opinion. We are living in an age of increased human longevity. The average life expectancy has been doubled since colonial days. It has substantially increased in recent years. This has seriously unbalanced our electorate. It is top-heavy with older people. And they are not all Oliver Wendell Holmeses, as some would have you believe.

Older people, and I number myself among them, have their place in the voting population, but they should not have, as they now have, a disproportionate place. The wisdom and judgment and caution of this more mature group should be offset by the injection of young blood at the opposite end of the scale. I offer no panacea for the ills that may beset our democracy. I simply urge that the inclusion of these younger people in our voting population will strengthen our public life.

I hope you will not be afraid of this idea because it is relatively new. As I look over this audience, most of the heads are gray or, like mine, they are bald. We can use, perhaps, in our public life just a little more of the enthusiasm of youth. Others are coming after us and will carry on where we leave off. Let the State have the benefit of their youth and their ardor and enthusiasm while they are at a high pitch.

I ask your support for this amendment and I ask your permission, Mr. President, to ask the co-sponsor of this amendment, Mr. Montgomery, a man of long experience in dealing with juvenile problems, to address you at this time.

PRESIDENT: Mr. Montgomery.

MR. JOHN L. MONTGOMERY: Mr. President and fellow delegates:

I tried to borrow time so that I could be sure you would be here for dinner, but I was unsuccessful in finding any delegate who would give me time. In order that I might keep within the limits, I have reduced the remarks that I am about to make to eight minutes.

The Constitution of the United States written in 1789 wisely rules in Article I, Section IV, that "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof . . ." Obviously, this is another "elastic clause," a wise grant of power to the states to decide for themselves as times change who shall and who shall not vote. It is a flexible provision, comparable to the Judicial Article which was approved yesterday. Both were forged, not to shackle the state,

but to expand and contract with the times as the Federal Constitution has done.

The times, I say definitely, call for expansion. And so I rise today to urge you to support with me an amendment to the Report of the Committee on Rights, Privileges and Amendments, an amendment that would lower the voting age limit in this State to 18.

This is not change for the sake of change. Definite conditions and trends have led me to make this request. In the first place, it would be almost trite to describe how vastly American education has improved since the Constitution was adopted in 1844. Not only is everyone in this State required to stay in school until he is 16 years of age, but colleges throughout the nation are filled to overflowing. Today's young men and women are far better educated than those of 50 or 100 years ago. Newspapers are universal; radio, with all of its shortcomings, brings news into almost every home; motion pictures, with all of their distortions, sandwich newsreels between every two features. The day of the provincial in this State is passed, and necessarily so. Today, few can afford to be provincial. Knowledge of the land outside the county limits is imperative, for the world, the nation, the State—yes, the country itself—have become very, very small.

Many question the self-reliance, the sense of responsibility, of men under 21. Why are they not eligible to make wills or to sign contracts? Are they as mature as the boy of 50 or 100 years ago who was thrown completely on his own at ages 12, 13 or 15?

I say the people in the 18 to 21-year age group today are self-reliant and responsible. Of course, it is as difficult to generalize about them as it is to generalize about the voting aptitudes of older men. But our 17 and 18-year-olds were thrown on their own during the war, and they won their spurs as far as I am concerned. I do not support the "They were old enough to fight so they are old enough to vote" argument. I do support unreservedly, however, the line of reasoning that points to the fact that these boys were not only self-reliant, responsible and efficient in the armed forces, but were also—and the model of the rugged young individualist of a century ago lacked this qualification—fairly well educated. In modern youth we have, therefore, not only maturity, but knowledge.

There is, of course, no use deluding ourselves. Thousands will be graduated from our colleges, but the millions will have only the education the State can afford to provide—four years of public high school. And here is another reason that the lowering of the age limit is not only wise but absolutely necessary. People scoff at the theory that high school boys get excited about politics during their school days, but that their ardor dampens during the three-year holiday before they are able to exercise the franchise. The theory is

truer than even at first might appear.

We saw here recently in the galleries of the Convention Hall hundreds of young men and women, many of them, as a matter of fact, only 16 and 17 years of age, who sat quietly in the heat and watched with unflagging interest while we were performing here on the floor. Members of the American Legion's Boys' and Girls' State, these young people were not being paid, rewarded, graded in any way for coming to Rutgers for a week and pouring over tomes to learn a little about government. Many of them, happily, will be able to go to college to learn government, economics, history and sociology. They will, it is hoped, graduate with a disinterested concern in the welfare of the whole, and that, in time, turns into what President Conant of Harvard calls "hard-headed idealism."

But what of the high school graduate? Is ours an oligarchy of the rich and well-educated? Madison wrote in Federalist No. 10 that our nation could never come under the domination of any one group because it is so huge that conflicting interests would always cancel one another out. The high school graduate will learn government, economics, sociology, history—and politics—in the hard way: by jumping into the political river whether he can swim or not, and paddle around until he makes shore.

How close to that political river can he get even now that we admit he is mentally and morally able to take care of himself? Without the franchise he is crippled. He has no power, and he soon has no incentive. He must wait three years after graduating from high school until his voice will be heard. Yet he has interests, important interests, that should be represented as completely as the interests of the older men. The 18, 19 and 20-year old person of today, I assure you—and I have worked with young men and women for years—has in many ways not only as big an axe to grind as many of the older men, but is far less apathetic and discouraged, and far more willing to labor for what he wants and believes in. Youth, as you may remember, is zealous. It is a quality that has been neglected too long.

I say, let us train our youth in political responsibility. The spotty voting records compiled by the people of our generation, only a fraction of whom go to the polls on election day, certainly is black-and-white proof that something is wrong with our system. The young men of Sparta and Athens were early ingrained with a sense of patriotism that went beyond waving a flag or even a spear. They felt the responsibility of their nation would some day be on their shoulders, and they prepared to meet it.

Let us then prepare our youth, since they are ready for preparation. Let us get them while they are fervent and idealistic, while they are eager; and let us rear them for citizenship. You also know

that it is surprising what changes sudden responsibility makes in a man or women, however flighty he was before.

And in closing, let me comment on the experiment of Father Flanagan in Boys' Town, who has taken not the youths of the fortunate home, but the youths who have had little opportunity. Not only his experiment, but many others in this State and in other states, have proven that by placing these boys under self-government, a very large majority of them have turned out to be very good citizens.

I urge your support for this amendment. Thank you.

PRESIDENT: Any further discussion ? . . . Mr. Schenk.

MR. SCHENK: At this time I would like to ask Delegate Park to speak in opposition.

PRESIDENT: Mr. Park.

MR. LAWRENCE N. PARK: Mr. President, ladies and gentlemen of the Convention:

The proposal advanced under Amendment No. 2 was presented before the Committee on the Bill of Rights and was voted down, ten to one. I cannot say to you that we gave it long deliberation. I can say to you that we were so convinced in our minds that it required very little deliberation to decide the problem.

I do not know from whence arose the interest in reducing the voting age from 21 to 18. I think it had its origin somewhat in the hysteria associated with the war, when the argument was advanced that if a man was old enough to fight he was old enough to vote. I say there is no connection between the two. I say the real relationship between age and the privilege of voting is a man's maturity.

Why were the Army and Navy so interested in getting young men? It wasn't because they cherished their judgment. It was because they were young, they could walk, they could recover, they could take orders, beause they didn't think too much, because the existing order did not disturb them. Many men served the country, many young men served the country. There is no question about that. But few of them were placed in positions of responsibility or the necessity of making decisions. I submit that the question with regard to military service has no bearing upon the point.

If we thought there was any need to alter the voting age, it was our idea that it ought to be raised to possibly around 30. That, of course, is not politically expedient.

Now, on this particular question, I know that there are many persons who feel very sincerely about it and have raised the argument that young men are mature. Their opinion differs from mine. I think that they are not. I think that 18 is the age of the jitterbug; it was the age, in my time, of the flapper. I know many of the mistakes that I made at that particular age, and I feel now that I am,

well, that I am at age when life begins at 40, although I have my doubts on that. I feel that at 18 you are half-baked. I think that if all of you will reflect upon your own experience, you will come to the same conclusion.

The law treats persons under the age of 21 as not being of sufficient intellect to allow them to enter into contracts. The law of New Jersey treats persons one day under the age of 21 as being juvenile, not treated as ordinary criminals, and yet this proposal will take a person out of the group by a one-day transition.

I feel that it is not a correct statement that young people at the age of 18 are qualified to vote. I do not think they are waiting too long. If the point is made that the children are so well-trained in school that they are able to exercise their franchise, and yet they lose interest in that intervening period of three years, then all I can say is this—the schools have not trained them too well, or the influence has been so unstable that they have lost that training.

Georgia is the only state that has a voting age of 18. I maintain—of course, this is my view, and the vote here will demonstrate whether you think there is any merit to it—that there is no public need for this, no public clamor. I submit to you people that we ought not to change the rule. If we are going to change the voting age, we probably should raise it to around 30.

I urge the rejection of the proposal.

PRESIDENT: Mr. Schenk.

MR. SCHENK: At this time, Dean Sommer wishes to be heard in opposition.

PRESIDENT: Dean Sommer.

MR. FRANK H. SOMMER: Mr. President and fellow delegates:

I am almost persuaded by the considerations that have been advanced in favor of this amendment to vote "Aye." Nevertheless, I will oppose the adoption of the amendment for one specific reason: the *New York Times,* in a comparatively recent survey, indicated a sad want of knowledge of American history by those of secondary school age. I shall oppose the adoption of the principle of this amendment until American history is more widely, broadly and effectively taught in our schools.

PRESIDENT: Mr. Dwyer.

MR. WILLIAM J. DWYER: Every time that I have trespassed upon the time of this Convention to express an opinion, it has been to disagree with an amendment. I regret extremely to oppose such a fine gentleman as Wayne McMurray and such a congenial and lovable gentleman as Mr. Montgomery—but shades of Frank Sinatra! —why should we delegate to the immature minds of this country the responsibility of citizenship? Why? There was a grave social problem in this country some few years ago when we pondered

whether we had a true democracy and extended the franchise to many more people than had theretofore exercised it. And we found out that the main result was that we merely extended the franchise and doubled the vote but didn't change the complexion of or reform the electorate in its deliberations. Now, that has nothing to do with the fine impulse about recognizing women's rights. Inherently they have it, and I, with about three other gentlemen in my home town, went out on the street corners and advocated woman suffrage. They gave a wonderful ball one night in our Fourth Regiment Armory, and five brave souls of the male gender graced that ball. I happened to lead the march. And we were considered to be extremely queer people that we would engage in such an enterprise as helping the women get their vote.

But let us deal now as men and women of maturity. I have a daughter going to one of the leading colleges of this country, and she has brought into my castle, if you will, some of the new-born theories and concepts of life that she claimed she derived from the academic rostrum of her alma mater—certain things that horrify me because I know that if the things that she says are almost *ex cathedra* in the precinct of her campus, if they were applied to our life here, would be devastating, they would be an atomic bomb in our society.

But there is an emotion abroad in the land. We take the veteran and we put him in every picture when we make a plea about social rights, and the veteran isn't so much concerned as we do-gooders sometimes are about his place in society. The 18-year-old boy should be able to have some fun in life, should be able to think in terms of improvement of his mind in our educational institutions until he earns the right to exercise the franchise intelligently instead of on an emotional basis.

Just think of the great big army of voters who, under the persuasion of the sophistries and under the persuasion of the innovationists who creep into our political society as leaders, occasionally can be wafted *en masse* back of a movement that might destroy us with the same deadly effect as an atomic bomb.

Oh, let's extend the youth period a little more and don't put upon the kids of this country the responsibility of thinking out the problems of government.

PRESIDENT: Mr. Schenk.

MR. SCHENK: I will yield to Mr. Hadley.

PRESIDENT: Mr. Hadley.

MR. WILLIAM L. HADLEY: Mr. Chairman: I do want to speak just briefly on this question because I am very much concerned about it.

I have lived through a period of two wars, and I recall very dis-

tinctly that after the first World War we turned the affairs of this nation over to youth, and God knows we have been suffering ever since and we haven't gotten out from under it yet. I hope that this Convention will not go on record as duplicating that kind of a thing with our youth.

I wouldn't have it understood that I have anything against youth's getting all that is coming to it. My record with regard to them stands. My five adopted children—I have raised them, I have educated them as best as I could, and I have done a lot of things for them that many of the people who have conceived their own didn't do. And I am sure that I am accused of being an old fogey, and I like it very much. I find my son coming home from eight years of war, having served in the Marine Corps, and having come out as supply sergeant of the Fourth Marines, and telling me that his old daddy has some sense.

Gentlemen and ladies of this Convention, let's show our sons and daughters that we do have some sense and keep the reins of this thing in our own hands until they have earned their spurs. I will vote against this resolution.

PRESIDENT: Mr. Cowgill.

MR. JOSEPH W. COWGILL: Mr. Chairman and delegates:

I, too, rise to oppose this amendment. I recall the day that all the young ladies were in the gallery, because a group of them came down to my desk and one of them said to me, "Just what is a Constitution?" I asked her how old she was, and she told me she was 17. That question alone would seem to me to demonstrate exactly what Dean Sommer told us.

Now, if we are to follow the argument that those who were liable for military service should be able to vote, we should include aliens because they are subject to being called for military service, and I don't think anyone would go that far. There is but one precedent for this proposition; that is Georgia, and I respectfully submit that a precedent set by the State of Georgia is not a proper one for the great State of New Jersey to follow.

PRESIDENT: Judge Carey.

MR. CAREY: Mr. Chairman: I have just a brief suggestion to make, and that is that we use a little wisdom for just a moment. If we adopt this proposal as a part of our Constitution, I would suggest in the interest of saving time that we then immediately adjourn the Convention, because if that proposal were handed to the adult people of New Jersey to vote on as a part of their Constitution, it would be beaten overwhelmingly by the same intelligent adult vote of this State. They wouldn't stand for it for a moment.

I have grandchildren just approaching the age that will come within the purview of this document, and the saddest thing that

could happen to me or to the State would be to have this be a part of the organic law, to have the right of suffrage cast upon these youths. Why, I'd be so unhappy about it I would be ashamed of having been a part of the Convention that gave it to the State.

The boys and girls are not looking for the vote. They are thinking of other things. The boys and girls in the high schools of our community are not worrying about politics, and we don't want them to worry about politics until they are freed from their educational pursuits, until they can begin to think in an adult way. Oh, what a crime it would be! Take this picture: Give the boys and the girls of the town of New Brunswick the right to vote, make them a part of the political machines of the community, and where would we find them between 18 and 21? In the Third Ward Democratic Club, doing what? In the Second Ward Republican Club, doing what? Some of them woud be in the Independent Club. Some of them would become Communists as a result of their being driven into this type of enterprise at just youthful years.

What a crime it would be! The sophomore classes of our colleges, the freshman classes; what a wonderful picture Princeton would be and Rutgers would be with all its lads and girls dabbling in the game of dirty politics at times. It would be a sad, sad thing. You and I, we older fellows, we'd go down to college when that day came, and while we were at college we would be telling them how they ought to join into the government and how and why they should vote for, well, Mr. Hansen or somebody else—it doesn't make such difference.

Oh, let's not make this mistake. It is positive that you and I have a job here. Why, if the people who sent us here as delegates had known we were thinking of doing this, there would have been no Convention. They'd have stayed away on voting day, all of them. I can't see the practical side. Oh, I see the idealists' side of it, not the practical side. Let's save our boys and girls by not giving them the vote until they are 21 years of age.

PRESIDENT: Dr. Saunders.

MR. WILBOUR E. SAUNDERS: Mr. President, I will take just a moment. I spoke previously on the gambling amendment, but I think my comment concerning that, in spite of the fact that Mr. Murphy still owes me a cigar because we didn't adjourn this session last night on the second reading, is little compared with my wanting to have just a word to say in regard to all these remarks that have been made, not about boys and girls, but about young men and young women of 18 and more.

I am the headmaster of a school which has a considerable number of boys. For example, one delegate has said rather interesting things about the group in the gallery. The other day we here had

12 boys from the social studies department of our school, and I would like to know if there was any frivolity or any foolish questions which they asked. Those young people are sincerely interested. The most recent speaker has said: "Let them have a holiday from politics." We have been told in education that our job was to train them to be citizens, to be prepared for citizenry; not to give them over to frivolity and play, but to make them ready to take a part in government.

I just want to say this one word from my experience as the headmaster of a school with young men of 18. I have had no experience with the young ladies; we are a boys' school. In my opinion the young men of 18 whom I have observed in 12½ years as headmaster are distinctly better prepared to vote intelligently, are more fully motivated to take a part in government, and are more ready for it than the average group of older adults with whom I have had the chance to be associated. I feel that if we say to them, when we get through with some of this education, "See here, just forget it; you are not old enough to do anything yet; you can't take part in all this," then we give them a chance for a cooling-off period after that education, which every school gives.

I agree with Dean Sommer that we ought to give better training in American history. However, I want right now to state that in my opinion, the average student of 18 graduating from high school knows more American history than the average adult whom you let vote now.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for . . . Mr. Schenk.

MR. SCHENK: I might just sum up briefly. I do not want to labor the point. As you know, Delegate Park told you we rejected this by ten to one in committee, after hearing testimony and weighing all facts, including what we thought was a very able letter from the Department of Institutions and Agencies. I will read briefly:

> "In relation to juvenile delinquency, there are administrative and perhaps constitutional considerations which make it desirable to have a lapse of time between the termination of childhood and the assumption of full adult obligations and privileges. Through the three-year period between the age of eighteen years below which courts are empowered to deal with children as delinquents, and the attainment of majority, treatment agencies (institutions and probation) now have the time to do things for minors under an equity-type of procedure which they could not legally do if the upper age of juvenile court jurisdiction should be made identical with the voting age.
>
> I, therefore, would not recommend, from the point of view of one concerned with juvenile delinquency problems, the lowering of the voting age to eighteen years."

Now, we know, as the point has been made, the precedent for this is very low, and there are many other reasons which have been given to you on the inadvisability of adopting such an amendment.

I therefore suggest we have the question.

PRESIDENT: May I ask Mr. McMurray or Mr. Montgomery if they wish to conclude the argument . . . Just a minute, Mr. McMurray—Mr. Gemberling.

MR. ARTHUR R. GEMBERLING: Mr. President, fellow delegates:

I am up here for two reasons: First, in defense. I don't want to go back to my home county and tell them that I did not appear on the floor.

I have a deep-seated interest in youth. I think I know twice as much about it as Dr. Saunders, because I taught twice as long. Last week when I was back home I was asked why I didn't say something on the floor of the Convention, and I told them that if I possessed the dignity of Dr. Clothier, the size of John Schenk, the eloquence of Ed O'Mara, the courage of Justice Brogan, the wisdom of Dean Sommer, the stick-to-it-iveness of John Rafferty, the knowledge of Walter Winne, the wit of Senator Milton, the oratory of Robert Carey, the grace of Mrs. Hacker, and the endurance of Spencer Miller—

(Laughter)

I thought I would be able to say something.

Now, I want to say that I have a deep-seated interest in the boy and girl of today, the manpower and womanpower of tomorrow. I spent 35 years in the classroom and handled thousands of boys and girls. I don't believe they are ready to start on hard work, difficult work. Give them a few years to mature. Give them a few years to enjoy themselves. Don't ask them to shoulder a responsibility that would devolve upon them if they were permitted to vote. We have placed a great burden on their shoulders. They will have to shoulder many of the things that we have created. Give them a chance to enjoy life for a few years immature.

I am going to vote against it.

PRESIDENT: Mr. McMurray will conclude the argument.

MR. McMURRAY: I call for a roll call on the question.

PRESIDENT: Mr. McMurray calls for a roll call on the question.

SECRETARY *(calls the roll):*

AYES: Barus, Cafiero, Constantine, Drenk, Eggers, Farley, Hansen, Jacobs, Jorgensen, Lord, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Morrissey, Naame, Randolph, Saunders, Wene, Young—21.

NAYS: Barton, Brogan, Camp, Carey, Cavicchia, Clapp, Cowgill, Cullimore, Delaney, Dixon, Drewen, Dwyer, W. J., Emerson, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Katzenbach, Kays, Lance, Lightner, Lloyd, McGrath, Milton,

Murphy, Murray, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Read, Sanford, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Winne—53.

(The negative vote was finally 54, as appears hereafter)

SECRETARY: 21 in the affirmative; 53 in the negative.

MR. ARTHUR W. LEWIS: How am I listed?

SECRETARY: Not voting.

MR. LEWIS: List me as "No."

SECRETARY: 54 in the negative.

PRESIDENT: The amendment is not adopted.

The chair will recognize briefly the chairman of the Committee on Submission and Address to the People. Dr. Saunders.

MR. SAUNDERS: Can that Report be made by our secretary? It will get out of the way in a moment some business that will expedite matters. The secretary is ready to give the Report. Mr. Moroney.

PRESIDENT: Mr. Moroney, will you report?

MR. J. FRANCIS MORONEY: This is the Report of the Committee on Submission and Address to the People:

> "Proposal No. 3-1 was referred to your Committee on August 20, 1947, and, pursuant to the rules of the Convention, is reported back.
>
> The Committee is not ready to report on the manner of submission to the people until all proposals are received and considered by the Committee.
>
> The Committee suggests that Proposal No. 3-1 be referred to the Committee on Arrangement and Form."

PRESIDENT: This action will be taken.

We will now proceed. The chair recognizes Mr. Schenk.

MR. SCHENK: The next amendment on the list furnished you is No. 15, by Mr. Lightner.

PRESIDENT *(reading):*

> "Amend Article——, Elections and Suffrage, paragraph 4, line 3 and 4 by changing the semicolon after the word 'district' to a period and by striking out the words 'The Legislature may provide for absentee voting by members of the armed forces in time of peace' and inserting in lieu thereof the words 'The Legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who may, on the occurrence of any general election, be unavoidably absent from the State or county of their residence because they are inmates of a soldiers' and sailors' home or of a United States Veterans' Bureau hospital, or because their duties, occupation or business require them to be elsewhere within the United States, may vote.'"

Mr. Lightner.

MR. LIGHTNER: Not feeling that I would wish to enter into a competition with any of the gentlemen so well enumerated by Delegate Gemberling, I would like to establish some sort of a record for brevity in the opening remarks with respect to an amend-

ment submitted to this Convention. I was moved to introduce this amendment by a study of the committee proposal on suffrage with respect to absentee voting. That proposal provides, as I understand it, for compulsory action to permit absentee voting in the case of members of the armed forces in time of war, and gives the Legislature authority to permit absentee voting on behalf of those who have chosen to be in the armed forces in time of peace.

My interest in absentee voting goes back a good many years to the time when I was somewhat older than the 18-year-olds whom we have just been discussing, and I was receiving my education in a state different from that in which I had been born and brought up. And when it came to the first presidential election in which I was old enough to vote, I found myself unable to vote because I was absent from my state. My state was one of those that had not yet authorized absentee voting.

I commend the amendment to Mr. Saunders because of the fact that the graduates of his famous school, if they haven't gone to Rutgers or Princeton or some other institution of higher learning in this State, will find themselves disfranchised when they are 21. I was old enough to take the stump and go up and down the highways and by-ways of Massachusetts on behalf of a certain famous citizen of New Jersey who was a candidate for President at that time and was elected—but I couldn't vote.

I believe that New Jersey is, perhaps, for one reason or another, somewhat backward in not having a provision which permitted absentee voting. Every election the people who are interested in good government in this State do everything that they can to get the voters who are at home to turn out and vote. And by the laws of this State, if a voter is sufficiently interested and wishes to vote but is unable to be at home for some perfectly good reason, he is disfranchised from voting.

The proposal which I have taken the liberty of bringing to the attention of this Convention was copied by me from the constitution of our neighboring State of New York where it was adopted in the year 1894. New York State has had that clause all these years, and many other states now have absentee voting. It is becoming a very common thing, and I think it is something which should come to the attention of this Convention. Whether it gets as many votes as the last proposal had or not, I don't know. I move the amendment.

PRESIDENT: Is there any discussion on Amendment No. 15? . . . Mr. Hadley.

MR. HADLEY: Just as enthusiastically will I support this amendment as I was opposed to the other one. I'll be very glad to vote for it.

PRESIDENT: Any further discussion? . . . Mr. Schenk.

MR. SCHENK: Fellow delegates: We considered the philosophy of this proposed amendment in committee, and in various tests of our opinion it lost substantially.

Delegate Lightner has said that what we have done is to provide for the voting of, or to force the taking of the vote of, those who have chosen to be in the armed forces in time of peace. I think we all agree that in times of peace from now on, perhaps for many years, there may be many hundreds of thousands of boys and girls, men and women in the armed forces, involuntarily, unless the strains on the international scene disappear and apparently irreconcilable philosophies are composed. I think I should put that thought to you for the committee.

Now, as to the language of the proposed amendment—"be unavoidably absent," I presume that may run back to the words "the Legislature may," so that the "be unavoidably absent" will be interpreted by the Legislature. Our thinking was of a more restricted type and ran to the question of being involuntarily absent, not unavoidably absent. Now, there are such words in the amendment as "duties," "occupations" and "business." I do not see that they are germane in the constitutional provision at all. And I notice it also provides "within the United States." I presume a diplomat outside the United States might be considered to want to have his vote, if anybody should have it.

They are all technical criticisms of language. But I suggest that the committee philosophy be endorsed on broader grounds. In this Constitution we are trying to avoid the impact of elections in presidential years, for the reason that we do not want New Jersey decisions colored by the thinking on national problems. It seems to me that if we adopt this amendment we would be providing at least the means for the first step of bringing into New Jersey voting results the views of perhaps many thousands of people who have in fact moved away permanently and abandoned New Jersey and whose thinking might be colored by their closeness to the national government and its policies, regardless of party. In other words, our thinking ran to this: that people who have in fact actually abandoned their residence and who might seek the franchise under this really should not be enfranchised unless they maintain their residence in New Jersey and want to come back. They can still come back. It seems to me that we do not need this provision and that it should be defeated.

PRESIDENT: Mrs. Constantine.

MRS. MARION CONSTANTINE: Mr. President, through you, may I ask a question of Mr. Lightner?

Does that amendment apply to the Merchant Marine?

MR. LIGHTNER: It applies to people whose occupations have

unavoidably kept them away, and I presume that applies to the Merchant Marine and the boys in the service as well.

MRS. CONSTANTINE: Thank you.

PRESIDENT: Mrs. Sanford.

MRS. OLIVE C. SANFORD: Mr. President and members of the Convention:

I had not planned to say anything on this, but you know I have been in politics and I am interested in having people get out to vote; and I vote. In a house where I am I have said to some young men, "Are you registered or are you able still to vote in Connecticut?" And they said, "We have absentee voting." The kind of business they are in brings them to New Jersey, but they can vote at home because they have absentee voting. Now, I know other people, traveling men, who are unable to come back to their town to vote and they lose their vote frequently. I have felt for years that we should have a properly set up system of absentee voting. It seems to me that it would be a perfectly possible thing for such a thing to be evolved. Naturally, no one whose residence was not legally that of the state in which he wished to vote could possibly use absentee voting.

I'm very much in favor of absentee voting and I questioned, when I read the proposal of this committee, why they were only letting these people have the absentee voting who were serving militarily. I think this should be amended.

PRESIDENT: Are you ready for the question?

MR. THOMAS J. BROGAN: I just wanted to make a suggestion which the proposer of this amendment, I think, will accept. If we are to pass this amendment I suggest that the word "general" before "election" be struck out, because under it a man might not vote at a primary election, or at a municipal election, or at other kinds of special elections. If we are to pass it, we ought to give the Legislature the right to do all that it has a mind to do.

PRESIDENT: Mr. Lightner, is that amendment acceptable to you?

MR. LIGHTNER: From my own philosophy, Mr. President, I would have no objection to it. I hesitate to accept it in my amendment because I do not know whether it would swing votes for it or against it.

(Laughter)

In other words, the question of absentee voting is a matter in which I am interested—not as to whether it is confined to one type of election or another. If it is offered as an amendment to the amendment, why that's another thing.

PRESIDENT: Justice Brogan, do you move this amendment to the amendment?

MR. BROGAN: Yes I do. I move the amendment to the amendment. And I think that this proposal restricts the Legislature in another particular, because it speaks of the business of those who require them to be elsewhere than within the United States. Now, suppose a man is unavoidably in Europe, or some place else. He might want to vote, too.

PRESIDENT: Your amendment, though, I understand Justice Brogan, touches only the use of the word "general" at this time. Am I right?

MR. BROGAN: Yes, sir. By deleting the word "general."

PRESIDENT: It has been moved as an amendment to the amendment that the word "general" be deleted. Is there any discussion or question?

Will all in favor please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Chorus of "Noes")

PRESIDENT: Will all in favor please raise their hands?

(Majority of hands raised)

PRESIDENT: All opposed?

(Minority of hands raised)

PRESIDENT: The amendment to the amendment is carried, and the word "general" is deleted . . . Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: On the amendment as amended, this admittedly is offered as a means of providing a vote for civilians who are absent on election day. I think in that respect we are loading up the Constitution, because I say to you that the Legislature has that right in any event. And secondly, I want to recall to the minds of the older members of this Convention—I know it not from experience but from hearsay, and I think the records will bear me out—that there was absentee voting in this State for civilians many years ago, and the consequences of it were so bad that the Legislature repealed it. I suggest that because of its possible results the amendment is bad and ought to be defeated.

MR. EDWARD A. McGRATH: Mr. President: I agree with the previous speaker from my own experience, that this is a very bad amendment. In the first place, it's nothing but pure legislation that loads up the Constitution with something that's not necessary. It fixes something in here which should not be fixed.

And the language itself is very dangerous because it says, first of all, that the man shall be unavoidably absent. Now who is going to decide that to begin with? Second, it speaks of absentee voting by inmates of a soldiers' and sailors' home. Well, we can visualize

where there would be a soldiers' and sailors' home in a small county where two or three hundred votes would control the whole township. We have cases in our books where the inmates of certain hospitals have attempted to vote in mass and control a local election. That's vicious. I don't see how anybody could vote for that. That's exactly what the amendment says—"because they are inmates of a soldiers' and sailors' home or of a United States veterans' bureau hospital, or because their duties, occupation or business require them to be elsewhere within the United States." That means they could vote in a local election. Now, who on earth is going to decide that? See what a complicated thing that is?

We have experience as county judges. Every year in the general or presidential election some people come in who haven't voted in ten years. I had one lady come in who hadn't voted in ten years and I said, "Well, lady, where were you all these ten years?" She said, "Well, I'm just as good a citizen as you are, I always try to do my duty."

It seems to me that in the first place, we're dealing here with trivia. It's not a thing that should be in the Constitution at all; it's a matter for the Legislature to decide. In a general election in Union County, for instance, there wouldn't be ten votes influenced by it. It's going to create a lot of confusion and it's a type of thing that we ought to vote down, in my opinion, because it has no place whatever in our Constitution.

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: I hear a request for a roll call. The Secretary will call the roll. Those in favor will please say "Aye" as their names are called; those opposed will please say "No."

SECRETARY *(calls the roll):*

AYES: Barus, Brogan, Constantine, Hacker, Hadley, Hansen, Jorgensen, Lightner, Lloyd, Miller, G. W., Milton, Morrissey, O'Mara, Sanford, Saunders, Schlosser, Van Alstyne, Wene—18.

NAYS: Barton, Cafiero, Camp, Carey, Cavicchia, Clapp, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Holland, Hutchinson, Jacobs, Katzenbach, Kays, Lance, Lewis, Lord, McGrath, McMurray, Miller, S., Jr., Montgomery, Murphy, Murray, Naame, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Schenk, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Taylor, Walton, Winne, Young—55.

SECRETARY: 18 in the affirmative, 55 in the negative.

PRESIDENT: Amendment No. 15 is not adopted.

The chair declares a five-minutes recess.

(The Convention reconvened at 4:05 P. M.)

PRESIDENT: Will the delegates kindly take their seats? . . . The chair recognizes Mr. McMurray.

MR. McMURRAY: Mr. President, ladies and gentlemen:

The Committee on Arrangement and Form has completed its work on Proposal No. 2-1, the Legislative Article. We have had conferences with Senator O'Mara, the chairman of that committee, with regard to the Article, and with Senator Lewis with regard to framing the article on gambling; and I submit at this time, Mr. Secretary, the Report of the Committee on Arrangement and Form.

PRESIDENT: Do you move the adoption?

MR. McMURRAY: I move the adoption.

PRESIDENT: Is it seconded?

FROM THE FLOOR: I second it.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried . . . Senator O'Mara.

MR. EDWARD J. O'MARA: Pursuant to Rule No. 52, I give 48 hours' notice of the intention to move Proposal No. 2-1 on third reading on Friday next, August 22.

PRESIDENT: The chair will recognize Mr. Schenk.

MR. SCHENK: Mr. Chairman, although the schedule now provides for taking up the amending process, I request that at this time we pass that item and consider Amendment No. 23, by Mr. Clapp, delegate from Essex County.

PRESIDENT: Mr. Schenk, may I inquire whether you have any further thought regarding the taking up of all these amendments this afternoon?

MR. SCHENK: I would like very much, with the leave of the Convention, to postpone the very important subject of the amendment process until tomorrow. We're getting to the end of the day, and the delegates have worked hard and listened long. I think it requires such careful consideration that we should take it up tomorrow morning, because we have five or six methods when we consider the Committee Report and all the amendments. We can't, in fairness to the work, I believe, try to crowd them in now. I would rather take up these few miscellaneous things so that tomorrow we will only have the one subject left to consider, and we can clear it, I think, tomorrow morning.

PRESIDENT: Do you move then, Mr. Schenk, the reconsideration of our earlier vote, that we should proceed through this evening?

MR. SCHENK: I would, sir. Yes; I would like very much to do

that, and I so move.

FROM THE FLOOR: I second it.

MR. WINSTON PAUL: I might make the suggestion to the chair that if at any time, in the chair's opinion, an evening session is necessary, I think many delegates would appreciate advance notice the day before so that they can plan accordingly.

PRESIDENT: You have heard the motion, the effect of which, if adopted, is that we shall not meet tonight, but shall clean up several of these odds and ends and then meet tomorrow to consider the amendments on the amending process.

All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(One "No")

PRESIDENT: Carried.

MR. SCHENK: At this time, could we hear from Mr. Clapp on Amendment No. 23?

PRESIDENT: Mr. Clapp.

MR. ALFRED C. CLAPP: Mr. President, this provision is wordy —an adaption of a wordy provision in the 1844 Constitution which, I might say, fell between the Committee on Rights and Privileges and the Judiciary Committee. I think it's just of a technical nature —continuing all laws—and is necessary to be inserted in this Schedule.

I move the adoption of the amendment.[1]

FROM THE FLOOR: I second the motion.

MR. SCHENK: Dr. Clothier, I also second the motion of Alfred C. Clapp of Essex County. As he told you, this provision fell between two committees, and the Convention owes a real vote of thanks to Delegate Clapp for his taking care of this matter for all of us.

PRESIDENT: Any further discussion? . . . Is the question called for?

FROM THE FLOOR: Question?

PRESIDENT: All in favor of Amendment No. 23, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted.

MR. SCHENK: Mr. Chairman, under Article ——, "Elections and Suffrage," the Committee Proposal reads as follows:

[1] The text of this and other amendments appears in the Appendix in Vol. 2.

"General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor and members of the Legislature and such local officers as may be provided by law shall be chosen at general elections."

There has been some criticism raised, and I think valid criticism, of the words in line 3 and in line 4 reading "and such local officers as may be provided by law," because it is possible to construe that to mean that commission elections might have to be held in November. It is a matter of the construction of the language.

Just before we recessed, I had hoped that Amendment No. 26 would be on the desks of the delegates. I do not know whether I am in or out of order in suggesting that we strike the words "and such local officers as may be provided by law" and add a new sentence.

PRESIDENT: Mr. Schenk, may I interrupt. Is this Amendment No. 26 to which you are referring?

MR. SCHENK: Yes, sir.

PRESIDENT: Has amendment No. 26 been distributed to the delegates?

MR. SCHENK: I was about to read it, sir.[1]

PRESIDENT: Oh, I beg pardon. Please proceed.

MR. SCHENK: And I will lay the matter over until tomorrow morning if anyone objects.

We would add this sentence as follows, on line 4:

"Local elective officers shall be chosen at general elections, or at such other times as the Legislature by law shall provide."

It runs to the construction of the language. It is a technical point. I think we could clear it now if you care to do so.

PRESIDENT: Are you ready for the question?

MR. SCHENK: Before—I will read it as it would be.

PRESIDENT: Please.

MR. SCHENK *(reading):*

"The Governor and members of the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections, or at such other times as the Legislature by law shall provide."

PRESIDENT: Is there any discussion on this amendment?

FROM THE FLOOR: Question!

PRESIDENT: Are you ready for the question? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted.

[1] The full text of the amendment appears in the Appendix in Vol. 2.

PRESIDENT: Mr. Schenk.

MR. SCHENK: Fellow delegates, we have one more amendment, No. 24, offered by Delegate Lewis of Burlington. We considered this same subject yesterday and made a decision on it. However, it is now before us again.

PRESIDENT: Senator Lewis, will you discuss this amendment.[1]

MR. LEWIS: Mr. President and fellow delegates:

I do not wish to be unduly persistent in this matter, but the subject of our jury system is of such importance that, in my opinion, we should not be too hasty in passing it over lightly. I have, therefore, introduced today Amendment No. 24 which reads as follows:

> "The Legislature may provide, however, by law, that a verdict may be rendered by not less than three-fourths of the jury in any civil case."

I wish to call your attention to the fact that this does not in any way abrogate the right to a trial by jury. I shall not repeat the arguments that I made on this floor yesterday, except, however, I would like to answer a question that may have been in doubt. Someone inquired yesterday as to whether or not the Legislature had the power to make any change in the law whereby a jury verdict could be rendered by less than a unanimous verdict. I answered: "The Legislature could not."

I would like to refer you to two decisions in New Jersey on this point, and what I consider to be a conclusive decision on the subject in a sister state.

The Court of Errors and Appeals of New Jersey, in the case of *Stizza* vs. *Essex County Juvenile Court, 132 N. J. Law 406,* said in regard to the present constitutional provision, referring to Article I, paragraph 7, of the Constitution providing that "The right of trial by jury shall remain inviolate," that it is not intended to give that right in cases where it did not previously exist, but merely to preserve it inviolate in cases where it existed at the time of the adoption of the Constitution. It was so decided in *McGear* vs. *Woodruff, 33 N. J. Law 213,* the opinion in that case having been written by Justice Depue.

In another case in our Court of Chancery, the decision rendered by Chancellor McGill in *In re Lindsley, 46 N. J. Eq. 358,* points out that 12 jurors had unanimously concurred on the verdict rendered, and states: "No inquisition could be taken upon the oath of less than twelve jurors." Now, this point has not been raised four-square in New Jersey because the Legislature has never seen fit to try to provide for a jury verdict of less than 12 jurors. In the State of Pennsylvania a few years ago, the Legislature tried to do it. That case went up on appeal to the Supreme Court. I refer you to the case of *Smith* vs. *Times Publishing Company, 178 Pa. Rep. 481,*

[1] The full text of this amendment appears in the Appendix in Vol. 2.

36 Atl. Rep. 296, wherein the court said this—and I wish that you would note in particular this language of the court:

> "All the authorities agree that the substantial features of trial by jury which are to be as heretofore are the number of twelve and the unanimity of the verdict. These cannot be altered, and the uniform result of the very numerous cases growing out of legislative attempt to make juries out of less number or to authorize less than the whole to render a verdict is that as to all matters which were the subject of jury trials at the date of the Constitution, the right which is to remain inviolate. . . ."

I want to emphasize that language—*"the right which is to remain inviolate is a jury of twelve men who shall render a unanimous verdict."*

Therefore, Mr. President and ladies and gentlemen of the Convention, I submit the Legislature will have no authority whatsoever to make any improvements in regard to our jury system unless in this Constitution we so provide. This proposal merely provides that the right of trial by jury shall remain inviolate, but the Legislature may, and I quote: "provide, however, by law, that a verdict may be rendered by not less than three-fourths of the jury in any civil case."

Mr. President, I submit that this is, indeed, a good proposed amendment to this Constitution which we are trying to bring up-to-date.

PRESIDENT: Is there discussion on Amendment No. 24?

MR. SCHENK: Mr. President, I believe Dean Sommer wishes to be heard, perhaps in the affirmative, and I wish to be heard in the negative.

PRESIDENT: Dean Sommer?

MR. SOMMER: Mr. President and members of the Convention: I am going to content myself by saying that out of a long experience I will support the proposed amendment.

PRESIDENT: Mr. Schenk?

MR. SCHENK: I cannot conceive what might have happened in the last 24 hours to change the principle which is now to be considered, and in making that statement I am not criticising either Mr. Lewis or Dean Sommer, or anyone else who may have voted for the principle yesterday.

I think yesterday we had the same thing presented to us on a five-sixths basis, and yesterday, apparently, when we voted against this idea 42 to 29, we felt that we should not dilute the question of having 12 out of 12 by even one-sixth. In other words, we said yesterday, by a vote of 42 to 29, that the principle was wrong, and I say that it is still wrong today. Therefore, I urge you to vote against it.

PRESIDENT: Judge Lloyd?

MR. FRANCIS V. D. LLOYD: I was unavoidably absent yes-

terday. I am surprised at these businessmen who complain about the courts, taking the view that an amendment such as this is not a good amendment. I have tried cases before juries for more than 25 years and there have been many disagreements due to one or two jurymen disagreeing with the other ten, we will say, or three against nine, and it has resulted in a re-trial, and in many instances we have had a third re-trial. All of which is a real economic waste.

Now, I have had the opportunity of hearing juries deliberate. I was a District Court judge for 12 years, and while juries deliberate in secret, the jury room was right next to the judge's chamber and the door was a single door and not a double door, so that deliberations were heard by me. In fact, sometimes I couldn't help hearing them, they shouted so. I think anyone who has not heard a jury deliberate would be shocked to know some of the reasons some jurors give for disagreeing with the majority. Some of those reasons are prejudice; they don't like the lawyer, they form ideas of their own entirely disconnected and in no way relevant to the case and certainly not adduced at the trial of the cause, and sometimes, although I can't prove it, I think that some of them have been fixed. You can't fix nine jurors, I am sure. I think you can fix one juror or maybe two or maybe three, but I think the principle as enunciated in this amendment is a worthwhile one. It will be good, it will work substantial justice, it will certainly reduce this economic waste that we hear so much about in the courts. I believe that Senator Lewis' amendment should be adopted.

PRESIDENT: Judge Proctor?

MR. HAYDN PROCTOR: Fellow delegates, I agree with Senator Lewis' amendment wholeheartedly, as expressed also by Judge Lloyd. However, I think it is a little too drastic, and I would like to make an amendment to his amendment that it be five-sixths. I know we voted on that yesterday, but I don't think it is *res adjudicata* and I would like at least to have a vote on my amendment to Senator Lewis' amendment.

PRESIDENT: Senator Lewis.

MR. LEWIS: Mr. President and fellow delegates:

I would be very happy to accept the amendment to the amendment proposed by Judge Proctor. The reason this proposal provided for three-fourths, which would be nine in number, instead of five-sixths, which would be ten, is that the only way I could bring this subject before the Convention for reconsideration was on a new proposal. I am perfectly happy to accept the proposed amendment to the amendment.

PRESIDENT: Mr. Paul.

MR. PAUL: The majority of the delegates to this Convention are lawyers. I don't know whether they have had the experience

before they went into law of serving on a jury, but one of the most exasperating situations which an intelligent person can find himself in is to be in a jury room where the overwhelming majority of the persons know what the verdict should be, but one or two or three persons hold out without reason, without justification, and hang up the whole thing for a substantial period of time. It is a cause for grave dissatisfaction to intelligent citizens who want to serve on juries. Therefore I say to you lawyers, if you want better juries, make it worthwhile for intelligent persons to serve on the juries and not feel that their time is wasted by one or two persons unfairly holding out.

PRESIDENT: Mr. Schenk?

MR. SCHENK: I seem to be in this debate—

PRESIDENT: Mr. Schenk, do you mind if I interrupt at this moment? I want to find out where we stand. Did Senator Lewis accept Judge Proctor's amendment?

MR. LEWIS: He did, sir.

MR. SCHENK: May I proceed?

PRESIDENT: Yes.

MR. SCHENK: I will be brief. It seems to me that our friends who are in support of this amendment show confusion in their thinking by the way in which yesterday five-sixths was the right amount, a little while ago three-fourths, and now we are back to five-sixths. I might say that we who are opposed to the idea are opposed because we like the absolute right and the absolute protection of requiring 12 out of 12.

I told you yesterday that perhaps some time subsequently in our thinking five-sixths may be discarded and we would go to three-fourths or three-fifths or some such figure. I did not realize that in less than 24 hours three-fifths would suddenly become the right one, or three-fourths rather, and then in a few minutes we would be back to five-sixths.

Let us keep our mind on the principle of this thing. I think it is wrong. It sounds plausible. It sounds reasonable. It implements judicial action in the courts. Lawyers do not have to ride the merry-go-round twice, although I do not see why they would object, because somebody else buys the ticket both times. I do not mean that unkindly. If they do the work twice they should get paid twice, but it is a question of degree here in this principle and I say let us keep it 12 out of 12. It was a good idea yesterday to reject five-sixths and it is still a good idea today. Let us vote so we can go home.

PRESIDENT: Senator Lewis?

MR. LEWIS: Mr. President and fellow delegates:

The principle today is precisely what the principle was yesterday, and I am arguing for the principle. It makes no difference to me whether it is three-fourths or five-sixths. I merely say we should not now in the Constitution of 1947 preclude the Legislature from any thinking on the subject of possibly improving our jury system. The weaknesses I pointed out yesterday. I do feel we ought not to write into the Constitution precisely the number. We should say to the Legislature: "You study the question, and if perchance you feel, as more than a third of the states in the Union have already done, that there should be some improvement in the jury system, the Legislature has the right to study it, consider it, and improve it." I submit that it is a good proposal and I call for the question.

PRESIDENT: The question is called for. All in favor of Amendment No. 24, as amended to five-sixths, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Chorus of "Noes")

MR. SCHENK: Let's have a roll call, please, and dispose of the matter.

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Barus, Cafiero, Camp, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Dwyer, W. J., Emerson, Farley, Feller, Gemberling, Glass, Hacker, Hadley, Holland, Jacobs, Jorgensen, Lance, Lewis, Lightner, Lloyd, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Murray, Naame, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Smalley, Smith, G. F., Sommer, Stanger, Taylor, Van Alstyne, Walton, Wene, Winne, Young—56.

NAYS: Brogan, Carey, Drewen, Ferry, Hansen, Hutchinson, Katzenbach, Kays, Lord, Milton, Morrissey, Murphy, O'Mara, Orchard, Schenk, Schlosser, Streeter—17.

PRESIDENT. Amendment No. 24 is adopted . . . Mr. Orchard.

MR. ORCHARD: I should like to point out, Mr. President, that we have now adopted by a vote of 56 to 17 Amendment No. 7 in the precise language that yesterday we defeated by a vote of 29 to 42.

I would observe to Senator Lewis that he who fights and runs away will live to fight another day.

(Laughter)

PRESIDENT: Mr. Schenk.

MR. SCHENK: I just want to add that the male delegates to

the Convention are exercising the prerogative that they, too, enjoy with the ladies, to change their minds frequently—

(Laughter)

and without, perhaps, too much reason—

(Laughter)

other than that they may be confessing that they made a mistake the day before. I agree and accept in good faith and in good spirit the decision of the Convention, and the right of the members of the Convention to change their minds.

I move we adjourn until tomorrow.

(Seconds from the floor)

PRESIDENT: It's been moved, then, and seconded, that we adjourn until tomorrow morning at 10:00 o'clock.

All in favor please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. We adjourn.

(The session adjourned at 4:35 P.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Thursday, August 21, 1947

(Morning session)

(The session started at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and spectators to rise while Rabbi Nathaniel M. Keller of the Anshe Emes Memorial Temple pronounces the invocation.

RABBI NATHANIEL M. KELLER: Almighty Father, Thou Source of all blessings, we thank Thee for the gift of this new day. We thank Thee for the powers of mind and heart that help us to use wisely the blessings Thou hast bestowed upon us. May we see clearly the tasks of this day, that we may do them willingly and faithfully. Strengthen our souls that we may be of service to our fellowmen, and thus serve the holy purpose for which Thou hast placed man upon this earth. Let us walk before Thee in humility, trusting steadfastly in the wisdom and goodness of Thy all-ruling will. Bless us and keep us, O God, as we strive, through our deeds, to express our love and reverence for Thee. Amen.

PRESIDENT: The first item of business on the docket is the reading of the Journal.

FROM THE FLOOR: Move it be dispensed with.

FROM THE FLOOR: Second.

PRESIDENT: You have heard the motion. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W.,

Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne.

SECRETARY: Quorum present.

PRESIDENT: The Secretary reports that a quorum is present. May I inquire if there are any petitions, memorials or remonstrances to be presented?

(Silence)

PRESIDENT: Any motions and resolutions? . . .Mr. Dixon.

MR. AMOS F. DIXON: I have a resolution to present to the Secretary.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourn it be to meet at 10 A.M. on Friday, August the 22nd."

PRESIDENT: Mr. Dixon.

MR. DIXON: I move the adoption of the resolution.

PRESIDENT: Colonel Walton.

MR. GEORGE H. WALTON: Mr. President, fellow delegates: I wonder whether Mr. Dixon would be willing to let this motion go over until later on in the morning, until we see a little how we are going?

PRESIDENT: Is that agreeable to you, Mr. Dixon?

MR. DIXON: I'll be willing gladly to do that, Mr. Walton. We'll keep it on the boards. I'm assuming that we won't get through until tomorrow, with the Rights and Privileges today and the Taxation tomorrow. We may do better.

PRESIDENT: We'll bring it up later in the program, Colonel Walton.

I would like to ask the chairmen of the standing committees, those who have no other definite commitments, to meet for lunch at the adjournment of the morning session.

Is there any unfinished business?

(Silence)

PRESIDENT: May I inquire whether any delegates have further amendments to offer? If so, may we have them at this time.

FROM THE FLOOR: Judge Carey has, I think, Doctor.

PRESIDENT: Judge Carey.

MR. ROBERT CAREY: Mr. Chairman, Exhibits A and B, the Dean and myself, have a joint amendment to offer to Section I of the Report of the Committee on Taxation. The amendment is now

being drawn, and we will be ready to present it and file it within three or four minutes, if the chair will permit.[1]

PRESIDENT: Very well. Are there any other amendments to be offered at this time?

(Silence)

PRESIDENT: If not, we will proceed with the continuation of our discussion on the amendments to the Proposal of the Committee on Rights and Privileges. I will recognize Mr. Schenk.

MR. JOHN F. SCHENK: Fellow delegates, there are a number of amending proposals before you, and I wish at this time to call on Mr. Carey, who has Amendment No. 4 before you, and Amendment No. 17.

PRESIDENT: Judge Carey.

MR. CAREY: The Section to which those amendments are directed is being changed to my satisfaction. I therefore withdraw both of those amendments.[2]

PRESIDENT: Amendments Nos. 4 and 17 are withdrawn.

MR. SCHENK: At this time, Mr. Chairman, I wish to call on either Mr. Park or Mr. Jorgensen, the sponsors of Amendment No. 8.

PRESIDENT: Mr. Park.

MR. LAWRENCE N. PARK: Mr. President, ladies and gentlemen of the Convention:

The amendment which bears my name at the top, through an error, should read, "Proposal by Mr. Park, Mr. Jorgensen, and Mrs. Katzenbach." The sense of the proposal is embodied in the amendment advanced by Mr. Walton. If Mr. Walton's amendment is adopted, the three sponsors of Amendment No. 8 will withdraw their proposal. Therefore, I move to lay over Amendment No. 8 on the table until Mr. Walton's proposal is considered.[2]

PRESIDENT: Amendment No. 8 is laid over . . . Mr. Schenk.

MR. SCHENK: Mr. Chairman, at this time I wish to call on the sponsor of Amendment No. 10, Mr. Spencer Miller, Jr., delegate from Essex.

PRESIDENT: Commissioner Miller.

MR. SPENCER MILLER, JR.: Mr. President and delegates to the Convention:

I should like the permission of the Convention to withdraw this amendment.[2] It is my purpose to support the amendment introduced by Delegate Walton.

PRESIDENT: Amendment No. 10 is withdrawn . . . Mr. Schenk.

---

[1] Amendment No. 15 to Committee Proposal No. 5-1. The text appears in the Appendix in Vol. 2.

[2] The text of these amendments to Committee Proposal No. 1-1 appears in the Appendix in Vol. 2.

MR. SCHENK: Mr. Chairman, at this time I call on the sponsor of Amendment No. 22, I believe it is, Mr. Walton, to discuss his proposed amendment.

PRESIDENT: Colonel Walton.

MR. WALTON: Mr. President, fellow delegates:

Unless there is some objection, I have a little amendment to this amendment that I would like to make. That is, wherever the words "each of the two houses" appears, they should read instead, "each of the respective houses." That is done in order to clarify it.

I would like very frankly to say first that my thought was to make the amending process easier. As far as I personally am concerned, I was satisfied to have it a mere majority of the two houses. However, in listening to the various delegates, particularly those from our smaller counties, I realized that my view was rather extreme, and this amendment is an attempt to compromise and reconcile the two views. It first takes the committee proposal that an amendment may be put up to the people by a three-fifths vote of all members of both houses of the Legislature; that failing, that a majority vote having been obtained for the particular amendment, it goes over for a year, and then if it carries again by the majority vote of the members of each of the respective houses, the two houses, it is presented on the ballot for the voters of the State to pass on. Frankly, as I say, this is an effort to reconcile the two views, and I believe that it does it. I hope you will vote for it.

PRESIDENT: Mr. Schenk.

MR. SCHENK: Fellow delegates, you have before you the committee proposal on amendments. It provides for a check and balance in the amending process. The heart of it is the three-fifths vote of each of the two houses in one legislative session.

Our committee emphatically supports this basic three-fifths principle at one session, and I am glad to see our recommendation and Amendment No. 22 in agreement on the basic principle.

The question of going through the additional screen of gubernatorial approval is secondary, of course. As you know, Amendments Nos. 4 and 17 embody the philosophy of the present method of amendment, and this philosophy is also found in Amendment No. 22, as an alternate. The alternate method, providing for majority vote at two successive sessions, in combination with the inclusion of our committee's basic three-fifths principle in one session, in my opinion well reconciles the different viewpoints of this Convention and of the majority and minority reports of our committee. However, each member who cares to will doubtlessly express his own convictions on the matter, as of this day. Taken together I feel they give a flexible and still orderly amendment process, which fair-minded people can support. I feel I can in good conscience,

and do, support and urge the adoption of Amendment No. 22. It is a reasonable compilation of two basic methods under consideration by this Convention.

As does our committee proposal, Amendment No. 22 provides for a reasonable check and balance in the amending process, in one session, to the end that changes in our basic code of law will be orderly and carefully considered, so that we will continue to maintain in our society the proper balance between security and liberty and power and freedom. If the alternate method is used, the check and balance runs to a time interval.

All persons and all viewpoints are protected by a reasonably balanced amending process, because such a process makes heard the voice of the temporary minority to the end that any possible excesses of the temporary majority are tempered. Undesirable changes in any direction, too far right, too far left, or backward, are avoided. The majority mood of the day, which in the long run may be unsound and harmful and so proven, is leavened by including in it a reasonable proportion of the minority viewpoint, to the end that the welfare of all the people is promoted.

In closing, I wish to read a short quotation from that great authority on the governmental process, Charles A. Beard, who says in his book *The Republic:*

> "The end of Government in the United States, at least, is not mere technical efficiency, nor mere competence in specific matters, nor speed of political action, nor instant responsiveness to the will of the majority, nor the unrestricted rule of simple majorities. For us the ends are not only a more perfect Union, the establishment of justice, provision for common defense and general welfare, but also—and do not forget it—the maintenance of the blessings of liberty and long-run service of American society."

Fellow delegates, I say to you honestly that I have read and reread those words, and every time that I do I get the same pleasant glow and stimulus to try to help preserve and conserve in our society American principles, rights and freedom. I feel that in the Walton amendment we would be writing an amendment process that provides for orderly change in our basic law by check and balance methods, and in the words of Mr. Beard, it will provide "the maintenance of the blessings of liberty and the long-run service of American society." I feel that in adopting this amending process we will earn the thanks and the gratitude of the vast majority of the people of New Jersey today, and I urge its adoption.

MR. WESLEY L. LANCE: Mr. President.

PRESIDENT: Judge Lance.

MR. LANCE: Mr. President, so far in this Convention I have probably earned the title of "His Majesty's Loyal Opposition." Probably to the surprise of all of you, I now rise in support of a

proposition. As the second youngest member of this Convention, it probably would be more appropriate if I were seen more and heard less. However, my interest in many of the items of the subject matter which comes before this Convention from time to time may cause me to exceed the bounds of propriety, and if I do, I apologize.

I have a genuine interest in seeing New Jersey have a reasonable amending process. As a member of the House of Assembly in either 1938 or 1939 I introduced a constitutional amendment which sought to liberalize New Jersey's amending process. What constitutes a reasonable amending process? James Madison, in writing on this matter in *The Federalist Papers,* stated in effect that an amending process should not be too easy on the one hand nor too hard on the other. Madison said:

> "A good amending process should guard against that extreme facility which would render the Constitution too mutable, and on the other hand it should guard against that extreme difficulty which might perpetuate its discovered faults."

In other words, let us find middle ground. The experience of other states should be helpful. With few exceptions the various state constitutions fall into two main categories: first, the many states which require action by merely one legislature before submission to the people; second, the few states which require action by two successive legislatures before a popular referendum is held. Those states which require only one legislature generally demand more than a mere majority of each house. The fraction varies. In some states, three-fifths of all of the members of each house is demanded. In others, two-thirds of each house is needed. There are 32 states which compel action by only one legislature; nine demand a mere majority, six require a three-fifths concurrence, and 17 compel a two-thirds vote of each house. There are about ten states which require two successive legislatures.

Colonel Walton's amendment seems to be a compromise between the two systems in use in the American states. No other state uses this exact system, to the best of my knowledge. However, that necessarily is no criticism of it.

In concluding, I believe that this is a reasonable, equitable amending process, for four reasons. First, it eliminates the necessity of a special election. As you all know, these special elections cost three-quarters of a million dollars, and the main reason, in my opinion, that New Jersey has not amended its Constitution in the past is because the Legislature is hesitant to spend three-quarters of a million dollars every time they want to make an amendment.

Second, Colonel Walton's amending process eliminates the Governor. In saying that, I am not making an argument that putting the Governor in there would be bad because it would give him in-

creased power. That is not my argument. My argument is that in the veto process the Governor is used because he is a substitute for a popular referendum. Here we have the real article. We have the vote of the people itself, and therefore we do not need the substitute.

Third, this amendment gives speed where speed is necessary. The job can be done in a single year.

Fourth, this process gives deliberation where deliberation is proper, in that two successive Legislatures must be required if enough of the legislators withhold their votes to make that necessary.

I support Colonel Walton's amendment.

PRESIDENT: Judge Rafferty.

MR. JOHN J. RAFFERTY: Mr. President, delegates to the Convention:

I arise to support this amendment, if any urging is necessary at all. I had intended to urge upon the Convention that the present revision or amendment method be retained, because I think in matters of basic law we ought to approach them with great caution. But this amendment suggested by our good friend from Camden, it seems to me, is a very fine solution of the problem, and I respectfully urge upon the delegates that they vote in favor of this amendment.

PRESIDENT: Senator Pyne.

MR. H. RIVINGTON PYNE: Mr. President and members of the Convention:

I certainly have no objection to this amendment, but I think we should know exactly what we are talking about. I hear mentioned that the alternative is the present method of amendment. In my opinion that is not entirely true. In so far as I understand, the new Constitution contemplates elections only in every other year, and two-year terms for Assemblymen. That can eliminate the requirement in the old Constitution that an election must intervene between the two submissions to the Legislature. In other words, a proposal submitted in an even year could be carried by a majority of two successive Legislatures, both of which would be made up of the same individuals, without the public having a chance to pass on the question in an election meanwhile. I am not sure if that's any objection to this method. I merely think that we ought to bear in mind that this is, in that sense, an easier method of amendment than the one we presently follow, in my opinion. Thank you.

PRESIDENT: Any further comment on Amendment No. 22?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor of Amendment No. 22, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Scattered "Noes")

PRESIDENT: The amendment is adopted . . . Mr. Schenk.

MR. SCHENK: The next item on our schedule is the withdrawal permanently of any amending processes that were put on the table temporarily.

PRESIDENT: Mr. Park.

MR. PARK: Mr. President and ladies and gentlemen of the Convention. The basic tenet of the sponsors of Amendment No. 8 having already been accomplished by unanimous vote, all three of us, the sponsors, beg leave to withdraw our Amendment No. 8.

PRESIDENT: Amendment No. 8 is withdrawn. Mr. Schenk, is there any further action at this time?

MR. SCHENK: I think that completes the amendment process. I believe that all amendments were withdrawn. Mr. Carey withdrew his, Mr. Miller withdrew his, and Mr. Park put his on the table. We now come to the question of an amendment titled revision, Amendment No. 18. I think the sponsor of that amendment is Mr. Van Alstyne.

PRESIDENT: Senator, will you speak on this?

MR. DAVID VAN ALSTYNE, JR.: Mr. President and fellow delegates:

Since I have offered this amendment,[1] from certain conversation that has come to me from certain delegates you would think it is my solemn and determined vow that before I got through with my political career I was going to carve the little counties limb from limb. That is not the purpose and I am perfectly willing to accept any amendment, practically speaking, that will protect the territorial representation of the small counties. Outside of that I have heard of really no valid objection.

My point in introducing this amendment is very simply this: We live in rapidly changing times. Conditions certainly change more rapidly than they did a hundred years ago. It seems to me entirely reasonable that the Legislature wants every generation, every 25 years, simply to ask the people whether or not they want their Constitution revised. I have heard people objecting to this because they say this means you have to have a revision every 25 years. It does not. All it means is that every 25 years the subject will come up for discussion, and certainly, I repeat again, with con-

[1] The text of this amendment appears in the Appendix in Vol. 2.

ditions changing as rapidly as they do, it seems to me only fair and reasonable that we should bring up the matter of a full revision for discussion once in a generation.

MR. SCHENK: Mr. Van Alstyne, could I offer a technical amendment from the floor to your amendment? In the second paragraph, the second line, after the word "Constitution," I think the language is unintentionally defective. It should also include "or vote on the question of same," because you might have a situation where they would vote and vote the idea of the Convention down. Then I suggest also that—

PRESIDENT: Would you mind clarifying that, Mr. Schenk? I am not sure we got your meaning.

MR. VAN ALSTYNE: Through you, Mr. President—

MR. SCHENK: The second paragraph would read this way: "If at the expiration of the twenty-fifth year after the last revision of the Constitution, or vote on the question of same, the country shall be at war," and so forth. Then, I also suggest for your consideration, Mr. Van Alstyne, the following: that on line 10, the word "may" be stricken and the word "shall" be substituted. And on line 13, first paragraph, "the Legislature may by law"—change that to read "the Legislature shall by law limit"; and after the word "counties" in the first paragraph insert a comma and put in the phrase "unless otherwise provided by law."

PRESIDENT: Did you get them, Senator?

MR. VAN ALSTYNE: Yes, but Mr. President, through you, some of the delegates behind me would like to ask if you will do that over again please, Mr. Schenk, and not quite so fast.[1]

PRESIDENT: Senator Milton.

MR. JOHN MILTON: I know that both Senator O'Mara and Mayor Eggers are keenly interested in the proposition submitted in this proposed amendment. As they are presently engaged in conference in the building and will be here shortly, I am going to ask in the light of that circumstance, that further consideration of this matter be deferred until they are on the floor.

PRESIDENT: Is that agreeable to you, Mr. Schenk?

MR. SCHENK: Yes, of course, if Mr. Van Alstyne wishes to yield.

PRESIDENT: Mr. Van Alstyne?

MR. VAN ALSTYNE: We are trying to put in these new changes.

MR. SCHENK: Do you accept those changes, Mr. Van Alstyne, as far as you are concerned?

MR. VAN ALSTYNE: Well, I accept the first two. There was

[1] The changes suggested by Delegate Schenk appear after the text of Amendment No. 18 to Committee Proposal No. 1-1 in the Appendix in Vol. 2.

one there that I didn't quite get. Could we just take a minute and go through it again?

PRESIDENT: I would like to have you, Mr. Schenk, if you will, repeat that very slowly for our—

MR. VAN ALSTYNE: Excuse me, wait just a minute, Mr. Schenk. Mr. President, through you, as long as we are to lay this over, why don't we have it typed up so we'll have it all in front of us?

MR. SCHENK: All right, I will submit it as an amendment to the Amendment.

MR. VAN ALSTYNE: I'll do it myself.

PRESIDENT: If you can do that now, Senator, we'll have it mimeographed and distributed before we reconvene.

Mr. Schenk, is there further action to be taken up at this time?

MR. SCHENK: At this time we have one point to clear up. We never passed on Amendment No. 6 by Delegate Carey of Hudson, to strike all reference to collective bargaining from the constitutional draft. Mr. Carey, at this time, in view of the expressions of the will of the Convention twice on this point, do you wish to withdraw this amendment? No. 6?

MR. CAREY: Gentlemen, the problem that is attacked by me in No. 6 has been solved, to my satisfaction and, I think, to those whom I speak for here. I therefore withdraw No. 6.

PRESIDENT: Amendment No. 6 is withdrawn.[1] . . . Mr. Schenk.

MR. SCHENK: I suggest we take a short recess. We have cleared, in my opinion, everything under Rights and Privileges except Amendment No. 18.

PRESIDENT: The chair declares a recess until 10:45.

(The Convention recessed at 10:33 A. M. and re-convened at 11:00 A. M.)

PRESIDENT: May I inquire of the delegates if they have a complete set of the proposed amendments to Committee Proposal No. 5-1, 14 amendments? Will those who do not have them in their possession or on their desks please raise their hands?

(A few hands raised)

PRESIDENT: We shall have them distributed at once.

MR. WILLIAM T. READ: I might state that in the folder or the book which came out either Monday or Tuesday, the first 12 amendments were in there. I think everybody has that. Amendments Nos. 13 and 14 were presented only yesterday and I doubt if they are on the desks of the members.

[1] The text of Amendment No. 6 to Committee Proposal No. 1-1 appears in the Appendix in Vol. 2.

PRESIDENT: Mr. Read, which amendment would you care to discuss at this time?

MR. READ: I might state, Mr. President, that under an agreement, all amendments pertaining to the taxation clause will be considered last and taken up probably at a future time.

PRESIDENT: Can you indicate the numbers?

MR. READ: We can take up Amendment No. 2 by Senator Van Alstyne. We can take up Amendment No. 3 by Delegate Walton, and we can take up Amendment No. 4 by Delegate Constantine.

PRESIDENT: 2, 3, and 4.

MR. READ: 2, 3, and 4 can be taken up. There is another one by Mrs. Barus which pertains to the same thing as No. 4. It will have to be taken up at the same time.

All the rest of the amendments pertain to the tax clause except, I think, 13 and 14. One of those pertains to a matter in which Mrs. Barus is personally interested and she had it before another committee. It happened, however, to pertain to our committee but it was not necessary that the true value clause go. Therefore, that may be considered afterward. The other amendment, the one by Delegate Paul, merely takes out one word in one of these exemption clauses. That also can be taken up.

PRESIDENT: I understand that all delegates have now received copies of the amendments to Proposal No. 5-1. May I report that there should be a bound copy of the proceedings of the Committee on Taxation and Finance on each delegate's desk. If any delegate does not have that bound copy, will he or she please raise his or her hand.

MR. READ: Mr. President, if the Convention will be in order, I think I can dispose of one very, very quickly, and that is Amendment No. 3, by Delegate Walton. He is not in his seat, but I can explain that very quickly. We drew the Committee Proposal, Section I, paragraph 3:

> "No money shall be drawn from the State treasury but for appropriations made by law . . ."

and so forth. And then it says that only certain things may be done by certification. The present Constitution says, "State Comptroller." We put in "State Auditor," because the State Comptroller was to be taken out of the proposed Constitution.

However, when that "State Auditor" phrase in the proposed Constitution was made we recalled that he is an auditing officer and the Governor, because he is the budget officer and will present this matter to the Legislature, should be the one to present it. Delegate Walton's amendment is merely to strike out the words "State Auditor" and put in place thereof the word "Governor," because the Governor is the one to present that to the Legislature. Therefore,

perhaps if Colonel Walton—oh, he is here. Well, I second his motion anyway.

PRESIDENT: Colonel Walton will you comment on Amendment No. 3?

MR. WALTON: Mr. President and fellow delegates:

There is not much more to be said than what Mr. Read has already said. I would like to point out that the State Auditor is a post-auditing officer, whereas in the Governor's department there is generally someone in charge of the budget. It is better, I think, to make the Governor responsible for these certifications, in view of the fact that the State Auditor would not have the necessary information.

PRESIDENT: Any further discussion on Amendment No. 3?

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted . . . Mr. Read.

MR. READ: On page 2, the very last two words of Paragraph 3 on line 11, take out "State Auditor" and put in "Governor." The committee doesn't want any adverse criticism because we've put in "State Auditor," because at the time we adopted that we didn't know just what official it ought to be and he was the only one we knew of to take the place of the State Comptroller. But they made the State Auditor, as Delegate Walton said, a post-audit matter.

I congratulate this Convention on adopting this amendment.

PRESIDENT: Mr. Read, what amendment do you wish to take up now?

MR. READ: If Delegate Van Alstyne is ready, I might take up his, Amendment No. 2, which is an amendment to Section I, paragraph 4.[1]

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

In the present Constitution there is a limitation that the government of the State cannot borrow more than a $100,000 without going to the people. In 1844, when this exemption was adopted, the annual budget of the State was approximately $100,000, so that the people who sat there in Convention decided that it was proper to give the government of the State a leeway of approximately 100 percent of the state budget which existed then.

The budget this State is operating under today is approximately

[1] The text of this amendment appears in the Appendix in Vol. 2.

$155,000,000, so a leeway of $100,000 is just about the same as nothing. I am very strongly opposed, however, to making the exemption $155,000,000, but I do think it should be something more than $100,000. I therefore proposed this amendment and put in there that the exemption should be one per cent of the total amount of money appropriated for the State in any given year. Now, that means, at the present time, a leeway of approximately a million and a half dollars.

Those of you who have had much to do with preparing budgets a year to a year and a half in advance, which is what we have to do with the state budget, will realize that if you can hit your budget within one per cent you have done very well indeed. I think this is only a reasonable provision and in keeping with the change of modern times. I move its adoption.

PRESIDENT: Any further discussion on Amendment No. 2? . . . Mr. Read.

MR. READ: Mr. President, I suggest that Vice-Chairman Murray discuss this matter.

PRESIDENT: Mr. Murray.

MR. FRANK J. MURRAY: Mr. President and ladies and gentlemen of the Convention:

The committee discussed this matter and one of the members of the committee proposed increasing the amount from $100,000 to $500,000. I agree with Senator Van Alstyne that $100,000 is practically synonymous with nothing. But we decided, the committee decided by a majority—in fact, I think all but one or two—that it would be better to continue the tradition or the practice in this State of not incurring debt.

Of course, this limitation has exceptions. The State may incur a debt over $100,000 and without limits, for the purposes of war, or to repel invasion, or to suppress insurrection, or to meet an emergency caused by an act of God or disaster. So that we do have a leeway to meet any emergency of that kind.

In addition to $100,000 and the debt that could be incurred for these excepted purposes which I have read, all other money spent beyond available appropriations, or available monies and revenues which could be appropriated, must be by referendum approved by the voters of the State. Now, it is just a question of policy as to whether we want to preserve a situation where the State should not incur a debt beyond these emergencies except by the vote of the people, or whether we do want to make it a reasonable sum such as the Senator has suggested. The sum he suggests is not unreasonable, but it is a question of policy and a question of tradition, and as far as my opinion is concerned, I think the State should not change the past policy.

PRESIDENT: Any further discussion on Amendment No. 2? . . . Mr. Lightner.

MR. MILTON C. LIGHTNER: When this matter was pending before the Committee on Taxation, the state fiscal officers who appeared before the committee were asked whether they wished to have this debt limitation increased. My own impression, as a member of the committee, was that the desire of the state fiscal officers was to preserve the spirit of the existing limitation, but that there was no evidence of a feeling that there was anything sacred about the sum of $100,000. I believe that if the fiscal officers had offered a definite suggestion as to a somewhat larger sum, consistent with the value of money today as compared to the value of money when this clause was written, that the committee might very well have reported it.

Senator Van Alstyne, with his splendid experience in charge of the Appropriations Committee of the Senate, expresses a belief that this amount should be raised to one per cent of the budget. Personally, I believe it is a very sane point of view and I propose to support the amendment.

PRESIDENT: Mr. Peterson.

MR. HENRY W. PETERSON: Mr. President, I just can't conceive that there would be any objection to Senator Van Alstyne's proposed amendment. The only reservation I had in my mind, sir, is that it doesn't go far enough, that it should be increased, instead of one per cent to three per cent. That could possibly be $4,500,000 of debt created by the State, which isn't too great an amount of money.

After all, if an emergency or a necessity arises—it wouldn't have to be an emergency—wherein an amount of three or four or five million dollars was involved, the alternate now would be to get it from general taxes, get it from the general income of the State. When you consider the enormous amount of ratables of the State of New Jersey and you just issue $4,500,000 without a referendum, it seems to me that that would be better, or we'll be having before us, in my opinion, and I anticipate, bond issues of a hundred or two hundred million dollars for approval which may be circumvented by the power given the Legislature to issue a three per cent basis instead of a one per cent basis. I move you, sir, to amend the amendment from one per cent to three per cent.

PRESIDENT: Senator Van Alstyne, will you comment on the amendment to the amendment?

MR. VAN ALSTYNE: Mr. President and fellow delegates:

I appreciate very much the support of Delegate Peterson to my amendment, but I'm inclined to think that I would like to stand

on one per cent. And so, with all due respect to you, sir, I would not like to accept it. You have the privilege of moving it, however.

MR. PETERSON: In the interest of saving time, I withdraw my amendment.

PRESIDENT: Amendment No. 2 then stands in its original form.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor, please say "Aye."

(Majority chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Minority chorus of "Noes")

PRESIDENT: All those in favor, please raise their hands.

(Hands raised by majority of delegates)

PRESIDENT: All opposed.

(Few hands raised)

PRESIDENT: The amendment is adopted.

I wish to report, ladies and gentlemen, that we have with us this morning Mrs. Driscoll, the Governor's mother, seated on the floor of the Convention. We are very happy to have you with us, Mrs. Driscoll, and hope you will be with us as often as your convenience permits.

(Applause)

MR. READ: Mr. President, may I, through you, representing the Camden County delegation, say that we are also very proud to have our fellow resident of Camden County, Mrs. Driscoll, with us?

I would now suggest that if the proponents are ready, we take up Amendment No. 4 by Delegate Constantine. Along that line, we must have in mind Amendment No. 8 by Mrs. Barus.[1] Although they both don't have exactly the same idea, they both pertain to the same paragraph in the Committee Proposal. Are you ready, Mrs. Constantine?

PRESIDENT: Will you comment on this, Mrs. Constantine?

MRS. MARION CONSTANTINE: Mr. President and fellow delegates:

I ask for the passage of this amendment on one premise, that the proposal is not constitutional matter but should be handled by the Legislature. That has been the procedure in the past, in this State and in others, and up to the present time I have heard no suggestion that this method was improper or unsatisfactory. In view of this fact, and in particular because this proposal is much

[1] The text of these amendments to Committee Proposal No. 5-1 appears in the Appendix in Vol. 2.

wider in scope than the present statute, I believe the people of this State should have the opportunity to express their views through their elected representatives in the Legislature.

Before this delegation began its deliberations, both the Governor and Dr. Clothier stressed two points: first, that the language of the final draft should be concise and the intent clear; and second, that it contain only constitutional matter as opposed to legislative. Since this difference was not entirely clear to me at that time, I made an extra effort to listen most carefully when the delegates discussed this point, as they have done frequently and ably. I have confidence, therefore, that this amendment is based on sound procedure and I urge its passage.

PRESIDENT: Any further discussion on Amendment No. 4? . . . Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President and ladies and gentlemen:

Very frankly, I address myself to this amendment with very genuine reluctance. I had hoped that it would not be necessary for me, or for any other delegate, to speak on this matter, for I had hoped the matter would not appear in the Report of the Committee on Taxation.

I had also hoped that debate would not occur on this matter because the matter contained in this paragraph is, in a sense, of an emotional nature. I think we all know how difficult it is to consider an emotional issue with the same objectivity that we consider the other more pragmatic matters that have been brought before us. It is this type of proposal which splits people into opposing camps, and men who are otherwise single-minded in their devotion to the public welfare and united in their determination to give the people of New Jersey the best possible Constitution, find themselves divided. On issues of faith we have had some of the cruelest contests that have ever beset mankind. But it seems to me that the best part of this country has been that its intelligent leaders have resolved to spare this country that sort of strife. Regardless of race or religion, we are all one. And issues that might divide us on either of those grounds, I think, should be avoided.

Now, I have friends in this Convention who favor this amendment. And I have friends, and I hope that they are still going to be my friends, who with equally honest ardor, oppose it. In my county I have friends who favor constitutional treatment of free transportation for pupils of private schools, and I have others whose friendship I value equally, who oppose with similar fervor any such provision in our basic law. This division among our friends makes an individual decision in this matter at once easy and at once difficult. No matter how we vote, we cannot please every-

one. That is the difficulty of our situation. But this division among our friends also has its compensation. We can align ourselves, it seems to me, with neither group and seek only to square our votes with our individual thinking on the matter.

I favor this amendment and I oppose the Committee Proposal, and I rest my opposition on one simple, single premise. This matter, as Mrs. Constantine has told you, does not properly belong in the Constitution of this State. This proposal is legislative in character, and already the Legislature has acted and the highest courts of this State and nation have upheld its action. The proponents of the Committee Proposal now enjoy the same thing that they seek to obtain through this suggested constitutional provision. The whole matter of public transportation for pupils of private schools is now an accomplished fact.

If the end result sought by the Committee Proposal is already accomplished—and no one with whom I have talked has offered, nor has anything I have read indicated, a contrary view—what, then, is to be gained by the proposal before us? What good is to be served by demanding that the Constitution give to the Legislature a power it has already asserted, and which assertion of power has been confirmed by the highest court of New Jersey and the highest court of the United States? The only thing that will be gained, in my opinion, is strife and discord and a resurgence of all the unfortunate conflict that attended legislative consideration of this same matter a few years ago, a conflict which I think all of us hoped had happily been laid to rest.

Say what you will, strive as you may to keep the voters' consideration of this matter upon a high plane, this proposal will be fought out next November on sectarian lines. And I for one, and even though I am the only one, will not vote for any proposal which will engender that sort of internecine strife. No matter which side prevails at the polls in November, we will have what we have now, public transportation for pupils of private schools. But we will have lost, in my opinion, and mark this well, we will have lost much of the mutual tolerance and respect which the adherents of our different faiths now hold for each other.

Is there any faith represented in this hall that has not had its hours of travail and its year-long nights of persecution? Is there any faith represented in this hall that has not flourished in this country as it has flourished in no other? And has it not so flourished because we have all, down through our history, resolutely set our faces against proposals like this one before us which conceivably may divide our political thinking along sectarian lines?

I, for one, have spent a great part of my life in my community

working for racial and religious harmony, and I have done so too much to vote lightly for a proposal that cannot change existing conditions and that, I know, contains the seeds of religious discord.

I would make one further observation. I have based my opposition to the Taxation Committee's proposal upon a single ground, that it does not belong in the Constitution. I reiterate that single, compelling objection.

I have refrained from a discussion of the merits of public transportation for pupils of private schools. On that issue I firmly believe that valid argument can be adduced on both sides, but that issue is not before us. Public transportation for pupils of private schools is a fact. It will be no more a fact, nor any less a fact, were this proposal to be written into the Constitution or were this proposal left out of it. But remember this, ladies and gentlemen, if it is written into the Constitution of this State, we set the stage for controversy and we give ammunition to intolerant people of all faiths—and there are some intolerant people in every faith—which they will not be slow to use next November. In the smoke of that battle may well be lost all the results of the selfless labors of every delegate to this Convention. When argument is based upon religion, reason is supplanted. For religion rests upon faith and faith transcends reason.

If we permit the Constitution we are drafting to go before the voters containing a clause which, rightly or wrongly, may be construed to have sectarian implications, those implications may well dwarf, in the minds of the average citizen, everything else this document contains, however meritorious it may be.

The finest Bill of Rights, the most enlightened Executive Article, the most workable legislative plan, the most far-seeing Judicial section, and the most equitable Taxation clause, all may be lost sight of in a sectarian argument that may well follow.

The future holds promise; it also holds a challenge, a challenge not alone to do what is best for the State but an equal challenge to do it in a manner that will unite our people and not divide them. Heaven knows we can find enough to disagree about without adding sectarian differences to the sum of the problems which now perplex us!

With all the earnestness at my command, I urge a vote in favor of the amendment now before you. Not on the merits or demerits of public transportation for pupils of private schools—that issue is not under discussion, that issue has been decided. I ask your vote for the amendment solely that we may keep out of the Constitution something that does not properly belong there and which, if placed there, in my opinion, may well divide our people and jeop-

ardize the better things that we hope to bring them on election day.

PRESIDENT: Mr. Read.

MR. READ: The committee was not unanimous in adopting this proposal and I would like to call on Judge Rafferty who was a proponent of the provision. I understand that Mrs. Streeter of our committee would also like to be heard on this matter.

PRESIDENT: Judge Rafferty.

MR. RAFFERTY: Mr. President and delegates to the Convention:

I proposed this article to the Taxation Report in the committee, and as our very wonderful chairman, Senator Read, has said, there was division in the committee. I am very happy that Mrs. Constantine and Mr. McMurray have approached the problem as they have. I would like to disabuse Mr. McMurray's mind at the outset about sectarian strife. As far as the people with whom I am acquainted, who are interested in this matter, are concerned, there will be no sectarian strife. I promise you that.

The people for whom I speak are merely asking that a right which, as has been stated, has been recognized, and which now is a part of public policy of our State, be written into the Constitution. Now, what is the reason that it should be written into the Constitution? The reason is clear at once when you consider that this statute passed the Legislature by a small, if not a bare majority; it passed the courts in this State by the barest majority; and it passed the United States Supreme Court by the barest majority.

In addition to that, there are those who have an attitude toward this legislation which, I am reliably informed, will seek again to try this case in the courts. They will do it upon the premise that the *Everson* case, which is the case that we are talking about, was a case, as lawyers will say, based on the skimpiest of facts. It was a case which involved the payment of bus transportation disbursed by the parents of these children. It did not involve the public school buses at all. It was on a matter that was essentially different. And more than that, constitutional questions were raised in the state courts; and in the federal court a constitutional question was raised which might have caused this statute to be declared unconstitutional, except for the fact that the plaintiff, Mr. Everson, did not raise the questions to which I shall refer in a moment in the New Jersey courts, and, hence, the federal court could not consider it.

This matter should be constitutional because of its importance, in the first place. It should be constitutional, in the second place, because it then places it beyond the reach of further dispute. I want to assure the delegates to this Convention that there would be no grounds for dispute hereafter if this matter is included within the

Constitution, and I am confident that if it is included in the draft it will be adopted in the fall.

However, as to its being merely of statutory nature, we have had at least two matters before the Convention that the same argument could have been addressed to—in fact, was addressed to. The gentleman from Essex introduced his anti-discrimination proposals, which, by the way, I supported and voted for because I thought they were desirable and because I thought they should be in the Constitution. They are declaratory of existing rights and should be in the Constitution. The one is the matter of segregation in the militia. I think that is a matter which should have constitutional sanction. It is a matter which is a right, and which is a disputed right, and it is good to put it beyond all question. Again, the matter of segregation in the public schools. Mr. Randolph himself said that there is a statute presently on our books forbidding segregation in public schools, as it should be; but yet Mr. Randolph says, and it is the truth, that segregation is practiced in our public schools. Now, those matters, certainly if anything should be statutory, they should be statutory; and yet this Convention determined that it should be in the Constitution, and I think properly so.

So also another matter, with reference to the rights of labor. You will recall a week or more ago, I argued—I discussed that very point—the right of labor to organize and bargain collectively, again a right that is generally recognized. No one seriously disputes the right. And yet we wrote it into the Constitution—not as emphatically as I would have written it in, because I was in favor of the provision that it shall not be impaired. The Convention thought that, perhaps, was going too far, but we did write this, declaratory of existing right, into the Constitution.

I say to you, my dear friends, that so with this, even in a more important way. The rights of these private schools to exist is a right which has been established not only in reason but in law. It was decided in the United States Supreme Court almost three decades ago that these schools have a right to exist. Indeed, to employ Mrs. Hacker's argument yesterday about the totalitarian features of one of the matters that was before us, if we could not have these private schools and must have public schools exclusively, then we would surely be on the road to totalitarianism, which we all despise and all will resist with our greatest vigor.

I urge you sincerely, my fellow delegates, to vote against this amendment. I urge it because I think it should be in the Constitution, because I know that it will tend to erase and do away with these unfortunate differences that Mr. McMurray referred to, and because I think primarily, of course, it is eminently proper that it should be a part of the constitutional provision.

PRESIDENT: Mrs. Streeter.

MRS. RUTH C. STREETER: Mr. President and fellow delegates:

As I think we all know, this is likely to be one of the half-dozen most controversial questions before this Constitutional Convention and before the citizens at the general election. I think that all the delegates here have very much at heart the idea that the Constitution shall be presented as a whole, and they hope that it will be adopted. To that end they have exercised great self-respect and restraint and wisdom, I think, in accepting compromises. Not everybody has had everything come out the way he or she would like, but there has been a spirit of reasonable compromise. The delegate from Middlesex, himself, has admitted that this is a highly controversial point when he said that it had been decided by a very narrow margin in the committee, in the Legislature, in the courts of New Jersey and in the Supreme Court.

We have tried to compromise some of the more important questions before us. There was one, in addition to this, which could not be compromised. We had to vote either "yes" or "no"—the bingo amendment. I would like to suggest that the same form of procedure be used in dealing with this bus bill as was used in dealing with the bingo amendment. In other words, that the amendment now before us be adopted, and thereafter, if the proponents of the bus bill wish to submit a memorial to the Governor and the Legislature asking that a commission be appointed to survey the entire matter of public funds appropriated to private institutions, I would be very glad to support such a memorial. Any such commission, after a survey, if it recommended that this was a wise policy, could recommend it in the form of an amendment to paragraphs 5 and 6 of the Committee Proposal. That amendment, in due time—perhaps even by next fall, in 1948—could be submitted to the people.

Now, one point was made in the argument before our committee —that this provision did not consist of a subsidy to a private organization; that it was a service to children. I do not see myself how you can differentiate between a gift of money or services to an organization which consists wholly for the purpose of rendering service to the people, whether they be old people, or sick people, or children. Anything that they do is a service to people. If bringing children to school is a service to children, then the provision of school books is also a service to children; paying the teachers' salaries is a service to children; building a new wing to the school in order to accommodate more children is a service to children.

I think this, as well as the proposition that was made to us the other day, involves the very basic principle of whether or not we

shall now establish in the Constitution the idea that public funds may be used for the support of private institutions. We have no discussion as to the conditions, or the method of accountability, or control under which such funds might be used, and we do not have sufficient facts before us to come to a wise decision on that matter. I suggested the other day, and I suggest now, that any such important and widespread problem should go over and be the subject of a commission.

I urge that this amendment be adopted and, as I said before, if it is the wish of the delegate from Middlesex to go further than that and propose that a study be made by the Governor, or the Legislature, or a commission whom they may appoint, I would be very glad to support that further move.

PRESIDENT: Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. President, fellow delegates:

It is with a great deal of reluctance that I address myself to this amendment. In the committee we had quite a discussion over this clause. It was voted on twice. I voted against it twice. I think primarily of a school of which I am a trustee—the Country Day School for Boys. The public schools are available to those boys, and I think that if those boys wish to go to a private school the taxpayers shouldn't pay any part of the expense of their attendance in a private school.

The first proposal which was made to permit the transportation of children to school without limitation, in a quick computation I figured it would cost the taxpayers something like $18,000 to transport the children to just one school—and there are many of them in this State.

I realize that the private schools save the taxpayers a great deal of money; that our budgets would be increased considerably if it weren't for the private schools. I think they do a splendid job. I have no fault to find with private schools—any kind of private school. But I think that when the public schools are available to boys and girls, if they or their parents do not wish to avail themselves of those schools, they should pay the entire expense of attending such schools.

I'm in favor of this amendment. I thought my thinking might have been warped initially, and I have discussed this matter with many of my friends who attend all types of churches, and I still am of the same view that if people wish to send their children to private schools they should pay all of the expense. I favor the amendment.

PRESIDENT: Mr. Lightner.

MR. LIGHTNER: Mr. President: I would like, if possible, to try to bring this discussion back on the basis on which it was so well

placed by Mr. McMurray. The discussion which has occurred in the interval is a graphic illustration of the fact that it is very difficult to discuss this proposal without getting off on the *pros* and *cons* of the legislative question as to whether or not bus transportation should be made available for children who are attending schools other than the public schools. I felt that Mr. McMurray very clearly demonstrated that that is not the question before this Convention.

With all due respect to my good friend, Judge Rafferty, I would like to refer very briefly to one or two comments that he made, because in his sincere advocacy of the clause which was written in by a six to five vote of the Taxation Committee, he has led this movement as well as anyone possibly could. He spoke of the fact that there were three hurdles—the hurdle that had been surmounted by the legislation obtaining a bare majority vote in the New Jersey Legislature; a second hurdle, that of obtaining a majority decision in the New Jersey Court of Errors and Appeals; and third, a majority decision in the United States Supreme Court.

Let me call the attention of the Convention to the fact that the proposal in the Taxation Committee Report—to which I am just as opposed as when I voted against it in the committee—that that proposal is permissive. The Legislature may do something. It permits the Legislature to do what the Legislature has already asserted that it had the right and power to do. In so far as the first hurdle is concerned, it would still be there. In other words, if the Legislature in its wisdom does not see fit to enact legislation such as is proposed here, or, to turn it around, sees fit to repeal the present legislation, this clause leaves it perfectly free to do so, and it does not remove that hurdle.

Let me pass to the third hurdle. In the United States Supreme Court this case received very extended discussion. If anyone cares to take the time to examine it, I happen to have here a copy of the decision. I suppose that a large number of the members of the Convention, because of their interest in the law, are probably familiar with it. In the United States Supreme Court, the decision made it perfectly clear that what the court was concerned with was the question as to whether or not legislation of this character violated the United States Constitution. And if the Supreme Court should ever reverse not only the *Everson* case, but also the whole line of cases on which they based their decision, the enactment of a permissive clause in the New Jersey Constitution would be of absolutely no effect.

The Supreme Court will not, of course, sanction legislation by a state which is in violation of the United States Constitution, no matter what the State Constitution may say about it. Therefore, I call attention to the fact that so far as school bus legislation is con-

cerned, this proposal of the committee leaves in effect the two hurdles which Judge Rafferty referred to—namely, the hurdle of the legislative majority and the hurdle of the United States Supreme Court. Both of those hurdles have been surmounted. The State Legislature has enacted this. The New Jersey courts have affirmed it. The United States Supreme Court has said that it does not violate the United States Constitution and has accepted the New Jersey decision as being a satisfactory interpretation of the New Jersey Constitution.

I think that the proposal is one which is offered out of, may I say, excessive caution, in an effort to try and protect legislation which as a practical matter needs no protection. Judge Rafferty pointed out that as far as the people on whose behalf and in whose interest he was speaking were concerned, there would be no secular hostility aroused by the approval of the Committee Report. I agree with that. I think it is quite obvious. Personally, I am simply delighted that no one who is opposed to school bus transportation has seen fit to inject the contentious question into this assembly. I was apprehensive that there might be thrown into this Convention a proposal to enact a constitutional provision reversing the action of our Court of Errors and Appeals, a constitutional provision which would prohibit the use of public money for school buses for anything other than public schools. If that provision had been injected, I'm quite sure that the people on behalf of whom Judge Rafferty is speaking would have opposed it in this Convention and might well have opposed it strenuously at the polls.

If we put into this Constitution a clause which—according to my analysis, and I submit it for your consideration—a clause which is quite superfluous, quite unnecessary, and we put that in, we will undoubtedly stir up opposition to this Constitution, opposition possibly even coming from people of the creed of which I happen to be a member, and which I would regret to my dying day, because I think it is utterly and completely improper. But nevertheless, we might very well stir up opposition to the Constitution by adopting the Committee Report and writing in something which is entirely superfluous and unnecessary.

(At the request of President Clothier, the First Vice-President took the chair)

FIRST VICE-PRESIDENT: Mr. Walton.

MR. WALTON: Mr. President and fellow delegates:

As I understand it, Mr. McMurray argued that the matter should be left *in statu quo;* that as far as he was concerned it was satisfactory as it now remained; and that, therefore, there was no necessity of bringing the subject up as far as the Constitution is con-

cerned. Mrs. Streeter, on the other hand, felt that we were not a legislative body and that we should memorialize the Legislature to appoint a commission to study the matter and come to some proper conclusions.

I would just like to point out in connection with these arguments that we are not directing that the Legislature provide this transportation. We are making it entirely permissive. And I can see no harm in putting this in the constitutional language in which it is framed in our Constitution and leaving it up to the Legislature. I am very well pleased with the committee's wise clause on this subject, and I feel that the committee should be supported and that the amendment should be defeated.

FIRST VICE-PRESIDENT: Judge Stanger.

MR. FRANCIS A. STANGER, JR.: Mr. President and delegates:

My feet this morning are hesitant, but my heart and conscience say "go on." I doubt if there is anyone in this Convention who will expose himself to more criticism, maybe from the proponents of the Report as well as the proponents of the amendment, than I. There is no part of all our deliberations here that has given me more concern than the matter that now comes before us. But after those deliberations—some of a very serious nature, Mr. Chairman—I must rise to speak against the amendment.

Mr. McMurray has said that it was a subject of emotionalism. And I'm sure that as I speak you will see personalities, emotionalism, and idealism combined in what I shall have to say. I hope I do not transgress the freedom that should be mine here in speaking on this subject. But may I say to you, Mr. Chairman and delegates, that if I did not speak on this subject this morning, I could not be content with myself because of cowardice. And I chance the criticism of the members of this Convention and the criticism of anyone outside of the Convention, rather than to feel myself a coward and to have to approach the public with my head hung in shame. I have come here to vote my personal convictions, sir, and that is what I shall do even on this subject.

There have been various arguments advanced about it. This matter has been very much discussed in the cloakrooms. We have had testimony on it. We have had numerous letters on this subject. We all know about that. I must be telling you what you all know. And we have had some very, very fine arguments advanced against the Committee Report, sir.

One of the arguments advanced here is that it is a matter wanted only by a church. But, sir, in my opinion that does not spoil the Committee Report. I, too, am a churchman. I should not say this, it is too personal I'm sure, but I am the elected leader of 90,000 churchmen of one particular denominational emphasis in the State

of New Jersey, situated on the garden side of the Raritan, here by us. I, too, am a churchman.

One of these days I'm coming to the legislators who are here in this Convention—this may be improper here, and if it is, admonish me, Mr. Chairman—but I'm going to ask Senator O'Mara, Senator Morrissey, Senator Farley, Senator Young, Senator Lewis, and my companionable colleague, Senator Wene, and you, Mr. Assemblyman Dixon, to help me put back in our statute law the provision permitting us to present to the boys and girls in the public schools the inspirational part as well as the historic part of the Holy Scriptures.

I say to you, sir, there was never a time when we needed moral training in our youth as we do today. This old world is suffering this moment from a dearth of moral leadership. You may disagree with me, but I'm saying to you, sir, that peace is a matter of personal spirituality expressed publicly. And I'm saying to you that peace in this world will never come through any international poker game. It must first be born in the hearts of men, and the leaders must lead us on in those channels.

I say to you, I am not concerned because a church wants it. I have heard—we bring the argument in the open—all of you have heard that this is the flint that is going to cause the first fusion of church and state. I trust, sir, that I shall never live under a government that is dictated by any church—not my church, sir, any more than any other church. I hope I shall never live to see the day when democracy is swept aside by church principles. But I don't see in this thing anything about church and state at all, as I have given it my most heartfelt consideration. There are only two things that present themselves before me, one is children and one is love.

I am remembering that there came one time through the limestone cliffs of a little Judean village a great Teacher. Not only the burden of His teachings—and He taught as man had never taught before—but also the body of His teaching was love. "This new commandment I give unto you, that ye love one another." But the thing that strikes me so forcefully as I stand here this morning, is when He wanted to demonstrate the love that He was teaching, He took a little child, and He drew it to His breast, and then he pointed the finger at those folks and He pronounced denunciations against them who would hurt or hinder little children.

I have read this clause, sir, and I'd like to call your attention to it again. It says,

> "The Legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of 5 and 18 years inclusive to and from any school."

I don't see in those words any limitation to any child. I think they apply just as well to the child from the home where the *mezuzah* hangs on the doorpost, or in the home where there lies open on the reading table the life of Wesley, or Luther, or Knox beside the Holy Scriptures, as of the church where the crucifix hangs in honor and reverence on the wall—I think that we have encompassed all of our children here, sir. They may say to me that it takes in children more from one particular denomination than any other. Well, sir, they are my neighbor's children. It may be, it is true, that my neighbor and I, when we would purge our souls, turn in opposite directions at the street corner. He goes his way, I go my way. He may have a more ornate altar to kneel at; I kneel at a little, crude, humble Methodist altar, in a wayside church down in southern New Jersey. But we go for the same purpose, sir, and he has a right to go the same as I have. This is America! There's room enough. There's sky enough. There are opportunities enough in America for all of us.

Mr. Chairman, the question that concerns me this morning is: Is there love enough? Is there love enough? Let me say to you, fellow delegates, that when you spell peace, when you would spell happiness, spell both those words: L-O-V-E. That is where we fail. You will notice I don't speak a word about tolerance. I don't like it. I think it is the ugliest word in the language. It isn't tolerance we want, sir, it's love. I could not be consistent here unless I stood on the side of children this morning, because of the stand I have taken before, because of my life. I have tried to devote a reasonable part of my life to childhood. I intend, Mr. Chairman, to continue.

I can't claim the further thought of the delegates to this Convention. We are coming to a close, one of these days. There is nothing that I have done here, sir, and there is nothing that I have said here that I think merits your thought of my name when you leave this Convention hall. But if, perchance, some night when the light is lit and you sit in your reading chair beside the reading desk and your book drops to your knees, if you are reviewing the days of this Convention and if by wild figure of imagination you should chance upon the name of Stanger, will you say, please, that he was there as the friend of children? He stood by them from the first to the last. I ask you that for this reason—and I am closing, sir, and I am afraid I am transgressing—I ask you to do that, fellow delegates, for this reason.

One of these days, the twilight will fall. One of these days the Tennysonian bell will toll and a little bark, my little bark, will put out on that final sea. And if I look ahead, sir, I believe the lights of the distant city will be brighter; and I believe, as I stand there,

the things of life will in retrospect seem more worthwhile to me if a little child—maybe the ragged newsboy with bruised feet which have tripped and he has fallen—if he has felt my hand to put him back on his feet again. He may be a little boy confused by this thing we call the future, and I can just point my finger to a college on a green hill and say: "Son, there is the place where you can be taught to give expression to what you have in your mind, that's where you may be developed into the greatest of usefulness as a citizen." Or it may be that the boy I'm thinking of, Mr. Chairman, may be a little boy who stood in bewilderment on a sidewalk and said to himself as the school bus went by "Well, is this America? His children climb aboard, and I, a little boy, can't get aboard. Is this America?"

Well, I say to you again, Mr. Chairman, if a little child, one of those of many others, if I have helped him, I say to you the lights of the city will be brighter, the worthwhile things of life will seem more worthwhile if one of those little children shall rise up and breath my name and call me blessed. I thank you and I hope I have not transgressed, Mr. Chairman.

FIRST VICE-PRESIDENT: Any other comments?

MR. LELAND F. FERRY: Mr. Chairman and delegates: I would like to pay a tribute to Judge Stanger for his very beautiful talk. I wish I had his silver tongue. I am only going to say a few words. I am opposed to this amendment because I think it's wrong. I come here not representing any group of people, unless it be the right, fair-thinking people of Bergen County. I like to think I came here as a result of their sending me. I do not agree with Delegate McMurray when he stated that this would create chaos or a great deal of contention in the State, possibly jeopardize our Constitution. I do not think that is true. I think most of the people in this State are fair-minded. I don't think that any such condition would arise. I can only say in conclusion that I hope that when the Convention resolves this question it will not do so on the basis of who is right, but what is right.

FIRST VICE-PRESIDENT: Mr. Jorgensen.

MR. CHRISTIAN J. JORGENSEN: Mr. President, ladies and gentlemen of the Convention:

In prefacing my remarks, I would like to say that I do not stand here as an advocate of the advancement of any particular religion or religious group through legislative aid or assistance. But this provision of the proposed Article in the committee draft does not do any of those things. I want to say, as has adequately been emphasized already, that this is merely declaratory of what is our present thinking. The Legislature has so decided.

Whether or not in some remote time in the future somebody opposed to the taking of children to school on buses gets another case before the United States Supreme Court, and if through some height of judicial interpretation it is found to be contrary to the theory and the concept of our Federal Constitution, then I think that that would be the time for all liberal-minded people throughout this country to change the inhibitory provision, if there be one in our Federal Constitution. This merely permits the Legislature to do by its majority vote what it has done.

That is true, but we heard here on this floor yesterday from advocates of different proposals that what they wanted was merely declaratory. I think it is very inconsistent in reasoning that today we find some of those very same advocates of yesterday advocating the adoption of this amendment which would wipe out a declaratory provision which I am certain we all want to sustain.

This merely eliminates the danger that in the future a judicial interpretation in this State may find that granting little children the right to ride on a bus to school will be held contrary to our State Constitution. That's all it does. It doesn't go beyond that, either. I want to tell you that as far as this provision is concerned, it doesn't only aid some religious school, whether it be a Protestant or a Catholic school, but it also tends to clarify another thing that we have lost sight of.

What about the mental and the physical handicaps that some children have? Would any of us think of denying them the right to be on a bus and taken care of by taxpayers' money, to be taken to some special school for the physically or mentally handicapped? I don't think that anybody here would dare to contend that that would be a bad law.

I want to say one thing by way of conclusion—and please bear it in mind—that regardless of the faith of a child, he is that by virtue of his birth, the accident of birth, if you will. That shouldn't be held against him or create a hindrance to his pursuit of education in line with the religious upbringing he may have. Let me tell you that he is just as subject to the rigors of inclement weather as any of our children. He succumbs to the cold that one gets as a result of becoming very wet on his way to school because he has to walk and cannot get transportation. His little feet get just as cold plodding through the snow as our children's feet get plodding through the snow. Let me call upon every fair-minded and liberal delegate in this Convention to defeat this amendment.

FROM THE FLOOR: Question!

FIRST VICE-PRESIDENT: Mr. Read, do you wish to rebut on any of this?

MR. READ: I am merely chairman of the committee and you have heard from both sides.

MR. CLOTHIER: Mr. President: I hadn't expected to speak, but I've listened with a great deal of interest to what has been said and I envy the eloquence of those who have said it. I'm not concerned with the issues which some have stressed, but I am concerned lest we place in the Constitution something which does not belong in the Constitution.

I view with favor Mrs. Constantine's amendment, as commented on by Mrs. Streeter, because it seems to me that looking back over the history of this particular legislation it is apparent that the decisions have been reached by a close majority, and perhaps we are not yet prepared to say which decision is ultimately the right decision. It seems to me that this is peculiarly one of those matters which should be studied with the greatest care before it is crystallized and frozen into our Constitution. I believe the matter is of such importance that it deserves that careful consideration and study. I can't hope but entertain the hope that Mrs. Constantine's amendment will be adopted and will be followed by the setting up of such a commission, or whatever the agency might be, as Mrs. Streeter has recommended for thorough and conclusive study of the matter.

FIRST VICE-PRESIDENT: Mr. Dwyer.

MR. WILLIAM J. DWYER: It is a privilege to have recorded whatever thought you may have on the subject in a Convention such as this, to hear the eloquent appeal that has been made in an effort to rationalize this question before the Convention, and then to have the distinction of following such an eminent educator as Dr. Clothier. It is something that I shall cherish as one of the great heritages that I will pass on to my children.

I was worn and weary one day in a trench line in France. I was bewildered, if you may take my word for it, by this conflict among men grappling at each other's throats and tearing each other asunder, and then reading in the Paris edition of the New York *Herald* that uplifted were the arms of the Bishop of Canterbury pleading with the God of Christianity for the success of the Allied Army; great Cardinal Mercier standing in the square in Brussels with uplifted hands asking with all the fervor of his great soul for the success of the Allied Army, and then over in the German lines at Cologne Archbishop Hahnemann pleading to the same God that the Germans arms might prevail against fellow Christians. I thought that the war and its progress would serve to eliminate any thoughts of division among Chrsitians, yet in my imagination there was the leering fact of a Mohammedan, who represented unity among his

co-religionists, looking down upon the scene of the Bishop of Canterbury, Cardinal Mercier and Archbishop Hahnemann of Germany praying to the same God that their murderous arms might prevail and Christians might slay each other because they were Christians.

Oh, we have liberalized America a lot. We gave recognition to some principles in this Convention only yesterday that would have been impossible of accomplishment ten years ago. Let's subordinate all thoughts of distinction when it comes to lives of children, the children of our neighbors. The Christian world is under challenge today. Let's stay united as Christian Americans.

FIRST VICE-PRESIDENT: Any further discussion? . . . Mr. Carey.

MR. CAREY: I came here this morning deliberately determined to vote "yes" on this proposition. Then I began thinking. I began thinking hard and some things came back to my mind. I'm an Episcopalian, if any of you know what that means. I had one experience in my life that taught me more than anything else and has been of real, profound value to me in my recent older years.

In my church we have a great rector, one of the world's finest orators. He became the Bishop of Ohio, Bishop Warren Rogers of Ohio. His relationship with me in my old home church in Jersey City was such that I imbibed from him a spirit of what I thought religion really meant. Anyhow, he and I became close personal friends. One day, after he had become Bishop of that great state, I met him on a lake in the Adirondacks. We were fishing. The fish weren't biting and neither one of us had brought any refreshments to the rowboat and it was a hot day. We began discussing the things of the Church.

I said to him, "Bishop, why do we always have to stick to the prayers in the prayerbook in our religious services in our church?" He said, "We don't." I said, "We do." I said, "I'd like to pray like a Methodist every once in a while, just the way I talk here. I like to pray that way, right to God, straight about the things I want." He said, "You can." I said, "You can't. You're a Bishop. You have to follow the book." Here's what he said to me—and I want you to remember it, it is worthwhile—he said, "Bob, I pray that way 20 times a day in these hectic, troublesome days. I've got a prayer, and I'll give it to you if you'll pass it on." I said, "I'll pass it on, Bishop, after you're gone." He was 20 years younger than I. He said, "Okeh." He's gone. He's up there now. I believe he's listening to me now. He gave me this one little prayer. This is all there is to it: "Oh God, make me of some real use, here and now." I thought of that prayer often. I believe the Bishop is listening to me right now. I am going to try and be of some real use right here and now.

I've listened to all the arguments and have become convinced that this isn't a problem of diverting the funds of the State for any improper purpose. As it was stated by speaker after speaker, the problem here is simply to provide consideration for our children, no matter what kind of a church they belong to, no matter what homes they come from. We are to help them get to their schools when help is essential.

Some of them may become bishops, perhaps. Some of them may become lawyers. Maybe some will become Episcopalians. These things don't make any difference to me, when I do want to see the children getting to school safely. I have raised my children. Their father could afford to help them to their several schools. But, there are thousands of children who have their difficulties in getting to their schools, particularly in rough winter weather. In my city, here's one thing we have done. We have established in my city a school for the crippled children, and every crippled child in our city has the opportunity of getting to that school every day, and we help all crippled children to go to the schools of their selection. Some of them have to be carried on to the buses which the public provides. They go to the Catholic schools, to the Jewish schools, to the public schools, and to any and all schools they attend. We don't care what school they are aiming for, as long as they are developing the thing we need in America, the education of all our youth.

So, I have concluded that no law or principle of law is to be violated or changed by the public providing the necessary kind of transportation. I hold that we should leave this matter to the Legislature with power as the law provides. I am going to vote "no" on this amendment, accordingly, and "yes" for the adoption of the plan proposed.

FROM THE FLOOR: Question!

FIRST VICE-PRESIDENT: Is there further discussion? . . . Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President and fellow delegates:

I had no intention of speaking on this subject this morning, until just the past few minutes. I come from a Quaker county, although not being a Quaker myself, I guess I just had that impulse to get up on my feet.

I have no prejudices whatsoever, no religious prejudices at all on this subject. I ask no man what his religion may be. I ask of every man that he have a religion and that he be truthful and faithful to that religion. I am a strong advocate of the theory and philosophy of Thomas Jefferson, as expressed in those words, "We in America must at all times keep a wall between the church and the state."

I notice in the language of this particular paragraph, subdivision (c) of Section II of the Committee Proposal, that this matter is left

entirely to the Legislature. The word "may" is used in this paragraph. As a legislator, I am confident that the Legislature now and in the future will not only keep a wall between the church and the state, but will keep that wall impregnable. And with that confidence and belief, and solely for that reason, I am going to vote "no" against the proposed amendment.

FROM THE FLOOR: Question!

FIRST VICE-PRESIDENT: Are you ready for the question? . . . Mr. Smith.

MR. J. SPENCER SMITH: I may be densely ignorant to bring this up, but to my mind what has this question we are debating got to do with religion? I understood the United States Supreme Court said that the State of New Jersey had the right to pass legislation on this question. For the life of me, I cannot understand why all this talk about religion in this connection. If someone can tell me why religion enters into it, I would appreciate it.

FROM THE FLOOR: Question!

FIRST VICE-PRESIDENT: Are you ready for the question? We are voting on Amendment No. 4, introduced by Mrs. Constantine.

All those in favor will please answer by saying "Aye."

(Minority of "Ayes")

FIRST VICE-PRESIDENT: Opposed, "No."

(Majority of "Noes")

FIRST VICE-PRESIDENT: The Secretary will please call the roll.

SECRETARY *(calls the roll):*

AYES: Barus, Cavicchia, Clapp, Clothier, Constantine, Cullimore, Emerson, Gemberling, Hacker, Hadley, Holland, Jacobs, Katzenbach, Lightner, McMurray, Miller, G. W., Miller, S., Jr., Murphy, Paul, Pursel, Pyne, Read, Sanford, Saunders, Schenk, Smith, J. S., Sommer, Streeter—28.

NAYS: Barton, Berry, Brogan, Cafiero, Camp, Carey, Cowgill, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Farley, Feller, Ferry, Glass, Hansen, Hutchinson, Jorgenson, Kays, Lance, Lewis, Lloyd, Lord, McGrath, Milton, Moroney, Morrissey, Murray, Naame, O'Mara, Orchard, Park, Peterson, H. W., Peterson, P. H., Proctor, Rafferty, Randolph, Schlosser, Smalley, Smith, G. F., Stanger, Struble, Taylor, Van Alstyne, Walton, Wene, Winne—50.

SECRETARY: 28 in the affirmative, 50 in the negative.

FIRST VICE-PRESIDENT: Inasmuch as the amendment failed to receive the necessary 41 votes, the chair declares the amendment lost.

MR. EMERSON: Mr. President.

FIRST VICE-PRESIDENT: Pardon me, Mr. Emerson, just a moment. I understand Mr. Clifford T. Case of the Sixth Congressional District, former Assemblyman from Union County, is here. I would be very glad, indeed, to have Mr. Case stand up where he can be seen and take the applause of the Convention.

(Mr. Case acknowledged First Vice-President Dixon's request and was loudly applauded by the delegates)

FIRST VICE-PRESIDENT: Mr. Emerson, did I take that out of your mouth?

MR. EMERSON: No.

FIRST VICE-PRESIDENT: I'm sorry if I did.

MR. EMERSON: No, that's all right.

I am delighted this question has been resolved. Speaking for myself, and I think for many others who voted in favor of the amendment, we are going to work just as hard for the adoption of this Constitution with that clause in it as we would have if it hadn't been incorporated.

(Loud applause)

FIRST VICE-PRESIDENT: We will now recognize—pardon me, Mr. Read—Mr. McMurray do you want to speak on this?

MR. McMURRAY: I just want to say, and I heartily mean it when I say it, that I subscribe to everything Mr. Emerson has said.

(Loud applause)

MR. WILLIAM L. HADLEY: Mr. Chairman, I just want to record my appreciation of what has been done here, notwithstanding the fact that I voted for this motion, and have it known that I'll go along with the gang in trying to put the Constitution over, too.

(Loud applause)

FIRST VICE-PRESIDENT: The chair recognizes Mr. Read.

MR. READ: I understand that the Bill of Rights Committee is ready to proceed with Senator Van Alstyne's propositions, and it is the last one on the Bill of Rights. However, it is getting near to lunch time, and if they think that will take over 30 minutes, Delegate Paul has a very minor amendment, No. 13, to our Proposal. It doesn't matter to me personally which you take up.

FIRST VICE-PRESIDENT: All right, go ahead with that. Amendment No. 13. The chair recognizes Mr. Paul as sponsor of this amendment.

FROM THE FLOOR: We haven't that amendment on our desks.

FIRST VICE-PRESIDENT: No. 13. Do the delegates have No. 13 on their desks?

(Chorus of "Noes")

FIRST VICE-PRESIDENT: We will defer that.

Mr. Read, have you another amendment which probably will not take over 15 or 20 minutes, while that is being passed out?

MR. READ: Mrs. Barus has an amendment, No. 8, which pertains to the same section of the Proposal as we have just discussed. Her words merely take out the private schools. I think that as long as that subject is before us we might take it up because it will need very little argument now.

FIRST VICE-PRESIDENT: All right, No. 8. The chair recognizes Mrs. Barus. Amendment No. 8.[1]

MRS. JANE E. BARUS: Mr. Chairman and fellow delegates:

I yield to no one in my interest in children and my deep concern for their welfare. I could give you chapter and verse to prove this, but I think it would be too bad to introduce a personal note into the discussion.

I voted for the amendment which has just been defeated and, of course, I submit to the will of the Convention as a whole. But I would like to propose an amendment which would add the words "not operated for profit" at the end of this paragraph, because I think the provision as it now stands is far too broad. To illustrate this I would like to draw upon my own experience.

My children went to a private school for which tuition was charged. It was owned and operated by a group of parents who wished to provide certain special advantages for their children, such as smaller classes, more individual attention, more outdoor play, and so on and so on. To say that this school was not operated for profit would be putting it with extreme mildness, for at the end of the school year it was not a question of dividing up the profits but rather of prorating the deficit. Free bus service, or repayment for the money spent to provide bus service to our children, would have been of inestimable value to the success of this school and would in some cases, I think, have served actually to keep us out of the red. So, of course, would federal aid to school lunches, or free medical service, or any other of the services to children which are rendered through the public schools and to non-profit making schools to a large degree.

We could not find, and I cannot find now, any justification for asking the taxpayers to help us meet our financial problems. We had a perfect right, I think, to set up this special kind of school and operate it for the benefit of our children. But I submit that we had no justification whatever in asking the taxpayers to assist us to meet our budget. Of course, our children were children like all children. They would have benefited very greatly by having a bus

[1] The text of this amendment appears in the Appendix in Vol. 2.

service or any of the other services to children, but in effect, really, this service would not have been so much a benefit to the children as to the pockets of the parents who were endeavoring to maintain this school.

I therefore urge that this proposal be limited so as not to be applicable to schools operated for profit.

FIRST VICE-PRESIDENT: Any further discussion on Amendment No. 8? . . . Mr. Cowgill.

MR. JOSEPH W. COWGILL: Mr. Chairman and fellow delegates:

As I understand the opinion of the United States Supreme Court in the case of *Everson* vs *Ewing Township,* the suggestion was very clearly made by the court that the failure to include any school might well make the legislation unconstitutional. It seems to me that if we adopt the amendment offered by Mrs. Barus we will go far to destroy the proposition which we have just approved by a very large vote, and I urge you to defeat this amendment.

FIRST VICE-PRESIDENT: Mr. Rafferty.

MR. RAFFERTY: I want at the outset, and I'll only speak for a moment or two, to pay my personal tribute to the sincerity of Mrs. Barus. I have heard before of the very great interest and of the constructive work that Mrs. Barus has done along social lines. I have done a great deal of it myself, and necessarily I know of the interest which she has in these matters.

I want to say that I attribute and ascribe no improper purpose to the amendment suggested by Mrs. Barus. If Mrs. Barus were a lawyer I would have a different view. I am sure that after the matter is explained, Mrs. Barus probably will reconsider the matter which she has proposed.

The effect of this amendment, Mr. Chairman and delegates to the Convention, would be to destroy absolutely any constitutional provision which this State may have, or any statute which may be enacted in this State, as being in utter violation of the 14th Amendment to the Federal Constitution which provides for the equal protection of the laws to all citizens. I quote from the opinion of the United States Supreme Court in the *Everson* case. The matter was presented to the court, as I indicated in my previous discussion, that the New Jersey statute was unconstitutional because it was in violation of the 14th Amendment in that it denied the equal protection of the laws to all persons. Justice Black, who wrote the majority opinion, said: "Since there has been no attack on the statute" —speaking, of course, of the situation in the New Jersey courts— "that a part of its language excludes children attending private schools operated for profit from enjoying state payment for their transportation, we need not consider this exclusionary language."

Now, those who are acquainted with courts know that what Justice Black invoked then was that this matter, not having been argued in the court below—that is to say, in the court from which the appeal is taken—we will not consider it here. So Justice Black said: "We will put the question to one side."

Now, let us go into the dissenting opinion of Justice Rutledge who wrote a very excellent opinion from his point of view. Justice Rutledge says:

> "The New Jersey statute might be held invalid on its face for exclusion of children who attend private, profit-making schools."

That, my dear friends, is language which cannot be misunderstood. Justice Rutledge, I respectfully submit, is absolutely right. The statute is "invalid on its face" because it refers only to non-profit schools. I say to you, the purpose of my proposal before the Tax Committee and in opposing the amendment of my dear friend, Mrs. Constantine, was to make this statute "valid on its face."

Mrs. Barus has proposed that we limit it to non-profit schools. A perfectly laudible purpose. That was the intention of the 1941 legislators, that was the intention of everyone until the United States Supreme Court pointed out for the first time that this statute might be held "invalid on its face" because it provides the very thing that Mrs. Barus now desires to perpetuate.

For that plain reason, I urge that the amendment be defeated.

FROM THE FLOOR: Question!

FIRST VICE-PRESIDENT: Any further discussion? Are you ready for the question?

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: All in favor of Amendment No. 8 will please answer "Aye."

(Minority chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed?

(Majority chorus of "Noes")

FIRST VICE-PRESIDENT: The amendment is lost, not having received the necessary 41 votes.

It has been called to my attention that there are a great many Rotarians in this Convention. They have been asked to come forward immediately at the close of this session, and as quickly as possible so as not to lengthen our recess, to have their pictures taken. There has been a definite request for—

FROM THE FLOOR: How about the Elks?

(Laughter)

FIRST VICE-PRESIDENT: The chairman would also like particularly to call the attention of the chairmen of the committees to the fact that they are to meet at luncheon today to discuss the

schedule. We have lined up a schedule for discussion. It is extremely important, because in lining up that schedule we find that the time between now and September 12, when our Convention must adjourn *sine die,* is very short and must be filled with action. That doesn't mean, I might say, so as not to disturb your minds, that we are going to keep up this five-day week, but we hope to work out this schedule so that this afternoon we can give you a pretty clear idea as to just what we may plan for between now and the end of the Convention. So it is very necessary that the chairmen meet to discuss this schedule.

The Convention will be recessed until 2:00 o'clock—one hour and a quarter for lunch.

(The session adjourned at 12:45 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Thursday, August 21, 1947

(Afternoon Session)

(The session started at 2:30 P. M.)

PRESIDENT ROBERT C. CLOTHIER: The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S. Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne.

SECRETARY: Quorum present.

PRESIDENT: The Secretary reports that a quorum is present.

May I inquire if there are any further amendments to be offered by any members of the Convention to any of the Proposals?

Mr. Schenk, are you ready to go ahead? . . . The chair recognizes Mr. Schenk.

MR. JOHN F. SCHENK: Mr. Chairman, I thought at this time we might resume our discussion of the remaining amendment under Rights and Privileges. The delegates will recall that this morning I offered two amendments to Delegate Van Alstyne's proposal and then we recessed to give the matter further consideration. Now, this is a matter that is going to require some time and discussion, since the delegates will want to express their opinion and their views, I am sure, on the floor. In an attempt to be helpful, the delegates now have the amendment to Amendment No. 18—

PRESIDENT: We have difficulty hearing you, Mr. Schenk.

MR. SCHENK: What I wish to call to the delegates' attention is the fact that the one suggested amendment which I made this morning: "In paragraph 2, line 2, after the word 'Constitution' "—

PRESIDENT: Which amendment is this, please?

MR. SCHENK: Amendment No. 18, by Mr. Van Alstyne, called "Revision," the only remaining subject for discussion under Rights and Privileges.

I will start over, sir. There was one suggested amendment not included on the memorandum which the delegates are now receiving. I would like them to make a note of it because it is germane and pertinent to our discussion which is to follow; namely, that paragraph 2, second line, after the word "Constitution," I offered an amendment "or vote on the question of same." That is purely technical and puts it in the language which implements and clarifies the language of the whole proposal. The delegates do not have that on the mimeographed sheet which has just been handed to them, and it should be considered in addition to those other suggested changes.[1]

MR. WILLIAM J. ORCHARD: Will the chairman repeat that, please.

PRESIDENT: Mr. Schenk has requested that after the word "Constitution" in the second line of the "Revision" amendment—he has inserted the words, "or vote on." May I suggest that you write that in.

MR. SCHENK: "Or vote on the question of same." Mr. Van Alstyne accepted that amendment this morning, and inadvertently, in going through the process of being mimeographed, it was left off. I thought to save time I would merely restate that particular one. The others have been written down.

MR. DAVID VAN ALSTYNE, JR.: Excuse me a minute—through you, Mr. President: Back here these delegates didn't quite get it. I just want to say that Delegate Schenk is referring to the second paragraph, second line, after the word "Constitution" insert the words "or vote on the question of same."

MR. SCHENK: Shall I proceed now?

PRESIDENT: Please do.

MR. SCHENK: Can you hear me?

PRESIDENT: Perfectly.

MR. SCHENK: Now, in addition to that amendment—that is accepted, is it not?

MR. VAN ALSTYNE: I accept it.

MR. SCHENK: In reference to the amendments on the memorandum, are you satisfied, Mr. Van Alstyne, to accept those amendments?

MR. VAN ALSTYNE: I am.

MR. SCHENK: Now, in the third paragraph, on the third line, another suggested amendment from the floor: After the word "voting" insert the word "thereon."

[1] The text of Mr. Schenk's amendments to Amendment No. 18 to Committee Proposal No. 1-1, appears in Appendix in Vol. 2.

MR. VAN ALSTYNE: That should be in there. I accept that amendment.

MR. SCHENK: Now, one further suggested amendment, to read as follows:

> "Such Convention shall consist of 81 delegates and each county shall have the same number of delegates as representatives in the Legislature."

That is the suggested clause that some delegates are interested in. Can you accept that amendment, Mr. Van Alstyne?

MR. VAN ALSTYNE: I do not accept that amendment. I do not think, Mr. President and fellow delegates, that we should bind in that much detail a Legislature 25 years into the future.

MR. SCHENK: Do you wish then, Senator Van Alstyne, to proceed to the subject under discussion in the way in which you care to present it?

MR. VAN ALSTYNE: Mr. President and fellow delegates:

I spoke this morning on this Amendment No. 18. I repeat, I accept all the amendments to this amendment that have been enumerated except the last one. I will be very brief now in my remarks in recommending this amendment.

I simply repeat a few fundamental reasons why I believe this is entirely sound. It seems to me little enough to put into the Constitution that we are in the process of writing, the principle—the thought—that once in every generation we shall put up to the people whether or not they want their Constitution fully revised. They can reject it if they want to. But it certainly seems to me that with the rapidly changing conditions, the modern age we live in, it's only right that we should consider this question every 25 years. So far as the territorial limitation in the protection of the small counties is concerned, the amendments offered take care of that completely and I think it is entirely the same thing. The Senate can certainly take care of the territorial limitation as provided for in this amendment. I move its adoption.

PRESIDENT: Mr. Schenk.

MR. SCHENK: Dr. Clothier: This matter was considered by the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions. We did not recommend the idea to the Convention of a periodic vote on the question of holding a convention to revise the Constitution. The thinking of the committee was, and I feel perhaps may still be, that they do not wish to go along with the idea, but in any case I want to give you the reasons of the committee on which we based our decision.

First, if a Constitution contains fundamentals only, and brief declarations of proven American principles, there should be need, at most, for only very occasional amendments, and no need in the foreseeable future for automatic review of the question of revision of the constitutional charter. For instance, the Federal Constitution,

written 160 years ago, has really been amended only on an average of about once every 16 or 17 years, because the first ten amendments were passed at one time and in fact, as far as the practical situation goes, were intended to be a part of the original document, and an agreement was made at the time of the passage of the main document that the ten amendments would be included shortly thereafter. This means that we have amended our Federal Constitution really only about ten times, or about once every 16 years, a substantial portion of the time interval suggested for consideration of revision and not of amending our state charter.

Now, our consideration in committee included the original Proposal No. 17, by Mr. Paul,[1] and a modification of same, which modification as further changed in the interest of concession and compromise, in an effort to reach a common ground, is now before you.

Another thought that we had in committee was that a Constitution should not be an experimental document in which we express little faith by providing the machinery for its automatic review at a stated time in the near future. In this respect, Amendment No. 18 differs from the Federal Constitution, which, while it does have an affirmative method of revision through the legislative process and broad state approval, has no provision calling for review by vote at stated intervals.

The third reason which governed our thinking, I believe, in commitee was: If a provision goes in our draft for a periodic convention vote, it is likely a majority of those voting would vote for another convention, since pressure groups themselves, in total a probable minority of the registered vote, would stir things up sufficiently. A favorable vote is likely since the records show that voting on questions at election is often relatively light compared to voting for candidates, and hence the pressure groups raise their percentage of influence beyond the usual norm of influence which they exert in elections for candidates.

A fourth reason that we had in mind was that a periodic convention vote might result in a convention at the very worst period to have one, such as during a period of grave political or economic crisis, or while the country was at war. Now, Amendment No. 18 as revised attempts to meet the objection on this point as compared to Proposal No. 17, and I think, in fairness to Mr. Van Alstyne and the others interested in the proposal, it does meet that committee objection.

Another thought was that a periodic convention vote might result in a convention whether it was actually needed or not, due to pressure group activity, thereby possibly producing a poor docu-

[1] The text of this and other Proposals appears in the Appendix in Vol. 2.

ment, as some people feel New York State's 1938 product is, with its mass of legislative material.

A sixth reason which we had in mind—a majority of the committee—was that the precedent for a periodic convention vote is very low; only six or seven states have it and it runs a poor third to other procedures. For instance, the precedent for no periodic automatic convention vote exceeds very substantially that of the precedent for one, as can be seen by examining the state constitutions. In about equal degree to no affirmative revision statement is the precedent for a revision provision initiated in the legislature. There are several states which have each of these two methods.

I think another thought that several members of the committee had in mind was that it was our duty to reject any argument that we should make a recommendation for a periodic vote because certain groups of people in the State might want it. In saying that, I feel that the committee's thinking was that we should do what was right in our opinion, and not what might be expedient.

In closing, I wish to say that I feel the committee thinking ran along these lines also: Paragraph 2 of Article I, when taken in combination with the precedent of the 1947 Convention, amply takes care of the matter and nothing else is needed.

Now, since our Committee Proposal was made up and filed with you, of course there has been some change in the original Proposal No. 17, and it has been further changed even up to this time. I have not told the committee—in fairness to the proposal I think I should say that to you—I think the committee members will have to tell you how they feel about it from here on. I have tried to give you what I feel are the basic reasons why we did not recommend this point to you.

I believe that pretty well covers the subject. I have tried to sketch in the background, and we now have this matter before the Convention for the Convention's decision.

PRESIDENT: Judge Feller.

MR. MILTON A. FELLER: Mr. President, members of the Convention:

If this amendment provided for a Constitutional Convention every 25 years, I certainly would vote against it. It doesn't do that. It simply provides for a referendum to enable the people to decide whether or not they want the calling of a Constitutional Convention.

So far as the question of the people being influenced by pressure groups is concerned, I don't think that is true. After all, in 1943 the people voted in favor of revising the Constitution by a very substantial majority. The following year the people rejected the Constitution that was revised by an equally substantial majority.

And this year, by an overwhelming majority, the people of this State again requested, or directed, the calling of a Constitutional Convention to again revise the Constitution. I think they have voted in a very discriminating manner on this particular subject.

Now, I know we passed a very excellent amendment to the Amendment Article, giving us a very flexible method of amending the Constitution. I also know that under the Bill of Rights the people have the right to alter or reform their government at all times. But in each case the initiative rests with the Legislature, and the Legislature has not always seen fit to take the initiative to call a Constitutional Convention or to provide some other method of completing the revision of the Constitution. It has been only since the year 1942 that the Legislature has been Constitution-revision minded. That is when the movement started, and successive Legislatures have advocated a general revision. But previous to that, nothing was done.

In 1913, Woodrow Wilson, as Governor, advocated the calling of a Constitutional Convention. The Constitutional Convention bill passed the Assembly but was defeated in the Senate. Nothing else was done in this respect until 1928, when a Constitutional Convention was advocated by former Governor Moore. But nothing happened. Then, in 1931, on February 10, an Assembly bill was introduced providing for the calling of a Constitutional Convention. It was referred to the Constitutional Convention Committee and nothing happened. Seven years later, in 1938, another bill was introduced in the Assembly providing for the calling of a Constitutional Convention; it was read the second time and that was the end of it. In 1941, a Senate bill was passed authorizing the election of 81 delegates and providing for a Constitutional Convention. It was referred to the Committee on Elections, and that was the end of that. Again, in 1941, on May 26, a Senate bill was introduced, providing for the calling of a Convention. It was referred to the Miscellaneous Business Commitee, and that was the end of that. In July, 1941, another Senate bill was introduced calling for a Constitutional Convention and that was also referred to committee and that was the end of it. On April 23, the following year, an Assembly bill was passed calling for a Constitutional Convention. In May 1941—May 26—two of them were introduced, both in the Assembly and both referred to the Judiciary Committee; and both died there. And in June of that year an Assembly bill was introduced which died in committee. Again, in November of the same year, another bill was introduced in the Assembly and it died in committee.

On ten different occasions since 1913, when Woodrow Wilson first requested the calling of a Constitutional Convention, Constitutional Convention bills were introduced in the Legislature and nothing

happened. So the Legislature has not always been inclined to take the initiative, with due respect to the members of the Legislature who are here and who have been members since 1942. It has only been since that time that the Legislature has in any way seen fit to take the initiative.

Now, as I said in opening, if this bill provided for the calling of a Constitutional Convention, I would oppose it; but it simply leaves it up to the people, and I don't think we can make a mistake in letting the people decide.

PRESIDENT: Mr. Naame.

MR. GEORGE T. NAAME: Mr. Chairman, through you, I would like to inquire of Delegate Van Alstyne what his reply was to the amendment offered by Mr. Schenk. I have a similar amendment and I am going to read it:

> "Such Convention shall consist of 81 delegates and each county shall have the same number of delegates as representatives in the Legislature."

Mr. Van Alstyne, I did not hear your reply to that.

MR. VAN ALSTYNE: Well, I will just repeat what I said: I did not think that we should bind in so much detail a Legislature that is going to sit 25 years from today. I don't think that any of us should do things in so much detail. I think we should leave those things to the discretion of the Legislature. It might very likely be at that time they might not want to do it that way. They might want to have more; they might want to have less.

MR. NAAME: This seems to be, through you, Mr. President, a fair, representative group and a practical, workable group. If I am within my rights, Mr. Chairman, I would like to offer this amendment and ask for a roll call.

PRESIDENT: Is the amendment seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: The Secretary will read the proposed amendment to Amendment No. 18.

SECRETARY: Proposed amendment to Amendment No. 18, by Mr. Naame *(reading):*

> "By adding a new paragraph after paragraph 1, as follows:
> 'Such Convention shall consist of 81 delegates and each county shall have the same number of delegates as representatives in the Legislature.' "

PRESIDENT: Is there any discussion on this proposed amendment to the amendment? Are you ready for the question? . . . Judge Feller?

MR. FELLER: I would just like to ask the sponsor of that amendment a question.

PRESIDENT: Mr. Naame, will you take the microphone.

MR. FELLER: Suppose this Constitution is adopted in November, and an amendment is added to the Constitution at some future

date providing for Assembly districts and eliminating the limitation of 60 Assemblymen. How would this jibe with that?

MR. NAAME: Wouldn't you have the same amendment, Mr. Feller? You could also amend this, could you not?

MR. FELLER: Aren't you providing for 81?

MR. NAAME: I am providing for 81, but you are also asking if the present Constitution is amended. If the present Constitution can be amended in that regard, certainly this can be amended.

MR. FELLER: In other words, we would have to amend both sections at the same time.

MR. NAAME: Well, aren't we doing that now?

MR. FELLER: Well, I am asking a question.

MR. NAAME: Yes.

MR. FELLER: In your opinion, would—

MR. NAAME: In my opinion, it would.

PRESIDENT: Mr. Lightner?

MR. MILTON C. LIGHTNER: Question!

PRESIDENT: The question on the amendment to the amendment is called for. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: All in favor, please raise their hands.

(Showing of hands)

PRESIDENT: Those opposed?

(Showing of hands)

PRESIDENT: A roll call has been asked for, and I am afraid it is in order. I will ask the Secretary to call the roll.

SECRETARY *(calls the roll):*

AYES: Barton, Berry, Cafiero, Camp, Carey, Dixon, Drewen, Dwyer, W. J., Eggers, Farley, Gemberling, Hadley, Hansen, Holland, Kays, Lance, McGrath, McMurray, Milton, Montgomery, Moroney, Morrissey, Murphy, Naame, O'Mara, Park, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Read, Schenk, Schlosser, Smalley, Stanger, Streeter, Struble, Wene—40.

NAYS: Barus, Brogan, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Drenk, Dwyer, W. A., Emerson, Feller, Ferry, Glass, Hacker, Hutchinson, Jacobs, Jorgensen, Katzenbach, Lewis, Lloyd, Lord, Miller, G. W., Miller, S. Jr., Murray, Orchard, Paul, Randolph, Sanford, Saunders, Smith, G. F., Smith, J. S., Sommer, Taylor, Van Alstyne, Walton, Winne.—37.

(The final vote was 41 to 36, as shown in the ensuing discussion)

SECRETARY: 40 in the affirmative; 37 in the negative.

PRESIDENT: The vote is 40 in the affirmative, 37 in the negative.

MR. NAAME: Mr. Chairman, I ask for a continuance of the roll call.

MR. WILLIAM J. DWYER: I second that motion.

SECRETARY: Leonard, Young.

MR. JOSEPH W. COWGILL: Mr. Chairman, how am I recorded?

SECRETARY: In the negative.

MR. COWGILL: Change it to the affirmative.

SECRETARY: 41 in the affirmative, 36 in the negative.

PRESIDENT: The amendment to the amendment is adopted. . . . We will, then, discuss Amendment No. 18 as amended. Is there further discussion? . . . Mr. Emerson.

MR. SIGURD A. EMERSON: I am opposed to the amendment, Mr. President. I think if the amendment stopped at the first semicolon, which would merely give the people the right to call a Convention every 25 years, I would favor it. But we are attempting to tie the hands of the Convention which will meet 25 years from now by not permitting any change of county line, or the number of delegates and representatives of the various counties. It is true that in one place there is a provision, "unless otherwise provided in the law submitting the question to the people." Nevertheless, there is a mandate here, and I think we are doing something which we ought not to do by attempting to tie the hands of a future Convention.

PRESIDENT: Is there further discussion on the amendment? . . . Dean Sommer.

MR. FRANK H. SOMMER: May I ask the mover of this amendment what is meant by the statement, "provided that when submitting the question to the people, the Legislature shall by law limit the convention so as to prevent changes in the basis of representation in the Senate and General Assembly or in the geographical boundaries of counties, unless otherwise provided in the law submitting the question to the people"? Now, there is a command that it shall be included unless otherwise provided in the law. Is there a contradiction, in other words?

PRESIDENT: Mr. Van Alstyne.

MR. VAN ALSTYNE: Through you, Mr. President, to Dean Sommer: Being a very genial soul, as you find as you look at my smiling face, and making an effort to satisfy as many people as possible, after a meeting a number of the small county people asked me to accept this amendment. They felt that it would be acceptable to them, the idea being that there would be a positive statement that this territorial representation must be put in the law because

it submits the question to the people whether they shall have a Convention or not. But, on the other hand, there was a loophole providing that the Legislature might change it if they wanted to. Do you understand that, sir?

MR. SOMMER: What was intended? Did you intend to provide that when submitting the question to the people, the Legislature shall by law limit, or did you intend to provide that when submitting the question to the people, the Legislature *may* limit? Which did you mean?

MR. VAN ALSTYNE: Mr. Schenk has a desire to answer that, sir.

MR. SCHENK: I think in fairness to Senator Van Alstyne, the explanation, if it can be made clear, should come from someone other than the Senator. It wasn't his language. I think the philosophy of the thinking was that the practice and procedure would ordinarily be that the Legislature would use this method unless at that time, after due consideration, it cared to provide another method. In other words, as the language says, they shall do it this way unless they decide to do it some other way.

(Laughter)

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: I would like to cut all this debate short. I really feel that the last amendment frankly puts this thing in such—I don't want to use too strong a word—in such an absurd light. To think that we will sit here and deliberately vote to tell the Legislature 25 years from now exactly how and what type of representation they will have in a Convention. I would like to withdraw my original amendment.

PRESIDENT: Amendment No. 18 is withdrawn. . . . Mr. Schenk.

MR. SCHENK: Mr. Chairman, all amendments to Committee Proposal No. 1-1, as amended, having been individually considered and proper action taken on same, I move that Committee Proposal No. 1-1, as amended by the will of this Convention, pass second reading, to be advanced to third reading and sent to the Committee on Arrangement and Form for appropriate action.

MR. WILLIAM T. READ: I second the motion.

PRESIDENT: You have heard the motion seconded. Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Committee Proposal No. 1-1, having been twice

read and considered by sections, will be referred to the Committee on Arrangement and Form for necessary action and report.

Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen:

The Committee on Arrangement and Form has completed its work on Committee Proposal No. 4-1, the Judiciary Article, and I herewith turn it over to the Secretary and move its adoption.

PRESIDENT: Is the motion seconded?

MR. READ: I second the motion.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

MR. NATHAN L. JACOBS: I should like to give the required 48 hours' notice that the Report on the Judiciary Article will be brought on for third reading and, as I understand it, that will be on Tuesday, according to the calendar planned by the Convention.

PRESIDENT: Mr. Dixon.

MR. AMOS F. DIXON: I wish to offer a resolution to the Secretary.

(Mr. Dixon confers with the Secretary)

PRESIDENT: The chair recognizes Mr. Read.

MR. READ: Mr. President, and fellow delegates:

I believe the 5-1 is the only Proposal still remaining, the one on Taxation and Finance. I desire to state now that it is the desire of many of the delegates and of the committee that all matters pertaining to the amendment of the tax clause lie over until Tuesday. I believe it is in the time table that this Convention, when it does adjourn tonight, will adjourn until Tuesday morning. That, however, is subject to further discussion by the delegates. We have remaining—and I want to be corrected on this if I am not exact, because some delegates may have amendments that I do not have—we have remaining Amendment No. 13 that does not pertain tc taxation; that is Amendment No. 13 by Delegate Paul, eliminating the words "altered or" in one of the sections. We have Proposal No. 14 by Delegate Barus, but this amendment, as I understand it, will not be necessary if the words "true value" are eliminated from the taxation clause. Therefore, it seems unnecessary now to take up time unless Mrs. Barus would like to have it considered this afternoon.

PRESIDENT: Mrs. Barus.

MRS. JANE E. BARUS: Mr. Chairman, through you, to Senator Read: I would like to bring it up because although I do think the

"true value" clause has a great deal to do with it, there are other elements concerned, too, and unless we are very much pressed for time, I would like to bring it up this afternoon.

MR. READ: I think we have the time if you want to bring it up, Mrs. Barus. And then, Amendment No. 15, jointly by Judge Carey and Dean Sommer. They are the only three that I have before me that do not pertain to taxation.

PRESIDENT: Mr. Murray.

MR. FRANK J. MURRAY: Mr. President, I do not have Nos. 13 and 14, and neither do some of the other delegates.

PRESIDENT: May I call for a show of hands, please, on those who do not have Nos. 13, 14, and 15?

MR. READ: I would state that there was distributed to the delegates this morning a copy of all amendments, numbered 1 to 14, inclusive. Two days ago you got from 1 to 12, inclusive, and they gave out another one this morning. Perhaps you are looking at the old one and not the new one.

PRESIDENT: The chair will declare a five-minute recess while we effect this distribution.

(The session reconvened after a five-minute recess)

PRESIDENT: Am I correct in assuming that all the delegates now have copies of Amendments Nos. 13, 14, and 15?

(Some "Noes")

PRESIDENT: Will they raise their hands, please, those that do not?

(Some hands raised, and copies supplied)

PRESIDENT: Ladies and gentlemen, may I have your attention, please. Am I correct in assuming that all the delegates now have copies of Amendments Nos. 13, 14 and 15?

(Silence)

PRESIDENT: The chair will recognize Mr. Read.

MR. READ: Mr. President, I desire to present Delegate Paul, who will speak on Amendment No. 13.

PRESIDENT: Mr. Paul.

MR. WINSTON PAUL: Mr. Chairman, if Amendment No. 15 is taken up and disposed of, then I intend to withdraw Amendment No. 13. I suggested to Chairman Read this morning that if Amendment No. 15 were taken up first, it would make the change proposed by my No. 13 unnecessary. I suggest Amendment No. 15 be considered now.

MR. READ: I'm willing to go on.

PRESIDENT: Mr. Read, can you let the rest of us know what is about to happen?

MR. READ: Delegate Paul will be the "warming up" pitcher

for Dean Sommer, and Dean Sommer will take over the relief later.

(Laughter)

PRESIDENT: Mr. Paul.

MR. PAUL: Mr. Chairman, this is addressed to the elimination of two words. If you will turn to the first page of the Taxation Proposal, on the ninth line, the amendment that I have introduced is for the elimination of the words "altered or." This has reference to the various exemptions which the State may grant—and I call your attention to the fact that they grant exemptions for taxation, etc.—and it goes on to say:

> ". . . except that the exemption from taxation . . . used exclusively for religious, educational, charitable or cemetery purposes . . . not for profit."

Now, I am a business man and I think I have a little concept of profit. Profit is what is left after your expenses and your salaries are paid.

It is my thought that possibly the Legislature might in some future years find that there might be an abuse on the part of some so-called or purely educational institution or cemetery association, where they might put in very substantial and heavy salaries and thereby avoid having a net profit at the end of the year. Unless the Legislature controlled that, we might find a very unsatisfactory situation.

The purport of my proposed amendment is to eliminate the words "altered or." The Legislature cannot repeal, but I think it should be within the power of the Legislature to prevent an abuse of that kind by any educational institution or cemetery association. The Legislature should at least keep some measure of control in that manner.

PRESIDENT: Is there any further discussion on Amendment No. 13? . . . Judge Lloyd.

MR. FRANCIS V. D. LLOYD: Mr. President and fellow delegates:

Mr. Paul overlooks the prior words "organized and conducted exclusively." The courts of this State have construed what is a charitable organization, and this "organized and conducted exclusively" for that purpose is, I would say, the dominating factor in the determination of whether they are really charitable institutions.

The Internal Revenue Act and the income tax law provide a similar exemption from taxation and use, I think, the identical words used in the section as proposed by the committee.

It isn't a case of making a profit. It's a case of the underlying and fundamental purpose for which the organization was created, and its method of operation after creation. It's entirely possible that a charitable organization may show "black ink" at the end of a fiscal

year, but it is also so that it's a charitable organization. It is not a profit, in the businessman's sense of the word, that this charitable organization may show, and that "black ink" does not deprive the organization of its exemption from taxation.

I think the change in the section as drawn should not be made, and the amendment should not be adopted, because too much stress is laid by Mr. Paul on the word "profit." That is not the intention of the section, I am sure, and I think the section follows the law of our State and the laws of the United States.

PRESIDENT: Is there any further discussion? . . . Mr. Dwyer?

MR. WILLIAM J. DWYER: Mr. President and fellow delegates:

My mind being a counting house mind and not dealing in that nebulous thing called "profit," a charitable organization is *per se* not organized to pursue a course by which it may profit by its operation. It might very well have a surplus against the day when it would revert to a deficit because of lack of support by those who sustain charitable organizations. Therefore, I think the introduction of the word "profit" supplies a connotation there that is not the purpose of our committee, or was not the purpose of our committee, but was to protect the thought that a non-profit organization, conceived with the idea that it would not make a pecuniary profit, should be sustained in its exemption.

PRESIDENT: Judge Rafferty.

MR. JOHN J. RAFFERTY: Mr. President and fellow delegates:

Just for a moment I think, perhaps, there has been some mistake in the words "organized not for profit." I might say to the delegates who are not lawyers that that strictly is a term in the law. There are two types of corporations, generally speaking: profit corporations and non-profit corporations. A profit corporation, for instance, is the Pensylvania Railroad—

(Laughter)

I am not referring to the tax clause, folks. I am just thinking of things closer at hand, as I will demonstrate, where such profits as may come are distributed in dividends to the stockholders.

Well, for instance, Rutgers University is a non-profit corporation. Of all the money that comes into Rutgers University, none of it can be used for the benefit of any individual, but it must be used only and exclusively for the purposes of the corporation.

I thought, perhaps, Mr. Paul might have a wrong view about the words "non-profit corporation." It is strictly a term in the law and refers to a corporation where the monies which come into it must be used exclusively and entirely for the purposes of the corporation, and for no other purpose.

FROM THE FLOOR: Question!

PRESIDENT: Is there any further discussion? . . . Mr. Paul.

MR. PAUL: Mr. Chairman, I used the matter of the profit as an illustration. My objection is a fundamental one. If we continue in the Constitution the prohibition against the Legislature not merely repealing its laws, but altering them, we tie the hands of the Legislature from preventing any abuse such as the one I mentioned. I think it's too stringent a restriction upon the Legislature.

PRESIDENT: Is there any further discussion? Are you ready for the question? . . . All in favor of Amendment No. 13, please say "Aye."

(Minority of "Ayes")

PRESIDENT: Those opposed "No."

(Majority of "Noes")

PRESIDENT: The amendment is lost . . . Mr. Read.

MR. READ: I will ask Mrs. Barus if she is ready.

PRESIDENT: Mrs. Barus.

MRS. BARUS: Mr. Chairman and delegates:

In submitting this amendment[1] I would like to say at the outset that I don't think it is one of the very momentous decisions before the Convention. I think I should admit, too, that it applies only to certain cities. But since it is purely permissive and isn't mandatory upon any city and would not affect any community where it would not be useful, I hope that you will approve it.

The older cities in the State, in common with most older cities everywhere, I imagine, have been facing an increasingly difficult situation as the years advance. Certain sections of those cities have fallen in value, and have became what is known as "blighted" or "depressed" areas. This has happened, sometimes, because the population has shifted from one part of the town to another, or one section has become overcrowded. Sometimes it has happened because the district has turned to business instead of residential, or partly to business; and sometimes simply because the buildings themselves, although they were originally good and may have been fine homes, have become so outdated and obsolescent that they are no longer desirable, and hence, no longer profitable.

These depressed areas go steadily down hill. The original occupants move away, the rents fall, landlords lose income and they make up for it by taking in more families per house. It's impossible to keep the properties in good condition, the houses deteriorate more and more, and what was once a good section of the town is on the way to becoming a slum.

Naturally, this slump in value is not confined to the original area affected. It spreads to neighboring blocks. No one person, no

[1] Amendment No. 14 to Committee Proposal No. 5-1. The text appears in the Appendix in Vol. 2.

house owner or landlord in this neighborhood, can counteract this spread, because no one can afford to sink money into a blighted area. Even if one or two of the houses are modernized, the money is thrown away and nothing is gained, because the improvement is so small that it cannot turn the tide of deterioration. The only way in which the section can be rehabilitated is by a complete rebuilding of a whole neighborhood. But, naturally, that is an extremely expensive matter and one which is not attractive to capital.

We know that a great deal of money has been spent on slum clearance, but it has seemed to many towns, to the officers of many towns, to the governing bodies, that this should be done, so far as possible, by means of private capital; that if some plan could be worked out which would make it possible for business to invest in redevelopment or rehabilitation projects, the great use of federal subsidies would be avoided.

In order, therefore, to meet this situation, the Legislature of New Jersey passed in 1944 the so-called Redevelopment Act. This law permits towns to enter into contracts with private corporations, such as banks or insurance companies, to rebuild obsolescent areas. The town may use its right of condemnation with, of course, just compensation to the owners, who, by the way, would often be able to realize more on their property in this way than in any other, since it is already going down hill. Thus, a large enough parcel of land can be assembled so that the improved property will be self-supporting, and not likely to go down hill again. Similar laws are now in effect in New York, Michigan, Illinois and Pennsylvania.

In such a contract, the corporation is limited in the dividends that it can pay. On the other hand, in order to be fair to the corporation and give it a good return on its investment, the town is permitted to freeze the tax on the property so that it does not go up when the improvements are made, although, of course, it increases enormously in value. If this were not done, the cost of redevelopment would be too high to attract private capital. The tax freezing stays in effect during the period of amortization of the bonds. Then the corporation owns the land and buildings free and clear, the restrictions on it are removed, and the tax freezing is stopped.

However, such an arrangement, which is mutually beneficial to the town and to private business, ran into the danger of the constitutional "true value" clause and also, I might say, the legal question of whether or not it would be permissible to use the town's power of condemnation for, in a sense, the benefit of private business. That is another questionable point which has not been settled. No corporations have been willing, so far, to undertake such projects

with the fear of the law's being held unconstitutional hanging over their heads.

In 1946, the Legislature revised the law. I believe the Prudential Insurance Company's experts took part in this revision. As you know, they are very much interested in housing projects. Under this new law, the corporation leases the land from the town and does not buy it, and at the end of the period of amortization the town and not the corporation is the owner, not only of the land, but also of any buildings that have been put on it. This may remove some of the legal difficulty, but it does not, by any means, offer such an attractive proposition to the corporation. They would invest a great deal of money, they would be limited in their profits, and at the end of the amortization period they would not be in possession of the property. Such redeveloped property would often have a longer useful life than the amortization period, and the corporation would naturally like to be in full possession of it from then on. It is possible, of course, that these laws would not be declared unconstitutional, but no business corporation wants to be the guinea pig and sink large sums into a project without assurance that it will be safe in its investments. The result is that while this program of rehabilitation has been endorsed by the Legislature twice, no redevelopment is being undertaken in the State, even now when the acute housing shortage would make it an attractive venture to capital.

The proposed amendment would remove this fear and would make possible a program of rehabilitation of our cities, which would be very valuable. Without such a program they cannot be rebuilt, and we must look forward to a higher and higher tax rate on the remaining good real property in the towns.

PRESIDENT: Is there discussion on Amendment No. 14? . . . Senator O'Mara.

MRS. BARUS: Mr. President, I move the adoption of the amendment.

FROM THE FLOOR: Second.

PRESIDENT: The amendment is moved and seconded . . . Senator O'Mara.

MR. EDWARD J. O'MARA: Mr. President and ladies and gentlemen of the Convention:

I think that this is a very meritorious proposal. The Legislature has attempted to deal with the problem of slum clearance. It passed a law, I think it was in 1944, which had that end in view. However, no practical benefit has come from that law bacause of the fact that, as Mrs. Barus so clearly pointed out, capital is unwilling to invest in a project of this kind, without the absolute assurance of the constitutionality of tax exemption.

Anyone who is familiar with the situation in the larger cities and the older towns in this State knows that neighborhoods come under a blight for one reason or another, that the blight is progressive, and that effective steps must be taken to arrest it. The only suitable and sensible method of approaching this problem, it seems to me, is to permit the Legislature to grant tax exemption for such limited period of time as shall be prescribed by it. Then capital would be attracted, with a very salutary effect not only on the property value of the municipalities involved but also from a social standpoint. In other words, as I see it, this is not merely an economic problem, but it also has its sociological implications. I think that Mrs. Barus' amendment is one of the most salutary proposals to come before this Convention. I hope it will have the unanimous support of the delegates.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for on Amendment No. 14. All those in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Minority of "Noes")

PRESIDENT: The amendment is adopted . . . Mr. Read.

MR. READ: Mr. President and fellow delegates:

Outside of those on the actual tax clause, this is the last amendment that I have before me. I might state that for the sake of clarity I have already met with the Committee on Arrangement and Form and we have decided that if, as, and when we adopt the taxation clause, the first sentence in the section will be paragraph 1; beginning with the word "Exemption" and going down to line 9, paragraph 2—that's the provision with regard to charitable exemptions; and then the armed forces' exemption will be paragraph 3. Then the original paragraph 2 will be 4, 3 will be 5, etc. Don't get too confused when you are amending these provisions because they are going to be a great deal shortened when the Committee on Arrangement and Form gets through with them.

The only amendment we have now is No. 15, and before introducing Dean Sommer or Judge Carey, whoever speaks for it, I want to call attention to one thing.[1] As I understand it, this amendment seeks to eliminate that portion beginning with the word "Exemptions" (plural), whereas the printed amendment that I have says the word "exemption." Unfortunately, the word "Exemption" is on line 2, beginning "Exemption from taxation may be granted only by general laws." I don't believe it is the intention to cut that out, but, starting with the word "Exemptions" on line 3 and going

[1] The text of this amendment appears in the Appendix in Vol. 2.

down to the end of the sentence on line 9 ending with the word "Legislature."

MR. SOMMER: We did intend to cut it out.

MR. READ: Oh, you do intend to cut it out? Ought it to be, then, on line 2?

MR. SOMMER: No, we intended to cut it out for this reason, that the Legislative Article runs as follows:

> "The Legislature shall not pass any private, special or local laws relating to taxation or exemptions therefrom."

MR. READ: Then, shouldn't the amendment read, beginning with line 2, the word "Exemption"? It seems to me it ought to be the word "Exemptions," on line 3, or the word "Exemption," on line 2. It doesn't matter which, but it ought to be one or the other. I don't know who speaks for this amendment, but it ought to be one or the other. It's a little confusing to me whether they mean to start with line 2, or line 3.

PRESIDENT: Let's hear Dean Sommer a moment on that.

MR. READ: Apparently, they are going to start on line 3.

PRESIDENT: Will you take the microphone, Dean Sommer?

MR. SOMMER: We did intend to strike it out, but did not succeed. In preparing the amendment, we did intend to strike out but did not succeed in striking out the words "Exemption from taxation may be granted only by general laws."

MR. READ: Then you will start on line 2, instead of line 3?

MR. SOMMER: "Exemption from taxation may be granted only by general laws." We intended to strike that out altogether.

MR. READ: Then you will start on line 2, and not on line 3?

MR. SOMMER: Yes, sir.

PRESIDENT: Judge Carey.

MR. O'MARA: Mr. President.

PRESIDENT: Senator O'Mara.

MR. O'MARA: Mr. President, yesterday I gave 48 hours' notice, in accordance with the Rules, that the third reading of Committee Proposal No. 2-1 would be moved on Friday, August 22. I would like to cancel that notice and give the Convention notice that Committee Proposal No. 2-1 will be moved on third reading and final agreement on next Tuesday, August 26.

PRESIDENT: Judge Carey.

MR. ROBERT CAREY: Mr. President and ladies and gentlemen of the Convention:

Amendment No. 15 is directed to a very simple point that is quite expressive. The amendment offered is the joint product of the Dean and myself. We talked the matter over and we feel that it is something that should positively be settled and determined by the Con-

vention. The change in the law which we propose is this: Here's what the findings of the committee are:

> "Property shall be assessed for taxes under general laws, and by uniform rules, according to true value. Exemption from taxation may be granted only by general laws."

We need that. The rest of the section that we object to and which we are now moving to strike out reads as follows:

> "Exemptions from taxation validly granted and now in existence shall be continued but such exemptions may be altered or repealed by the Legislature, except that the exemption from taxation of real and personal property used exclusively for religious, educational, charitable or cemetery purposes and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and operated not for profit shall not be altered or repealed by the Legislature."

Now, there is a complete modification of the taxing law as it exists in this State today—the paragraph that we ask be stricken from this Report of the committee. Every phase of what I have just read has always been covered by legislation, purely legislative matter, and has been covered so, I think, for a hundred years. At the present moment, there is no such element, as I understand it, in the Constitution of our State.

We say it doesn't belong there, that it never has belonged there, and shouldn't be put there now. We say that the power of exemption from taxation should be performed by the Legislature under general laws applicable all over the field, exactly alike. We say that any exemptions otherwise may be contingent, they will be, they are, of the other features of our Constitution until the law has been changed. But they shall always be subject to legislative control. I don't mean today or tomorrow only. I mean for the years to come. No one of us can tell while standing here now what the requirements of the State itself is going to be 20, 25, 30 years from now, or three years from now.

We say this: that there is nothing any church, any charity, or any education needs to fear from the adoption of the plan we propose, because the plan we propose is the plan that we are living under right now, and have been living under for years and years and years. There's nothing to fear. There isn't any legislation that can be conceived that dares to change the method the State has adopted for 75 or a hundred years in the treatment of its educational, religious, or charitable organizations. But the power, the power to do it, and the fashion in which it should be done, and the extent to which it should be done at any time in the future as the years roll by, should certainly be left somewheres, to be handled and controlled so that the State may be able to act if the occasion ever requires it. And that's all the picture that we present.

We are not interested in anything personal here, in any way, shape or manner. It is simply a clean-cut declaration of what the

law should be, as distinguished from constitutional inhibition or prohibition.

Now, I am going to let the Dean finish up with any argument that he desires to make in connection with the presentation of this particular amendment. I'll ask the Dean to take hold now where I've left off.

PRESIDENT: Dean Sommer.

MR. SOMMER: In order to clarify the situation, may I read the amendment as Judge Carey and I are agreed it should, in turn, be amended. It would read like this:

> "Page 1 under Section I, strike out the two sentences beginning on line 2 with the word 'Exemption' and ending on line 9 with the word 'Legislature.'"

We strike out the provision "Exemption from taxation may be granted only by general laws" because that subject is already specifically dealt with in the Legislative Article. As to the balance of the section which we would strike out, I want frankly to confess that I have read this section again and again and do not know what is the object sought to be accomplished thereby. And if the object to be accomplished is the object that I think was in mind, I should certainly favor the striking out of this provision.

Now, let me take a moment or two and analyze the provision with you for the purpose of indicating that it raises serious questions of construction. "Exemptions from taxation validly granted and now in existence . . ." Notice the words "now in existence,"—limiting words—"shall be continued but such exemptions may be altered or repealed by the Legislature." Now, what exemptions? The exemptions "validly granted and now in existence . . . may be altered or repealed by the Legislature." Then follows this statement: "except that the exemption from taxation of real and personal property used exclusively for" . . . certain purposes. Now, what exemption from taxation of real and personal property? The exemption merely that is now in existence, or an exemption that may hereafter become operative? Construction of that language would confine the provision to exemptions now in existence and make a distinction, apparently, between exemptions now in existence and exemptions hereafter coming into existence. What is the situation if that be the proper construction? This extends to real and personal property. What is the organization which desires the benefit of the exemption to do with respect to personal property? Is it to keep an inventory of the personal property so that it may be ascertained what personal property the organization had on the first of January when this Constitution goes into effect, and property thereafter acquired? I don't know whether that distinction was in-

tended to be made or not, but I have a more fundamental objection to this section.

This section writes into the constitutional law of this State the doctrine of the *Dartmouth College* case and the doctrine of *Paterson* v. *The Society for Useful Manufactures.* It creates a contract as between the State and the grantee of this exemption. That contract is an irrevocable contract. The people of Passaic County have been struggling with that doctrine almost from the beginning of the creation of this Republic. Because Alexander Hamilton clearly explained the charter for the Society of Useful Manufactures which granted an exemption from taxation, the charter was accepted by the Society, and from that day until very, very recently, when the property was acquired by the City of Paterson, this city found itself incapable of subjecting the property to taxation no matter how changed the conditions, no matter how great the need for additional sources of revenue. In a limited way, if I understand this section, you'll write the doctrine of the *Dartmouth College* case and the doctrine of *Paterson* v. *The Society for Useful Manufactures* into the Constitution.

All through this Convention you have been careful not to freeze certain provisions, not to hamper the Legislature in meeting new conditions. This would represent a departure from that principle.

Finally, our municipalities are in sad need of funds. Their state may become worse. The limiting of these exemptions may become essential. If it becomes essential, under this provision the municipalities will find themselves in a position where those exemptions cannot be altered. Now, I recognize that exemptions have always been and will always be granted to these institutions. I certainly believe in granting exemptions, in advancing those things that are unseen, in advancing spiritual purposes. But, I submit that this provision which the amendment would excind is a provision that is fraught with danger.

PRESIDENT: Mr. Read.

MR. READ: This amendment came in a little late. I don't know what member of our committee would like to reply, but I might give you—while one of them is thinking up something like Mr. Dwyer could think up, or some of his other associates—I can give you a very practical reason, which is not wonderful but is practical.

I'm going back to the proposed Constitution of 1944. If you will recall that proposed Constitution you will realize that on the taxation clause there was attached an exemption in favor of those who served in the armed forces. We were all—as far as I know, everybody was in favor of that exemption. They have it now to the extent of a $500 exemption on real property, but everybody will admit that

under a certain case in New Jersey in regard to the volunteer firemen, if anybody desired to stick his chin out and fight that law it would be declared unconstitutional. For that reason it was placed in the proposed Constitution in 1944. Unfortunately, when that draft was studied thoughtfully the question was raised that if you put in the Constitution a tax clause and then state that only one certain classification of people shall be exempt, then the intent of the constitutional body or those proposing the Constitution was that no other exemption should be allowed. For that reason there were a great many thousands of "no" votes, in my opinion, cast in 1944, and perhaps enough to have defeated that Constitution at that time. I think the majority was 120,000, and I would venture to say that at least 70,000 people voted against that proposal because of that; and 70,000 off on one side and added on the other means 140,000, and you would have carried the matter by 20,000 if those 70,000 had voted the other way.

Now, if you take out this exemption you then leave as the only exemption the one in favor of the veterans of the various wars that we have fought. And if you do that you are going to pile up thousands of votes against the proposed Constitution. We are in favor of these exemptions; I agree with Dean Sommer and Judge Carey that we should not need to put this in the Constitution, and if we did not have the proposal to exempt veterans in one way or another we would not have this before us. It is a very practical reason for the committee's putting it in.

Everybody who came here on the day we discussed exemptions—people in favor of this exemption—said that if no other exemption were put in they did not care to have it put in, but if any other exemption was put in they desired this put in because of the purpose I have expressed. There may be some other members of the committee who would like to speak on it.

PRESIDENT: Dean Sommer.

(Dean Sommer indicated that he wished Judge Feller to have the floor)

MR. FELLER: Mr. President and members of the Convention:

I happen to be one of those unfortunate individuals who went around the State in 1944 advocating the acceptance of the 1944 revision. One of the most important objections that I discovered was the fact that the 1944 revision, unlike the New York State Constitution, did not have a provision specifically exempting property used for church, charitable and educational purposes. I personally disagreed. I felt, and I believe I was borne out by judicial decisions, that property exempt because of the use was considered a general law and was exempt if the Legislature so desired. Exemptions of property from taxation due to the nature or character of the owner-

ship were, I believe, special laws and unconstitutional under the terms of our present Constitution.

That provision exempting veterans was put in there to permit the Legislature to pass special laws in order to get around a certain court decision. However, apparently the language was not clear enough and it did lead to misunderstanding and confusion among a great many people and a great many groups on the theory, as the chairman has said, that—and there seems to be a conflict of legal opinion in that respect also—that when we specifically mention one class we exempt all other classes. Now, as the chairman of the Taxation Committee has stated, this was put in here in order to continue in the future a practice which is in existence now and is a precedent.

In 1938, as we know, the New York State Constitution was adopted, and on page 229 it provides this—I believe it's almost the identical language: "Exemptions from taxation may be granted only by general laws; exemptions may be altered or repealed except those exemptions of real or personal property used exclusively for religious, educational or charitable purposes as defined by law . . ," and so forth.

I think that it's advisable to leave this clause in there for the reasons that the chairman of the Taxation Committee mentioned. I'm afraid that if it's eliminated it will also lead to raging objections and misunderstandings and differences of opinion as to what will happen to this class of property in the future, which objections were raised several years ago.

I think the amendment ought to be defeated.

PRESIDENT: Judge Rafferty.

MR. RAFFERTY: Mr. President and delegates to the Convention:

I think, for the reasons stated by Senator Read and by Judge Feller, that you have an understanding of the practical considerations of the committee in this matter. But I am interested in the points raised by Judge Carey and Dean Sommer, and I think that perhaps they're entitled to a more detailed answer which I hope I shall be able to give.

If you will examine the phraseology and language which would be stricken out, you will find that it may briefly and generally be divided into three classes. The first is "Exemption from taxation may be granted only by general laws." That speaks in the future—"may be granted." Therefore, the hands of the Legislature are entirely free as to such exemptions which they may grant in the future. Of course, such exemptions as may be granted will fall into several categories, depending upon the nature of the exemption or the use to be exempted or the person to be exempted and hence, if in the

future the Legislature shall grant further exemptions to charitable institutions—and within that category are churches and schools and colleges and hospitals and so forth—why, they will naturally fall into the third category. So, therefore, on the point made by Dean Sommer that we are freezing present exemptions, into which no other exemptions may fall, it would seem to me, by a construction of the whole document, that perhaps it is not being frozen at all.

Now, as to the second category. "Exemptions from taxation validly granted and now in existence shall be continued but such exemptions may be altered or repealed by the Legislature." There, in a very real way, do we find the point made by Senator Read and Judge Feller. There are many exemptions presently upon our statute books. They could not reasonably all be mentioned in a constitutional document. To do so it would be necessary to comb the statute books, and even then we may miss an exemption. And hence, you would run into that practical situation where everyone who feels that he is not protected in this Constitution will be obliged to oppose it.

Now, we say, "Exemptions from taxation validly granted." It is the opinion of the committee that some of the exemptions presently in effect are not valid; therefore, we ourselves were not going to make a decision as to those which were valid and those which were not, but we said whatever those exemptions are, provided they have been validly granted, they shall be continued. Thus it was the thought of the committee not to state an exemption without giving suggestions as to the treatment of any others.

There is presently a statutory exemption to veterans of $500. Well, it must be apparent to every lawyer—I'm sure it is—that that is an unconstitutional exemption because it is based on the personality of the individual who is the recipient thereof. Exemptions have never been granted to the individual, to the person. They have always been granted on the basis of use, which I shall come to very shortly. Now, let us take that kind of exemption. There are others which might be referred to, but it perhaps would be imprudent to do so. We may report on this, as I said, because it is being treated. Assume that the veterans' exemption were not treated in this Article as it is, and after this Constitution is passed by the people, as we confidently expect it will be, someone may attack that exemption and the court may say, "Well, it has been approved by this Constitution." But, we have carefully put in the descriptive word "validly," so that a court may say, "That exemption when granted was not valid and has not been made valid by the adoption of the 1947 Constitution"; so that the court may go back into the Constitution as it existed at the time that that exemption was granted. From the practical point of view, rather than

stirring up the question among the recipients of these exemptions as to whether they are going to be cut off or not, we leave them exactly where we find them and we say to them, "We are not passing upon the validity of your exemption; your exemption is continued, but that exemption is subject to attack in the courts on the basis of the constitutional provision obtaining at the time the Legislature made that exemption." We thought that was a practical solution to the problem and I respectfully urge upon you, looking again from the practical point of view, it is wise for us to leave that sentence in there.

Now, as to the third classification, the charitable institution. From time out of mind exemption has been granted to these charitable institutions on the theory of the use of the property. If the use of the property was such that it contributed to the public welfare, in the sense that the State itself would be obliged to furnish that service to the people were it not furnished by the charitable institution, then that use is one which may be exempted. For instance, we have Rutgers University here, now the State University of New Jersey, one of the great institutions not only of our State but of our country, an institution, as I said on the very first day that we met here, the fruits of which have extended throughout the world. In the field of soil chemistry, for example, Rutgers has brought untold benefits to the people of the world. Now, this University is tax exempt. Leaving aside for the moment the state character which has lately been attached to it, it has been exempt for the use to which its property is employed. It is a recognition, as I said, from time out of mind, and is one which surely is right for constitutional recognition.

But there is another approach to that. Within the last few years, especially in New York, New Jersey and Massachusetts—and in other states as well, but I know of those particularly—there have been a group of people not within the category of those suggested by our good friend, Mr. Randolph from Essex, but a group of people who feel they have been discriminated against in the institutions of higher learning. They complain about what is called—whether it exists or not I don't know, because I was never a college student—but they call it the quota system, and they say because of that quota system they are discriminated against in these colleges. Bills have been introduced in the Legislature aiming at the complaints of these folks, and they would make it an act of discrimination if a college such as Rutgers or Princeton or Upsala or whatever college it may be, should by the exercise of the quota system refuse these applicants admission into their college.

They say, therefore, we shall set up within the Department of Education a Division against Discrimination in Education. They

would make the Assistant Commissioner one who need not be a lawyer, although he would have *quasi*-judicial duties to perform. He would not be bound by the rules of evidence. There was no description in the proposed statute as to what an act of discrimination would be, but it says "discrimination because of race, color or creed or any other act of discrimination,"—the exact language in the proposal. This person who would be set up as a judge of these matters, not bound by the rules of evidence, not bound by any statutory definition of what is discrimination, making his own rules of evidence, determining himself what was an act of discrimination —upon his finding that discrimination existed, the tax exemption of that educational institution would be cut off. Now, that is a real attack. It has been made, and I have no doubt that in the future the impact of that feeling of discrimination will continue and similar attacks will be made again.

So therefore, having in mind the practical purposes set forth by the gentlemen who preceded me, having in mind the practical purposes to be served by the category I secondly referred to, and having in mind again the traditional and historic exemption to these charitable institutions granted to them upon the use of their property and the fact that this has been attacked—otherwise, without this provision, these institutions must be forever on the alert, they must be forever currying favor with the politicians and with the legislators to be sure that they will not be jeopardized in this traditional exemption which they have always had—I urge sincerely the adoption of the Committee Proposal, and with the greatest of deference and respect I urge the defeat of the amendment proposed by Judge Carey and Dean Sommer.

PRESIDENT: Judge Lloyd.

MR. LLOYD: Mr. President and members of the delegation:

It is with real reluctance that I venture to differ with such great lawyers as Dean Sommer and Judge Carey, but I recall that when Governor Driscoll opened this Convention he said: "Write a Constitution that a layman can read and understand, if you can."

I don't think there is any layman who can understand the legal significance or the real significance of just the words "Exemption from taxation may be granted only by general laws." The statute books and other law books are full of cases trying to define what is a general law and what is a special law. I am thankful that they do have laymen at this Convention, although there were great squawks from the lawyers, "Why fill this Convention up with laymen when it is really a legal problem?" They seem to have written an Article that anyone can understand, and that is that the present exemption enjoyed by our churches, our hospitals, and our cemeteries and burial grounds shall be continued.

Now, this question of the validity of exemptions brings to mind this: We have on our statute books the law which says exempt firemen shall be entitled to $500 exemption of assessed value. Nobody grants the exemption because it is unconstitutional, but it is on the books. As one who has worked for many years as a member of a board of directors of a charitable hospital, may I say that taking out of this section that which the committee has written in can only mean one thing to the laymen on these various hospital boards and to the deacons and elders of churches and those who are active, and these people who run these burial grounds—we are not going to have any more tax exemption. They don't know what general laws mean in the granting of exemptions. It has been put in now by our committee. Perhaps it is only a restatement of the law, but we have had other restatements of the law, one this morning that we adopted. Don't jeopardize it, don't let's arouse any further antagonism, if there be antagonism. Don't let's give anyone any question as to what the right of these churches, these hospitals, and these other charitable institutions is. They have it now and the Constitution says they may have it, and I say that I would be perfectly willing to have it written into the charter.

The Society for Useful Manufactures, which Dean Sommer mentioned, was a profit organization. It wasn't a charitable organization. If 25 or 30 years from now it is decided to take away the exemption that these charitable institutions now enjoy, then let it be done by amendment. Having once put it in, having circulated it, and having the people feel that this will be the will of the Convention—and it is the will; I am sure no one means to take it away —then let's leave it there.

PRESIDENT: Senator Lewis?

MR. ARTHUR W. LEWIS: Mr. President, ladies and gentlemen of the Convention:

I do not speak as a member of the Taxation and Finance Committee. If it were not for that very flexible and practical amending clause that was presented to us this morning by Delegate Walton from Camden, which was adopted unanimously or almost unanimously by this Convention, I would be inclined to favor the proposed amendment by Delegates Sommer and Carey. With that amending clause which we have in the Constitution, I submit to you that if the fears and phobias of the gentlemen proposing the amendment should materialize, we can very easily, very readily, and practicably amend our Constitution to take care of the situation if and when it arrives.

In other words, we have two dangers here. I submit the lesser of the two dangers is to adopt the Committee Proposal because as to that danger it can be corrected. As to the other danger, we may

not have the opportunity to correct it.

PRESIDENT: Dean Sommer?

MR. SOMMER: Mr. President, may I first say that I have listened and am in further doubt as to what was designed by this amendment. Talk about implications from language!

Notice this: "Exemptions from taxation validly granted and now in existence shall be continued but such exemptions may be altered or repealed by the Legislature." What is the design? What is the implication? Exemptions from taxation hereafter granted shall not be subject to alteration or repeal? If that is the purpose, why not so state?

Addressing myself to Senator Lewis' suggestion, may I point out to you that in my judgment his suggestion does not carry the answer to my proposition? It will be, under the new Constitution, easier to amend the Constitution, but in the meantime, under this provision of the existing Constitution, a contract will be created as between the State and the organization for exemption, and that contract cannot be violated by the adoption of a constitutional amendment. The Constitution of the United States specifically provides that the obligation of contracts shall not be impaired. That prohibition extends not only to laws in the formal statutes, but to constitutions of the states as well.

PRESIDENT: Mr. Emerson?

MR. EMERSON: As a member of the Tax Committee I didn't advocate, necessarily, that we should have a special provision with respect to religious, educational and charitable institutions. But we found ourselves in a position that if we exempted veterans—and that was the only exemption that was granted in the law—then by implication there could be no other exemptions, and for that reason it was necessary to tie in exemptions that presently exist. The Legislature in its wisdom a few years back exempted the tax on intangible property. I think if we omitted the portion which Judge Carey and Dean Sommer desire omitted, we would have only one exemption, and that would be to veterans. I think we should grant the exemption to veterans, but we should not by doing that exclude all other exemptions.

It may be that if the substance of the Article is acceptable, possibly some changes in language should be made. I don't know whether the proponents of the amendment object to the exemption to religious, educational and charitable institutions. If they would not object to those exemptions, then I think the language which has been used can probably be modified to express very clearly, or more clearly, the views of the Convention.

PRESIDENT: Dean Sommer?

MR. SOMMER: I call the attention of the Convention to the

provision that is contained in the New York Constitution which is perfectly simple and clear and which will carry out the objective that was in the minds of the committee. It says:

> "Exemptions may be allowed or repealed except those exempting real or personal property and exclusively used for religious, educational, or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operated for profit."

It is a perfectly simple proposition that cannot be misunderstood, and it would carry out the objective that is in mind. It does not meet the further objection which I urged was fundamental, but which objection, for the sake of securing a composition of differences, I would forego.

PRESIDENT: Mr. Lightner?

MR. LIGHTNER: As one of the members of the Tax Committee and one of the laymen on that committee never admitted to practice in the courts of New Jersey, and not feeling that I know too much about New Jersey constitutional law, I make this comment: That the language which Dean Sommer has so eloquently and, I doubt not, so validly attacked was language which was put in with an objective which has already been stated. I will not take the time of the Convention to repeat it.

But I would call attention to the fact that we have before us a situation somewhat similar to the situation that existed at the time we voted some days ago on the amendment offered by Judge Carey to strike out of the proposed Constitution the committee's proposal on the subject of collective bargaining. The language of the committee's proposal was unacceptable to a great many members of the Convention. Nevertheless, the Convention voted down Judge Carey's proposal to strike it all out, thereby evidencing a desire that language of some character should be in the Constitution.

If the present amendment is defeated, I sincerely hope that some of the legal lights here who can frame this matter in perhaps a better way would take advantage of the fact that this Committee Proposal No. 5 will still be before the Convention over the weekend. If we vote this down, I hope that they will come in with some more appropriate language which will carry out the intention of the committee. As one of the members of the committee, I hold no brief for the particular language that may be inartistic.

PRESIDENT: Judge Rafferty?

MR. RAFFERTY: Dean Sommer has suggested that the matter again be referred to the Committee on Taxation and Finance to consider his criticisms, and that if the Committee on Taxation and Finance would substitute the words of the New York Constitution for those which the committee proposed it would entirely meet the objections of Dean Sommer. On that basis, Mr. President and dele-

gates to the Convention, I move that the discussion of this amendment be suspended and the matter again be referred to the Committee on Taxation and Finance to report on Tuesday morning.

PRESIDENT: You have heard the motion. Is it seconded?

(Seconded from the floor)

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All those in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried . . . Mr. Read, do you have anything more to present?

MR. READ: That is all at the present time, sir.

PRESIDENT: I have a notice from Dr. Saunders that at the conclusion of this session the Committee on Submission and Address to the People will meet in the Judiciary Committee room on the second floor of this building.

Is there any other business to come before the conference this afternoon? . . . Senator Farley?

MR. FRANK S. FARLEY: For the purpose of the record, I would like to have it recorded that Delegate Leon Leonard has been ill for the past three weeks and has been in the hospital for the past ten days. I notice that on various occasions the press has noted him as being absent. So as to have the record clear, I would like to have it recorded that he is definitely ill and is presently in the hospital.

PRESIDENT: If agreeable to the members of the Convention, the Secretary will send an appropriate message to Mr. Leonard expressing hope for his prompt recovery.

(Moved and seconded from the floor)

PRESIDENT: Those in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Mr. Read.

MR. READ: I would just like to make an announcement that this disposes of every question except taxation. I have been asked to make a little talk on the taxation matter, but I feel that it can be done better if the delegates in the interim of the adjournment until Tuesday will get out of the large number of monographs[1]

[1] The monographs appear in the Appendix in Vol. 2.

which Sidney Goldmann gave us in the beginning, that of Aaron Neeld—N-E-E-L-D—of the Inheritance Tax Bureau of New Jersey, and read that thoroughly. I think you will get a better idea of the taxation clause and what taxation means in the Constitution than I can tell you right now.

PRESIDENT: Mayor Eggers?

MR. FRANK H. EGGERS: I just came to my desk from the rear of the hall and I picked up the editorials which I notice the page boys were distributing concerning taxation. I would like to ask you, Mr. President, is this an official distribution of the Convention? Or who is responsible for this?

PRESIDENT: I haven't seen them, Mayor Eggers.

MR. EGGERS: What was that, sir?

PRESIDENT: I haven't seen the editorials.

MR. EGGERS: Well, they are editorials that are designed not to create harmony. They are editorials which are designed to accomplish a purpose which is at variance to what we are trying to accomplish here, and I think it is the duty of this Convention, or the officers thereof, to find out who is responsible for this. Here we are, within just a few minutes of adjournment time. We were to adjourn until Tuesday, as I understand it, and just a few moments before adjournment time this propaganda is distributed for a purpose which will readily be understandable after we read it. I would like to know who authorized the distribution of this propaganda?

PRESIDENT: My only comment is that these were brought here and were distributed on the desks. I personally said it was all right. I had not read them. I assume the responsibility, Mr. Mayor, must be mine.

MR. EGGERS: I certainly would not impugn your motives, Mr. President. I would ascribe it to a mistake, but I would like to know who handed these to the page boys or to the officers of this Convention for distribution. I don't expect you to be responsible when they come up to you and they say: "Shall we distribute this?" You are not expected to look everything over and examine it minutely. Nevertheless, the persons who handed this to the page boys or to the officers of this Convention should be ferreted out, because their purpose is not to have this Convention wind up in the way we want it to wind up.

PRESIDENT: Mayor Eggers, as I say, I have not read this, but when it was reported to me that these editorials were here and should they be distributed, it was my thought that they would merely throw some light on at least one angle or perhaps all angles of the matter which we are to discuss. I didn't for a moment contemplate that they would be categorized as propaganda. I express my regret if inadvertently I have acted out of order.

MR. EGGERS: I would not say that you have acted out of order.

PRESIDENT: I am afraid that I am the responsible agent, Mayor Eggers.

MR. EGGERS: I think we should institute an inquiry and find out who is responsible for giving these to the officers of the Convention or to the page boys for distribution. There have been some characters around here the last few days that have been working, and they have not been working for the success of this Convention.

PRESIDENT: I shall be very glad to have the matter investigated.

MR. EGGERS: Thank you.

PRESIDENT: Are there any other matters to come before the Convention?

MR. FRANCIS D. MURPHY: I move we adjourn, Mr. President.

PRESIDENT: Mr. Dixon?

MR. DIXON: The resolution on the clerk's desk?

SECRETARY: Resolution by Mr. Dixon *(reading):*

"RESOLVED, that when today's session of this Convention adjourns it be to meet at 10 A.M. on Tuesday, August 26."

MR. DIXON: I move the adoption of the resolution.

(Seconded from the floor)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Mr. Orchard?

MR. ORCHARD: Do we have a contemplated schedule for next week, Mr. President?

PRESIDENT: We shall meet Tuesday and meet briefly on Thursday. Mr. Dixon, is that your timetable?

MR. DIXON: According to the present schedule we will meet Tuesday, and then the next meeting will be on Thursday.

PRESIDENT: A motion to adjourn is in order.

(Moved and seconded from floor)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: We stand adjourned until Tuesday at 10 A. M.

(The session adjourned at 4:20 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Tuesday, August 26, 1947

(Morning Session)

(The session started at 10:00 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

Will the delegates and spectators please rise while the Reverend Doctor Horace E. Perry of St. John's Evangelist Church pronounces the invocation?

REVEREND DOCTOR HORACE E. PERRY: Let us pray. Direct us, Almighty God, with Thy most gracious favor, and further us with Thy continual help, that in all our works begun, continued and ended in Thee, we may glorify Thy name. And, O Lord, for as much as without Thee we are not able to please Thee, blissfully grant that Thy Holy Spirit may in all things direct and rule our hearts, through Jesus Christ, Our Lord. Amen.

PRESIDENT: Do you want to take a seat, Doctor, and watch things for a while?

REV. PERRY: Yes.

PRESIDENT: The first item on the docket is the reading of the Journal. May I ask your wish?

MR. DAVID VAN ALSTYNE, JR.: I move it be dispensed with.

FROM THE FLOOR: Second.

PRESIDENT: It has been moved and seconded that the reading of the Journal be dispensed with. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray,

Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Young.

SECRETARY: Quorum present, Doctor.

PRESIDENT: The Secretary reports that a quorum is present.

May I inquire if there are any petitions, memorials or remonstrances to be presented?

(Silence)

PRESIDENT: Or any motions and resolutions?

(Silence)

PRESIDENT: Or is there any unfinished business?

(Silence)

PRESIDENT: May I inquire if any delegate has further amendments to offer to any of the Proposals which are still open? . . . Senator Read.

MR. WILLIAM T. READ: It may be that in a few moments I will have an amendment to propose, perhaps as a committee amendment, to the tax clause. I realize that under the Rules the committee cannot meet during a session of the Convention, without consent. There are two matters of order: Either, we can ask consent to meet for a few moments in our committee room, or have the Convention go on. I think there are some matters on third reading here that are rather perfunctory, and we can meet during that, or we can ask for a recess.

PRESIDENT: Would you like to have the consent of the Convention that your committee meet, rather than—

MR. READ: I would like to have the consent of the Convention that it meet immediately.

PRESIDENT: You make that motion?

MR. READ: Yes.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Second.

PRESIDENT: Any discussion?

(Silence)

PRESIDENT. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

MR. READ: I will ask, then, that the Committee on Taxation meet immediately in Room 201.

PRESIDENT: The Convention will recess for ten minutes.

(The Convention reconvened at 10:45, after recess)

PRESIDENT: Will the delegates kindly take their seats?

Ladies and gentlemen, the Legislative Article is up for third and final reading. I would like to recognize Senator O'Mara.

MR. EDWARD J. O'MARA: Mr. President, Mr. Peterson desires to ask the unanimous consent of the Convention to amend the Legislative Article on third reading. Mr. Peterson and I have agreed on language which we think is a definite improvement over the language which now appears on page 10 of the Report of the Committee on Arrangement and Form, paragraph 11, Section VII.

PRESIDENT: Mr. Peterson.

MR. HENRY W. PETERSON: Mr. President, ladies and gentlemen of the Convention:

There is no use restating what happened when this amendment was lost last week. As Senator O'Mara has stated, we have agreed upon a modification of the language as it is contained in the Committee Proposal. I don't know whether the copies of this new amendment have been distributed or not, but I shall read it. They are going around now.

PRESIDENT: Mr. Peterson, what is the number of that amendment?

MR. PETERSON: The number of that amendment is No. 16, sir. The language which exists now is:

> "Amend Section VII, paragraph 11, page 8, by striking out all of the language on lines 4, 5, 6 and 7 after the word 'not' on line 4; and insert in lieu thereof the following:
>
> 'Only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.'"

Senator O'Mara is in agreement that this reconstruction of a line will attain what is wanted for those people who are interested in the home rule section; it will meet his objections. So I move the unanimous consent, that this Committee Proposal No. 2-1 be amended as per this suggested amendment.

PRESIDENT: Senator O'Mara.

MR. O'MARA: I would like to second Mr. Peterson's motion.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried . . . Senator O'Mara.

MR. O'MARA: I move that Committee Proposal No. 2-1, as

amended, be passed on third reading and final agreement. There is nothing which can be said now about the Article which has not already been said on second reading. It has been debated thoroughly and I am convinced that in its present form it is a very definite improvement over the Legislative Article of the existing Constitution. I therefore move its adoption on third reading and final agreement.

MR. MILTON C. LIGHTNER: Second the motion.

PRESIDENT: The motion is seconded. Is there any discussion? The Secretary will call the roll. All those in favor, please say "Aye" as their names are called; those opposed, "No."

SECRETARY *(calls the roll):*

AYES: Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Paul, Peterson, H. W., Peterson, P. H., Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Young—75.

NAYS—None.

SECRETARY: 75 in the affirmative, none in the negative.

PRESIDENT: The Legislative Article is adopted unanimously. . . . Senator O'Mara.

MR. O'MARA: I move that Committee Proposal No. 2-1 be referred to the Committee on Submission and Address to the People.

FROM THE FLOOR: Second the motion.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The chair recognizes Mr. Saunders.

MR. WILBOUR E. SAUNDERS: The Committee on Submission and Address to the People feels about these Reports that as long as there are no alternatives to come in, it has no report to make until all Proposals are received, and consequently it suggests that this Proposal be referred to the Committee on Arrangement and Form. I so move, Mr. Chairman.

FROM THE FLOOR: Second.

PRESIDENT: Will all in favor please say "Aye"?

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Adopted.

The Judiciary Article is up for third and final reading. May I call on Dean Sommer or Mr. Jacobs?

MR. NATHAN L. JACOBS: Mr. President, I understand the Committee on Arrangement and Form has a change which is to be submitted this morning. I suggest that we defer the third reading of the Judicial Article until that change is submitted.

PRESIDENT: Mr. McMurray, have you anything to report with reference to the division of Rights and Privileges?

MR. WAYNE D. McMURRAY: No report.

PRESIDENT: Mr. Schenk, have you anything to report on your Proposal? Has 48 hours' notice been given?

MR. JOHN F. SCHENK: No, Doctor Clothier, because the Report has not been received back from Arrangement and Form as yet, I believe. I'm waiting to hear from them. Mr. McMurray, have you something to say in that respect?

MR. McMURRAY: Later in the day we will have that.

PRESIDENT: Later in the day.

Ladies and gentlemen, this is an important and significant week in the history of New Jersey, and I am sure we are gathering here this morning with a sense of confidence that we shall complete successfully the task which the citizens of the State gave us at the election on June the third. If I may do so, I would like once more to congratulate all the members of the Convention upon the spirit of sincerity and cooperation which has characterized our discussions from the very beginning, and which perhaps more than anything else, has made them so successful and so constructive. We have handled a number of issues which have been controversial in nature, in the sense that different persons felt differently about them, at times in direct opposition to each other. Had they been handled in any other way than the frank and friendly manner in which they were handled, they might well have developed into major conflicts. If that had happened, it might well have jeopardized the success of the Constitution as a whole.

You will agree with me, I am sure, when I say that, so far as I have been able to judge—and I think all of you, through reading editorials and press accounts, have also been able to judge—the delegates have demonstrated their ability to work together. Their willingness to yield gracefully to the majority viewpoint has done much to inspire confidence in this Convention on the part of the people of the State and augurs well for the adoption of the Constitution at the polls in November. This is something we must not lose in these last days of our discussion together. It was so well

exemplified, if you remember, by Mr. Emerson and Judge Stanger last Thursday when, after their arguments had been turned down by the Convention, they took the floor and said that the decision against them impaired not the slightest their resolution to continue to work for the success of the Constitution with all their enthusiasm and with all their devotion.

Now we are on the homestretch. We have considered the Proposals of the Committee on the Executive, the Committee on the Legislative, the Committee on the Judiciary, and the Committee on Rights and Privileges. These Proposals, as you know, have been amended, with arguments for and against on the floor of the Convention, and approved and referred to the Committee on Arrangement and Form. The last Committee Proposal to come before us, and it comes this morning, is that of the Committee on Taxation and Finance. I am entirely convinced that the spirit which has governed our discussions so far, and which has made it possible for us to construct a Constitution which will serve the best interests of all the people, will continue to govern our discussions as we proceed to discuss the tax clause of the new Constitution. The professional pessimists have prophesied dire things about this Proposal, about irreconcilable differences between Hudson County and the rest of the State, about people handing down ultimatums to go all out against the Constitution as a whole unless their particular points of view are adopted. But the history of our discussions so far refutes in no uncertain terms these prophets of doom. Certainly, my own talks with delegates whose views on this important issue are at variance have provided not the least cause for concern on this score. I am convinced that we shall finish our discussion of the tax clause promptly and successfully—I hope today—and refer the Committee Proposals to the Committee on Arrangement and Form and leave for our homes with light heart and a sense of a job well done, with nothing official on our minds other than that of returning for the one or two days necessary to complete the formalities and to approve the final draft of the Constitution and present it to the Governor.

So, in our discussion on the tax proposal this morning, may I urge all of us to remember one of the basic principles with which we started—that is, that we are constructing a Constitution for all the people of the State, not just the people of our own counties. This means that we must remember that New Jersey has 21 counties, not 20, and that we must have the best interest of the twenty-first county in mind as well as that of the other 20. It means that we must remember the twenty-first county while very properly considering the special problems with which it is confronted. It is not an island set apart by itself, but a part of the State, and it is

equally concerned with the construction of the tax clause, which will serve all the people of the State as well as the people of that county.

I hope that when viewpoints differ, the exponents will urge and defend them with eloquence and persuasion, and with good will. I am sure that however our discussions may develop and whatever final decision is reached, we shall all in the spirit which Mr. Emerson and Judge Stanger expressed on Friday and which has been evidenced time and again by all the delegates, unite our efforts and our prayers to insure the success and adoption of the Constitution to which 81 delegates here assembled have dedicated their summer, and which already has made a favorable impression on the people of the State.

And so, ladies and gentlemen, we shall proceed, with your consent, to the consideration of the tax clause. I shall call upon Mr. Read, the chairman of the Committee on Taxation and Finance, to initiate the discussion and to present these proposals.

MR. READ: Mr. Chairman and fellow delegates:

All day Friday and most of yesterday a number of the delegates were working on the tax clause. We are not quite ready as yet for full discussion of that clause, because there are two amendments to be offered this morning. They will be offered in my name, which does not necessarily mean that they represent my views or that of the committee. I may not advocate them with enthusiasm, and certainly will not attack them with any too much vigor on the score that Dr. Clothier has mentioned. However, while we are waiting for those amendments to be printed, and before I offer them, perhaps, Dr. Clothier, it might be well to inform the rest of the delegates just what has happened from my viewpoint in the Committee on Taxation and Finance. I will try to make it brief, and I hope very basic.

PRESIDENT: Mr. Read, may I interrupt to say that while you are speaking, the Secretary and his assistants will be distributing the copies of these amendments?

MR. READ: I therefore now offer, Mr. President, these amendments, and I will get to them as quickly as I can.

PRESIDENT: They are Amendments Nos. 16 and 17.[1]

MR. READ: 16 and 17; 16 is the large one.

In opening up our hearings on taxation and finance we were first presented with the tax clause. A great many of the state officials appeared before us and said, "Let the matter alone. We can do what we please." It is my opinion that they were correct. A great many things have happened since then, and perhaps I can boil the thing down very, very basically.

[1] The text of these amendments appears in the Appendix in Vol. 2.

In the first place, why a tax clause? The Constitution of 1776—I mean our own—got along without any tax clause whatsoever. As to the Constitution of 1844, the Convention that met discussed the matter of a tax clause and left without putting a tax clause in the Constitution. It is interesting to read the notes of that Convention and find that the same arguments prevailed then as prevail today, in the way taxes might be levied. For example, the farmer, they argued, should not be taxed for the full amount of his farm while the man who held the mortgage on it would go scot-free on the matter of taxes. We are still discussing those elementary things.

It was not until 1875 that the present clause came into the Constitution. It said, as you know, that which is the first paragraph of our report:

> "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

That clause has been the subject of much litigation. Under that clause, "true value" has been blamed for many bad features of our taxing system. It was held that "true value" can mean anything. Of course, the general decisions are that it means a willing seller and a willing buyer, not a forced sale nor a forced purchase. But there have been many matters done locally. The tax assessor has his own idea of what that "willing buyer" and "willing seller" is, and he puts it accordingly. You can't sell every piece of real estate at once, and there is no willing buyer coming along. So, there is a great feeling that the "true value" clause has outlived its usefulness, or has not served its purpose.

We must realize that although the Constitution of 1776 and that of 1844 did not contain tax clauses, it is very elementary that the State, for its own living and substance and protection, inherently has the right to tax. Decisions in this State and elsewhere—and by the way, there are four states in the United States which still have no taxation clause in their Constitutions—the courts have held here that that right to tax is inherent in the State. While municipalities locally present tax bills to us, and that's where we really get our taxation, it is only with the consent of the State that they do so. The right of the State to tax must not be impaired when giving the right to a local municipality to tax.

The courts have said other things too. They have said that under our present Constitution the Legislature has the right to classify certain different kinds of property. It can classify real estate by itself, it can classify personal property by itself, it can also classify certain property for exemption. The courts, however, have said that they must contain a certain degree of limitation in order properly to come within the right of the Legislature to make those classifications.

It seemed wise to me, as a member of the Committee on Taxation

and Finance, that the word "classification" should be put into the Constitution, whatever we finally decide upon. I believe that with the word "classification" put in there, the courts will probably go a little further and be a little more lenient with the Legislature in passing upon those laws classifying property for tax purposes.

We have presented to us three or four basic propositions. The first one was, keep the present constitutional provision. Another was one which pertained to the taxation of real estate, the result of which was to give to local municipalities where an appreciable amount of second-class railroad property was located, the right to treat that property as they pleased. That took away from the State its right to tax and was not very well looked upon.

We had another proposition put to us, which was presented by Mr. O'Brien, who represents the real estate boards. The main part of it was passed upon by Dr. Sly of Princeton. At my request, in order that it should be before the delegates, Senator Lewis very kindly offered to introduce it. The amendment which bears his name is the so-called Dr. Sly or O'Brien amendment. It had one more paragraph which I cut out because it contained the words "true value," and we wanted to get rid of "true value."

We have had in the State of New Jersey, because of the tax novelties which have cropped out because of the way our Constitution was held, two major reports. There was one, I think it was in 1919, by Frank Jess of the County of Camden, who at that time was Chairman or President of the State Board of Equalization of Taxes. It was very voluminous and very searching, but it didn't get very far with the Legislature.

Again, during the administration of Governor Larson, in 1929, a joint resolution was passed by both houses of the Legislature, but it was not until 1932 that the commission appointed under that resolution made its report. It really made eight reports. They were all bound together in 1932 and now comprise a fairly large volume, which you might call the "Anthony Adverse" of the tax problem if you wanted to look at the volume. It's about the same size. That contains it all, and Thayer Martin was chairman of that committee. If you read all those reports, you may feel that you can do as much as you want under our present Constitution. As I said, the "true value" provision has outlived its usefulness and gotten us into a position where I don't believe you can do what you should do under that clause of our Constitution.

Now, there are several schools of thought on what our Constitution should contain. One school of thought supports no tax provision whatsoever. Another one is—the less you say the better. Still another one is a wide-open clause. Yet another provision calls for classification very minutely, going into income taxes, property

taxes, sales taxes, and various things, which, of course, restricts you to those things when you once start to classify. A far better method seems to be to merely give the Legislature the right to classify.

It was my own opinion that we would serve the State best if we cut out the "according to true value" and put in there "and by classifications provided by law," as part of the Dr. Sly recommendation. He had some other words there that I thought might cause as much trouble as the "true value" clause. That would be a very short, very terse, very substantial constitutional amendment. It would provide for the Legislature to classify as it fairly well pleased, within the limits of propriety. It could classify real estate and personal property.

Let me give you, while I'm on my feet, one illustration which you might have in various other kinds of property, the illustration of a railroad bond of the Norfolk and Western Railroad. I think those who are informed on railroad investments know that a Norfolk and Western four per cent first mortgage bond is just about as good an investment as you can get. It is selling today at 130. That means you pay $1,300 for a $1,000 bond. If you invested $100,000 in those Norfolk and Western bonds today, or at least if you wanted to have $100,000, in order to get an income of $4,000 which four per cent would give you, you would have to pay $130,000. That is the true value of those bonds. You can buy them and sell them any day on the stock market for probably a little more than that. Now, when you go to your taxing district with a $5.00 rate, if you are going to tax personal property the same as real estate, you are going to tax those bonds at $130,000. That's their true value. And when you do it at the $5.00 rate you compel the taxpayer to pay $6,500, out of which he's getting $4,000. In other words, every year it costs him $2,500 to hold that investment. It is far better to keep his cash in the bank.

Now, that is an absurdity, and Legislatures have realized and recognized that. In New Jersey, as far as the individual is concerned, personal property taxes have practically been abolished because of that inequality. You would simply force your citizens to keep their money in the bank. In fact, only a few years ago cash itself was taxed. Perhaps some of you from Newark will remember that about the 28th of September, when the assessor came along to tax the cash in bank, as they did up there in Newark, there was an exodus of $25,000,000 to $30,000,000 over to New York; and on the second of October, which was one day after the taxing day, that came back again. It was a great hardship on the banks, and the result was the Legislature passed a bill which amended the tax law that money, cash, should not be taxable.

Those are the matters that we have. Now, we do have one

great problem in New Jersey. In 1941—I don't hesitate to speak about it—there was a railroad tax act passed. We have had many railroad tax acts. We had that special one of Governor Stokes in 1906, I think it was chapter 196 of the Laws of 1906. We used to sing that when I was in the Legislature, because that was a little thing which we never must touch because it had the school fund. But they did touch it; they touched it for the local school matters and teachers' pensions and various other things, so that now practically not a dollar of it goes where it went in 1906. The municipalities are now crying for more help under that railroad tax.

But in 1941, as you know, after the depression got pretty well under way, railroads felt very keenly about 1938 or 1939 hardships, and the law of 1941 treated everybody very mercifully in this matter. The law of 1941 was passed, perhaps, to save some railroads; it didn't save the Central Railroad of New Jersey—you know that that is now in the hands of receivers, and has been for many years. But speaking kindly, the act was passed to help railroads. There was something put in lieu thereof, which was a franchise tax. It just so happened that that franchise tax began mounting very appreciably during the war, so that the franchise tax amounted to about $11,000,000. It's a matter of oddity that last year the total went down quite considerably—in fact, down to $1,700,000. If some of the suggestions made to us had been followed, it would give to the municipalities of this State $11,000,000, if you pay the uniform tax rate rather than the arbitrary tax rate of $3.00 which the railroads pay under the 1941 law.

Now, you can't go quite fully on that 1941 law as far as the railroads are concerned, because they do pay more than a $3.00 tax. There is in those taxes a sum on about $65,000,000 of what might be termed "rolling stock" or personal property, which amounts to about 15 per cent of what the railroads are paying. In other words, they are not paying the local rates on all of their second-class property, they are paying only a $3.00 rate. They are paying the $3.00 on about 15 per cent of their tax bills, at a rate where all of us are not paying one cent. According to the little monograph that we all received, I think the railroads are actually paying $4.05 or $4.08; it's a little more than that.

They are problems, and it was my own personal feeling that the proper way out of this dilemma was to take the "true value" out of the present clause, and put in the words of classification, and then memorialize the Legislature and perhaps even the Governor to repeal the law of 1941. By having the Governor give a proper message to the Legislature and the Legislature acting thereon wisely, as I am sure they will, because I have met many of the legislators here and I know they are all acting wisely in everything they do—we should memorialize the Legislature and we will get an amend-

ment or a remodeling of that 1941 law which will be fair to the municipalities and the railroads alike.

Now, that, Mr. President, is a general review, as I see it, of the tax situation. Amendment No. 1 by Dean Cullimore merely strikes out the "true value" clause. I shouldn't say "merely," because that's a very important proposition.[1] It strikes out the "true value" clause. You have the one by Senator Lewis,[2] the one to which Dr. Sly gave approval before our committee, and you can find it—I didn't get the page—but you can find it in the committee minutes, I think, of July 9. You will find it there in Dr. Sly's testimony, where he very strongly advocates the amendment, or the constitutional provision, that Senator Lewis has introduced.

Now, the two [3] that I have introduced this morning—perhaps others might speak for their own—but very generally, they strike out the first sentence of Section I. Those of you who are familiar with the amendments know that Delegate Feller introduced an amendment [4] some time ago, and then that was modified, and this [5] might be called a modified, modified amendment by Delegate Feller. It takes out the words "true value." It has that element of advancement in it. Then it goes on about real estate taxation. In my opinion, that wording still ties the hands of future Legislatures and freezes certain types of your real estate laws. However, on the second amendment,[6] there is wording which comes in after—if you will turn to Committee Proposal No. 5-1, page 2, in the fourth paragraph the seventh line; I think I've loaned my copies now to everybody, so much that I haven't one for myself—after the word "law." The language now is "therein; which law" . . . Put a comma after "law" and the following words, "regardless of any limitation relating to taxation contained in this Constitution." Then go on, with "shall provide the ways and means," and so forth.

By this second amendment, putting it in there in paragraph 4, which will be a new paragraph, as Delegate McMurray told me in his committee, that means that no matter what you say in the first paragraph about taxation, that shall not impair the right of the State, at least in its bond issues, to do as it pleases about taxation. In other words, the reading of the first amendment might bind the State hereafter so that if we wanted to issue a bond issue for $75,000,000, as is now talked about, for institutional advancement and buildings—we have talked about a two-cent cigarette tax—if you wanted to put one-mill, or a half-mill or a two-mill tax on real estate, it could not be done under the first amendment I am intro-

[1] The text of this and the other amendments mentioned in this debate appears in the Appendix in Vol. 2.
[2] Amendment No. 7 to Committee Proposal No. 5-1.
[3] Amendments Nos. 16 and 17.
[4] Amendment No. 10.
[5] The reference is to Amendment No. 16.
[6] The reference is to Amendment No. 17.

ducing. But with this language in paragraph 4, the State still reserves the right, no matter what occurs elsewhere in this Constitution, for the sake of its own bonded indebtedness and to keep its own credit, to borrow its money unimpaired in its way of taxation.

I think, Mr. President, that explains all that's before the Convention. Now, whether they want to vote on it, I do not know.

PRESIDENT: It is your suggestion, I take it, Mr. Read, that we consider Amendment No. 16 and Amendment No. 17 together.

MR. READ: Yes. They should be considered as companion amendments.

PRESIDENT: Is there any discussion on these amendments?

MR. READ: I would suggest, for the sake of getting under way, that we do discuss Amendment No. 16 right now, with the idea that that also has in mind Dean Cullimore's Amendment No. 1 and Senator Lewis' Amendment No. 7, for what they contain.

PRESIDENT: I will ask the Secretary to read these two amendments.

SECRETARY: Amendment No. 16 *(reading):*

> "Amend page 1, Section I, paragraph 1, lines 1 and 2, by striking out the first sentence of the paragraph and inserting in lieu thereof the following:
>
> 'Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value and taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.' "

Amendment No. 17 *(reading):*

> "Amend page 2, Section I, paragraph 4, line 7, by inserting after the word 'Law' the words: 'regardless of any limitation relating to taxation contained in this Constitution.' "

PRESIDENT: I might say apropos of these two amendments that over the week-end a small group of us who have been interested in reconciling differing points of view on this important matter, have met and discussed with a great deal of candor and a great deal of sincerity, I believe, and a great deal of earnestness the best way of phrasing a provision for the tax proposal which would reconcile these conflicting points of view. I would like very much, if I may, to ask those who participated in this informal discussion to be entirely frank and outspoken with reference to these two amendments which, as I say, have been adopted in a very earnest attempt to reconcile a point of view "for the benefit"—in quotes if you will —"of all the people of the State." Quotes closed.

Who will speak first? I wonder if I might—Senator Read?

MR. READ: I was in the conference on Friday but not yesterday, and I think Senator Van Alstyne probably has been on more of these than any of us right here, except those who might be consid-

ered locally interested. As the best disinterested man, I suggest that Delegate Van Alstyne be heard on this matter.

PRESIDENT: May I recognize you, Senator Van Alstyne?

MR. VAN ALSTYNE: Mr. President and fellow delegates:

This, of course, to use a trite phrase, is a very, very difficult and knotty problem. To me this tax clause is not perfect by any means. I could wish that there were many changes in it. I might also say that our own Executive Proposal doesn't entirely suit me; there are a number of things that I would like to have had different. And that goes for quite a few things that we have voted on here.

We come to this tax clause, where we have many different points of view. Of course, the outstanding debate in regard to taxes over a period of many years concerns railroad taxation. But that isn't the only form of taxation in the State; there are many other interests involved.

As we met in an effort to try to work out as many conflicting points of view as possible, we have tried to set up certain principles and yield to those principles. One of the principles which I believe in myself is that real estate property as a whole should be assessed as a whole and taxed as a whole. I know we come to a different point of view there. Many people feel that we should allow the Legislature to set up different classifications of real estate for taxation purposes. I frankly do not think that the State has reached that point yet.

Another principle that we discussed and insisted upon was that at no point should the sovereign right of the State to tax any form of property in the State be abrogated; at no point should we foreclose or freeze in this Constitution the right of the Legislature to come in and decide what type of property would be assessed and taxed for local purposes so long as the method was uniform. And in this Amendment No. 16, that principle has been followed.

I feel very strongly that Amendment No. 17 is part of this whole picture, because, in effect, what Amendment No. 17 does is to state absolutely, in as clear language as it is possible to use, that regardless of anything else in this Constitution the full faith and credit and the full taxing power of this State will be pledged behind any debt that this State incurs, as voted on by the people. That certainly is clearly expressed. So that regardless of anything we do here, there is no doubt that we don't have to worry about our ability to raise funds in the municipal bond market as cheaply as the market indicates.

And so, Mr. President and fellow delegates—I don't want to speak too long—I want to say this: This isn't perfect, but I think it represents the righting of a wrong. I think that we should follow this up with a memorial to the Legislature to take a look at the railroad

situation and the tax situation as a whole. This maintains the sovereign right of the State, I repeat, to have control over the situation with one exception, and that is the right to classify real estate in different categories. I repeat again that I do not quite feel we are at that point yet in this State.

As one of those who sat in many, many meetings trying to work this thing out, I want to look every single one of you in the face and say that there has been no private arrangement, agreement or understanding of any kind or description between the parties who sat in those meetings, except as is expressed in writing in these two documents before you. Nothing! I want to say it is entirely fitting and proper that different groups of delegates should meet to try to resolve differences, and that nothing could be more improper than that they should make separate agreements among themselves. That was not done. All we have done was to try to work out a problem which we present before you, and that is all that has been done or understood—what you are to go on today. I just want to emphasize that as strongly as I may, and I feel quite convinced that if this Convention will go along with this 16th and 17th amendment we can end up having done a job of compromise and reconciliation that will astound the State, and I think will be for the best interests of the State, and that we can pass this Constitution in November. I urge you strongly on behalf of Amendments Nos. 16 and 17.

MR. WINSTON PAUL: Mr. Chairman—

PRESIDENT: Mr. Paul?

MR. PAUL: Through you, Mr. Chairman, may I ask a question of Senator Van Alstyne?

I would like to inquire of the Senator—he stated that he did not think the time had yet arrived where the State was ready for classification. That has been one of the things we have heard a great deal about, desired classification. Let's grant that the Senator is correct that we are not yet ready. Would this proposed amendment, if adopted, prevent classification if in the future we should find the State is then ready for classification?

MR. VAN ALSTYNE: I want to say that I think it would prevent classification, as we understand the term. Some of you may disagree with me, but that is my belief—classification as to real estate and real estate only.

PRESIDENT: The chair would like to recognize Senator O'Mara. Senator O'Mara, may I recognize you?

MR. O'MARA: Mr. President, ladies and gentlemen of the Convention:

You took me by surprise, Mr. President. I was engaged in a discussion with Dean Sommer on some other matter.

I shall say very briefly that this Amendment No. 16, while it does

not do what the delegates from Hudson County, who are primarily concerned with this problem, hoped would be accomplished by the amendment which Mayor Eggers presented[1], nevertheless we feel that it is satisfactory and we are willing to go along with it.

PRESIDENT: Senator Barton?

MR. CHARLES K. BARTON: Mr. President, fellow delegates:

I do hope that the Convention will pass favorably upon Amendment No. 16. This is a very vexatious question, exceedingly troublesome, which is probably one of the reasons why it has been left until last. That always happens. I am certain it is not going to be satisfactory to everyone. But I call to mind Governor Larson's remarks at the opening of the Executive Committee sessions when he said, and very forcibly, that our present Constitution and our United States Constitution, and the constitutions of practically all the states in the Union, were only arrived at in a spirit of compromise—not, of course, compromising in principle, but yielding and bending and giving way to some other one's view probably better expressed and more conducive to a proper deduction. And I am certain that every soul here has since June 12 very properly given check to his or her emotions at times on different subject matters. I could count many instances where I kept my tongue in my cheek on matters that I would like to have vehemently opposed, but because of the majority being so strenuous in their views I felt that I was wrong. I think we have all sensed that feeling.

There has been no noticeable rancor, no animus expressed here at all. And there have been very delicate subject matters discussed, and in these matters which arouse our emotions, which affect our daily lives, there has not yet been one on this floor or in the hallways—there has not been one of those delicate matters which has in any way aroused that little adder of hatred which lies reposed in nearly all our breasts. That is as it should be, and it is a tribute, sir, to your intelligent, kindly direction of this Convention. But it is a far greater tribute to the patience and the willingness to work, and the effort put forth by the members of the Convention, truly a democracy at work, always under the kindly hand of Divine Guidance. That, of course, has always been with us and I attribute to that, as you do, the success of this Constitutional Convention thus far.

I had not intended to digress that way, sir, I know you will pardon me. To come back to the subject matter, the bone of contention has been our legislation in the past half-dozen years and the series of court decisions. There have been proponents of the theory that that shall not be done again by the Legislature; that it shall be in the Constitution, in so many words, that there shall be a stan-

[1] The reference is to Amendment No. 5 to Committee Proposal No. 5-1. The text appears in the Appendix in Vol. 2.

dard of values and uniformity of rates, so that every owner of real property shall be treated alike. And to enforce it for all time, they sought to put it into the Constitution.

There are those of us, and I will name myself among the other promoters of our cause, who believe that that should be a legislative matter, and that by general law the Legislature can continue to make such changes and enactments as would put it back to where it was. I firmly believe that it is and will still be the right of the Legislature to do that in the event that this is passed. I think that the Legislature will have a right, in my humble opinion, to do everything that they have been able to do, except that there must be a standard of value uniformly kept and a standard of rate uniformly kept in the assessment and collection of taxes on real estate and, then, that the moneys are to be returned or collected by the municipality in which this real estate is located, with the exception, of course, of main stem railroads—railroad main stems, main arteries.

Now, I am greatly interested in this amendment because it is going to be of immense advantage to our cities, our larger cities, and not at all to the exclusion of our smaller municipalities. Jersey City is not alone in having suffered because of the situation we are trying to cure by this amendment. Paterson, Passaic, Clifton, Newark, Weehawken, Trenton, Camden, Elizabeth—all these larger cities are in need of more moneys. Certainly, in my opinion, it is absolutely fair to permit them to have the taxes coming from real estate in those communities which are served by those communities. And for that reason alone, sir, I think that this is fair, if nothing else.

To be brief, in closing my remarks I will say that we who have participated more closely than probably most of you on this matter have tried to be diligent in our work and to arrive at a conclusion which will not permit it to be frozen in the Constitution until the next Constitution, or a change in it, and yet to circumscribe the Legislature with the direction that they must pass general laws for the uniformity of values and the uniformity of rates in those localities.

I urge the adoption of this amendment.

PRESIDENT: Mr. Read?

MR. READ: I just want to say for the record that I introduced these amendments for the sake of brevity and to get action. I really think that they should bear the name of Judge Feller, because as I have seen these things and studied them out, Judge Feller introduced the original amendment along this line. It was then modified, I think on Thursday, and again yesterday. It really is the modified Feller resolution, and I don't believe anybody yet—I know I didn't, I just explained it—has moved the resolution. I would suggest that we hear from Judge Feller, and let him move its adoption.

PRESIDENT: Judge Feller, may we hear from you?

MR. MILTON A. FELLER: Mr. President and delegates:

Thank you very much, Mr. Read. I think you had as much to do with the preparation of this tax clause as anybody.

On August 13 I introduced Amendment No. 10, which I thought might settle in very flexible language the difficulties and controversy that had arisen. It did answer some, but not all of the objections. Subsequently thereto, Mayor Eggers—and I want to say that Mayor Eggers has worked valiantly and made every effort to have this question solved—also introduced an amendment which answered some of the objections, but not all of them. I personally think that this new amendment, Amendment No. 16, answers practically all of the objections. I intend to vote for this and, if it passes, I am going to ask that Amendment No. 10 be withdrawn. Thank you.

PRESIDENT: Mayor Eggers, we would like to hear from you. May we?

MR. FRANK H. EGGERS: Mr. President, fellow delegates:

Of course, you are going to miss the opportunity of listening to an hour's dissertation on taxation by the introduction of this amendment, for which I suppose you will be duly grateful. However, I would like to say to the ladies and gentlemen and delegates here that while I have not achieved the purpose of my amendment, I still feel that we are resolving a difficulty for the best interests of the State.

I introduced an amendment here which had a definite objective and definite principles, and which I would like to have seen this Convention adopt. And yet I realize, in view of the past actions of this Convention in resolving other great difficulties, that were all to adopt the attitude of remaining steadfast to those principles or remaining steadfast to our objectives we would simply be giving a demonstration of the negation of democracy. This Convention has been an example of democracy at work. I am satisfied that this Amendment No. 16 achieves the principle for which both sides have been contending, in a way that will be for the best interests of the people of the State of New Jersey.

I would like to say here to all of my fellow delegates that I appreciate deeply the tolerant spirit in which they have faced this taxation issue. Day after day, during the sessions of this Convention, many of my fellow delegates came to me and asked me if there wasn't some way that this question could be resolved without acting against the best interests of the State. While not admitting for a moment that my amendment would be against the best interests of the State, I still appreciated their interest and I determined that wherever I could enter into a discussion which would clarify this issue, I would do so. I am glad to say, Mr. President, that through

your efforts in directing this Convention and in directing these discussions, we have arrived at this amendment, and I sincerely hope that my fellow delegates will pass it.

PRESIDENT: Colonel Walton?

MR. GEORGE H. WALTON: Mr. President and fellow delegates:

While I did not have the privilege of sitting in over the week-end on the various conferences that were held and which were spoken about by Senator Van Alstyne, nevertheless, I feel that the men who attended those conferences should be congratulated for a statesmanlike job. I intend voting for these amendments and I am very hopeful that they will pass.

PRESIDENT: Mr. Murray?

MR. FRANK J. MURRAY: Mr. President and ladies and gentlement of the Convention:

I too am, I think, equally interested with every delegate in trying to provide a means by which the municipalities may be reimbursed or made whole by the State as a result of the taxation of second-class railroad property at a lower rate than the rate which pertains in the various municipalities in which this property is situated. I am also equally interested with every delegate in having this Constitution adopted by the people. However, I do not feel that that desire and that objective should lead this Convention to the hasty adoption of a provision in the Constitution which will limit the power of the Legislature in the field of taxation. This amendment will very seriously and very substantially limit the power of the Legislature as to taxation.

The Legislature needs no grant of any power to tax from this Convention. It has complete power, an inherent power, in the sovereignty of the State. We are dealing here with the most important question in the government of this State, the most important matter in this Constitution, which transcends every other Article and every provision and paragraph of every Article. We are dealing here with the life-blood of this State; we are dealing here with the vital necessity of the State for the years to come, the matter of revenue. We are dealing here with the rights and the interests of every individual in this State and of every municipality in this State, and it is not in the interest of any municipality or in the interest of any individual in this State to place a limitation upon the power of the Legislature in the field of taxation.

The Taxation Committee met for two months or more and heard many witnesses—men who have been studying this question for many years. We were told that the present tax clause is inflexible, that what the State needed was a flexible tax clause to meet present conditions and the changing conditions, and even the unknown conditions that will come along. We were told that the Legislature

might have the power of classification of all property and that any doubt as to its power to classify all property must be removed. We were told that it was necessary for the State to have the power to fix different standards of value for different classes of property. Now, what are we doing by this amendment? We are violating every one of those objectives, so far as real property is concerned.

I have listened to two proponents of this amendment, who participated in these recent meetings, say that all real property should be taxed as a whole and that there should not be classification of real property for taxation. Where does that leave the taxpayers of this State who pay 80 per cent of the taxes collected in this State—and I refer to real property taxpayers other than railroads?

We were told that now that we were getting a new Constitution we should have a liberal tax clause, so that the State might give some relief to home-owners, so that the State might decide in the years to come as to the proper method of the taxation of various types of real property. Should we continue to assess apartment houses on the basis of the bricks and mortar and wood and material things that make them up, and land alone, or should we have the right to tax them on the basis of their income, of their earnings? How should we deal in the future with industrial property, factories, and other buildings used to produce wealth, which is an important consideration to this State? Must we continue to assess them also on the basis of bricks and mortar and land alone?

This is an amendment which in general language, when boiled down, amounts to nothing more than an attempt by the Constitutional Convention to amend the present 1941 Railroad Tax Act as to the taxation of second-class railroad property. What do you know and what do I know as to what is a proper tax for a railroad to pay on second-class railroad property? That is the function and province of the Legislature, which we should not attempt to transgress.

But this amendment goes further. It not only attempts to do that, but it freezes the taxation of all local real estate, and all real estate is local. It also prevents the classification of real property in the future. It is wide open as to the necessity of some laws to be passed by the Legislature. It fixes one standard of value for all real property, assessed locally or assessed by the State for allotment and payment to the taxing district.

Senator Van Alstyne was frank and honest and correct in stating in reply to a question from Mr. Paul that this amendment would prevent the classification of real property, so that there could never be classification so far as the real property referred to in this amendment is concerned. It could be all real property, because there would be nothing to stop the Legislature from providing that main stem railroad property should be assessed locally, or that the tax

derived from such assessment of such property should be allotted to the municipality.

I am just as anxious, as I stated in the beginning, to remedy this situation as anybody can be. I believe that those municipalities which, because of the $3.00 tax rate assessed against second-class railroad property, are deprived of very substantial amounts of revenue, shall be made whole by the State. But I do not believe that they should be made whole in the form of a tax clause which is a limitation upon the taxing power of the State—and any word on the subject of taxation which we put into this Constitution is a limitation upon the power of the Legislature, because the Legislature needs no grant of power from this Convention.

The Legislative Article provides that the Legislature shall not pass any private, special or local laws relating to taxation or exemption therefrom, and that the Legislature shall pass general laws providing for such a case.

It is my belief that the Constitution on the subject of taxation should contain a simple clause. We had no clause on the subject of taxation in the Constitution prior to the amendment of 1875, and that clause had included the words "according to its true value." We have heard a great deal about true value, as though those words were the culprit which has resulted in excessive taxation of homes and other forms of real property, most of which has been very much exaggerated. However, I am not opposed to amending the Report of the Committee on Taxation and Finance by omitting the words "according to its true value" and permitting the Legislature to establish any standards of value it may desire.

I think that by the passage of this amendment we would be deserting the millions of people and their many representatives over the years, particularly in the past ten years, who have been the leading advocates of a flexible clause which would give the Legislature unquestioned power to tax property and to provide classifications and standards of value. They were the property owners of real estate. They were the home owners whom we are about to desert *en masse* if we pass this amendment.

PRESIDENT: Is there further discussion on this Amendment No. 16? . . . Mr. Hadley.

MR. WILLIAM L. HADLEY: I would like to speak briefly on this. I am in favor of this amendment and will vote for it. I want to observe that if it becomes necessary at any time to provide classification, there is nothing in the world to prevent an amendment to our Constitution to accomplish that end.

PRESIDENT: Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: Mr. President, I don't desire at this moment to speak to the merits of this proposal. It may be the answer to the problem of taxation, but I am more interested

now in what we intend to say by this proposal. It has been iterated and reiterated on this floor this morning that the standard of value, as permitted in the second sentence, is to be the same standard, state-wide. But I wish the delegates would read that sentence. It seems to me that there is a question as to whether it would be a uniform state-wide standard of value as fixed by the Legislature or whether it permits of varying standards of value among the taxing districts.

In other words, all real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value and taxed at the general tax rate of the taxing district in which the property is situated, and so on. Now, we may intend here by this language that there shall be a uniform standard of value throughout the State as to real property, but lawyers here know, as well as I know, that the courts in the matter of statutory construction—and the rules of statutory construction apply to constitutions as well—have said in effect that it wasn't what the Legislature intended to say but what it meant by what it said. Let's have some clarity with respect to that. Do we mean according to the same state-wide standard of value as fixed by the Legislature? If we mean that, let's say so. Let's not make it doubtful as to whether that was our intent or whether it was our intent that there can be varying standards of value among the several municipalities.

I would like some clarification on that by the gentlemen who have worked upon this.

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: Mr. President, through you, I think that Mr. Cavicchia has raised a very good point. I for one feel that the point he raised is answered in the first sentence, where it states quite definitely in the first few words from our present Constitution: "Property shall be assessed for taxation under general laws and uniform rules." It was intended, I am quite sure, by the draftsmen that the general laws should apply for the balance of that paragraph.

PRESIDENT: Mr. Orchard.

MR. WILLIAM J. ORCHARD: I would also like some information. So far as this proposed amendment answering the question of the taxation of second-class railroad property is concerned, I find myself in agreement. But I am concerned from the standpoint of industry over this phrase "same standard of value."

I will not tax the time of the delegates to make any remarks on the glories of this State of New Jersey where we find the greatest concentration and the greatest variety of industry in any area in the country. Industry hasn't come here just because it happened to come here. It has come here because of the advantages that this

State offers to industry in its location, its facilities, its labor market, and its taxing procedures. Many large industries have been attracted to this State from other areas in this country, have made very large investments in property, have given very large employment to new employees, and have contributed to the general economic welfare of this State because they have been attracted here by those advantages, and also because of the intelligent arrangements made with the local municipal authorities and the taxing officials looking toward tax relief in the initial years of getting started. One very large industry left New Jersey to go to a central New York city because a large manufacturing plant was made available by the municipality to that industry with freedom from municipal taxes for a stated period of years. One community in northern New Jersey, through an intelligent long-range program of its governing commission, has trebled its assessed valuation of industry by a very definite program of attracting industry to that community and making, with the agreement of the commission and presumably according to existing law, tax relief proposals to that industry for a stated period.

My question, sir: Will that procedure in the future be possible under this interpretation and under this phrase "same standard of value"? I would appreciate an answer.

FROM THE FLOOR: Question!

PRESIDENT: Senator Van Alstyne, will you give the answer?

MR. VAN ALSTYNE: I don't know but what I ought to be very flattered about this, because I think that there are at least 25 or 30 lawyers and judges in this room who know ten times more about this subject than I do.

I think, Mr. Orchard, that under the exemption clause, what you have in mind could take place. I further would like to call your attention to this, and I will ask the indulgence of the delegates for just a brief moment: When I stated that I didn't think that classification could be made by the Legislature so far as real estate was concerned, I wanted to be sure and err on the conservative side with respect to the question as it was asked of me. On the other hand, Delegate Murray made some very interesting points, and I would like to make this observation: Is it unfair that all real estate should be taxed on the same level and on the same basis and the same standards of value? And, in doing that, is there any reason to prevent real estate from being relieved? The only way real estate is going to be relieved is not by reclassification, except if you bring in the ability to pay, but real estate is going to be relieved by income from other sources. The Legislature did exactly that thing three years ago. The Legislature first reduced and in the next year eliminated the state school tax on real estate and substituted therefor the corporation net worth tax.

One of the things I would like to emphasize is that under this phrase "standard of value," the Legislature may determine by law the various items that will go to make up those standards. The Legislature could include ability to pay as one of the items that would be determining those standards, so that ability to pay could under this phrase be used. But, on the other hand, if you want to go entirely to the question of ability to pay, aren't we really talking about an income tax? Let's be honest. I am not talking about real estate tax and reclassification.

I do think, and I do say to you, Delegate Orchard, through you, Mr. President, I do think this is flexible enough to answer your question.

FROM THE FLOOR: Question!

PRESIDENT: I would like to ask Judge Feller to close the debate.

MR. FELLER: Mr. President and members of the Convention:

I heartily agree with Senator Van Alstyne that this clause permits a certain amount of flexibility and a not too drastic change almost overnight to handle this situation. Now, in answer to the objections that were made, and I think they were valid ones, I don't think real estate taxes have been any deterrent for preventing industry from coming into this State or for driving industry out. What industry was concerned with up until about two years ago was the danger of tax lightning striking at their intangibles. We had a system at that time which was conspicuous for its lack of uniformity. Many corporations were moving out of the State, many were moving to certain sections of the State where the local tax rate was much lower than it was in the larger municipalities. The Legislature handled this very capably several years ago when they passed a new net worth corporation tax, providing for a general rate of eight-tenths of a mill tax, or a figure closely approximating that. That, in itself, I have been informed, has induced many more industries to come into the State the last two or three years than in any corresponding period heretofore. It hasn't been real estate taxation that has kept them out or driven them out; it has been the danger of tax lightning striking at their intangible assets.

Now, under the present Constitution and under the tax clause as it is now constituted, it was the home owner who was bearing an excessive tax burden. In 1943 I was chairman of the Taxation Committee of the House of Assembly, and we had a public hearing which lasted all day on several very controversial tax matters that were introduced in the House of Assembly. It was brought out at that hearing that the average tax on homes in this State is higher than the average tax on homes in any other state in the Union, and that real estate has been bearing approximately 80 per cent of the tax burden.

I think this clause is sufficiently flexible to permit uniform assessments, the same assessments at the same standard upon real estate in the taxing district, and if all are assessed alike, surely the average tax that each one is to pay will be lower.

I ask that this amendment be adopted.

FROM THE FLOOR: Question!

PRESIDENT: The question has been called for. I will ask the Secretary to call the roll. All those in favor, please say "Aye" as their names are called. All those opposed, please say "No."

SECRETARY *(calls the roll):*

AYES: Barton, Barus, Brogan, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Naame, Park, O'Mara, Orchard, Paul, Peterson, H. W., Peterson, P. H., Pursel, Rafferty, Randolph, Read, Proctor, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Young—72.

NAYS: Berry, Camp, Murray, Payne—4.

SECRETARY: 72 in the affirmative; 4 in the negative.

PRESIDENT: Amendment No. 16 is adopted.

By the same token, we should vote on Amendment No. 17. Would it be agreeable to the delegates if we were to ask those who wish their votes recorded in the negative to raise their hands, leaving the assumption that all those who do not do so will vote in the affirmative?

MR. ORCHARD: Has Amendment No. 17 been moved?

MR. READ: I move the adoption of No. 17. I think it has been fully explained.

FROM THE FLOOR: Second!

PRESIDENT: The motion has been seconded. If that is agreeable to the delegates, will those who wish to be recorded in the negative, kindly raise their hands?

(No hands)

PRESIDENT: Unanimous vote.

Mr. Read, may we call upon you for the next step in our discussion?

MR. READ: Mr. President, now that this taxation matter has been resolved by the Convention to a certain extent, I think we still feel that the Railroad Tax Act of 1941 needs some legislative enactment. I, therefore, present a resolution which I would like to move for the adoption of the Convention. It will be printed a little

later. In effect, it is a memorial to the Legislature to overhaul the Railroad Tax Act of 1941 and put it in proper shape to meet what will be the present constitutional limitations thereon.

PRESIDENT: Do you want it read now, Mr. Read?

MR. READ: They haven't been distributed, have they? I think we had better wait until the delegates have it. It is only one page. I would suggest, however, that we have one more matter of the Taxation Committee, and that is the exemption amendment which Dean Sommer offered last Thursday. I think we are ready for that now, and perhaps in the meantime we can have the other resolution printed.

Mr. President, I understand that the delegates who are interested in that are still not quite together, and it is suggested that they will be together during the luncheon period.

PRESIDENT: May I inquire then, Mr. Read, whether action should be taken on any of these other amendments now before the delegates?

MR. READ: I think not. The action taken by the Convention now practically destroys all the other amendments of the taxation clause.

PRESIDENT: Should we not formalize that action?

MR. FELLER: Mr. President, if it is in order, I would like to withdraw Amendment No. 10.

PRESIDENT: Amendment No. 10 is withdrawn.

MR. ROBERT CAREY: Mr. Chairman, I would like to withdraw Amendment No. 9.[1]

PRESIDENT: No. 9 is withdrawn.

MR. ARTHUR W. LEWIS: Mr. Chairman, I wish to withdraw Amendment No. 7 in view of the action just taken on Amendments Nos. 16 and 17.

PRESIDENT: No. 7 is withdrawn. . . . Mr. Cullimore, how about No. 1?

MR. ALLAN R. CULLIMORE: I wish to withdraw it.

PRESIDENT: No. 1 is withdrawn. . . . Mr. McMurray.

MR. McMURRAY: When the taxation matters are out of the way, I would like to be heard.

PRESIDENT: Mr. Read, are there any other amendments on which action should be taken, of one kind of another?

Is Mayor Eggers on the floor? How about Amendment No. 5, Mayor Eggers?

MR. EGGERS: Withdrawn.

PRESIDENT: It is withdrawn. . . . Are there any other amendments, Mr. Read?

MR. READ: Dean Cullimore has an amendment in?

[1] The text of this, and other amendments withdrawn, appears in the Appendix in Vol. 2.

PRESIDENT: That has been withdrawn. . . . Senator Milton, Amendment No. 6. Withdrawn?

MR. JOHN MILTON: Withdrawn.

MR. READ: I understand that amendments by Senator Milton will be withdrawn.

PRESIDENT: That has just been withdrawn.

MR. READ: Mr. President, I think now the delegates all have the resolution to which I referred, which is a memorial to the Legislature, and after the whereases with which we are all familiar now, it is resolved *(reading):*

> "The Governor and the Legislature are hereby memorialized to reconsider the entire railroad tax law in the interest of financial stability and efficient service of these vital public utilities. It is the sense of this Convention that upon such reconsideration the railroad tax which is for State use should be adjusted so that the application of local general property tax rates to second class railroad property will not impose a harmful and unfair total tax burden upon the railroad industry of this State.
>
> "The Secretary of this Convention is hereby directed to transmit a duly authenticated copy of this resolution to the Governor forthwith and to each house of the Legislature at the opening of the next regular session."

I think that explains itself, and I move the adoption of the resolution.

PRESIDENT: You have heard the resolution. You all have copies, I believe. Is it seconded?

Senator O'Mara.

MR. O'MARA: In seconding the adoption of this resolution, I want to emphasize that the objective of all the delegates who have been concerned with this very vexing question of taxation has been a twofold one. While we recognize the justice of having localities where second-class railroad property is located receive an equal share of the tax burden from that class of property along with the general real estate of the locality, we are also conscious of the fact that the State requires for its prosperity a healthy transportation system of which the railroads, of course, form the very foundation. I think the general principle which has guided those who have concerned themselves with this problem has been that a tax burden should not be imposed upon our transportation system, our railroads, which would impair their efficiency. If it were necessary, in order to maintain that efficiency, that preferential tax treatment be accorded to the railroad systems, the burden of that preferential system should fall on the State as a whole, which is the beneficiary of the transportation system, and not on the municipalities where the terminal facilities are located because of their geographical location.

I think that this resolution is a necessary complement to the adoption of the amendment which has just been passed, and I think

that the Legislature should be memorialized by this Convention to reexamine this question to the end that the burden of second-class railroad taxation which has been increased by the adoption of the last amendment, should not operate to impose an over-all burden of taxation on the railroads which would impair their efficiency, and that the adjustments which are necessary to bring about the maintenance of the railroads in a healthy condition should be accomplished by legislative action in recasting the franchise tax, the first-class railroad tax and the third-class railroad tax. I want to second this resolution.

PRESIDENT: Is there further discussion on this resolution? . . . Mr. Paul.

MR. PAUL: The railroads pay a substantial sum of money in taxes to this State. As a business man, I have always understood that the principle was that you should be concerned with the health and the financial well-being of your good paying customers. The action we have taken this morning on the clause would leave the officials and the executives of a great many railroads in very grave doubt as to the attitude of this State as to its future tax burdens. I, therefore, want to compliment and most heartily endorse Senator Van Alstyne and Senator O'Mara for proposing a resolution of this kind, for I can conceive of nothing which would more reassure the people who are rendering a very valuable service to this State, the railroad industry, than the passage of this particular resolution, showing that we have their well-being in our hearts and in our minds.

I heartily second it.

PRESIDENT: Is there any further discussion?

FROM THE FLOOR: Question!

PRESIDENT: Are you ready for the question? All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is unanimously adopted.

Mr. Read is there any further business on Taxation and Finance?

MR. READ: I have no further business at present, with the exception of the exemption clause which I want to go over. I would suggest that the Taxation Committee meet immediately in Room 201, as soon as this Convention recesses for lunch.

PRESIDENT: There is nothing other than that that you wish to take up at this time?

MR. READ: That completes our cause, with the exception of that one matter, and then we're through.

PRESIDENT: May I inquire about Amendments Nos. 11 and

12? Amendment No. 11 was introduced by Mr. Cullimore, and Amendment No. 12 was introduced by Mr. Lightner . . . Mr. Lightner.

MR. LIGHTNER: I introduced Amendment No. 12 and I would like to withdraw it.

I would merely like to say for the record, if I may, that that is an amendment which was offered with a view to facilitating the future tax program of the State, involving freedom to classify and to fix standards of value. Personally, I think that Senator Van Alstyne was unduly conservative in saying that he thought that under the amendment which the Convention has now adopted we would not be allowed to classify real property. I see nothing in the amendment which would prohibit it, and I believe the amendment that we have adopted will enable the State to have a very wise clause in the future.

PRESIDENT: Mr. Cullimore, may I ask you about Amendment No. 11?

MR. CULLIMORE: I withdraw Amendment No. 11, but I would like to make a statement. It is withdrawn in the spirit of harmony and against, perhaps, personal opinion.

PRESIDENT: There is nothing, then, to come up at this time on the docket on the Committee on Taxation.

The Chair will recognize Mr. McMurray.

MR. McMURRAY: Mr. President, ladies and gentlemen of the Convention:

Your Committee on Arrangement and Form has laid before you an amendment introduced in the interest of clarifying the Schedule in the Judicial Article. This amendment has been discussed with the chairman, and I believe the other members. I know it was with me, of the Committee on the Judiciary. I should like to read this amendment and ask for unanimous consent for its adoption.

PRESIDENT: May I inquire, Mr. McMurray, if this has been distributed?

MR. McMURRAY: I believe it has.

PRESIDENT: All right.

MR. McMURRAY *(reading):*

> "I. Substitute in place of paragraph 4, page 8, the following paragraph:
>
> 'Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraph 3 hereof, shall continue as if this Constitution had not been adopted, provided, however, that when the Judicial Article of this Constitution takes effect the jurisdiction, functions and powers of the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions and Court of Special Sessions of each County, the judicial officers, clerks and employees thereof, and the causes pending therein and their files, shall be transferred to the County Court of the county. All statutory provisions relating to the county courts aforementioned of each county and to the

Judge or Judges thereof shall apply to the new County Court of the County and the Judge or Judges thereof, unless otherwise provided by law. Until otherwise provided by law and except as aforestated, the judicial officers, surrogates and clerks of all courts now existing, other than those abolished in paragraph 3 hereof, and the employees of said officers, clerks, surrogates and courts, shall continue in the exercise of their duty as if this Constitution had not been adopted.'

II. Substitute the following for lines 25 to 30 of paragraph 8 on pages 9 and 10:

'For the purpose of this paragraph, paragraph 4 and paragraph 9, a cause shall be deemed to be pending notwithstanding that an adjudication has been entered therein, provided the time limited for review has not expired or the adjudication reserves to any party the right to apply for further relief.'"

Mr. President, I ask unanimous consent for the adoption of that clarifying amendment.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any question?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The amendment is carried by unanimous consent . . . Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. President, in the second section of the amendment, after the words "has not expired, etc.," the words "adjudication reserves to any party, etc." Does that mean order or decree?

PRESIDENT: Do you mind saying that again, Mr. Emerson. I don't think the microphone caught it.

MR. EMERSON: In the second section, Mr. McMurray: "has not expired or the adjudication reserves to any party the right to apply for further relief." Does than mean order or decree?

MR. McMURRAY: Mr. President, I learned earlier in the game that you always rely on the advice of counsel. Therefore, I will call upon Mr. Jacobs.

MR. JACOBS: That is intended to apply to order or decree.

PRESIDENT: Is there any other matter to come before the Convention at this time? . . . Mr. Clapp? . . . Judge Stanger.

MR. FRANCIS A. STANGER, JR.: May I rise for a point of information, Mr. President, and ask whether or not the amendment in two places should not say "other than those expressly abolished by the Constitution"? Aren't there some inferior courts which continue until changed by the Legislature? And doesn't this have a meaning to apply, Mr. McMurray, to the courts which are expressly abolished by the Constitution?

PRESIDENT: Mr. Jacobs.

MR. JACOBS: It says "other than those abolished in paragraph 3." Paragraph 3 expressly abolishes particular courts. I don't think there is any need for changing the language.

MR. STANGER: Do all inferior courts continue until changed by the Legislature?

MR. JACOBS: That is correct; they are not abolished. All the inferior courts are continued until changed by law.

MR. STANGER: Might that not be an implied abolition of those continuing, then, until merely changed by the Legislature?

MR. JACOBS: No, I think they continue now until changed by law. They are all statutory courts, and they continue until changed by law, and that is exactly what they do now.

MR. STANGER: Well, the committee feels that that does not work an abolition of those courts?

MR. JACOBS: Positively not.

MR. STANGER: Very well.

PRESIDENT: Are there any further inquiries? . . . Mr. Clapp.

MR. ALFRED C. CLAPP: I have an item of business relating to another subject, sir.

PRESIDENT: May I ask then, before you proceed, Mr. Clapp, if there is anything more on this matter we are discussing?

MR. JACOBS: There is one, Mr. President.

PRESIDENT: Mr. Jacobs.

MR. JACOBS: There is one matter of substance that I would like unanimous consent on.

In the last paragraph of the Article, it provides that the Judicial Article of this Constitution shall take effect on July 1, 1948. We have been requested to defer that date until past the summer to enable the old court to clean up its business during that additional time. Therefore, I request that the Convention unanimously approve a change from July 1, 1948 to September 15, 1948.

PRESIDENT: Do you offer that as a motion?

MR. JACOBS: I do.

PRESIDENT: You have heard the motion. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

MR. JACOBS: As thus amended, I move the adoption of Committee Proposal No. 4-1 on third reading.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any discussion on the motion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Minority of "Noes")

FROM THE FLOOR: Let's have a roll call.

PRESIDENT: We will have a roll call on that.

MR. FELLER: Mr. President, may I ask Mr. Jacobs a question?

PRESIDENT: Yes.

MR. FELLER: I am still not clear on this point. Paragraph 14 says,

> "The Judicial Article of this Constitution shall take effect September 15, 1948, except that the Governor by and with the advice and consent of the Senate shall have the power to fill vacancies arising prior thereto in the new Supreme Court and in the Superior Court."

Now, if the Article does not take effect until September, 1948, I just can't understand how the Governor would have the power to appoint to vacancies in a court which apparently does not come into existence until September 15, 1948.

MR. JACOBS: If you will look at the Schedule, you will see that the Governor is authorized to make the appointment immediately after the adoption of the Constitution in November. The purpose of that was to enable the appointment of the judges before they would function as a court, so that they might administer the rule-making power. They could prepare and adopt, at least tentatively, rules, so that there won't be any gaps after they take office on September 15, 1948.

MR. FELLER: I understand that the number of vacancies occurring between Election Day, 1947, and September 15, 1948—just what court would they be appointed to?

MR. JACOBS: Both to the old court and to the new. By virtue of their old appointment they would continue until the expiration of the period up to September 15, and on September 15 they automatically start functioning as judges of the new court.

PRESIDENT: Will you restate your motion then, Mr. Jacobs?

MR. JACOBS: I have moved the adoption of Committee Proposal No. 4-1 on third reading.

PRESIDENT: You have heard the motion for the adoption of Committee Proposal No. 4-1 on third reading. Is the motion seconded?

MR. JOSEPH W. COWGILL: I second the motion.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: The Secretary will call the roll. All those in favor

will please say "Aye" as the names are called. All those opposed, please say "No."

SECRETARY *(calls the roll):*

AYES: Barton, Barus, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Young—69.

NAYS: Berry, Brogan, Camp, Lord, Milton, O'Mara, Schlosser —7.

PRESIDENT: Committee Proposal No. 4-1 was adopted, then, on third reading.

With the consent of the delegates we shall now recess for luncheon until—Mr. Jacobs?

MR. JACOBS: Mr. President, may I move that Committee Proposal No. 4-1 be referred to the Committee on Submission and Address to the People?

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Second.

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The action is taken . . . Dr. Saunders.

MR. SAUNDERS: May the Committee on Submission and Address to the People have this Proposal referred to it pursuant to the Rules after it is reported back? The committee is not ready to report on the manner of submission to the people until all the Proposals are received and considered by the committee. The committee suggests that this Proposal be referred to the Committee on Arrangement and Form. I so move.

PRESIDENT: Mr. Clapp.

MR. CLAPP: Mr. President, while the draft of the Executive Article was before the Committee on Arrangement and Form, a sentence was dropped out by a pure typographical error. It is a non-controversial provision.

To correct the error, it will be necessary to add at the end of Paragraph 13 of the Executive Article the sentence that appears in

the Committee Report. Page 4 of the Report of the Committee on Arrangement and Form as to the Executive Article. That sentence reads as follows *(reading):*

"Any person nominated for any office by the Governor—"

PRESIDENT: Mr. Clapp, will you please read a little louder?

MR. CLAPP: I am drawing the attention of the Convention to Paragraph 13 of the Executive Article. There should be inserted at the end thereof the following sentence, which was dropped out by a typographical error *(reading):*

"Any person nominated for any office by the Governor who shall not have been confirmed by the Senate shall be ineligible for ad interim appointment to such office."

That sentence, you will find, was in the Committee Proposal and it was dropped out in the course of comparison. To correct the error, I received advice from several persons, and I am going to accept the suggestion made by Senator Van Alstyne, namely, first to move to reconsider the vote on third reading, and then to move for unanimous consent to insert the clause. I therefore move you, Mr. President, that the vote on third reading be reconsidered.

FROM THE FLOOR: Second.

PRESIDENT: A motion has been made and seconded. All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

MR. CLAPP: Now, Mr. President, I move that—I have a form of written motion here. Will you read it?

(Hands motion to Secretary)

SECRETARY *(reading):*

"Amend paragraph 13, page 4, of the Proposal, by adding the following sentence which was dropped out by typographical error:

'Any person nominated for any office by the Governor who shall not have been confirmed by the Senate shall be ineligible for ad interim appointment to such office.'"

MR. CLAPP: I ask for unanimous consent for this resolution.

FROM THE FLOOR: Second.

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried.

MR. CLAPP: I suppose now, we ought to have the roll call on the third reading so as to button the thing up.

PRESIDENT: Will it be agreeable to the delegates if we ask those who are opposed to that action to raise their hands; otherwise the vote will be taken in the affirmative?

(Silence—no hands raised)

PRESIDENT: Is there any other matter to come before the Convention at this time?

(Silence)

PRESIDENT: I propose, then—. . . Mr. Schenk.

MR. SCHENK: I will take it up after lunch.

PRESIDENT: I propose, then, that we adjourn for luncheon until 2:00 o'clock. I presume the afternoon session will not be a particularly long one, but we shall have the opportunity at that time of presenting to you the proposed schedule for the next few days, so that individually we can make our plans.

The Convention will be recessed until 2 o'clock.

(The session adjourned at 12:45 P.M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Tuesday, August 26, 1947

(Afternoon session)

(The session started at 2:25 P. M.)

PRESIDENT ROBERT C. CLOTHIER: The Convention will come to order. I'll ask the Secretary to call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Young.

SECRETARY: Quorum present.

PRESIDENT: The chair will recognize Mr. McMurray.

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen:

Your Committee on Arrangement and Form submits herewith its Report on the Rights, Privileges, Amendments and Miscellaneous Provisions Article, and asks for its adoption.

PRESIDENT: Do you want that as a motion?

MR. McMURRAY: Yes.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Mr. Schenk.

MR. JOHN F. SCHENK: Doctor Clothier and fellow delegates:

I wish to give the usual 48 hours' notice of my intent to move this Article for final third reading and consideration.

PRESIDENT: It will come up for consideration on Thursday.

MR. SCHENK: Yes, sir.

PRESIDENT: Mr. Dixon.

MR. AMOS F. DIXON: I have a resolution for the Secretary to read.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourns, it be to meet at 10:00 o'clock on Thursday, August 28th."

MR. DIXON: Mr. Chairman, I move the adoption of the resolution.

PRESIDENT: Any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted . . . The chair recognizes Mr. Read.

MR. WILLIAM T. READ: Mr. President and fellow delegates: The Committee on Taxation and Finance had a meeting at luncheon and we have practically agreed to rewrite the exemption part of Section I. The copies are not quite ready for distribution—they are coming in—and if you don't mind, I'll explain it to save a little time.

If you will take your Committee Proposal No. 5-1, the first sentence relating to assessment of property has been somewhat altered, so that it wouldn't be recognized right now—so we'll skip that one. Then comes, "Exemption from taxation may be granted only by general laws." That's on line 3 of the first page. From there on until the end, the paragraph has been rewritten. This includes the exemption for charities and the exemption for veterans. I think it would be better, perhaps, instead of checking on me to see if I'm reading correctly, if you check with your Committee Proposal to see where the changes have been made *(reading):*

> "Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued."

As I explained the other day, because of the veterans' exemption we felt that we had to give due recognition to the present exemptions from taxation, especially for charitable or religious purposes. Then we go on:

> "Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational or charitable purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit. A person who is a citizen and resident of this State and has been or shall have been in active service in any branch of the armed forces of the United States

in time of war and was honorably discharged or released under honorable circumstances from such service shall be exempt from taxation on real and personal property . . ."

Then I think you'll find it goes on as it is in the regular text. We just cut out a few terms. We cut out "armed forces," and one or two matters there which made a sort of duplication in the original reading. Now, that keeps your present exemption for veterans as it really is, with a little change in verbiage.

It also puts this additional language in: "Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued." That means there should be no harm done to anyone who now has an exemption. But later on some of those exemptions may be changed or altered, except those for the religious, charitable and educational purposes which we now have.

Now, there is one matter we left out of the original Committee Proposal, and that is cemetery associations. Personally, I feel—and I'm interested in a cemetery association, but only in the fact that I have a lot there and don't want to use it; but it is a non-profit organization. In fact, we have to go down in our jeans every once in awhile and repair some of the fences and things . . . "Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued." That means that cemetery associations that are now restricted, I think, to ten acres, will be continued. I think they have no fear of any future Legislature, because they all, as a matter of fact, have exemption ultimately in their mind and will not seek to take the cemetery association out of the non-profit class, and thus be not exempt. I can't imagine a man whose own house is now exempt from taxation, would want to stop exempting his future home.

I move the adoption of the amendment,[1] unless somebody wants to ask any questions.

PRESIDENT: Mr. Cowgill.

MR. JOSEPH W. COWGILL: Through you, Mr. Chairman, I would like to ask Mr. Read if those cemetery properties now owned by churches come within the exemption—that portion of the amendment which says, "personal property used exclusively for religious, educational or charitable purposes." I would like to know if, in the eyes of the Taxation Committee, where a cemetery association is owned by a church, that is considered to be a religious purpose.

MR. JOHN J. RAFFERTY: Mr. President.

PRESIDENT: Would you mind waiting just a moment, Judge Rafferty? There is a question that has been asked.

[1] The discussion has been of Delegate Read's Amendment No. 18 to Committee Proposal No. 5-1. The text appears in the Appendix in Vol. 2. See also, his Amendment No. 16, referred to, but not by number, in the beginning of his remarks.

MR. RAFFERTY: We discussed this matter of cemeteries and it was my understanding when we adjourned that cemeteries were to be included. I'm surprised now to find that they are not included. We agreed at the meeting that the objection to the inclusion of cemeteries was not pressed.

MR. COWGILL: I'd still like to have my question answered.

PRESIDENT: Mr. Read.

MR. READ: Mr. Chairman and delegates to the Convention: In the opinion of many in the committee, we feel that cemeteries that are dedicated to religious purposes only—we have a lot of Quaker burial grounds in Camden and Burlington Counties and down around that way—we feel that they are absolutely exempt under this amendment. In the first place, they would certainly be exempt under the provision that "until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued." I cannot see the Legislature passing any law taxing those cemeteries of the good old Quakers down in Burlington County. I know Senator Lewis would stand up there with a good defense, and they would not get by Senator Lewis. As to the others, I think, as a matter of fact they are. I think those cemeteries which are run for religious purposes only would be classified by the Legislature—after all, it is a legislative function, to a certain extent—as religious matters, and would be continued on as charitable and religious propositions and would not be taxed whatsoever.

I might state that there is a little conniving here. Judge Rafferty wants cemetery associations put in, and if that goes in, then Dean Sommer is going to press his Amendment No. 15; but if we can adopt Amendment No. 18, he will be glad to withdraw Amendment No. 15.

PRESIDENT: Mr. Rafferty.

MR. RAFFERTY: By way of amendment to Amendment No. 18, I'd like to say, in explanation, that we discussed this matter in committee and it was decided—at least, it was my impression when we left the committee meeting that the objection to the inclusion of cemeteries was not pressed—that it would be included in this proposal. Therefore, I move that Amendment No. 18 be changed as follows: On the sixth line strike out the word "or" and insert in lieu thereof a comma. On the seventh line, after the word "charitable" insert "or cemetery." The effect of this is to bring cemetery corporations within the amendment.

Now, on the amendment to the amendment, these exemptions to which we presently are addressing ourselves would not be before this body, and, indeed, they need not be before this body, except for the fact that we are making specific exemptions to veterans.

We have heard time and again on this floor that the inclusion of one, as the legal maxim goes, is the exclusion of others, and it was on that rock that the proposed revision of 1944 met the defeat, at least in part, which it did meet—because we were putting in the specific exemptions to veterans, which is a departure from our law heretofore.

As I explained the other day, the only exemptions granted heretofore have been on the basis of use of the property exempted, and not to an individual, a personality. Now we are departing from that and giving exemptions to individuals because of a particular service which they have rendered to the State and to the nation. Hence it becomes necessary, in order that there may not be discord and dissatisfaction among those presently enjoying exemptions, that we must include all of these various exemptions presently provided by law.

As to cemeteries, I want to point out the language says "those exempting real or personal property used exclusively for . . . cemetery purposes, as defined by law." We not only have statute law on cemetery exemptions; we have judicial construction on that statute law. This amendment goes to the existing state of the law and preserves those exemptions and makes them, in certain cases, unalterable and irrepealable. I urge upon the delegates very strongly that the amendment to the amendment which I propose be adopted, because, not in all of the communities, but in very, very many of the communities there are church burial grounds, there are cemeteries, and all of these good folks, representing the substantial body of the citizenry of that municipality, or of the particular group or organization to which they belong, having that sincere and earnest attitude toward their civic duties and their social relationships, have formed these associations, these burial grounds. And they will be aroused if these exemptions are not specifically included, and it may well be that they will form or participate in a bloc or group which might oppose this charter.

There seems to be no practical reason to leave them out. Everyone seems to be agreed that they ought to be in. Senator Read himself says that they are within the phrase "charitable." If that is so, why not put them in? Why risk an interpretation by someone who, for some motive or other, would desire to form an opposition to this charter which we are drawing here. If everyone is agreed that it ought to go in, why not put it in? I respectfully urge the adoption of the amendment to the amendment which I propose.

PRESIDENT: Is the amendment to the amendment seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor of the amendment to the amendment, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Chorus of "Noes")

PRESIDENT: All in favor of the amendment to the amendment, please raise their hands.

(Show of hands)

PRESIDENT: It is almost an even split. I'm afraid we'll have to call the roll.

MR. EDWARD A. McGRATH: Wouldn't it be well to have a little more clarification? Do I understand that some of the delegates wish to tax cemeteries that are used for religious purposes? Is that the thing that we're voting on, or just what is the point that is before the Convention?

PRESIDENT: Well, we're voting, Judge McGrath, on the inclusion of the word "cemetery," I believe for the purpose of further clarifying the phrasing.

MR. McGRATH: What I would like to have somebody speak about is whether the delegates have any idea that the State should tax cemeteries that are used for religious purposes and not for profit? It seems to me that would be the implication that would go out if we voted down Mr. Rafferty's amendment, and that would be very unfortunate, I think.

PRESIDENT: Senator Read, will you speak to that?

MR. READ: Mr. President, I think there is an erroneous impression here that if you don't put cemeteries in, they are excluded. This is not the same as the argument which obtained in 1944. In 1944 the proposed Constitution which was voted on, and voted down, contained a tax clause into which was put an exemption for veterans only. That was held, therefore, to exclude all other exemptions. Now, this time we have put the veterans' exemption in, and we have not excluded other exemptions.

The mere fact that we do not mention cemetery associations does not mean that we have excluded them. We have said that all exemptions otherwise provided by law are continued. If a cemetery company is now exempt, it will continue to be exempt. If that language alone had been in the 1944 proposed Constitution, it might have put it through. You have your exemption for cemetery companies there; and I don't think you need to put it any other place. If the cemetery association is a purely religious body, then it does come under the word "religious" which we have put in later on in another page.

PRESIDENT: Mr. Cowgill.

MR. COWGILL: Mr. Chairman, fellow delegates:

I dislike to disagree with the interpretation given by the delegate from Camden, but as I read this it says that "all exemptions from taxation validly granted and now in existence shall be continued"; and then it says, "Exemptions from taxation may be altered or repealed," except certain ones, and from that is left out cemetery associations. It seems to me, by the doctrine that that which is not mentioned is excluded, we are definitely giving the Legislature the right to tax cemetery associations. I think the amendment to the amendment should be adopted.

PRESIDENT: Is there further discussion? Mr. Orchard?

MR. WILLIAM J. ORCHARD: Might I ask Mr. Read or Judge Rafferty if there is any such thing as a cemetery, or mausoleum, or burial place conducted for profit? The way I read this proposed amendment, such would not be exempt from taxation because this clearly states it's to be non-profit. Am I correct in my understanding?

PRESIDENT: Senator Read.

MR. READ: That is correct, Mr. President. This only applies to non-profit organizations. If there is any cemetery association which is making money and operated for profit as a stock company, that wouldn't be exempt under any condition anyway.

Now, I might say in regard to Delegate Cowgill's proposition, he is technically correct, and I think I explained that. True, future Legislatures may stop the exemption of cemeteries, but they will continue to be exempt until the Legislature decides otherwise. And I cannot understand any Legislature ever taking from the exempt class, cemetery associations which are not run for profit. I am in thorough accord with the Legislature and what has been expressed here in its regard. I have a high regard for legislators, and I think they will act properly.

Non-profit cemetery associations, as I explained before, are not in the same position as in 1944, because they are now exempted by the first clause. In 1944 they weren't mentioned. They were out. The Legislature couldn't exempt them. Now they are kept in the exempt class until the Legislature might decide otherwise.

PRESIDENT: Senator Milton.

MR. JOHN MILTON: If I may add my voice, not to make confusion more confounded, but in the hope to straighten it out, the committee's proposal originally intended to include under the umbrella of a constitutional guarantee against taxation, lands used for cemetery purposes. After Dean Sommer made his objection a day or two ago to the granting of a constitutional exemption to certain institutions and organizations, because the effect would be to change a privilege into a contract, as he applied the *Dartmouth College* case,

the committee met and considered what changes might be made in the committee's proposal to meet the views of Dean Sommer. Part of that consideration involved whether or not the cemetery lands used for cemetery purposes and operated by the cemetery associations, not for profit, should remain in the committee's proposal, or should be deleted therefrom. That led, in a discussion this afternoon at the lunch hour, to the advancement by Mr. Lightner of Bergen County of the proposition that cemeteries should be so deleted, and finally, as I think most of us understood it, a statement by Mr. Lightner that he did not care to press the matter.

Now, it seems to me in view of the uncertainty of the construction given to the words "religious" or "charitable"—particularly in the instance of Senator Read's Quaker cemetery, and that of Senator Lewis, and speaking seriously in respect to the great mass of burial grounds which are connected with religious organizations of one kind and another—we should resolve this question so as to remove all doubt, and adopt the amendment proposed by Judge Rafferty to the amendment of Chairman Read, so as to restore to the committee's proposal the word "cemetery," thus extending to cemetery lands used for those purposes by associations not conducted for profit, the guarantee of constitutional protection.

MR. ORCHARD: May we have the question re-submitted?

PRESIDENT: Judge Rafferty, do you care to restate your motion about the insertion of the words "or cemetery"?

MR. RAFFERTY: Yes, Mr. Chairman. On the sixth line of Amendment No. 18, strike out the word "or" and insert in lieu thereof a comma. On the next line, the first word is "charitable"; between that word and the word "purposes" insert "or cemetery." So that it shall read, "except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law." I move the question.

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor of this amendment to the amendment, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Minority of "Noes")

PRESIDENT: The amendment to the amendment is carried. We will now consider further Amendment No. 18, as amended . . . Mr. Read.

MR. READ: Mr. Chairman and delegates:

I would like to suggest an amendment myself. This was done very hurriedly and I notice on line 7, I think it is, it is misprinted.

It's d-e-f-i-n-i-t-e, and it should be "as defined by law." I'd like to make that, "as may be defined by law." In other words, after the "as," strike out d-e-f-i-n-i-t-e, and substitute therefor, "may be defined." A mere typographical error.

PRESIDENT: Do you offer that as a motion? Is it seconded?

FROM THE FLOOR: Seconded!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

MR. READ: I now move Amendment No. 18, as amended. Then after that, I understand Dean Sommer will take up Amendment No. 15.

PRESIDENT: Judge Lance.

MR. WESLEY L. LANCE: I'd like to ask Senator Read a question.

Dean Sommer a couple of days ago brought up the possibility that if we freeze these exemptions into the Constitution there is a possibility that a future constitutional amendment could not remove them. Is that correct?

MR. READ: Oh, no. Not a constitutional amendment. However, Dean Sommer expects to move his Amendment No. 15, which may delete the whole thing.

PRESIDENT: Is there further discussion on Amendment No. 18? . . . If not, are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor of Amendment No. 18, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Few "Noes")

PRESIDENT: The amendment is adopted . . . The chair recognizes Senator Read.

MR. READ: Mr. Chairman, that disposes of all the amendments I have now except No. 15, by Dean Sommer.

PRESIDENT: Dean Sommer, the chair recognizes you.

MR. FRANK H. SOMMER: Mr. President and members of the Convention:

I want to apologize to the Convention and particularly to Judge Rafferty because of a statement that I made the other day in connection with the proposed Amendment No. 15. I divided that statement into two parts, one dealing with the construction of the Committee Proposal and the other dealing with what I regarded as a

matter of fundamental principle.

My criticism of the construction of the Proposal was based upon a reading of the Proposal alone. It was not based upon a consideration of the statutes lying behind the Proposal and the decisions of the courts upon those statutes. The statement, insofar as it related to the construction of the Proposal, was a sadly muddled statement, and it is because of that that I offer my apology. As a matter of fact, it added to the confusion, in part at least, that I attributed to the Proposal. I can't account for the muddled statement so far as it related to the construction of this Proposal, except by saying that, at the time, the grey cells were probably not working. I offer it as an incident to you, as further proof of your wisdom in limiting the age of the judges to 70 years.

(Laughter)

Some of the criticism based upon the Proposal read alone, or rather the amendment read alone, were far-fetched and specious when considered in the light of the background in statute and decisions. The committee's amendment of its Proposal clears up all of the structural difficulties that I saw, in so far as those structural difficulties were justified.

My second ground of objection was more fundamental. It was based upon the freezing into the Constitution of a provision for exemptions. I felt that there should be no freezing into the Constitution of a provision with respect to taxation. The Convention has today agreed with that principle. I believed at the time that there should be no freezing into the Constitution of a provision with respect to exemptions from taxation. However, on consideration of the entire matter I have concluded, because of my interest in educational, charitable and religious institutions—not cemeteries; I make an exception—

(Laughter)

I make an exception—that while the objection is theoretically sound, yet no practical harm will result from the writing of this provision into the Constitution. And therefore, I withdraw—if I have the consent of my fellow-mover of the amendment—Amendment No. 15.

PRESIDENT: Do you agree, Judge Carey?

MR. ROBERT CAREY: I agree.

PRESIDENT: Amendment No. 15 is withdrawn . . . Senator Read.

MR. READ: Mr. President and fellow delegates:

I know of no further amendment to Committee Proposal No. 5-1. I therefore move that it be passed on second reading and be referred to the Committee on Arrangement and Form.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Any discussion? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried.

MR. READ: Now, Mr. President, I'm standing here to get the benefit of the loud speaker. In order to save the time of the Convention, I now want to give the 48 hours' notice under the Rule. If the Committee on Arrangement and Form will have 5-1 completed and here on Thursday morning, I intend to move it on third reading.

PRESIDENT: On Thursday, August 28, consequently, the Committee Proposals on Rights and Privileges and Taxation and Finance will be considered on third reading and will then be reported on by the Committee on Submission and Address to the People, and then referred to the Committee on Arrangement and Form for final consideration.

From time to time suggestions have been made to the Convention to memorialize the Legislature to pass certain new legislation pursuant to the proposed Constitution. Will the chairmen of the committees or other delegates present such suggestions not later than next Thursday, the 28th, the day after tomorrow, so that they can be discussed on that day? Mr. Saunders, chairman of the Committee on Submission and Address to the People, will also present on Thursday, the day after tomorrow, a partial Report for discussion by the Convention.

You will be interested, I think, in what seems to be the way our timetable is shaping up. We shall meet, as I just said in accordance with Mr. Dixon's resolution, Thursday at 10:00 o'clock. In all probability we shall then adjourn until the latter part of the week of September 7. In other words, the expectation is that these intervening days will be used by the Committee on Arrangement and Form and the Committee on Submission and Address to the People. At that time we hope to have the final ceremony, adoption, and presentation of the Constitution to the Governor. It would be held earlier were it not for the fact that the Governor is to be out of the State until the latter part of that week.

The details as to this proposed timetable will be made more definite and will be explained more fully on Thursday. But it seemed appropriate for me at this time to inform the delegates of how the timetable is shaping up in order that they may have the opportunity of making their own personal plans.

Are there any questions, or is there anything else to come before the Convention at this time? . . . Senator O'Mara.

MR. EDWARD J. O'MARA: Mr. President, may I announce that there will be a short meeting of the Committee on the Legislative on Thursday morning at 9:45 in the committee room, Room 205?

MR. WILBOUR E. SAUNDERS: Mr. Chairman, may I announce that upon the conclusion of this session there will be a meeting of the Committee on Submission and Address to the People? It is suggested that we use the Taxation room if it is free, as it is the coolest there is.

PRESIDENT: Have you anything further to say? . . . Senator O'Mara.

MR. O'MARA: Is a motion to adjourn in order, Mr. President?

PRESIDENT: Is there anything else to come before the meeting? If not, I think a motion to adjourn is in order.

MR. O'MARA: I move we adjourn, Mr. President.

FROM THE FLOOR: Seconded.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

(The session adjourned at 3:10 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Thursday, August 28, 1947

(Morning session)

(The session began at 10:10 A. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and spectators to rise while the Reverend G. M. Plaskett, Rector of the Epiphany Church of Orange, pronounces the invocation.

REVEREND G. M. PLASKETT: Let us pray.

Almighty God, Who art the Father of all men, bestow Thy blessing upon these Thy servants, charged with the task of drafting a Constitution for the State of New Jersey. Give them the will and the wisdom to devise a way by which the rights of all may be safeguarded through the denial to no man of his own human rights. Grant that all the citizens of New Jersey may be ever mindful that to rights and privileges belong the responsibility for their use, and so lead us into a more perfect union for the safety, welfare, and honor of Thy people in this State and Nation. For Jesus Christ our Lord, Amen.

PRESIDENT: Thank you, Doctor.

The first item of business on the docket is the reading of the Journal.

FROM THE FLOOR: I move it be dispensed with.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried . . . I will ask the Secretary to call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barus, Brogan, Cafiero, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Feller, Ferry, Gemberling, Glass, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller,

S., Jr., Milton, Montgomery, Moroney, Murphy, O'Mara, Orchard, Park, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: A quorum, sir.

PRESIDENT: The Secretary reports that a quorum is present.

MR. WILLIAM J. ORCHARD: Mr. President, I would like the record to show that Dean Cullimore is absent this morning, called out of town because of the death of a near relative.

PRESIDENT: We shall proceed with the regular order of business, if it is agreeable to the delegates. I would like to call on the chairmen of the standing committees for reports. Is Senator Van Alstyne on the floor?

MR. DAVID VAN ALSTYNE, JR.: Yes, sir.

PRESIDENT: Will you make a report, Senator, for the Committee on the Executive. You may have occasion to say "No report," but—

MR. VAN ALSTYNE: No report, sir.

PRESIDENT: I didn't mean to suggest what you might say—

MR. VAN ALSTYNE: I have no report to make, sir.

PRESIDENT: Senator Van Alstyne reports that there is no report for the Committee on the Executive.

I would like to call on Senator O'Mara to report for the Committee on the Legislative.

MR. EDWARD J. O'MARA: Mr. President, there are three resolutions which are in the course of preparation now. They are very short resolutions which I would like to present to the Convention later this morning.

PRESIDENT: The Committee on the Judiciary? Dean Sommer or Mr. Jacobs?

MR. NATHAN L. JACOBS: Mr. President and delegates:

There was placed on the desk of each delegate this morning the Final Report of the Committee on the Judiciary, which relates to the Judicial Article as adopted by the Convention.[1] You will note on page 3 that the Report embodies the following items: A statement of the fundamental characteristics of a modern judicial system; an outline of the proposed court structure; a statement of principles underlying the proposed Judicial Article; an appendix which contains annotations of the Article; and, finally, an appendix which contains recommendations for legislation and rules of court.

I refer you particularly this morning to the last-named, namely, the appendix which contains recommendations for legislation and

[1] This Final Report, and other Committee Reports containing more than just the printed text of the Committee Proposal, appear in the Appendix in Vol. 2.

rules of court. Later this morning I shall request the approval of the Convention on each of the five recommendations embodied in Appendix B. If you will look at page 23 and following, you will note specifically what they are, and I would like to summarize them now, so that later on you will know particularly what the committee is referring to.

First, there is a recommendation that a commission be created by the new Supreme Court to formulate rules and recommend legislation, all of that to be done in the interval between the adoption of the Constitution and the effective date of the Article, which will be September 15, 1948.

Second, the committee recommends certain matters with respect to the lower courts, particularly those below the county courts. You will note the comments by the Committee, as follows:

> "The Committee believes that appointments to the County Courts and to other local courts should be restricted, by law, to residents of the area served by the respective court. As a fundamental principle, the judges of all courts should be required to devote full time to the performance of judicial duties. Where the function is now only part-time, the work of several courts might be merged so that the judges can be fully occupied. Moreover, legislation may well be studied having the object of unifying lower courts so that the benefits of centralized administration and uniform rules of practice could be made available more readily to this important part of the judicial organization."

The next relates to pension legislation, and the particular recommendation is the following:

> "The Committee believes that the pensions for Justices and Judges who are retired for age after acquiring tenure should correspond to their salaries upon retiring."

The next relates to the establishment of the office of Administrative Director, analogous to the office in the federal system.

And the final recommendation relates to the matrimonial cases. You will note the committee's reference to the fact that the present system is a considerable improvement over earlier systems, and the committee believes that further improvement in the conduct of that branch of the Superior Court's work should be made the subject of recurrent study by the Supreme Court and the Legislature.

PRESIDENT: Are there any questions? If not, I will call for a report from Mr. Schenk, Chairman of the Committee on Rights and Privileges.

MR. JOHN F. SCHENK: Dr. Clothier and fellow delegates:

As you know, Committee Proposal No. 1-1, as amended, and now on third reading, has been thoroughly discussed. At this time I wish to thank the members of the Rights and Privileges Committee, all of them, for their constant interest and real help in molding our Proposal as originally presented to you. It represented the collective views of all the members of the committee, and now that the Convention has acted on the Report, I am happy that the major

part of the philosophy and the language of the committee is intact and approved up to this point.

At this time I wish to move the final adoption of Committee Proposal No. 1-1, as amended by this Convention, and as received back from the Committee on Arrangement and Form. And I so move, sir.

PRESIDENT: You have heard the motion for the final adoption of the Rights and Privileges Proposal.

FROM THE FLOOR: Seconded.

PRESIDENT: The motion is made and seconded. Is there any discussion? Are you ready for the question? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

FROM THE FLOOR: Roll call!

PRESIDENT: My mistake. The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barus, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Ferry, Gemberling, Glass, Hadley, Hansen, Holland, Hutchinson, Jacobs, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McMurray, Miller, G. W., Miller, S., Jr., Montgomery, Moroney, Murphy, O'Mara, Orchard, Park, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young—60.

NAYS: None.

SECRETARY: 60 in the affirmative, none in the negative.

PRESIDENT: Mr. Schenk.

MR. SCHENK: Mr. President, I would just like to take a brief moment to tell you how efficient I think the Committee on Arrangement and Form is. They are one of the more quiet committees of our Convention but—it is really a pleasure to sit down with them and see them do a job. A split infinitive or a dangling participle does not have a chance, and these errors that creep in because the chairman is suffering from the handicap of a college education, why—they just sweep them away in short order.

(Laughter)

PRESIDENT: Committee Proposal No. 1-1, then, the Committee on Rights and Privileges, will be referred to the Committee on Submission and Address to the People.

MR. WILBOUR E. SAUNDERS: Mr. President.

PRESIDENT: Mr. Saunders?

MR. SAUNDERS: The Committee on Arrangement and Form isn't half as efficient as our committee. Having now received this

Report from you at this moment, the committee now reports back that it does not want to make any report until all Proposals are received, and therefore suggests that the Proposal be referred to the Committee on Arrangement and Form. I so move.

PRESIDENT: You have heard the motion that it be referred to the Committee on Arrangement and Form.

FROM THE FLOOR: Seconded.

PRESIDENT: The motion has been seconded. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried . . . Is there anything else, Mr. Schenk, at this time?

MR. SCHENK: No, sir.

PRESIDENT: The chair recognizes Mr. Read, chairman of the Committee on Taxation and Finance.

MR. WILLIAM T. READ: Mr. President and fellow delegates:

The Committee on Taxation has had a rather stormy time over the last several weeks but, like Delegate Schenk, I want to state that nobody could have worked with a finer committee than that on taxation. And on that, of course, Mr. Schenk and I differ—he thinks his committee is the best. I might go into the individual merits of all of them and tell you, but you probably know them by now. However, on Tuesday we were being so genial and pleasant and non-partisan that I think somebody could have slipped me a lead frank for a quarter and I would have taken it. You very kindly passed certain matters at my request—although I was just simply the man who made the form of the motion.

In the resolution which I presented to memorialize the Governor and the Legislature concerning the 1941 Railroad Tax Act, the very last line suggests that the matter be taken up at the "next regular session of the Legislature." I note in the papers this morning that if this Constitution is adopted by the people, the Governor might feel it necessary to call a special session to pass upon some matters which might be in the Constitution and which might need legislation, and this might be one of them.

I therefore move you, and ask unanimous consent, to strike out the word "regular." It would merely mean, then, that the matter may be taken up—it doesn't have to be—but may be taken up by the Legislature. Of course, we all know Legislatures; they will take it up when they please. But it may be taken up at the next session. If you said "the next regular," you would have to wait until the second Tuesday in January. This may be brought up at a special

session. I therefore move you, Mr. President, that we be allowed to strike the word "regular." Strike out the next to the last word in the resolution.

FROM THE FLOOR: Seconded.

PRESIDENT: The motion is made and seconded that the word "regular" be deleted from the last line of the resolution adopted last Tuesday. Is there any discussion? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted.

MR. READ: Mr. President and fellow delegates:

There is another matter I would like to take up. This is where I got the lead nickel, I think. In Amendment No. 18, when we were amending the exemption clause, you may remember that there was a word there which was supposed to be "defined." If you tried to pronounce it as "defined" you would have to be a man with a harelip and a cleft palate. So we changed that and somebody slipped in "as may be defined by law." Somebody handed me that and I suggested it go to Delegate Lightner, who was also very much pressed at that time because he was looking at the verbiage of the amendment.

I suggest, therefore, that the Committee on Arrangement and Form be permitted, or be requested, to delete those two words "may be," so that it would read as it was originally intended to read "as defined by law." We are talking now about the keeping of exemptions as they are. "May be" is in the future and should not be in this part of the matter. I therefore move you that the Commitee on Arrangement and Form be requested to delete the words "may be" before the word "defined" in the seventh line of Amendment No. 18.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried.

MR. READ: I have no further report to make, unless some delegate wants to ask a question.

PRESIDENT: Do you propose, Chairman Read, to present the

Report of the Committee on Taxation?

MR. READ: If the Committee on Arrangement and Form have the matter back. I gave notice on Tuesday for third reading, and I hope that it will be in shape so that we may take it up perhaps after luncheon and pass it on third reading.

PRESIDENT: You are not ready for that now?

MR. READ: Not ready because the Committee on Arrangement and Form is not ready to report it yet. But it will be some time during today, I think.

PRESIDENT: I shall call, then, on Mr. McMurray for the report of the Committee on Arrangement and Form.

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen:

The Committee on Arrangement and Form a little later in the day will be able to report on the Taxation Article. We are not ready right now. It is being remimeographed with the corrections that Senator Read mentioned.

PRESIDENT: Mr. Saunders? The Committee on Submission and Address to the People.

MR. SAUNDERS: Our committee will have a written report to put before you with recommendations, and I ask that that report be postponed for a few moments until mimeographed copies are available. May I, however, take this opportunity to ask the chairmen of the five committees that have written parts of the Constitution to get their summaries to us as rapidly as possible, and most certainly today, for use in framing the Summary and Address to the People.

PRESIDENT: Mr. Dixon?

MR. AMOS F. DIXON: Mr. President, in the interim I have a resolution which I would like to present for the Secretary to read.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourns, it be to meet at one o'clock on Monday, September 8."

MR. DIXON: Mr. President?

PRESIDENT: Mr. Dixon.

MR. DIXON: I move the adoption of the resolution, and in doing so may I be permitted to make some remarks concerning our meeting: The best arrangement that can be worked out, considering the time element involved, would seem to be to meet on September 8, in order to make our final conclusions and pass on the Final Report of the Committee on Submission and Address. During this interval, the Committee on Arrangement and Form expects to bring all of our Articles together so that we will have a completed Constitution, and have it printed and mailed to the delegates so that they will have it toward the end of next week. They can give

it consideration, and when they come here on the eighth, we will have had an opportunity to look thoroughly over that completed Constitution. Mr. Saunders has stated that he was going to discuss many matters concerning the Report of the Committee on Submission and Address to the People, and it is expected that he will have his final report so that that can also be adopted by the Convention.

That will leave only the formal operation provided by Senate Bill 100 of presenting the proper copies to the Governor, having the Governor certify them to the Secretary of State, hand them to the Secretary of State, and have the Secretary of State certify them back to our President, who represents the Convention. That operation will then conclude the final session of the Convention. That is expected to take place on Wednesday, September 10.

We will, then, meet on the eighth in order to clean up, we hope, all of the Report of the Committee on Submission and Address to the People and any other matters that may come up, and remain for the tenth only, which is the first day that the Governor can be here, and go through the formal ceremonies of adopting the Constitution.

I move the adoption of the resolution for meeting next week.

FROM THE FLOOR: Seconded.

PRESIDENT: Supplementing what Mr. Dixon said, I would like to say that Wednesday, September the tenth, has been selected as the date for the formal presentation to the Governor at his request, as he is now taking a badly needed vacation but will have returned at that time.

There was some discussion, I think perhaps the delegates will recall, that the final ceremony might take place in the Memorial Building in Trenton, but with the approval of the delegates and at the Governor's suggestion, the final ceremony will be held in this room, which has been dedicated by the blood and sweat of the delegates during these three hot months. So it is proposed to have that ceremony here instead of at Trenton, on Wednesday the tenth, and I understand that there will be certain ceremonies, both informal and formal, in connection with that event.

You have heard Mr. Dixon's resolution. It has been seconded. Is there any discussion? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted . . . I would like to call on Mr. Gemberling before he leaves the floor for a report of the Committee on Rules and Organization.

MR. ARTHUR R. GEMBERLING: Mr. President: I would like you to lay that over for just a minute.

MR. GEORGE H. WALTON: Mr. President.

PRESIDENT: Colonel Walton.

MR. WALTON: Mr. President and fellow delegates: It is necessary to have certain resolutions of appreciation drawn, and I would therefore like to move you that the chair be authorized to appoint a committee of three to prepare such resolutions.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is adopted and the chair will appoint Mr. Orchard, if it may, chairman of that committee, together with Mr. McMurray and Senator O'Mara. The committee will meet, I presume, at the call of the chairman.

May I ask Vice-Chancellor Kays if he will report for the Committee on Credentials and Authentication of Documents.

MR. HENRY T. KAYS: Mr. President: Up to the present time the Convention has spent $3,075.76 for printing. The mimeographing has not cost this Convention anything. The paper and so forth was supplied by the State, so that is the total bill to date that has been presented to your committee.

I don't know whether the Convention is interested in knowing what the cost of printing the Constitution will be, but we have an estimate that 500,000 copies would cost about $25,000. We have only estimated the printing of the Summary and the Address to the People of 2,500,000 copies at $15,000. Now, if the Convention decides to do any more printing or advertising—anything that has to come before this committee—we would like to know it in time to make the contracts.

PRESIDENT: Are there any questions the members of the Convention would like to ask Vice-Chancellor Kays?

MR. SPENCER MILLER, JR.: Mr. President: May I ask the Vice-Chancellor whether it is anticipated that there will be copies of the Constitution printed in all of the newspapers, as was the practice both in 1844 and in 1944?

MR. KAYS: That is something for the Convention to decide. We haven't considered that.

PRESIDENT: Is the chairman of the Committee on Submission and Address to the People prepared to comment on that?

MR. KAYS: That's something that the Convention will have to decide.

MR. SAUNDERS: Mr. Chairman: The reason that the Report from our committee is being held up is because we are taking a definite negative recommendation on that subject out of the Report. However, this Convention should know that our committee voted unanimously that we should not use the paid advertising and printing in that way, and it will be done only if the Convention so orders. It will not be so recommended by our committee.

PRESIDENT: But this matter will come up for consideration at the time of your Report?

MR. SAUNDERS: There will be no mention of it in the Report.

MR. KAYS: Mr. Chairman.

PRESIDENT: Vice-Chancellor Kays.

MR. KAYS: May I say that we are informed by the Secretary of State's office that the printing of the Constitution of 1944—there were 500,000 copies printed and they ran short and after that 25,000 copies more were ordered and printed.

PRESIDENT: Is there any further discussion of this point at this time? If not, may I now ask Mr. Gemberling if he is ready to report for the Committee on Rules, Organization and Business Affairs?

MR. GEMBERLING: Mr. President and delegates: I had a longer report to submit this morning, but Mr. Crystal has not arrived, so the only thing I will report on this morning is the unexpended balance—this includes all the commitments and all the bills—unexpended balance, $281,452.73.

PRESIDENT: Any questions?

This brings us, I think, ladies and gentlemen, to the presentation of memorials. Those who have memorials to present kindly do so at this time . . . Mr. Schlosser?

MR. FRANK G. SCHLOSSER: Mr. President: On behalf of myself and Delegates Ferry of Bergen, and Lance and Schenk of Hunterdon, I present a resolution, the effect of which is to memorialize the Legislature, asking the Legislature and the Governor to reconsider the criminal laws of the State and to consider codifying such laws.

PRESIDENT: The Secretary will read the memorial.

SECRETARY: Resolution by Messrs. Schlosser, Ferry, Lance and Schenk *(reading):*

> "Whereas, this Constitutional Convention has deemed it to be inadvisable to include within its draft of a new Constitution, to be submitted to the people for their approval at the next General Election, a provision abolishing prosecution for crimes at common law; and
>
> Whereas, this Constitutional Convention deems it to be fair and just that all crimes ought to be defined by statute in order that the citizens

of New Jersey may be enabled to know what acts on their part will subject them to criminal prosecution;

Be It Resolved:

1. The Governor and the Legislature are hereby memorialized to reconsider the criminal laws of the State of New Jersey and to consider codifying such laws, to the end that all crimes may be defined by statute before commission of the fact, and in order that the citizens of this State may be enabled to know what acts on their part will subject them to criminal prosecution.

2. The Secretary of this Convention is hereby directed to transmit a duly authenticated copy of this Resolution to the Governor forthwith, and to each house of the Legislature at the opening of the next regular legislative session."

PRESIDENT: Is the memorial seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any discussion?

MR. LELAND F. FERRY: Mr. Chairman: I would just like to say I spoke in favor of this matter when it came up before. I am still very much interested in its passage, and I think if the Legislature does take that action it will be an important step in the administration of justice in this State. I intend to support the resolution and I hope it wins approval of the Convention.

PRESIDENT: Is there further discussion? . . . Mr. Park?

MR. LAWRENCE N. PARK: Mr. President and fellow delegates: I spoke against the proposal when it was designed to incorporate the contents in the constitutional revision. I do not oppose it as a matter of statute law and urge the adoption of the resolution.

PRESIDENT: Is there further discussion?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The memorial is adopted . . . Are there other memorials to be presented? . . . Senator O'Mara?

MR. O'MARA: Mr. President: I have a resolution which I request the Secretary to read.

SECRETARY: Resolution by Senator O'Mara *(reading):*

"RESOLVED, that this Convention does hereby memorialize the Legislature of the State of New Jersey to enact legislation fixing the annual salaries of Senators at $3,000, and of members of the General Assembly at $2,500."

MR. O'MARA: Mr. President: The existing Constitution fixes the salaries of members of the Legislature at $500. That was written into the Constitution by an amendment of 1875.

When the Committee on the Legislative was considering the

question of legislative salaries, it was felt that it would be unwise to freeze such salaries by constitutional enactment, but that the Legislature should itself fix the salaries, subject to the restriction that any change in the salaries should not become effective until the legislative year following the next general election for members of the House of Assembly following the enactment of the legislation. The Committee felt that it should ask this Convention to memorialize the Legislature as to the salaries which should be fixed when the question comes before them at the opening of the next legislative session.

Practically every witness who appeared before the Legislative Committee felt—I say practically; I'll say *every* witness who appeared before the Legislative Committee and discussed the question of legislative salaries felt—that the present provision of $500 annually was grossly inadequate, and that $500 in 1875, when the amendment was adopted, represented far greater compensation than $500 at its present purchasing power represents, and that the duties of members of the Legislature have increased vastly in volume since 1875.

A careful analysis of the salaries paid to members of the legislatures of comparable states reveals this: in Pennsylvania the salary of members of the Legislature is fixed at $3,000 a year, with additional compensation of $500 for every special session, and if the special session exceeds one month in duration then the allowance for the special session is $750. The salary paid by the State of New York is $2500 a year and there is considerable agitation at the moment that that be substantially increased. However, the New York Constitution does not prevent the payment to members of the legislature of sums in addition to the stated salary, and I am advised that certain positions in the legislature, including the chairmanship of important committees and perhaps the majority leader of the two houses, pay compensation far in excess of the annual stipend of $2500 a year. As a matter of fact, I am told, although I cannot vouch for the accuracy of the statement, that one legislative officer in the New York Legislature, by virtue either of the fact that he is majority leader or the chairman of one of the important committees, receives annual compensation approximating $10,000. In Illinois the annual stipend is $2500, but they have only biennial sessions, which means that the compensation is $5,000 per session. In Massachusetts the salary is $2500 annually. So that the range which is suggested by the report of the Committee on the Legislative Article is well in line with the provisions of comparable states.

The differential between the salary suggested for members of the Senate and members of the House of Assembly comes from a general recognition that both the responsibility and the volume of

work of members of the Senate, especially in those times of the year when the Legislature is not in session, is far greater than that of members of the House of Assembly. I think that the recommendation of the committee in this respect is a fair and equitable one, and I hope it will have the support of the delegates.

FROM THE FLOOR: Seconded.

PRESIDENT: The resolution is seconded . . . Mr. Lightner?

MR. MILTON C. LIGHTNER: May I, through you, request some information of Mr. O'Mara?

PRESIDENT: Certainly.

MR. LIGHTNER: You have referred to the existing arrangements for legislative salaries in the various states. I am in no respect opposed to the proposal to liberalize salaries, which I think is long overdue, but is it not true that there is no state which has any distinction between the salary paid to members of one house and the salary paid to members of the other house?

MR. O'MARA: That, frankly, I am unable to answer. That might be so, Mr. Lightner, but whether it is or not—

MR. LIGHTNER: It is my impression that that is the case, and I have seen that statement made in print. I do not vouch for its correctness. I have also seen the observation made, which I confess appeals to me, that in so far as there is any distinction between the responsibility which may rest upon the member of one house of the Legislature as against the other, there are certainly compensating advantages in being a member of that house as against being a member of the other; and that in so far as the increase in salaries is a gesture in the direction of trying to overcome such obstacles as may exist to getting a high type of representation in our legislatures, that we certainly want that high type of representation in one house just as much as we want it in the other. I question very much as to whether it is desirable for this Convention, in expressing to the Legislature our feeling that salaries should be increased—I question as to whether it is desirable for this Convention to go further and to express a definite opinion that the salary paid to members of one house of the Legislature should be larger than the salary paid to the members of the other house of the Legislature, irrespective of which house it is that we propose to have receive the higher salary.

MR. O'MARA: Mr. President: As I said in answer to Mr. Lightner, I cannot say whether or not there are states in which a distinction is made, but I know that it was the opinion of the committee and the opinion of responsible officers of the State Government who were consulted on this question, that there was a very much greater amount of responsibility on the members of the Senate and a very very much greater demand upon their time. That is especially so, as I said, at times when the Legislature is not in session,

because of the practice that prevails in most of the counties—certainly the counties which have the larger delegations—of those who are interested in legislative matters seeking out the Senator from that county and corresponding with him, asking for conferences with him, and so forth.

I think that what we desire to achieve in the fixing of legislative salaries is admirably expressed in an excerpt from a report of the New York Constitutional Convention of 1938, in which it was said that:

> "Assuming that the Legislature should be representative of all classes of citizens, at the present rate of compensation it has become practically impossible for a poor man to accept office and properly attend to its duties. While salaries should not be so large as to make the position attractive merely from the money point of view, it should be sufficient to reasonably compensate for services of the member and prevent him from actual loss. An increase in salary will result in many more intelligent and well qualified persons aspiring to the position and the general result will be an improvement in the general character and standing of the Legislature."

PRESIDENT: Mr. Cowgill?

MR. JOSEPH W. COWGILL: It seems to me, Mr. Chairman, that if this matter were left to the Legislature it would be difficult to have the 60 Assemblymen decide that they are any less valuable than the 21 Senators, and while I realize that being a Senator is much more exclusive, the fact is that in a great many of our counties which have one Assemblyman and one Senator, the Assemblyman does just as much work as the Senator.

I am thinking of a practical consideration, too. In this Constitution we have provided that Assemblymen shall run for office every two years, whereas the Senators will run every four years. Since we put that additional expense on the Assemblymen I think we ought to compensate them just as well as we do the Senators, and I offer an amendment to the resolution to make that figure $3,000 for both of them.

PRESIDENT: Is the amendment accepted by the mover?

MR. O'MARA: I accept the amendment.

MR. J. SPENCER SMITH: Mr. President: May I, through you, ask Senator O'Mara a question?

PRESIDENT: Please do.

MR. SMITH: Senator O'Mara, do you know of any other state where a county is confined to one senator in the county?

MR. O'MARA: I have not examined into that, and therefore must answer that I do not know.

MR. SMITH: If there is one senator, maybe that does make a difference in the compensation. I was just raising the question.

PRESIDENT: Is there further discussion on this amended resolution?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

MRS. JANE E. BARUS: Is this on the amendment?

PRESIDENT: No. This is on the original resolution. The amendment has been accepted by the mover. It now provides for $3,000 for members of both houses . . . Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted.

Are there further memorials to be presented?

MR. O'MARA: Mr. President: I have a resolution which I would like to have the Secretary read.

SECRETARY: Resolution by Mr. O'Mara *(reading):*

> "RESOLVED, that this Convention does hereby memorialize the Legislature of the State of New Jersey to enact legislation providing for a periodic revision of the statutory law of the State."

MR. O'MARA: Mr. President?

PRESIDENT: Senator O'Mara.

MR. O'MARA: During the deliberations of the Committee on the Legislative there was submitted to it a proposal that there be inserted in the Constitution a provision requiring the periodic revision of the statutory law of the State. The Committee felt that that proposal had no place in the fundamental law of the State, but it recognizes the advantage of having such revisions and that it is desirable for the Legislature to make provision for them. The purpose of this memorial is to bring it to the attention of the Legislature that this Convention recognizes the desirability of such revisions and advises the Legislature to make the necessary provisions. I move the adoption of the resolution.

PRESIDENT: Is the resolution seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion?

FROM THE FLOOR: Question!

PRESIDENT: The question is called for . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The resolution is adopted.

Are there further resolutions to be presented? Senator O'Mara?

MR. O'MARA: Mr. President, I have a resolution which I would like to present.

SECRETARY: Resolution by Mr. O'Mara *(reading):*

> "RESOLVED, that this Convention does hereby memorialize the Legislature of the State of New Jersey to enact suitable legislation curtailing and regulating the practice of lobbying in the legislative chambers."

MR. O'MARA: Mr. President, ladies and gentlemen of the Convention:

There was submitted to the Committee on the Legislative, during its deliberations, a proposal that there be a constitutional provision regulating lobbying, and calling upon the Legislature to curtail and regulate that practice. The committee felt that that provision had no place in the fundamental law of the State, principally because it would be utterly impossible to define lobbying within the scope of a constitutional provision.

Those of us who have had legislative experience recognize the difficulty of dealing with this problem. There are all types of lobbying, as Senator Barton said recently on the floor of the Convention. Lobbying, as it is generally termed, sometimes accomplishes a great deal of good. Naturally, members of the Legislature cannot be expected to have the technical knowledge or experience which is necessary in order to form a proper judgment on some of the bills which come before them for consideration. There are bills dealing with all phases of our social and economic life, and I know that I, for one, in my experience in the Legislature, have found it very necessary at times to seek advice from those who are familiar with the special phase of life that a particular bill might deal with.

Nevertheless, it is thought advisable that there be some regulation of the practice of lobbying, perhaps by requiring registration of those who are professed legislative agents, whose business it is to give information to the members of the Legislature on the bills which affect their particular sphere of activity. The reason for this resolution is to have this Convention call the problem to the attention of the Legislature and urge upon it the advisability of dealing with the question of lobbying.

I move the adoption of the resolution.

PRESIDENT: Is the resolution seconded?

MR. COWGILL: Second.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Some "Noes")

PRESIDENT: The resolution is adopted . . . Mr. Jacobs.

MR. JACOBS: Mr. President, earlier this morning I referred to Appendix "B", which enumerates five recommendations by the Judiciary Committee. I now seek the approval of the Convention on each of the five recommendations.[1]

The first is a recommendation for the establishment of a commission—

PRESIDENT: What page is it that says this, Mr. Jacobs?

MR. JACOBS: Page 23. A recommendation for the establishment of a commission to prepare tentative rules and recommend such legislation as may be necessary during the interval between the adoption of the Constitution and the effective date of the Judicial Article.

PRESIDENT: Do you wish these acted on separately?

MR. JACOBS: I think so.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: If not, will all in favor please say "Aye."?

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

MR. JACOBS: Item 2 recommends that the Legislature study the problem of the lower courts, bearing in mind certain basic principles that the committee recommends: that appointments to county courts and to other local courts should be restricted by law to residents of the area served by the respective courts, and that judges of all courts shall be required to devote full time to the performance of judicial duties. Where the function is now only part-time, the work of several courts might be merged so that the judges can be fully occupied.

PRESIDENT: You have heard the motion. Is it seconded?

MR. A. J. CAFIERO: Second.

PRESIDENT: Is there any discussion?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

[1] See the Report of the Committee on Judiciary, which appears in the Appendix in Vol. 2.

PRESIDENT: Carried.

MR. JACOBS: The third relates to pension legislation. You might recall that the Constitution contains two provisions for retirement. There is an age requirement, and judges who have acquired tenure, that is life tenure after a seven-year appointment, must retire at 70. The committee's recommendation is that retirement in that situation should be at full salary. Further, with respect to judges who are retired because of disability, the committee recommends that a pension be provided subject to a reasonable minimum period of prior service.

I move the approval.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried.

MR. JACOBS: The fourth recommends the adoption of appropriate rules calculated to set up an organization similar to the federal office of Administrative Director, which organization would provide adequate statistical information and other materials more specifically referred to in paragraph 4 of the Report.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried.

MR. JACOBS: Finally, the committee recommends that although the present method of handling matrimonial cases is far superior to previous methods, the subject be studied further with a view toward improving the handling of matrimonial cases.

I move the approval of that recommendation.

PRESIDENT: Is the motion seconded?

MR. ORCHARD: Second.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

Are there other resolutions or memorials to be presented? . . . Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President, I wish to offer a resolution and request the Secretary to read it.

SECRETARY: Resolution by Mr. Lewis *(reading):*

"Whereas, this Constitutional Convention of 1947 adopted a Judicial Article giving constitutional status to the three upper courts, leaving the establishment, alteration and abolishment of the inferior courts and their jurisdiction, to the Legislature, and

Whereas, the Schedule of said Judicial Article, among other things, provides

'Until otherwise provided by law, all courts now existing in this State, other than those abolished in paragraphs two and three hereof, shall continue as if this Constitution had not been adopted.'

and by reason of said provision our present inferior court system will continue unless otherwise provided by the Legislature, and

Whereas, the Delegates of this Constitutional Convention are mindful of the immediate need for changing, simplifying and integrating our inferior court system,

Now Therefore be it Resolved

1. That the Legislature is hereby memorialized to consider the entire inferior court system of this State and to take such action as may be deemed necessary to establish a modern and efficient inferior court system to become effective if at all possible, by September 15, 1948, the date that the Judicial Article adopted by this Convention is to become effective.

2. The Secretary of this Convention is hereby directed to transmit a duly authenticated copy of this resolution to the Governor forthwith, and to each house of the Legislature at the opening of the next regular session."

MR. LEWIS: Mr. President and fellow delegates:

This resolution speaks for itself and it is definitely in keeping with the recommendations of the Judiciary Committee. As we realize, the Judicial Article gives constitutional status to the three upper courts. The inferior court system, however, is left entirely to the Legislature. Now, we are all acquainted with the defects in the inferior court system, in particular, the right to elect judges without regard to their qualification, or education, experience, character or fitness. It is really through the inferior courts, the lower courts, that the people first come in contact with the judicial system of this State. For us to have a strong superior court structure and yet a weak inferior court system would indeed be to build a beautiful edifice on a foundation of quicksand.

The purpose of this resolution is to direct the Legislature to give this thought immediate attention, so that if at all possible the inferior court system can be modified and modernized by September 15, which is the date that the Judicial Article will become effective. In other words, the inferior court system should become effective the same time the Judicial Article relating to the upper court system becomes effective.

I move the resolution.

PRESIDENT: Is the resolution seconded?

FROM THE FLOOR: Second.

FROM THE FLOOR: I would like the resolution read again.

PRESIDENT: The request has been made that the resolution be read again. Will you read it, Mr. Secretary?

SECRETARY: I will be very glad to.

(The resolution was re-read by the Secretary)

PRESIDENT: Mr. Cowgill.

MR. COWGILL: Mr. Chairman and members of the Convention:

It seems to me that this resolution by Senator Lewis, while it may be a very valuable one, is so long and contains so much, and it is very possible that some of the delegates could improve upon it, that I think it ought to be mimeographed before we pass on it. I make that request.

MR. LEWIS: Mr. President, I shall be glad to have this matter laid over until after each delegate has had an opportunity to read a mimeographed copy of the proposed resolution.

PRESIDENT: We shall have the resolution mimeographed and distributed as promptly as possible, to be considered later.

Are there other memorials to be presented? . . . Mrs. Barus.

MRS. BARUS: Mr. Chairman, I am not sure that this is anything so formal as a memorial—it probably isn't—but I would like to suggest that it be the feeling of the Convention that if we end up with money in the bank, as we seem to have every prospect of doing, we provide for generous compensation to the staff and the secretaries who have done such excellent work for us during the sessions.

PRESIDENT: Do you offer that as a motion, Mrs. Barus?

MRS. BARUS: Yes, I will.

MR. O'MARA: Second it.

PRESIDENT: The motion is seconded.

MRS. BARUS: I suppose it should go as a recommendation first to the Committee on Rules, Organization and Business Affairs, if I have the title correct.

MR. COWGILL: Mr. Chairman, I would ask that this resolution

be laid over. The Rules Committee has been sweating with this proposition every meeting, and it has been the consensus of the committee that this matter should be taken up at the end because we are not yet in a position to know precisely what the printing is going to cost. And until we have those figures, we don't know just how much money there is going to be. In view of the great amount of time and consideration that the Rules Committee has given to this problem, I would ask that this resolution lay over until further consideration by that committee.

PRESIDENT: Mrs. Barus.

MRS. BARUS: I have no idea of seeming to dictate to that committee, and I realize, of course, that it would have to wait until the bills are all in or nearly in before they could arrive at any figure. It was simply an expression of a general recommendation, and I think it should go to the committee. I will be very glad to let it lay over.

PRESIDENT: I understood, Mrs. Barus, your motion really to mean that it would be the desire of the Convention that the committee give appropriate consideration to this compensation if funds were available.

MRS. BARUS: Yes. That would be a better way of putting it. I think we might as well vote on it now in those terms, because it certainly doesn't dictate in any way to the committee.

PRESIDENT: I personally have the feeling—maybe I have no right to have a feeling up here, Mr. Cowgill—but I have a feeling that Mrs. Barus' motion has in mind exactly what you have in mind.

MR. COWGILL: May I say for the information of the delegates that the Rules Committee has already adopted a resolution to the effect that the staff will be paid and paid liberally, in so far as we can with the funds at hand? The Rules Committee has already adopted such a resolution.

PRESIDENT: There seems, then, to be no inconsistency between the action by the Rules Committee and Mrs. Barus' motion, and since it is seconded, I will call for the question. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried . . . Mr. Gemberling.

MR. GEMBERLING: Mr. President, I wanted to say that the Rules Committee has a schedule here. I am not ready to report on it; it is not completed. It won't be completed until the end of our session, but we are certainly taking into consideration the young

ladies and the young men who have put in extra time. I will report it at the next meeting.

PRESIDENT: Are there further memorials to be presented at this time? . . . Mr. Miller.

MR. MILLER: I have a memorial I would like to ask the Secretary to read.

SECRETARY: Resolution by Mr. Miller *(reading):*

> "RESOLVED, that this Constitutional Convention memorialize the Legislature as follows:
>
> That a Joint Committee of the two Houses of the Legislature be established by law and authorized immediately upon the ratification of the proposed Constitution by the people to engage an adequate full-time staff to conduct research to determine the new and amended legislation needed to carry out the mandates and facilitate the operation of the new Constitution."

PRESIDENT: Mr. Miller.

MR. MILLER: Mr. President and delegates:

The responsibilities which will devolve upon the different branches of the government in preparing for the transition from the old Constitution to the new will be tremendous. This memorial will indicate to the Legislature our belief that a technical staff on a full-time basis be employed to assist in the necessary research to aid this transition. The State of Missouri, which recently revised its own Constitution by a delegate convention, set up a so-called Committee on Legislative Research prior to the conclusion of the convention. A grant of $100,000 was made available to that committee by the Legislature, and they set about the task of working and preparing for this transitional period. That staff alone was responsible for the compilation of the necessary research and the preparation of some 450 bills that were required in order to effect the transition from the old Constitution to the new.

This memorial which I am presenting in a sense implements the proposal which has already been suggested by Delegate Jacobs in connection with the Judiciary Article. It expresses our belief that adequate research should be provided for this very important task which we have laid on them.

I move the adoption of the resolution.

PRESIDENT: Is the resolution seconded?

FROM THE FLOOR: Second.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: Are you ready for the question? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted.

Are there further resolutions or memorials to be presented at this time? . . . If not, the chair would like to declare a ten-minute recess, but calls first upon Senator Van Alstyne.

MR. VAN ALSTYNE: Mr. President, I would like to ask if the members of the Executive Committee would meet as soon as you recess in our committee room, 109?

PRESIDENT: May I ask, Senator, how long you would wish to be in conference?

MR. VAN ALSTYNE: I would think three to five minutes.

PRESIDENT: The chair will declare a ten-minute recess.

Will the delegates kindly wait just a moment. Mr. Saunders has asked the floor.

MR. SAUNDERS: May the Committee on Submission and Address to the People please meet somewhere over there for a moment or two?

PRESIDENT: A recess is declared.

(Convention reconvened at 12 o'clock noon after recess)

PRESIDENT: Before we recessed, Colonel Walton, I think, presented a resolution creating a committee to draw up a certain tribute to the workers who have cooperated so well with the delegates during the Convention. At that time we appointed a committee, as I recall, consisting of Mr. Orchard and Senator O'Mara and Mr. McMurray. I would like to add to that committee, if I may, with their consent, Mrs. Barus and Mrs. Katzenbach, to make it a committee of five.

I would like to recognize Senator Van Alstyne.

MR. VAN ALSTYNE: If you don't mind, sir, would you recognize Mr. Clapp?

PRESIDENT: Mr. Clapp.

MR. ALFRED C. CLAPP: Mr. President: The Executive Article, as proposed, authorizes the Governor to investigate and remove the officers and employees of the Legislature. This, presumably, was not intended, and the Executive Committee has asked me, on behalf of the Committee on Arrangement and Form, to correct this situation.

I think, in order to go through the formalities, we should have a motion to reconsider the vote on third reading on the Executive Article, and then I shall ask for your unanimous consent to make this correction, which will consist of inserting the words "officer or employee" in Section IV, paragraph 5 of the Executive Article.

If you have before you the Report of the Committee on Arrangement and Form as to the Executive Article, turn to page 8, where

you will see paragraph 5. In line 4 of that paragraph add after the word "member"—page 8—

PRESIDENT: Will you speak a little louder, Mr. Clapp, if you don't mind, and get right under the microphone?

MR. CLAPP: On line 4 of paragraph 5, on page 8, after the word "member," I am going to ask to have the words "officer or employee" inserted, so that the first sentence will read:

> "The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer."

That, you see, will apply to the language defining an "officer or employee" in the rest of the paragraph.

Therefore, Mr. President, I move that the vote on third reading as to Committee Proposal No. 3-1 be reconsidered.

MR. VAN ALSTYNE: I second the motion.

PRESIDENT: You have heard the motion. All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

MR. CLAPP: Now, I have a written amendment, Mr. President.

SECRETARY *(reading):*

> "Amend paragraph 5, Section IV, of the Article on the Executive (page 8 of the Report of the Committee on Arrangement and Form) by inserting in line 4 after the word 'member' the following words: 'officer or employee.'"

MR. CLAPP: I move this resolution, and ask for your unanimous consent.

PRESIDENT: Is the motion seconded?

(Seconded from floor)

PRESIDENT: Is there any discussion? . . . Mr. Van Alstyne.

MR. VAN ALSTYNE: Mr. President and fellow delegates:

I humbly apologize that we have to come back and ask your indulgence to amend the Executive Article again. Apparently, no matter how hard you try to express exactly what you have in mind, it's very difficult to think of every contingency. I want to give full credit for pointing out this error to Mr. Charles DeF. Besore, who called my attention to it this morning.

I would like, just briefly, to enlarge upon the remarks of Mr. Clapp, by saying this: Unless this change is made, the Governor could investigate the conduct in office and remove from office, for instance, the Clerk of the House of Assembly, or the Secretary of

the Senate. In case the Legislature got into a row with the Governor and it wanted to investigate the conduct of some officer or some appointee of the Governor and appointed a committee and hired counsel for that purpose, which it would be perfectly right and proper for it to do, the Governor, unless the amendment is put in, could investigate the conduct of such persons and throw them out of office and remove them, and the Legislature could keep making the appointments and the Governor could keep throwing them out. We feel that the Legislature and all appointees of the Legislature should be absolutely free from any interference by the Governor whatsoever.

I heartily second this motion.

PRESIDENT: Is there any discussion?

FROM THE FLOOR: Question!

PRESIDENT: The question is called for . . . All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried unanimously.

MR. CLAPP: Mr. President, I move Committee Proposal No. 3-1 for third reading.

PRESIDENT: Is it seconded?

MR. COWGILL: I second the motion, but I want a roll call on that.

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried.

FROM THE FLOOR: Let's have a roll call on that.

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barus, Brogan, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Feller, Ferry, Gemberling, Glass, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, O'Mara, Orchard, Park, Peterson, H. W., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young—64.

NAYS: None.

SECRETARY: 64 in the affirmative, sir; none in the negative.

PRESIDENT: The chair will recognize Mr. McMurray.

MR. McMURRAY: Mr. President, ladies and gentlemen:

Your Committee on Arrangement and Form submits at this time the draft of the last Article to be considered by that committee.

I would like to take this opportunity to announce that the members of that committee will meet immediately upon the adjournment of the Convention for a brief meeting.

Mr. President, I submit herewith the Final Report of the Committee on Arrangement and Form on the Taxation and Finance Proposal, and move its adoption.

PRESIDENT: You have heard the motion. Is it seconded?

MR. COWGILL: I second it.

PRESIDENT: Is there any discussion? . . . Are you ready for the question? . . . Mr. Lightner.

MR. LIGHTNER: I rise for an inquiry. Mr. McMurray referred to there being a meeting of the committee. Is this motion that is before the Convention now, one which would adopt this Report?

PRESIDENT: Yes.

MR. LIGHTNER: There are several changes in the language of this Report from the language that was sent to the committee. I don't think that those changes should be adopted without some discussion and consideration, and I do not wish to discuss them now unless this is the only opportunity. I thought that perhaps the reference to the committee was to consider it?

PRESIDENT: Mr. McMurray, will you comment on that?

MR. McMURRAY: Through you, Mr. President. Mr. Lightner, the committee meeting I referred to was the meeting of the Committee on Arrangement and Form to consider other matters, not this matter.

MR. LIGHTNER: Then through you, Mr. Chairman, may I address an inquiry?

PRESIDENT: Please do.

MR. LIGHTNER: There has been a change made in the second sentence, and I would like to know why?

MR. McMURRAY: There have been no substantive changes made without consultation with the chairman of the Committee on Taxation and Finance, and I would rather you address your question to him, if you will, Mr. Lightner.

MR. LIGHTNER: There has been a change in the second sentence and I would like to know why that change?

MR. McMURRAY: Is the change, in your opinion, substantive in nature?

MR. LIGHTNER: Well, if it is not substantive, I would like to know what it is? I don't understand the change, and from my reading of it I am very much opposed to it, but I don't want to get into an altercation on something that isn't necessary.

PRESIDENT: May I interrupt and suggest that for the benefit of the delegates you explain the nature of the change to which you are referring?

MR. LIGHTNER: As I read this Report, the second sentence of the first section of the Article on Finance has been changed so as to break it practically into two sentences, by putting in a semicolon after the word "value," which appears in the fifth line, and then adding, as I read it, the words "such real property."

Now, it would appear to me that that may have been put in with a view to altering materially the sense of this section, and unless I get some explanation which is other than that, why I would certainly wish to enter an objection to any such alteration.

PRESIDENT: Mr. McMurray.

MR. McMURRAY: The function of the Committee on Arrangement and Form does not deal with anything of a substantive nature, and if this represents a substantive change, I would ask Senator Read, with whom the matter was discussed, to reply to Mr. Lightner.

PRESIDENT: Senator Milton.

MR. JOHN MILTON: I defer, Mr. President, to the chairman of my committee, and if the subject needs any further explanation after he shall have finished, I shall be delighted to give it.

PRESIDENT: Mr. Read.

MR. READ: I went over this matter with the Committee on Arrangement and Form this morning. I talked to quite a few of the delegates. I had also talked to Delegate Lightner, on my way in. He was raising this question, and I took it up very thoroughly with others. It's not the intention with this change to make any change in substance. It's merely to make it more readable.

As it was, you could imagine a couple of commas in there and give a lot of work for future interpretation. There is a redundancy here to which I understand Mr. Lightner objected, but I think you have got to make that redundancy because you mention "such real property" which has been added in after the semicolon, because having put the semicolon in you might not think it applied to "real property." It's merely done for the sake of clarity.

While I'm on my feet, I might suggest to the delegates generally, and to the Committee on Submission and Address to the People, that in the original bill as printed, we had Section III, which was the amendment offered and adopted at the request of Mrs. Barus.

That has been put in as paragraph 9 of the Report of the Committee on Arrangement and Form. And also, as I suggested the other day, you will note that the tax clause and the two exemption clauses have been numbered 1, 2, and 3, instead of making a very large clause.

I think the changes made by the Committee on Arrangement and Form are to be commended. They have clarified the matter and I think they put the text in very, very good shape. I may be entirely wrong—perhaps Delegate Lightner doesn't agree with me—but I talked to quite a few persons, including those from Hudson County who had a great stake in here, and the feeling seems to be that it is clarified by this arrangement, or at least made more certain.

PRESIDENT: Is there any further discussion? Are there any further questions? . . . Mr. Lightner.

MR. LIGHTNER: If you ask whether that satisfies me, it definitely does not. I don't know whether unanimous consent is needed on a thing of this kind or not, but I certainly can't go along on any such change.

When this clause was brought out on the floor for discussion at the last meeting of the Convention, the question was raised as to whether or not the language of this revised clause would permit anything in the way of classification or flexibility in our future tax structure. There was by no means a unanimity of opinion on that subject. I am one of those who are definitely advocates of flexibility. I believe that one of the vices of the tax clause that has been in the Constitution for all these years was the phrase "according to its true value." Because of the fact that it created a certain standard by constitutional enactment which made it very difficult for the Legislature to get around it in this modern day, New Jersey has suffered. We are the worst state in the Union from the point of view of collecting our tax revenue from one tax source, the tax on real estate, and everybody knows that fundamentally that is due to the lack of flexibility in the tax clause.

Now, in this proposal which came before us at our last meeting and which was adopted by an overwhelming vote, many of us who perhaps didn't entirely agree with it were perfectly willing to go along, rather than have dissention on it at the last moment. But when that clause came before us, it came before us as a compromise and was adopted in that spirit.

If there is in this clause any hope of flexibility—not to change the status of taxation of second-class railroad property; I think that is beyond any question, I think that is settled—but, if there are any other opportunities for flexibility in this clause I, for one, object to any re-arrangement and additional words which would

tend to remove any hope of that sort of flexibility. As far as taxation of personal property is concerned, we have given flexibility by the elimination of the words "true value." And as far as the taxation of real estate is concerned, this change is intended to remove any hope of flexibility, and I object to it.

PRESIDENT: Senator Milton.

MR. MILTON: May I assure Mr. Lightner and the delegates here, that no such intent was in the mind of the persons who suggested the changes which appear in this draft as reported by the Committee on Arrangement and Form. The changes which have been made are simple and are principally grammatical and solely for the purpose of producing clarity. They stem from an objection which, I think, originally was made by Mr. Cavicchia, and later by Mr. Clapp. The change which has been made, as I read the Report of the committee, consists of the inclusion in the second sentence, after the word "value," of a semicolon, and also the following words: "such real property shall be." Originally, there was no punctuation mark and the original sentence read, that is, that portion of it: "shall be assessed according to the same standard of value and taxed at the general tax rate."

I think the criticism of Mr. Cavicchia and Mr. Clapp stemmed from their fear that the original language would give automomy to the respective taxing districts so far as the standard of value which was to regulate the assessment of property was concerned, and that in districts in which second-class railroad property might be found, such as Paterson, Elizabeth, Jersey City, Weehawken, West New York, etc., you might find different standards of value being set up by which the assessment of such property was to be made. To remove any doubt as to the limitation, so that there would be uniformity throughout the various taxing districts in which second-class railroad property may be found, and to insure that the same standard of value would be applied in all of those respective taxing districts, this change was made.

The semicolon was inserted after the word "value" so as to make certain that the first phrase or portion of the sentence dealt only with assessment. The remaining portion of the sentence deals with the taxation of second-class railroad property, as distinguished from its assessment.

The words "and such real property shall be" were added so as to identify without any uncertainty that it was such property as is referred to in the first portion of the sentence, that the right to tax was granted.

I assure the Convention that while I had little to do with this—it was submitted to me late yesterday afternoon at my office in Jersey City for my approval, whatever that might mean—the drafts-

men sought to meet the objection of Messrs. Cavicchia and Clapp, and to make it certain beyond doubt that in the various taxing districts of the State uniformity in applying standards of value would be guaranteed. There is no more inflexibility which results from this language addition than existed heretofore. In my judgment, the clause is just as flexible, so far as establishing classifications of property is concerned. Indeed, under the present Constitution there is ample authority for classifications of property, and it is my conviction and opinion that this clause, as it has been submitted by the Committee on Arrangement and Form, does meet the criticism which was raised by Messrs. Clapp and Cavicchia, and retains all of the flexibility that existed in the clause before it was amended. And I may add further, for whatever benefit it is, that in my judgment the criticism of Messrs. Clapp and Cavicchia was a bit of nicety. I don't think there was real foundation for their beliefs.

I submit that the committee's Report, in the form in which it is presented, should be adopted.

PRESIDENT: Mr. Lightner.

MR. LIGHTNER: Mr. Chairman, if I had the astuteness and the ability to express myself, which is possessed by my good friend, Senator Milton, I probably could have made myself much clearer when I spoke before, and would not again be consuming the time of the Convention.

However, Senator Milton has expressed, as I see it, very clearly and precisely the point that brought me to my feet. As I understand this clause, we have struck out the phrase "according to its true value" and we have substituted the expression "standard of value," which presumably is a standard which must be fixed under legislative enactment.

I understood Senator Milton to make a reference to the fact that we might have standards of value. You refer to the autonomy of taxing districts in fixing separate standards of value; that that was a possible interpretation of this clause as it was originally expressed. Am I correct, Senator? I don't mean, in the slightest respect, to question your phraseology.

MR. MILTON: I said that that was the fear, as I understood it —as it was explained to me, not by the gentlemen themselves, but by a third party—that that was the fear of our associates Clapp and Cavicchia. I don't share that fear, and I didn't. But those interested in establishing beyond doubt that the standards of value are to be the same irrespective of the location of the property, no matter in which taxing district it may be found, and that the standards of value shall apply alike to all real property coming within the category, namely, locally assessed or assessed and taxed by the State or allotment, etc.—to make certain that the fears of Messrs. Cavic-

chia and Clapp would be removed, the change was made. I don't share their views that as originally presented in the Proposal there could have been complete autonomy in the various taxing districts so far as standards of value are concerned.

MR. LIGHTNER: That is precisely my point, Mr. Chairman. I do not wish to belabor it, but that was the language which was in this clause when it was presented to this Convention as a proposed compromise. These questions were raised. Senator Van Alstyne was on the floor. Senator Van Alstyne expressed an opinion, which he said was perhaps unduly conservative, as to the possible interpretation of the clause. With that doubt before us and with eminent delegates who have been referred to by the last speaker expressing a doubt, this Convention adopted this clause. Then it came back to us from the Committee on Arrangement and Form which, under the Rules, is for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It is not there for the purpose of taking out of this clause language which may be interpreted by the courts at some future date as sanctioning a legislative enactment which the Legislature had adopted in the interests of a flexible tax system. I maintain my objection.

PRESIDENT: Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: Mr. President, I think Senator Milton has expressed it very clearly. I don't wish to take the time to repeat what he said.

It was I who, the other day, raised a question as to the ambiguity of the language. I raised it because I thought that the provision permitted of varying assessments, of varying standards of value among the several taxing districts, and I said that the language was not clear as to whether the intent was that that should be so or not. Mr. Van Alstyne who introduced it—I think it was Mr. Van Alstyne who spoke in response to my question—said that the intention was that there should be a uniform standard of value, statewide, and that the only variation would be as to the tax rate in the particular municipalities.

I think this language removes the ambiguity that I saw. It clarifies the provision, so far as I am concerned.

PRESIDENT: I think it is perfectly obvious to all that this is a question of phrasing and that there was no intent, even distantly in anyone's heart or mind to twist the meaning. What we are concerned with here is arriving at a phrasing which will remove so far as possible any of these uncertainties to which reference has been made. And I know that Mr. Lightner did not have in mind, in any way, impugning the motives of those who are concerned with this Report. I wonder whether it would be agreeable to the members of the Convention if we deferred consideration of this for the present

and ask Mr. Lightner and Senator Milton and those who are concerned with it, to meet and clarify it in their own minds and then resume discussion following luncheon. Mr. Read?

MR. READ: As I understand it, we are now considering the Report of the Committee on Arrangement and Form as it has reported to this Convention the Committee Proposal No. 5-1. As I understand it, this is merely for form and arrangement, and does not change the substance. I think Senator Milton has cleared it up very well. I talked with a great many of the delegates. As far as I am concerned, as chairman of this committee, the punctuation and added words were merely to clarify the original Report. There is no change in substance at all. It is merely in form and arrangement. I therefore second the motion of Delegate McMurray of that committee, that this Report be adopted. It does not require unanimous consent because that is merely a Committee Report. You do have to have unanimous consent to amend on third reading. This is not an amendment; this is merely a rearrangment of form. Therefore, I think the Convention can vote on this now; then we can proceed and get through with this Convention.

PRESIDENT: Is there further discussion on the motion? Mr. Lightner.

MR. LIGHTNER: The chairman suggested that possibly some of us should get together and discuss this. I merely want to say that I'm perfectly happy to do so. However, I do not see that it will serve any useful purpose. Every speaker, including the distinguished chairman of the committee that I was on, has agreed that this language is in here for the purpose of clarifying it, if you want to use that word. I say it is for the purpose of making it as certain as possible that the courts in the future cannot give to this clause an interpretation which some of us feel would be advantageous to the State if the courts would give that interpretation—if, as, and when the Legislature enacts such legislation.

Now, as far as the Convention disposing of it is concerned, I hope that I have made my objection clear. No one may agree with me, and so I withdraw completely as I do not wish to hold up the time. I do object to this being taken by vote of a show of hands, or any such manner. Under the Rules, if any five delegates object on the ground that the committee, which is now reporting, has done anything outside of the inaccuracies which it was to remove—and "inaccuracies" is certainly not a proper word to use for this—then the Rules apply. One delegate alone cannot hold it up. It is not a matter for unanimous action, but if any five delegates believe this committee has unintentionally gone beyond its province in bringing in these words, then the Rules provide as to what should happen —Rule 16.

PRESIDENT: Is there further discussion on this motion? Judge Drewen?

MR. JOHN DREWEN: I am a member of the Committee on Arrangement and Form, though I had no immediate personal contact with the matter that now presents itself. It is a question of values here that we must determine. There is no comparative value in observing a mere nicety in the face of the nature of Mr. Lightner's spirited objection.

In one respect his position, I must admit, is unassailable. An amendment was adopted here, couched in certain language. He insists that the language in which it was then couched be preserved. The only dissent for doing anything to the contrary has been urged on the ground of clarification, or the observation of a finer degree of nicety, as it has been put. A perfect understanding and absolute unanimity on a question of this sort is inestimably of greater value than any observation of mere grammatical correctness or the attainment of clearer statements, so-called. I rise, therefore, to move an amendment to Mr. McMurray's motion, which is that the language as originally adopted by this Convention be reinstated in the Report of the committee, the approval of which he has asked for by his motion.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion on the proposed amendment? Mr. Dwyer?

MR. WILLIAM J. DWYER: Mr. Chairman and fellow delegates:

I have always been far removed from an understanding of lawyers and the law. We have attempted to attain an objective which includes the deliberations of this Convention on the basis of understanding and implicit confidence in the intention of this grand delegation of New Jersey citizens to do that which is best calculated to assure the revision of this Constitution, free from the pitfall of technical interpretations and the lawyers' holiday which is bound up in technicalities. John Drewen, or Judge Drewen, I must say more respectfully—I call him John because we grew up together—we went to a meeting some years ago when we were young men and heard the late Theodore Roosevelt give expression to a thought which this discussion recalls to my mind. Theodore Roosevelt said that the Panama Canal controversy had been in the conversational stage for over half a century, and then by one inspired act of his, they took the conversation away from the Panama Canal and directed it to him personally. He said, "The thing that was accomplished was that they accused me of starting a revolution down in Central America." And he said, "Now they are talking about me, but you have the canal." And what we want in Hudson County

and what New Jersey wants is to take forever and ever out of the realm of political discussion the railroads versus the interest of the taxpayers of Jersey City. I hope there will be no spirit engendered here that will interfere with that accomplishment.

PRESIDENT: Senator Milton.

MR. MILTON: Mr. President, may I take just a moment or two? I realize I'm speaking a second time; I do it hoping I may clarify this situation. We are now going to vote upon an amendment proposed by Judge Drewen which, in effect, restores the original Proposal as it was submitted by the committee. If that amendment of Judge Drewen is adopted I apprehend that, knowing Mr. Cavicchia and Mr. Clapp as I do, it will immediately be followed by an amendment proposed by them putting into the Proposal the very language which we find in the Report of the Committee on Arrangement and Form. That, it seems to me, is a great deal of circumlocution. A direct way of approving the action of the committee—and I intend to vote against Judge Drewen's amendment—is to vote Judge Drewen's amendment down. By a roll call vote on the committee's Report we will, in effect, give approval to the incorporation in the Committee Proposal of the language which arises here because of a desire of Messrs. Clapp and Cavicchia to remove any question of doubt on the subject. I would vote for the motion which is pending, or was pending, as originally proposed, to approve the committee's Report out of respect for the legal attainment of Messrs. Cavicchia and Clapp. Lawyers disagree, of course. That is why we have courts and courts of appeal. I don't agree with them, but I do want to pay attention to a sincere recommendation made by them in the interest of the common cause. I say again that the incorporation of the language which we find in the committee's Report will not destroy in the slightest degree that element of flexibility which Mr. Lightner thinks is so desirable. I recommend that Judge Drewen's amendment be defeated.

PRESIDENT: Is there further discussion on Judge Drewen's proposed amendment?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(One "Aye")

PRESIDENT: Those opposed, please say "No."

(Chorus of "Noes")

PRESIDENT: The amendment is not adopted. Is there further discussion, then, on the Report itself. Mr. Emerson.

MR. SIGURD A. EMERSON: Mr. President: In the committee meetings when the clause with respect to the exemption to veterans

was incorporated, we were looking forward to the time, which we hoped would never occur, but if we ever got into another war, the exemption which is proposed in paragraph 3 ought to apply to the men during their actual service. As it now reads, it applies only to those who are honorably discharged from the service. I think it should be modified to include men during active service, hereafter in the active service of the United States in time of war, and persons honorably discharged. I suppose it shouldn't properly be addressed to this Report, Mr. President, but I didn't pick it up in the amendment which was offered. I'd like to have it considered and, if necessary, if it is desirable, if the Convention feels that it should be done, I'd like to have it reopened on third reading.

PRESIDENT: I think the chair would have to rule, Mr. Emerson, that we couldn't consider any change in substance at this time. Mr. Read?

MR. READ: No one has a greater regard for the integrity and ability of Mr. Lightner than I have. I think this is a solemn matter that he has asked. This, as I understand it, is a Report of the Committee on Arrangement and Form, and all arguments thereon are not to the substance but purely to the form and arrangement. In agreeing to this change this morning, which was suggested by the two delegates mentioned, I agreed that I felt it changed only the form and arrangement, and not the substance. But Mr. Lightner wants to see where he stands on this matter, and I suggest that he be given the solemnity of a roll call on this motion, that is, the motion to adopt this Report.

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: The Secretary will call the roll, and all those in favor, please say "Aye" as their names are called. Those opposed, say "No."

SECRETARY *(calls the roll):*

AYES: Barus, Brogan, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Feller, Ferry, Hadley, Hansen, Holland, Hutchinson, Jacobs, Katzenbach, Kays, Lance, Lewis, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, O'Mara, Orchard, Park, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young—62.

NAYS: Lightner—1.

(The final vote, as noted below, was 63-1)

SECRETARY: 62 in the affirmative; 1 in the negative.

MR. GEMBERLING: I wish to vote "Aye."

SECRETARY: 63 in the affirmative.

PRESIDENT: The Report is adopted. Mr. Read?

MR. READ: Mr. President, I gave notice two days ago, under the Rules, to take this up on third reading. I would now move that Committee Proposal No. 5-1 be taken up on third reading, and I move its approval and adoption by the Convention, on which there will be a roll call, of course, under the Rules.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: The Secretary will call the roll.

SECRETARY *(calls the roll):*

AYES: Barus, Brogan, Cafiero, Carey, Cavicchia, Clapp, Constantine, Cowgill, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Feller, Ferry, Gemberling, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Lance, Lewis, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, O'Mara, Orchard, Park, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young—61.

NAYS: Lightner—1.

SECRETARY: 61 in the affirmative; 1 in the negative.

PRESIDENT: Committee Proposal No. 5-1 will be referred to the Committee on Submission and Address to the People for appropriate action.

MR. SAUNDERS: It is my suggestion that it be sent back to the Committee on Arrangement and Form, and I so move.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. With the consent of the delegates we shall now—Senator O'Mara?

MR. O'MARA: I notice the presence in the gallery of a very distinguished federal jurist, Honorable Thomas F. Meaney, Judge of the United States District Court for the District of New Jersey, and I move that the Convention extend to Judge Meaney a welcome.

(Applause)

PRESIDENT: I might add, Judge Meaney, that I'm sure Senator O'Mara's message included an invitation to luncheon. If it is agree-

able to the delegates, we shall now recess until after luncheon at two o'clock, to take up the Report of the Committee on Submission and Address to the People.

(The session recessed at 12:50 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Thursday, August 28, 1947

(Afternoon session)

(The session began at 2:10 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats?

The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barus, Brogan, Cafiero, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Delaney, Dixon, Drenk, Drewen, Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Hadley, Hansen, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Murphy, Naame, O'Mara, Orchard, Park, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present, sir.

PRESIDENT: The Secretary reports a quorum is present.

The chair will recognize Commissioner Miller.

MR. SPENCER MILLER, JR.: Mr. President and members of the Convention:

Before we proceed with the matters presently before the Convention this afternoon, may I take this opportunity to call attention to what I think is an inadvertent error in the record of the proceedings of the Constitutional Convention for Thursday morning, August 21.

The question which was before the Convention at that time was on Amendment No. 22, introduced by Delegate Walton. The minutes presently before us indicate that when the "Noes" were called for there was silence. The President thereafter said the amendment is adopted. It was my recollection that there were a few, a very few, scattered "Noes." I have consulted with the chairman of the committee, Delegate Schenk, and it is his definite recollection that there were a few, a very few, scattered "Noes." I suggest, Mr. President, that the record indicate that such was the fact, if that is our recollection. I present this merely for the purpose of historic accuracy, and for no other purpose.

PRESIDENT: Do you offer that in the form of a motion, Commissioner Miller?

MR. MILLER: If it is necessary, sir, to offer this in the form of a motion, I am very happy to do so.

SECRETARY: May I have the date and the page number, Commissioner, in order to make the correction?

MR. MILLER: The date, Mr. Secretary, is August 21, and the page number is 18-11A.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: I understand that the substance of the motion is that in the report of the voting on this ballot the word "Silence" be deleted, and the words "Scattered Noes" inserted instead . . . Mr. Schenk.

MR. JOHN F. SCHENK: Delegate Miller asked me my recollection on it, and as I recall it there were two or three scattered "Noes." They were not substantial in quantity at all, but he is correct that there were two or three, I believe.

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(One loud "No") [1]

(Laughter)

PRESIDENT: Mr. Schenk.

MR. SCHENK: I'm glad that at long last I am in agreement with Delegate Miller.

(Laughter)

PRESIDENT: May I inquire if there is anything to come before the Convention, before we proceed to consideration of the Report of the Committee on Submission and Address to the People? . . . Senator Lewis.

MR. ARTHUR W. LEWIS: Mr. President, I believe the resolution relating to a memorial to the Legislature concerning the inferior courts has been mimeographed and put on the desks of all the delegates. I would like to move it at this time, if it be your pleasure.

PRESIDENT: You may proceed.

MR. LEWIS: Mr. President and fellow delegates:

I've had a number of suggestions with regard to this proposed memorial, but all of them go to enlarging the proposal, rather than abbreviating it. There are two of them that I would like considered. One is in the form of an amendment. Paragraph No. 1, line 4, after the word "system," to insert this language:

[1] The correction has been incorporated in the text. See page 697.

"to be presided over by qualified persons and . . ."

In other words, that sentence will then read:

". . . an efficient inferior court system to be presided over by qualified persons and to become effective if . . ."

A new paragraph has been proposed to be inserted, to be known as Paragraph No. 2, which will read:

"That the Legislature consider the enactment of legislation to provide that all judges of the inferior courts receive reasonable fixed compensation which shall have no relation to fees received."

That suggestion was made by Delegate Jorgensen, and I think it has considerable merit and can well be recommended by this Convention to the Legislature. Paragraph 2 would then be considered Paragraph 3.

Mr. President, I would like consent to those two amendments.

Mr. President, suppose I read from "Now therefore be it resolved," and read the entire language of the body of the resolution, as amended.

PRESIDENT: Please do so.

MR. LEWIS *(reading):*

"Now Therefore be it Resolved:

(1) That the Legislature is hereby memorialized to consider the entire inferior court system of this State and to take such action as may be deemed necessary to establish a modern and efficient inferior court system to be presided over by qualified persons and to become effective if at all possible, by September 15, 1948, the date that the Judicial Article adopted by this Convention is to become effective.

(2) That the Legislature consider the enactment of legislation to provide that all judges of the inferior courts receive reasonable fixed compensation which shall have no relation to fees received.

(3) The Secretary of this Convention is hereby directed to transmit a duly authenticated copy of this resolution to the Governor forthwith, and to each house of the Legislature at the opening of the next regular session."

I move the resolution as amended.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted. . . . Mr. Smith.

MR. GEORGE F. SMITH: I have a resolution which I would like the Secretary to read.

SECRETARY: Resolution by Mr. George F. Smith *(reading):*

"Whereas this Constitutional Convention has adopted a Judicial Article, leaving to the Legislature the question of compensation to judicial officers, and

Whereas, the compensation of judicial officers has remained substantially constant, notwithstanding economic changes,

Now Therefore be it Resolved

1. That the Legislature is hereby memorialized to consider immediately the granting of adequate compensation to judicial officers in keeping with their judicial duties and responsibilities and with regard to current economic conditions.

2. The Secretary of this Convention is hereby directed to transmit a duly authenticated copy of this resolution to the Governor forthwith, and to each house of the Legislature at the opening of the next regular session."

MR. SMITH: Mr. President and fellow delegates:

The purpose of this resolution and the need for it are too obvious to need elaboration. I therefore move the adoption of the resolution.

FROM THE FLOOR: Seconded.

PRESIDENT: The resolution is moved and seconded. Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: All opposed, please say "No."

(Silence)

PRESIDENT: The resolution is adopted. . . . Are there any other matters to come before the Convention at this time?

(Silence)

PRESIDENT: If not, the chair recognizes Mr. Saunders, chairman of the Committee on Submission and Address to the People.

MR. WILBOUR E. SAUNDERS: Mr. President and members of the Convention:

The Report of our committee with our recommendations has been placed before you in mimeographed form. I do not think that you want me to read it. I do, however, want to go through it with you briefly, for there are one or two changes which I want you to make for the committee on the form which has been placed before you.[1]

You will note that the first recommendation is that the Constitution be submitted as a whole.

The second recommendation is that voting machines be used in those counties where there are voting machines, and that in other counties the regular ballot be used and not a special ballot. Where local questions occur also for referendum, the constitutional question, clearly designated as such, should be put at the top of the ballot and the local questions at the bottom.

[1] This report appears in the Appendix in Vol. 2.

The third section is merely meeting a legal provision and that carrying it through is, I think, nothing that would be argued.

The fourth section, however, is our proposal of the form on the ballot. It should be changed to this extent. We are informed—the committee—since it was written, that a check mark as well as a cross or plus mark is now legal, and so this should be inserted on line 5 in the paragraph at the bottom of the page. It should read: "Mark a cross, a plus or check mark." And the same change should be made below where it says: "To vote 'No', mark a cross, plus or check mark in the square to the left of the word 'No'." Then at the top of the next page is the proposed wording on the ballot.

The fifth is our recommendation that we do not take advantage of that which the law allows, the placing of an interpretative statement upon the ballot.

In the sixth, the English is not quite the way we wrote it. We did not recommend no copies of the Constitution—but that copies of the Constitution should not be mailed to every voter. That would be a great expense and is not considered by the committee as of value. We do, however, on the basis of information coming to us since the committee meeting, by unanimous consent of the members present want to change the figure of the number of copies to be printed to 600,000 instead of 350,000. We had what we supposed was accurate information; that 500,000 were printed last time and only 150,000 used. That statement was made directly to us from what we thought was a trustworthy source, but it appears now that 500,000 were printed last time and used, and 25,000 extra were printed. . . . Then, we have made provision for the distribution of the Constitution to such centers as we or the Convention may designate, and in addition, of course, to such as the Secretary of State may deem wise.

Number seven is something that you may want to change. You will want to change the number to 600,000 again, please. But our understanding from a reading of the law was that this was to be printed by the State. We understand now that our own Printing Committee may be ready to print it. It is a matter of no moment whatsoever to our committee who prints it. We were trying to save the Convention some of its money, in case it were needed.

Number eight is a legal notice only, and the wording is directly from the law—and incidentally, in our entire Report we have followed just those matters which the Convention must act upon and which were to come under the purview of our committee.

Number nine deals with the one part of our committee's work not yet capable of completion, and that is the Address and Summary to be distributed according to law to the two and a quarter million voters. We think that two and a half million copies should be

printed. We cannot as yet tell the length or give the dimensions to the Printing Committee, as much as we would like to do it, but it is our wording of the instructions according to law to the Secretary of State, and we wish to have that wording slightly changed. Will you make this change in the wording? On the last line, after the word "prepared," will you put "to the County Clerk for distribution with the sample ballots," so that will read:

> "That the Secretary of State be instructed by the Convention to distribute the Address and Summary, when prepared, to the County Clerk for distribution with the sample ballots."

This is a Report of our committee, Mr. President, and I would like to move for its adoption and the adoption of its recommendations.

FROM THE FLOOR: Seconded.

PRESIDENT: The motion is made and seconded that the Report of the Committee on Submission and Address to the People be approved . . . Senator O'Mara.

MR. EDWARD J. O'MARA: Mr. President, before the vote is taken I would like to make a suggestion that I think will help if Dr. Saunders will follow me. On page 1, paragraph 4, the indented paragraph, which is the question, reads as follows:

> "If you are in favor of the approval and ratification, as a whole, of the Revised Constitution for the State prepared and agreed upon by the Constitutional Convention, mark a cross (X) or a plus or a check mark in the square at the left of the word 'yes,' and if you are in favor of its rejection as a whole . . . ."

My suggestion is that in the sixth line of that indented paragraph the words "in favor of its rejection" be stricken and there be substituted for them the word "opposed to its approval and ratification." I think that that would make it stand out more clearly. The effect of the question would then be, if you are in favor of the approval and ratification, vote "yes"; if you are opposed to the approval and ratification, vote "no".

MR. SAUNDERS: The chairman would certainly accept that. I don't know about the rest of the committee. Judge Cafiero, who is chairman of the sub-committee, gives his approval, and unless some member of my committee voices objection I would gladly substitute as Senator O'Mara has stated.

PRESIDENT: I understand, then, that that amendment is acceptable.

MR. SAUNDERS: Yes.

MR. O'MARA: Mr. President, the word "and" after the word "yes" on the same line, which Mrs. Miller has called my attention to, should be stricken.

PRESIDENT: What word is that, Senator?

MR. O'MARA: The word "and," which is the second word on

line 6 should be stricken. A period after the word "yes"; strike "and," and capitalize the "i" in "If".

MR. SAUNDERS: Judge Cafiero is the chairman of the sub-committee on this, and if it is acceptable to him it is to me.

PRESIDENT: Did you refer to Judge Cafiero, Mr. Saunders?

MR. SAUNDERS: Yes.

PRESIDENT: Are you calling on him?

MR. SAUNDERS: No, he has given his consent.

MR. MILTON C. LIGHTNER: I appreciate fully that these questions are sometimes extremely technical, and I may be offering a suggestion which has been considered and for some good reason has been thrown out, but I notice in the enabling act under which the Convention is sitting, that the language used is that

> "The Convention shall frame the question or questions to be placed upon the ballot, submitting to the people for adoption or rejection."

That's in section 25. And in section 28 that is again the word; it says:

> "If a Constitution as a whole is submitted to the people and a majority of all votes cast for and against its adoption shall be in favor of its adoption . . ."

I respectfully suggest that the word "adoption" be used in the framing of the question, instead of the word "approval," and in the suggestion that was made by Senator O'Mara the same change could be made, if there is any value, as it seems to me there is, in using the word "adoption" that is in the statute, rather than the word "approval."

MR. SAUNDERS: If it is thought to be of any value, I see no reason why it should not be used, but we felt that the meaning was quite clear in either case.

PRESIDENT: You do accept the amendment, then?

MR. SAUNDERS: We are willing to, yes.

MR. FRANCIS D. MURPHY: Do you mean in the question itself? We have "approved" and "ratified" in the question. Now how would you change that?

MR. LIGHTNER: "Adoption" instead of "approval."

MR. MURPHY: In the box itself?

MR. LIGHTNER: Yes. It is merely a matter of having the question that goes to the people be the question that the enabling act told us to submit, that of "adoption." That's all.

MR. SAUNDERS: That is quite acceptable to the committee.

PRESIDENT: Is there further discussion? . . . Mr. Peterson.

MR. HENRY W. PETERSON: May I ask Mr. Saunders, through you, sir: Is it necessary to include in this question the words "as a whole"? The Committee on Submission and Address to the People has determined that the revised Constitution should be submitted

to the people as a whole and not in parts, and I was wondering whether that would confuse any voter.

PRESIDENT: Mr. Cafiero.

MR. A. J. CAFIERO: Mr. President, through you, I would like to explain to the delegates that the committee believed that the use of the words "as a whole" would eliminate any possibility of anyone forming any impression that only a part of the Constitution was thought to be revised. It is the entire Constitution that is revised, and it was thought that by the inclusion of such words as "as a whole" it would eliminate any such misapprehension.

PRESIDENT: Senator Lewis.

MR. LEWIS: Mr. President, may I make one suggestion? It's rather minor. The language in the box refers to the Constitutional Convention but does not tie it up to the year 1947—this particular Convention. I'm wondering if it would not be advisable to put "of 1947" after the words the "Constitutional Convention" in the box, and then it ties it up unquestionably with this Constitutional Convention.

MR. SAUNDERS: Mr. Chairman, may I ask that Judge Cafiero of the sub-committee be asked to reply?

MR. CAFIERO: The matter or material now suggested by Senator Lewis was considered by your committee, and it was their opinion that the insertion of any such words would be unnecessary surplusage, because this is the only Constitutional Convention that is now in session. We sought to frame the question in language which was simple, concise and understandable, and which would at the same time enable the voters to express themselves decisively and unequivocably on whether the proposed Contitution should be adopted and ratified, or rejected. The words suggested by Senator Lewis would probably not disturb the legality of the question. I don't mean to imply any such thought, but we tried to make it just as simple as possible so that the voter, when he goes into the polling booth, could read it and quickly understand what he was voting upon.

PRESIDENT: Do you care to comment further, Senator Lewis?

MR. LEWIS: Mr. President, I do not wish to labor the point, but in view of the fact that we had a Legislative Convention in 1944 which is still within the memory of so many people, it just impressed me that putting the words "of 1947" right in the box eliminates any possible question or doubt. It would do no harm, but I do not press the point further.

PRESIDENT: Any further discussion on this particular point before I recognize Mrs. Miller?

(Silence)

MRS. G. W. MILLER: Mr. President, I just had a question to

ask the chairman. What was the thinking behind rejecting the idea of a state-wide use of special paper ballots? I ask that question of the chairman.

PRESIDENT: Mr. Saunders.

MR. SAUNDERS: I'm very sorry; I was being consulted and didn't hear the question. May I ask that it be repeated?

PRESIDENT: Would you mind repeating that, Mrs. Miller?

MRS. MILLER: Yes. I would like to know the thinking behind your decision to reject the idea of a state-wide use of special paper ballots. I thought it was a good suggestion, and I just wanted to know what your thinking was.

MR. SAUNDERS: We thought in the first place that we would get far more people to vote upon it if it were applied to the regular ballot. We felt that a special ballot would be advisable and a necessity if there were to be anything involved about this, but the committee has been so delighted that the Convention has resolved this into practically just one question—"Do you vote for the Constitution or against it?" And that being the case, we thought that it was best put on the voting machines and on the regular ballot, particularly if it could be at the head of the regular ballot. We are told that when special ballots are used, you get quite a noticeably smaller number of people voting than you do on the regular ballot at the same time. That was our thinking in back of the decision to make this recommendation to the Convention.

MRS. MILLER: I just wanted to call your attention, Mr. Chairman, to the fact that about 600,000 people did not vote on the question in 1944, and when the question was brought up this year, that more people voted on the question than it was supposed would, because it was on a special paper ballot and attention could be called to it.

PRESIDENT: Any further discussion on this point? . . . Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: Mr. President, of course, I'm aware that the chairman of the committee has called attention to paragraph 7, particularly on the question of whether the copy should be printed at the expense of this Convention under the appropriation to it, or whether it should be printed for the State at state expense. I wonder—and we ought to give consideration to it from that standpoint—whether, if we here decide on the basis of this recommendation that it should be done at state expense outside of the appropriation made to the Convention, there being no other appropriation for it, whether we are not running into an obstacle. I think we ought to clarify that point right here and now.

MR. SAUNDERS: I agree with Mr. Cavicchia that that point should be clarified now. The committee—I wish some other mem-

ber of the committee would check me on this—the committee felt that according to law we could direct it so to be printed. We didn't want to use our funds which the Business Committee has zealously guarded, unless need be. However, the chairman of the Printing Committee may want to say something about this, and I wish that Mr. Kays might be asked if he would give his advice. If the Convention wants it printed out of our budget, that is not an important or integral part of the Report that our Committee would do any fighting for, I can assure you.

PRESIDENT: Mr. Kays.

MR. HENRY T. KAYS: Mr. President, of course I don't know exactly what this means. It says "should be printed by the State at State expense." Now, I don't know what official of the State would be charged with that. If it is the Secretary of State, I am advised by that office that they only have $15,000 which was appropriated by the Legislature at the last session, and I understand that there are not sufficient funds in the revolving fund under the charge of the State House Commission to pay for them. Our estimate for the printing of 600,000 copies is about $25,000, and it seems to me that this Convention would be much safer in having it done by the Convention itself, rather than to send it to some state official who may not have the funds, and maybe have to call together the State House Commission or the Legislature in order to appropriate the money.

MR. SAUNDERS: I suggest in that case that Vice-Chancellor Kays amend this to read "to be printed by the Printing Committee of this Convention at Convention expense." I think that is the way to do it in that case.

MR. KAYS: Do you accept that as an amendment?

MR. SAUNDERS: I would vote for it, but I think that since our committee unanimously voted the other, I would rather have the Convention vote it as an amendment, if you are willing to have that form of procedure.

PRESIDENT: Do you move the amendment, Mr. Kays?

MR. KAYS: Yes, I move the amendment.

PRESIDENT: Is it seconded?

MR. WILLIAM J. ORCHARD: I second the motion to amend

PRESIDENT: You have heard the second. Is there any discussion?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is carried. How would that be worded then, Mr. Chairman, that paragraph?

MR. SAUNDERS: As I understand it, it would be that the Convention votes that 600,000 copies of the Constitution be printed by the Printing Committee of the Convention as a Convention expense.

PRESIDENT: Mr. Dixon?

MR. AMOS F. DIXON: May I ask through you, Mr. President—if you will, Mr. Saunders, has your committee considered at all the question of newspaper advertising in connection with the Constitution, or perhaps your final Summary and Address to the People? And if so, I wonder what the conclusions were in regard to it?

MR. SAUNDERS: Mr. President, if I may answer Mr. Dixon through you, our committee has considered it carefully, and in the original draft of this there was a statement concerning it which we took out but which comes up now. We understand that the printing of the Constitution in 1944—I mean the printing of it in the newspapers—cost approximately $180,000. We understand that it could now be printed in six sections, going into the dailies and weeklies of the State, for between $70,000 and $75,000.

Our advice from competent newspaper men, as well as others, was that it was not read in that way, and our feeling, frankly, was that in doing it we were spending that money so that it might get us more favorable space for news in the newspapers, and we felt that perhaps that would be the only benefit from it. I believe there was only one dissenting vote against paid newspaper advertising of the Constitution. However, if the Convention wishes to reverse that decision and spend between $70,000 and $75,000, those are the facts which the Convention should have. It would not cost as much as it did last time, when it cost $180,000.

MR. DIXON: Through you, Mr. President, may I ask, did you consider just printing the summary part of your final Submission and Address? I don't know how much that is going to be.

MR. SAUNDERS: We considered that, but since it is, by law, to be mailed to every voter in the State, we felt that that again would be simply a duplication, at considerable expense, which seemed to us inadvisable.

MR. DIXON: Thank you.

PRESIDENT: Any further discussion on the Report of the Committee on Submission and Address to the People?

(Calls for "Question" from the floor)

PRESIDENT: The question is called for. . . . Mrs. Sanford?

MRS. OLIVE C. SANFORD: Mr. President and members: If it is going to be sent out only with the ballot, what time would the voters have to consider it before they went to vote? Has any thought

been given to the presentation of it to the public outside of that?

PRESIDENT: Dr. Saunders?

MR. SAUNDERS: As I understand the question, the Constitution would be printed as soon as possible. I am not sure that I understand your question. Someone else was talking to me. Will you repeat, Mrs. Sanford? I am sorry.

MRS. SANFORD: I thought that you had spoken about it being sent out to all the voters, and I said that if that were the only way to reach the public it would be too late, because it would be going out with the ballot. But I do remember now that it will be printed and copies sent out to the public, if they ask for it.

MR. SAUNDERS: The idea would be that due notice would be given by the Secretary of State that copies were available in his office, so that anyone writing for a complete copy could have it; also, that all sorts of institutions and offices on the state, county, and municipal level would have copies available; also schools and libraries. In that way they would be available to anyone who wanted to get the complete text of the Constitution.

PRESIDENT: Mr. Kays?

MR. KAYS: Mr. President, may I ask through you, sir, of Mr. Saunders, whether the Submission and Address to the People is also to be printed by this Convention?

MR. SAUNDERS: The committee felt that the printing of the Address and Summary to the People was the business of this Convention, and would have to be printed by us. We will get information to you concerning its form as soon as possible, sir, but I see no way in which that can be done before perhaps a week, except for general estimates.

MR. KAYS: That is included in your Report, that the Convention is to act on it later, as I understand.

MR. SAUNDERS: That would be understood, yes.

PRESIDENT: For the information of the chair, Mr. Chairman, would you explain when this Address to the People comes into the hands of the voters?

MR. SAUNDERS: It comes into the hands of the voters when the county clerks distribute the sample ballots. By law it is to be distributed with the sample ballot. We don't know the full implications of that, for a recent law allows these ballots to be sent without their being in envelopes, and that, of course, presents a technical difficulty. It is my understanding that these sample ballots go out about a week before election. Someone else would have more complete information than I on that point.

PRESIDENT: Is there further discussion on this report? . . . Mr. Miller?

MR. MILLER: Mr. President, may I ask Dr. Saunders through

you, sir, whether his committee would consider an addition to Item No. 6, page 2, on the fifth line. It now reads: "We suggest that the Convention vote that as soon as they are available, the Secretary of State send copies to such citizens." My suggestion is the addition of three words at the end, as follows: "such citizens and civic organizations as request them."?

I am thinking, Mr. President, that there will be a good many civic organizations that have been very much interested in constitutional revision and that will undoubtedly want copies for their membership. If the Secretary of State is expressly authorized to send an allotment to interested civic organizations, I think it would help facilitate the wider distribution of the new Constitution in which I am sure we are all very much interested.

PRESIDENT: Mr. Saunders?

MR. SAUNDERS: I think that is an excellent addition, and we gladly accept it.

PRESIDENT: Is there further discussion on this Report?

(Silence)

PRESIDENT: Are you ready for the question?

(Calls for "Question" from the floor)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: All opposed, please say "No."

(Silence)

PRESIDENT: The Report is adopted . . . Mr. Kays?

MR. KAYS: May I ask Mr. McMurray a question relative to the preparation of the Constitution which is to be submitted to the Secretary of State, the Governor, members of the Legislature, and members of this Convention? We have no order for printing that, and I suppose that should be printed and distributed before our next session.

PRESIDENT: Mr. McMurray?

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen:

In answer to Vice-Chancellor Kays, the Committee on Arrangement and Form is planning between now and September 8 to organize the entire document. It was our hope, Vice-Chancellor, that we were going to have it printed and sent by mail to each delegate prior to the meeting on September 8. I mentioned that just a short while ago to Mr. Gemberling and he said, I believe, that he would take up with the committee the procedure to be followed in getting it printed.

MR. KAYS: All I thought was that the Convention should authorize the printing of it.

MR. McMURRAY: That would be a very helpful thing to the Committee on Arrangement and Form.

MR. KAYS: If you will make that motion, I will second it.

MR. McMURRAY: I will very gladly make the motion that the Committee on Arrangement and Form be empowered to have the completed document printed and distributed by mail to each delegate.

MR. KAYS: I second the motion.

PRESIDENT: You have heard the motion and the second. Is there any discussion?

DELEGATE FROM THE FLOOR: Mr. McMurray, that is the Committee on Printing and not the Committee on Arrangement and Form.

MR. McMURRAY: If that is the proper committee I would be very happy to accept that as an amendment to my motion.

PRESIDENT: Vice-Chancellor Kays?

MR. KAYS: That is the Printing Committee. The Printing Committee has to print it, that's all. We are not distributing it.

PRESIDENT: Is there any further discussion on this motion? Mr. McMurray, have you anything further to add?

MR. McMURRAY: No, sir.

PRESIDENT: All those in favor of the motion, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Is there any further business to come before the Convention this afternoon?

I would like to ask Chairman Saunders if he has anything to report to the delegates as to any action which his committee may take within the next week relative to and before the meeting on September 8?

MR. SAUNDERS: Mr. President, I think our committee will need that time to prepare the Address and Summary for printing, which, of course, must be presented to this Convention for adoption or change, as they wish, before it can be accepted.

PRESIDENT: Do you propose to mail that to the delegates before September 8?

MR. SAUNDERS: If we can get it done by that time.

PRESIDENT: Is there anything else to come before the Convention this afternoon?

(Silence)

PRESIDENT: Before we adjourn, may I remind the delegates

that we meet next on Monday, September 8, at one o'clock? Luncheon will be served at 12 o'clock for those who wish to have luncheon beforehand, and I shall ask the chairmen of the standing committees to meet, if they will, for luncheon at that time. If there is no other business before the Convention, a motion to adjourn is in order.

MR. ORCHARD: I so move.

MR. W. J. DWYER: I second the motion.

PRESIDENT: All those in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The meeting is adjourned.

(The session adjourned at 2:55 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Monday, September 8, 1947

(The session started at 1:15 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats? . . .

I will ask the delegates and the spectators to rise while Dr. John Soeter, Pastor of the Second Reformed Church of New Brunswick, pronounces the invocation.

DR. JOHN SOETER: Lord God, our Father, we give Thee humble and hearty thanks for the ever-pressing duties that come to us, for without them we should be of all men most miserable. We thank Thee, O God, for the opportunities we have to be of service to our communities and to our State here. Do Thou bless all the efforts that have been put forth this summer by these duly elected representatives of the people, that their work may be consummated in something by which we all shall live. Do Thou bless the people of our State as they shall consider the proposals to be brought before them, that in the coming selection and election we may have a law in this State of the people, for the people, and by the people. Guide us in our deliberations in the remainder of this Convention. We ask it in Thy Holy Name. Amen.

PRESIDENT: The first item on the docket is the reading of the Journal.

DELEGATE: Move it be dispensed with.

DELEGATE: Second it.

PRESIDENT: It has been moved and seconded that it be dispensed with. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried. The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Mont-

gomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present. Seventy-seven in number.

PRESIDENT: The Secretary reports that a quorum is present.

The chairman of the Committee on Arrangement and Form has requested a recess to permit the committee time to make some final adjustments in its Report. With the agreement of the Convention, we shall now declare a recess of one-half hour.

MR. WILLIAM J. DWYER: I wonder if I am in order in interfering with this recess long enough to present a resolution through the Secretary, to be read when we reconvene. I would like to present it for his reading.

MR. HAYDN PROCTOR: Mr. President, I have a resolution, too.

PRESIDENT: We shall delay the recessing for just a moment. There are certain resolutions to be presented.

Are there any other resolutions to be presented?

(Silence)

PRESIDENT: Mr. Dwyer, will you speak to your resolution?

(The following resolution is incorporated in the record:)

"Resolution by William J. Dwyer, Hudson County.

Whereas, it is the judgment of this Convention that a record of the proceedings of the Constitutional Convention and its committees be preserved in permanent form because of its legal, historical and research value; and

Whereas, the records of the Constitutional Convention and its Committees are to be turned over to the Bureau of Archives and History, in the Division of the State Library, Archives and History, State Department of Education, after the close of the Convention;

Now, Therefore, be it Resolved:

(1) A committee of five members, consisting of the President of the Constitutional Convention and four other members to be appointed by him from among the delegates, and to be known as the Constitutional Convention Record Committee, is hereby created and established;

(2) The Secretary of the Convention shall, under the direction and control of the said committee, proceed forthwith after the close of the Convention, to prepare and have printed an official Journal of the Convention, and shall thereafter turn over to the Bureau of Archives and History of the State of New Jersey, all the records which have come into his possession as Secretary, as provided in the Rules of the Convention;

(3) The Head of the Bureau of Archives and History of the State of New Jersey, under the supervision and control of the Constitutional Convention Record Committee, shall proceed after the close of the Convention, to edit, prepare and have printed the complete pro-

ceedings of (1) the Constitutional Convention itself, and (2) the Standing Committees of the Constitutional Convention, within the limits of funds available or to be made available to such Committee;

(4) The sum of $25,000 is hereby appropriated from the funds remaining to the credit of the Constitutional Convention and not expended or committed, for the use of the Constitutional Convention Record Committee in paying for the editing, preparation and printing of the Journal of the Constitutional Convention by the Secretary, of the proceedings of the Constitutional Convention and of the proceedings of its standing committees;

(5) All bills incurred in connection with carrying out the provisions of this resolution shall be signed by Robert C. Clothier and Oliver F. Van Camp;

(6) All printing shall be awarded on competitive bids, to the lowest responsible bidder, and shall be completed by June 30, 1948;

(7) The Constitutional Convention Record Committee shall have printed, in the following order and within the limits of the funds hereinabove appropriated:

(a) 1500 copies of the Journal of the Constitutional Convention;

(b) 1500 copies of the proceedings of the Constitutional Convention;

(c) 1500 copies of the proceedings of the Standing Committees of the Constitutional Convention;

(8) The said copies shall be distributed as follows:

(a) 3 copies each to the Governor, Secretary of State, Attorney General, State Treasurer, State Comptroller, Chief Justice of the Supreme Court and Chancellor;

(b) 3 copies to each delegate and to the Secretary of the Convention;

(c) 1 copy to each member of the 1947 Legislature and to the new members elected to the 1948 Legislature;

(d) 5 copies to the State Library; the Library of Rutgers University, The State University of New Jersey; Princeton University Library; and the Library of Congress;

(e) 1 copy to the State Libraries of the 47 States and Hawaii;

(f) 1 copy to such libraries, colleges, schools and institutions in the State of New Jersey, and to such libraries, government administration organizations, and institutions outside of New Jersey, as the Constitutional Convention Record Committee shall designate;

(g) The balance of the said 1500 copies of each printing shall be delivered to the Bureau of Archives and History of the State of New Jersey."

MR. DWYER: The resolution which I have given to the Secretary has for its purpose the permanent preservation of the record of the proceedings of this Convention. It requires the authority of the delegates because it involves an expenditure of money to preserve all of the proceedings of the Convention in printed form for the purpose of furnishing the record to libraries and all public officials and those who might be interested in the historic value of recording this Convention "for posterity," as they might say.

PRESIDENT: And you move that for action, Mr. Dwyer?

MR. DWYER: I move it for action.

PRESIDENT: Is it seconded?

FROM THE FLOOR: Seconded.

MR. JOSEPH W. COWGILL: On the question.

PRESIDENT: Mr. Cowgill?

MR. COWGILL: Mr. Chairman and members of the Convention:

I have no objection to such printing, but I wonder if the author of the resolution has in any way gotten an estimate of the cost of this thing. As I understand it, from the balance of funds now in the hands of the Convention there is to be paid the cost of printing the Address and the Constitution itself. If the cost of this thing is going to run over the $350,000 appropriation, how is it going to be paid for?

MR. WILLIAM T. READ: Mr. President.

PRESIDENT: Mr. Read?

MR. READ: Mr. President and delegates:

I think you will find that there is a Rule—Rule 23, or somewhere thereabouts—which provides that all resolutions dealing with expenditures of money should first be referred to the Committee on Rules. That is to get their estimate on the amount of money to be spent.

MR. DWYER: Well, I will accept that suggestion.

MR. READ: In Rule 21 *(reading):*

> "All resolutions authorizing or contemplating the expenditure of money shall be referred to the Committee on Rules . . . for its report thereon. . . ."

In other words, you have got to get their estimate before it is finally put through.

MR. DWYER: Well, of course, our problem now is time, which runneth against us. If we can consummate all these requirements this afternoon, that will be perfectly all right. I submitted the resolution with the thought that adequate funds are available. That was my information, not derived directly from the chairman of the committee. I thought it might be the sense of this Convention that it has been such an important one in the history of our State, it should be preserved in some permanent form. But I will bow to the suggestion of anybody as to the Rules and see that the resolution follows that course.

PRESIDENT: The chair will refer this resolution to the Committee on Rules for consideration and report, and will recognize Senator Proctor.

MR. PROCTOR: Mr. Chairman and members of the Convention:

At the last meeting, a resolution was proposed by Commissioner

Miller that a joint committee of the two houses of the Legislature should be established by law and authorized immediately upon the ratification of the proposed Constitution by the people to engage an adequate, full-time staff to conduct research to determine the new and amended legislation needed to carry out the mandates and facilitate the operation of the new Constitution. My resolution provides—it is merely an amendment to Commissioner Miller's resolution; I have conferred with him and I think he agrees with me—that existing state agencies, such as the Tax Revision Commission and the Law Revision Commission, so far as possible be used to facilitate any amendments to the law in connection with the passage of the Constitution. Contrary to Mr. Dwyer's resolution, mine is really for economy.

(Laughter)

PRESIDENT: May I ask if there are any other resolutions to be presented at this time? . . . Mr. Saunders.

MR. WILBOUR E. SAUNDERS: Mr. Chairman, I have a resolution dealing with somewhat the same problem which I would like the Secretary to read.

SECRETARY *(reading):*

> "RESOLVED, That the chairman and secretary of the respective standing committees of the Constitutional Convention of 1947 shall forthwith, after the close of the Constitutional Convention, turn over to the Bureau of Archives and History, in the Division of the State Library, Archives and History of the State Department of Education, all the records, including minutes and proceedings, correspondence, and such briefs, memoranda and drafts as may have been prepared by or submitted to the said committees in connection with their hearings and deliberations."

MR. SAUNDERS: I move its adoption, Mr. Chairman.

FROM THE FLOOR: Seconded.

PRESIDENT: With the agreement of the delegates, because of the pressure of time and the urgency of bringing before the Convention the Report of the Committee on Arrangement and Form, the chair rules that we recess now and consider the proposals at the conclusion of the recess . . . Mr. McMurray?

MR. WAYNE D. McMURRAY: Mr. President, ladies and gentlemen:

You have all received copies of the Final Report of the Committee on Arrangement and Form. Many suggestions have already been made to me today, and to other members of the committee, some of which are typographical in nature and some of which are substantive in nature. I am going to suggest that following the recess the Committee on Arrangement and Form meet in Room 205, on the second floor. I am also going to suggest that any delegate who has anything that he thinks should be changed or corrected, take it up with the chairman of the proper committee; then the

chairman of that committee will meet with our committee and outline, with his suggestion, what changes should be made. In other words, if you have a change that involves the Legislative section of the Constitution, it should be taken up with Senator O'Mara; and if you have one that deals with Taxation, it should be taken up with Senator Read, and so forth. Then they will meet later with our committee and we shall try to make the changes as needed.

Thank you.

PRESIDENT: Mr. Saunders.

MR. SAUNDERS: May I also ask for a meeting of the Committee on Submission and Address to the People during the recess?

PRESIDENT: In what room?

MR. SAUNDERS: Any room we can get upstairs.

PRESIDENT: We stand recessed until 2 o'clock.

(The Convention recessed until 2:15 P. M.)

PRESIDENT: The Committee on Arrangement and Form has requested an extension of 30 minutes on the recess.

(Recess continued; the Convention reconvened at 3:25 P. M.)

PRESIDENT: Will the delegates please take their seats?

I will ask the Secretary to call the roll.

SECRETARY *(the Secretary called the roll and the following delegates answered "present"):*

Berry, Brogan, Cafiero, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young.

SECRETARY: Quorum present.

PRESIDENT: The Secretary reports a quorum present.

We shall proceed now with consideration of the Report of the Committee on Arrangement and Form. I would like to ask if all delegates have a copy of this printed report which was sent to the delegates through the mail last week. Is there anyone here who doesn't have a copy?

(Several of the delegates indicated that they had no copy. Copies distributed)

PRESIDENT: May I ask if every delegate now has a copy?

(Several delegates raised their hands)

PRESIDENT: May I ask if any delegate has more than one copy? We have run out . . . Mr. Clapp, have you more than one?

MR. ALFRED C. CLAPP: Yes.

PRESIDENT: Anybody else with more than one copy?

(Silence)

PRESIDENT: Will those who have not a copy be good enough to look on with one of those who has?

The chair will recognize Mr. McMurray.

MR. McMURRAY: Mr. President, ladies and gentlemen:

Your Committee on Arrangement and Form asks your indulgence for the delay, but the various committee chairmen presented to us corrections which we felt were too important in a document of this sort to ignore; and we have, after consultation with them and with the members of the committee, made the following corrections in the document that you have before you. I will read the corrections and ask that you pencil them in.

On page one, the very first paragraph, before the word "New Brunswick" insert the word "in." The first paragraph of Article I, Rights and Privileges, in the third line, put in the word "of" before "acquiring."

PRESIDENT: Where is this, Mr. McMurray?

MR. McMURRAY: In the third line of the first paragraph. The paragraph begins "All persons are by nature free and independent . . ." Insert the word "of."

FROM THE FLOOR: Where?

MR. McMURRAY: Before the word "acquiring." In the third paragraph, next to the last line, delete the comma after the word "right."

PRESIDENT: Mr. McMurray, may I suggest that you allow me to ascertain whether anyone has had any difficulty getting each one of these points as you go along, before you go on to the next point?

MR. McMURRAY: Surely.

PRESIDENT: May I ask if all the delegates have these points which Mr. McMurray has already mentioned?

(Silence)

PRESIDENT: The first one: the word "in" is inserted before the words "New Brunswick," in the third line of the first page.

All right, Mr. McMurray.

MR. McMURRAY: There were two other corrections on that page, the insertion of the word "of" before "acquiring" in the first paragraph, and the deletion of a comma in the next to the last line of the third paragraph—the comma after the word "right."

On page 2, paragraph 10, next to the last line, after the word "favor," insert a semicolon instead of a comma.

On page 3, Article II, paragraph 5, following the word "State" in the second line, delete the comma.

On page 4, paragraph 2, of Section I, next to the last line, where it says "Legislature who shall not be entitled" delete the words "who shall not" and substitute the words "unless he," so that it now reads: "No person shall be eligible for membership in the Legislature unless he be entitled to the right of suffrage."

In paragraph 3, it should read as follows: "The Senate and General Assembly shall meet and organize separately at noon." Those are the inserted words—"*at noon* on the second Tuesday in January of each year." Then strike out "on which day," and substitute "*at which time* the legislative year shall commence."

On page 9, Section I, paragraph 2, after the word "shall"—"The Governor shall"—insert the word "be," so that it reads "The Governor shall be not less than thirty years of age."

PRESIDENT: Strike out the other "be"?

MR. McMURRAY: And take out the word "be" between "not" and "less."

FROM THE FLOOR: Let me have that again?

MR. McMURRAY: The first line should now read: "The Governor shall be not less than thirty years of age." And continuing it should read: "and shall have been for at least twenty years a citizen of the United States." The two lines now reading: "The Governor shall be not less than thirty years of age, and shall have been for at least twenty years a citizen of the United States."

Page 11, sub-paragraph "b" of paragraph 14, in the next to the last line, after the first word of the line which is "adjournment" insert the words "sine die," and at the end of that sentence change the period to a semicolon and add these words "in which event any bill not signed by the Governor—

PRESIDENT: Slowly, please, Mr. McMurray.

MR. McMURRAY: "In which event any bill not signed by the Governor within such forty-five day period shall not become a law." That makes the last line, after the period which is changed to a semicolon, read as follows: "in which event any bill not signed by the Governor within such forty-five day period shall not become a law."

The next change occurs on page 13, paragraph 5, the seventh line, beginning "the Governor." Strike out the words "the Governor" and insert the pronoun "he." The word "may" remains, but the word "require" is struck out and the words "call for" are inserted. So that the sentence now reads, "He may require such officers or employees to submit to him a written statement or statements, un-

der oath, of such information as he may call for relating to the conduct of their respective offices or employments."

The next change is on page 14, at the top of the page, paragraph 3. At the beginning of the second line strike the word "and" and insert "of all courts in the State and." Paragraph 3, at the top of the page, second line.

PRESIDENT: Will you say it again, Mr. McMurray?

MR. McMURRAY: The second line should now read, "of all courts in the State and subject to law, the practice and procedure" and strike the words "in all courts of the State" and substitute the word "therein." I will read slowly the entire sentence: "The Supreme Court shall make rules governing the administration of all courts in the State and subject to law, the practice and procedure therein."

FROM THE FLOOR: Is there a comma between "and" and "subject"? You didn't read it.

MR. McMURRAY: Between the "and" and "subject"? No; "in the State and subject to law,"—

PRESIDENT: Mr. Cavicchia.

MR. DOMINIC A. CAVICCHIA: I suggest that might mean that the Supreme Court was empowered to make rules only with respect to the Supreme Court—by using the word "therein." It is not a clarification; it is an ambiguity.

MR. CLAPP: Mr. President, to answer that—instead of the word "therein" could be inserted the words "in all such courts."

PRESIDENT: Mr. Clapp, I didn't hear you.

MR. CLAPP: In place of the word "therein" could be inserted the words "in all such courts."

PRESIDENT: Inserting the word "such" you mean, between the word "all" and the word "courts"?

MR. CLAPP: I will read the sentence: "The Supreme Court shall make rules governing the administration of all courts in the State and subject to law, the practice and procedure in all such courts."

MR. NATHAN L. JACOBS: May I suggest that you put that comma in, Mr. McMurray. I suggest that you put the comma in before "subject to law."

MR. McMURRAY: In other words a comma after "and"?

MR. JACOBS: That is right.

MR. McMURRAY: Then it will read—and I will read the punctuation: "3. The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts."

MR. JOHN MILTON: Mr. President.

PRESIDENT: Mr. Milton?

MR. MILTON: I assume that while it is not the intent, although perhaps I might be mistaken about that, nevertheless the effect of this language would be to make it mandatory upon the highest court in this State to prescribe the rules of the administration and the practice and procedure in police courts. Is that the intent?

MR. McMURRAY: Does the change in language, Senator, that we have just made—does that change the meaning of the original text? If it does not, it is not the function of the Committee Report, sir, that I am making.

MR. MILTON: I beg pardon. I don't understand your question.

MR. McMURRAY: The changes that I have just read and which Mr. Jacobs just referred to—does that change the substance of what was there before? Or does it merely phrase it in different language?

MR. MILTON: It may not change the substance.

MR. McMURRAY: Well, then, I would suggest, sir, that that would come up at another time and not in connection with this Report.

PRESIDENT: Mr. Jacobs, do you care to comment on this?

MR. JACOBS: The intent was that the Supreme Court shall have authority governing the administration of all courts in the State, which includes the police courts, and, subject to law, the practice and procedure in all courts in the State, which includes the police courts. Incidentally, the change in language is not the committee's suggested change, although the committee has agreed to the change in language since it does not change the meaning in any respect.

MR. McMURRAY: The next change occurs on page 17, the top of the page, paragraph 6. The paragraph begins, "The State Auditor . . ." In the third line, instead of reading "shall be appointed and qualified" we are following the same language used elsewhere in the Constitution and changing it to "shall be appointed and qualify." It is "qualified" at the present time. Change it to "qualify."

PRESIDENT: Would you mind spelling that, Mr. McMurray?

MR. McMURRAY: The word should be "q-u-a-l-i-f-y."

On page 18, at the end of paragraph 2, substitute a semicolon for the period after "profit" and add the words: "and except those provided in the succeeding paragraph."

FROM THE FLOOR: Say that over again.

MR. McMURRAY: Take out the period after the word "profit," substitute a semicolon, and add these words: "and except those provided in the succeeding paragraph."

FROM THE FLOOR: Will that change the substance?

MR. McMURRAY: Judge Drewen, would you like to speak to that?

MR. JOHN DREWEN: The effect of the change just recited by Mr. McMurray is, we firmly believe, to no more than carry out the obvious intent of the committee. We feel that if the language were not inserted it would leave the impression and possibly the sense that the exemptions awarded to veterans might be at any time taken away from them, so that the veterans' exemptions are placed in the same category with the other exemptions that may not be withdrawn.

PRESIDENT: Mr. McMurray, will you read that again for the Secretary?

MR. McMURRAY: Substitute a semicolon for the period after the word "profit" and add these words: "and except those provided in the succeeding paragraph."

MR. MILTON C. LIGHTNER: In the succeeding paragraph there is a specific provision that the exemptions shall be as from time to time provided by law.

MR. DREWEN: Some of them.

MR. LIGHTNER: Not the $500 exemption; for the $500 is there in specific language. It needs no such correction. But this is an off-hand opinion, Mr. President. I don't want to insist, but it reads to me as though this change that has been suggested would militate against the freedom of the Legislature to provide the type of exemption that is spoken of in the second sentence of the next paragraph, which says it is to be as from time to time provided by law, leaving the thing entirely in the hands of the Legislature. Now, wouldn't the effect of this be that once a statute has been passed that it might be frozen and deprive the Legislature of the "from time to time" that is specifically contemplated?

PRESIDENT: Judge Drewen.

MR. DREWEN: My reply to Mr. Lightner, Mr. President, is this: It is true that there are certain provisions in the succeeding paragraph that leave it to the Legislature to make changes. There is one provision in that succeeding paragraph which at least makes an exemption firm, one that the Legislature may not disturb. The language, therefore, in the paragraph now under discussion intends, as I have endeavored to state, to make the exception, except as provided in the succeeding paragraph, so that it saves the succeeding paragraph from any misunderstanding as to the effect of it on its face.

MR. LIGHTNER: It seems to me that it radically changes the second paragraph—this provision that exemption from taxation may be altered or repealed, except certain exemptions which by the language of the second paragraph are not to be subject to altera-

tion or repeal. Now, go on with the third paragraph which specifically authorizes the Legislature to make certain types of exemptions, the validity of which might be open to challenge if there wasn't constitutional authorization for the Legislature to meet them. That is, this second sentence of the third paragraph is inserted so as to specifically give the Legislature that type of authorization and to provide that the exemption that the Legislature may provide shall be subject to change from time to time. It shall not be frozen. The Legislature shall have freedom in that. Now, if we put in the words which the committee has suggested I think we destroy the fluidity which was contemplated when that second sentence of the third section was drawn.

PRESIDENT: Judge Drewen.

MR. DREWEN: I move, Mr. President, that the matter be proceeded with in its present way and let the discussion on the merits be taken up when the motion is made to adopt this Report of the Committee. I move you that we proceed with the recital of the changes that are made on the face of the text.

PRESIDENT: Proceed.

MR. McMURRAY: The next change occurs on page 20, Article IX, Amendments. In the second line of the first paragraph, strike out the word "this" before "Senate" and substitute "the," so that the line reads, "proposed in the Senate or General Assembly."

On page 21, paragraph 7, the first line, a comma should be inserted after the word "approved." The line should read, "If at the election a proposed amendment shall not be approved, neither . . ."

On the same page, under the Schedule, paragraph 4, the first line. At the end of the line, after the word "actions," add "judgments, decrees," so that the line now reads: "4. Except as otherwise provided by this Constitution, all writs, actions, judgments, decrees."

On page 22, it has been called to our attention and taken up with Chairman Van Alstyne, as well as with the technical staff, that as the result of one of the amendments introduced on the floor the mathematics of paragraph 3 are not exactly accurate. So the following change is suggested. Midway down in paragraph 3 there is a line beginning "terms of four years." It is the 15th line, beginning "terms of four years . . ." The words "ten seats" in that line should be changed to "eleven seats," so that the line reads: "terms of four years, so that eleven seats in the Senate shall be filled by election in"; and on the next line "one thousand nine hundred and forty-nine" should be changed to "one thousand nine hundred and fifty-one," so that the line reads "the year one thousand nine hundred and fifty-one and every fourth year."

Then dropping down to the third line below that line, the line beginning "paragraph 2," it should read: "paragraph 2 of Section II

of Article IV of this Constitution, and ten seats" instead of "eleven seats"; and on the line below that, "one thousand and nine hundred and fifty-one" should be changed to "one thousand nine hundred and fifty-three," making the line read: "shall be filled by election in the year one thousand nine hundred and fifty-three."

The next change, and according to my report the final change, occurs in the postscript to the Constitution, which is upon the last page, page 26, which begins, "Done in Convention, . . ." On the second line, insert the word "in" before "New Brunswick," so that it reads as follows, "Done in Convention, at Rutgers University, the State University of New Jersey, in New Brunswick, on the tenth day of September, . . ."

Mr. President, with those changes in the text of the document now before the delegates, your Committee on Arrangement and Form submits its Final Report. I move its adoption.

PRESIDENT: The Committee on Arrangement and Form has submitted its Report and moved its adoption. Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: The motion is seconded. Is there any discussion? . . . Mr. Lightner.

MR. LIGHTNER: Does that motion carry this change that was discussed a few moments ago?

PRESIDENT: Unless it's amended.

MR. LIGHTNER: Well, I dislike very much being in the position of registering an objection, but I certainly think that we should have a second thought on that change. We know perfectly well that one thing that has happened is that Legislatures have given exemptions and they have given civil service rights, and so forth, to veterans which, on second thought, have been found to be disadvantageous and undesirable. I was one of those who were very anxious to have this authorization placed in the Constitution, an authorization so that the Legislature could give liberal exemptions from taxation to veterans who had suffered disability while in the service, but I think the experience of other states shows that we should be very careful to see that we do not inadvertently put into the Constitution some language which would have the effect of freezing an exemption once the Legislature had given it. The language, as it was read, seems to me to give that meaning.

MR. FRANCIS D. MURPHY: May I ask the chairman of the committee, Mr. Read, what about that? It seems that Mr. Lightner has something there.

MR. READ: I might answer that by asking the vice-chairman, Mr. Murray, who has made some study on this thing, to take the floor.

PRESIDENT: Mr. Murray.

MR. FRANK J. MURRAY: Mr. President and members of the Convention:

I think we are all in agreement here that it is a matter of words. Mr. Lightner's objection is well taken to the last sentence in paragraph 3, which is the succeeding paragraph, because there the Legislature should be left free in the matter of granting exemptions to the disabled veterans as to amount and so on from time to time, and should be free to alter them.

As to the first sentence in paragraph 3, I think we are perfectly willing to agree to adding the words after "$500" on the fifth line, "which exemption shall not be altered or repealed," and leaving out the words which were proposed to be added at the end of paragraph 2. I think that that will accomplish what is in the mind of the proposer.

MR. LIGHTNER: Either that, or change the suggested words so that instead of saying "those provided in the succeeding paragraph," say, "those provided in the first sentence of the next paragraph." I have no objection to the $500 exemption being frozen; that was the intention of the committee. What I am objecting to is any inadvertent freezing of a subsequent legislative action with respect to granting an exemption under the permission that is given to the Legislature in the second sentence of the third paragraph.

MR. MURRAY: I think that is a very valid objection, and I think it would clarify it beyond any possibility of doubt in anybody's mind if we would just leave that out at the end of paragraph 2 and put on the fifth line of paragraph 3, after "$500," the words— a comma instead of a period— and say "which exemption shall not be altered or repealed."

PRESIDENT: Mr. Lightner, does that take care of your point?

MR. LIGHTNER: I think Mr. Milton has a suggestion he would like to offer.

PRESIDENT: Mr. Schenk.

MR. JOHN F. SCHENK: I wish to offer a suggestion also. I was partly responsible for this suggested change, because it seemed to me without it you had a conflict between the words, "exemption from taxation may be altered or repealed," and then you give your exception. The conflict occurred with the first sentence of paragraph 3, and I suggested to the Committee on Arrangement and Form that it add the words "except as otherwise provided in this Constitution." It can also be taken care of by keeping the words of the Committee on Arrangement and Form and having a fourth paragraph, starting with the second sentence. In other words, at the end of the second paragraph, you would have the words, "and

except those provided in the succeeding paragraph"; then you have your $500 one which would stand and go with the preceding paragraph, and then you would start the new thought in a separate paragraph to meet the objection of Mr. Lightner.

MR. LIGHTNER: I find it very hard myself to understand how a court would construe the paragraph as it was written in the first place so as to permit the Legislature to alter or repeal the $500 exemption which is there in such explicit language that there shall be that exemption. I don't see how a Legislature could alter or repeal that, but I am very jealous of maintaining the right of the Legislature to alter or repeal any exemption which it may hereafter grant under the blanket authorization given in the rest of the third paragraph.

PRESIDENT: Mr. Milton.

MR. MILTON: Mr. President: By the second paragraph I think it was intended to provide that exemptions now existing and validly granted may be altered or repealed except in the specific instances. I think also that it is clear that the constitutional language is mandatory, that is, the language which is contained in the third paragraph, "Any citizen and resident of this State now or hereafter honorably discharged or released under honorable circumstances from active service in time of war in any branch of the armed forces of the United States, shall be exempt from taxation . . . ," and so forth. I think it unnecessary to add to the end of the second paragraph the qualifying words suggested by the committee; but to remove any doubt I, for one, am willing to adopt the suggestion made by Mr. Murray that at the end of the first sentence of the third paragraph, there shall be added the words, "and which exemption shall be irrepealable or unalterable." To me that, it seems, would cure whatever conflict Mr. Schenk or the other members of the committee found between the second and third paragraphs. I doubt that there is a real conflict, a conflict in reality. But if there be, I suggest that there be added the words, as I say, "and which exemption shall be irrepealable or unalterable."

PRESIDENT: Judge Rafferty.

MR. JOHN J. RAFFERTY: Senator Milton agrees—he is so modest about these things, he doesn't like to come back—that instead of saying, "shall be irrepealable or unalterable," we will use the same phraseology as is used in the second paragraph, "shall not be altered or repealed." No motion has been made on the matter, and I move that the amendment suggested by Senator Milton, as rephrased, be adopted and the amendment proposed by the Committee on Arrangement and Form on this point be rejected.

MR. DWYER: I second it.

MR. MILTON: Is it clearly understood that the effect of the

amendment is to delete from the Report the suggested qualification at the end of the second paragraph reading, "and except those provided in the succeeding paragraph," and substitute therefor by incorporating in the second sentence at the end thereof—the first sentence; I am sorry, I misspoke myself—of the first paragraph, the language as suggested by Judge Rafferty, namely, "and which exemption shall not be altered or repealed"?

MR. DWYER: I second it.

MR. WILLIAM J. ORCHARD: You don't need any "and."

PRESIDENT: Is that clear to all the delegates?

MR. CLAPP: The Committee on Arrangement and Form is agreeable to that, but we suggest that you strike out the "and" there, which is an unnecessary word, and put in a comma after "dollars."

PRESIDENT: That is agreeable to you, Mr. Milton, is it not?

MR. MILTON: Yes.

PRESIDENT: Is that agreeable to the committee? Mr. McMurray?

MR. McMURRAY: That is agreeable to the committee.

PRESIDENT: Is there a question on the motion?

FROM THE FLOOR: Question!

PRESIDENT: This motion is the adoption of the Report as a whole, I understand. There is a motion made and seconded that the Report of the Committee on Arrangement and Form be approved. Are you ready for the question?

FROM THE FLOOR: Question!

PRESIDENT: The Secretary will call the roll. All those in favor, please say "Aye" as their names are called. Those opposed, say "No."

SECRETARY *(calls the roll):*

AYES: Berry, Brogan, Camp, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young—76.

NAYS: None.

SECRETARY: 76 in the affirmative; none in the negative.

PRESIDENT: 76 votes in the affirmative; none in the negative.

The Chair will recognize Dean Sommer.

MR. FRANK H. SOMMER: Mr. President and fellow delegates:

A BRIEF PROLOGUE TO FINAL BALLOTING, SUBMITTED ON SUGGESTION OF THE MANAGEMENT

Shortly the curtain will be rung down.
The footlights will dim and then cease to glow.

The successful run of the play titled "Democracy at Work" draws to a close. The players will soon leave to take up parts in other of life's theatres. Before we players scatter, let us go back stage and there, while the scenery is being taken down, reflect upon the play and players.

I hail the producer—a young man called Alfred, who, with the confidence of youth, put the play into production, turning deaf ears to the dismal prophecies of doubting Thomases and delaying Daniels.

I hail the star—President of the State's University, who played the leading part and who, with genius, a firm hand encased in soft buckskin and with authoritative yet gentle words, guided his fellow players. A star who never stole the spotlight!

The players were well cast. The play was, as a whole, admirably performed.

Now, I do not except from commendation the scene in which a real property taxation clause was framed, though the aid of prompters was frequently required. With due deference to the opinions of others, whose opinions I have held, and still hold, in high esteem, the scene did not picture surrender to considerations of political expediency, obvious or otherwise.

The scene marked the just culmination of a movement for equality and equity in taxation, the beginning of which dates back to the opening years of the century.

Upon the stage in full view of the audience—the people of the State—you players forged a Constitution on the anvil of mutual confidence, goodwill and accord, with the hammer of reason. A Constitution not perfect. No product of the melting pot of many minds attains perfection. A Constitution, the product of patient, untiring and disinterested endeavor to further the common weal. A Constitution that is practical; a workable, fundamental instrument of government. A Constitution that for one, I feel assured, will not require too frequent applications of the three-in-one oil of judicial interpretation to keep it from creaking and clashing in operation. A Constitution that is brief, concise, simple and plain and restricted in the main to matters fundamental.

Critics will damn the production with faint praise. Some will unqualifiedly condemn it. As you read the lines that come from

their pens and clattering typewriters bear in mind that, in the words of another, "To serve the public faithfully and at the same time to please it entirely is impracticable." The spirit of reasoned and reasonable composition of difference has characterized this Convention.

Yea, even the lion Hudson and the lamb Essex lay down together. Both survived the siesta!

(Laughter)

I fervently hope that a like spirit will prevail in legislative action upon the memorials of the Convention.

If the mist of doubt beclouds the hope, would that we, players here, effectively take on the role of legislative lobbyists ere anti-lobbying statutes or rules forbid.

I am proud to have played a walk-on part in this production—even more proud of the parts that former students of mine who sit among you, and who testified before committees, have played.

In the years ahead, as I look back with mind's eye upon the play and players, while sitting beside an open fireplace hypnotized by the glow of crackling logs, dozing and dreaming of days past, I know there will come a moistening of the eye, not in sadness but in gladness, and a swelling of the heart.

We part to go our separate ways—to play other parts.

Let one part be that of Minute Men, of forces united to present the issues to the people so plainly and so clearly and with such conviction of the rightness of our cause as to win their approval and their acclaim—"Well done, good and faithful servants."

We have differed. The time has come to put differences aside and to go forward in what should now be the common cause for all. Let us give evidence that while our ways were many, our end was one.

Moving in this spirit, victory will light upon the standard we have raised and will enable the State to cast off a garment worn thin with age, that outgrown, pinches in revealing spots, and to don a garment fashioned to the needs of this day.

Fall in! Carry on, in confidence and determination! Or—if words of military command grate on you—be a lamp-bearer, lighting the peoples' way!

(Loud applause)

PRESIDENT: Senator O'Mara, will you come up just a moment? Senator Van Alstyne, will you come up just a moment?

We will have a five-minute recess.

(The Convention reconvened at 4:25 P. M. after a five-minute recess)

PRESIDENT: Will the delegates kindly take their seats? . . .

The chair will recognize Mr. Park.

MR. LAWRENCE N. PARK: Dr. Clothier, ladies and gentlemen of the Convention:

I want to invite your attention to page 12, Section II, paragraph 1, which reads:

> "The Governor may grant pardons and reprieves in all cases other than impeachment and treason. . . ."

Now, it is late in the day and possibly I am late in bringing this matter before you. I am not a parliamentarian, but I want to tell you what is on my mind, and others more astute than I can manage it.

I think that we have made, are making and will make a very, very serious mistake if we adopt the Constitution in the way it is now printed. Because this document is so important, I feel that the question of laches, or the statute of limitations, cannot be raised, and I think that if we go away from here, at least not being mindful of the problem, that we are remiss in our duties. I regret that I did not see this, and I doubt if many of us have. I believe that a historian might be able to show that the matter was first called to the attention of the different delegates by the Attorney-General. But, what have we done so far? We have said that the Governor can pardon, but that he cannot pardon in cases of impeachment and treason. Let us break it down.

Impeachment, of course, has been in the Constitution. It is in the Constitution of 1844 of New Jersey, the Federal Constitution, and to the best of my knowledge, in the constitutions of the other states. And there is a very valid reason why he should not be empowered to pardon in cases of impeachment. Let us remember that impeachment itself, by the terms of our own Constitution, does not carry with it any penalty except removal from office and the penalty of a future negation from holding public office, honor, profit, etc.

But what about this crime of treason? Now, I have no brief for persons who are guilty of treason, but I do have a brief for persons who are not guilty of treason, but who have been convicted of treason. Treason, of course, is a very dastardly crime, but we allow the President of the United States to pardon for treason. We allow the Governor, under the 1844 Constitution, to pardon for treason. And, as a matter of fact, to the best of my knowledge—and no one has contradicted it—there are no provisions in any constitution which prohibit the governor from pardoning for treason.

Now, what do we do? Remember, friends, any men who are convicted of treason against the State would probably receive the death penalty. Of course, if a man has been executed, there isn't much you can do about it. But if he has not been executed, but has been given a life sentence or a tremendously long sentence, something

can be done about it. For those individuals who have been convicted and are serving their sentence, where the Governor would concede that probably they had been guilty of treason but had paid their penalty, they could be released. I see no reason, actually, why treason is any more heinous than murder.

But what concerns us most of all is the case of an individual who has been convicted, and the right of appeal to the courts has been barred by the lapse of time. Or he has been convicted under circumstances where he cannot allege the denial of due process by way of confession. (If you had a conviction in a case such as the Mooney case, where there was a denial of due process, you could get a correction by the court.) Let us take such a case in New Jersey, where an individual is convicted who is not guilty and never was guilty, and yet because of the passage of time, or because there is an inability to demonstrate any error in the record or to establish any evidence which would show the denial of due process—what about such a person? Even though he be innocent, he must stay in jail in the absence of any power anywhere to relieve him.

As I stated before, and as all of you well know, I am not a parliamentarian, and I don't know how to get this matter before you corrected. I may be entirely wrong on the merits of my case and in the way I argue, but I firmly believe that we are making a mistake in writing in this word "treason." I see no need for making an exception of that particular crime as against any other, and I say that when we take away from the executive his power to pardon this one particular crime, we close the door to any remedy for the man who is not guilty.

I certainly hope that the people on this floor, if they have faith in what I have said—and I know I have the support on this point from some of the members of the Convention as well as the support of the Attorney-General—I certainly hope we won't go away from here making this very bad mistake. You must remember that when treason does come up, it comes up in time of war, when everyone is inflamed, when there is tremendous hatred, and when you don't get a fair trial. You may not be able to show by judicial methods in many instances, that the trial is unfair. Let us not walk away from here, ladies and gentlemen of the Convention, having provided a system under which it will be impossible to relieve some absolutely innocent man from the consequences of what is a wrongful judgment which can in no way be corrected.

I brought this before you because in conscience I think I should. I regret the lateness of it; I think we had many other problems which were from all aspects more pressing. But we are making a mistake, I submit, if we do not take out the words "and treason." And, if anybody else agrees with me, I suppose that I'll have to ask

them to make some motion, because I don't know how to do it.

PRESIDENT: Senator O'Mara.

MR. EDWARD J. O'MARA: Mr. President, ladies and gentlemen of the Convention:

Because I feel that there is substance to what Mr. Park has said, and with the distinct understanding that the subsequent motions will be limited, if we get to a position where we can make subsequent motions, to the elimination of the words "and treason," as they appear in paragraph 1, Section II, of the Executive Article, on page 12, I do now move that the vote by which the Executive Article was approved be reconsidered.

PRESIDENT: Is that subject to a condition that that alone be considered?

MR. O'MARA: That's right.

PRESIDENT Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Senator Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: Mr. President, I would just like to tell the Convention a few facts about this matter. This was called to my attention while the Committee on Arrangement and Form was working, and we had a quick meeting of our Executive Committee, and this matter was brought before them again, not more than an hour or so ago. We had discussed it at considerable length when we made our original temporary Proposal, again when we made our final Proposal, and again this afternoon. The committee, for the reasons which will be advanced by other members, rejected the idea of deleting these two words.

I think that Delegate Park said that he knew of no other constitution—he didn't say that there weren't any—but I think he said he knew of no other constitution that exempted "impeachment and treason" from the pardoning power of the governor. I would like to think that the Convention would be interested to know that 27 other states exempt both impeachment and treason, among which are our neighboring state of New York and some of the larger states. When you say that 27 states do exempt, it seems that there is quite a division of opinion, which means that the balance don't exempt.

PRESIDENT: Colonel Walton.

MR. GEORGE H. WALTON: Mr. President and fellow delegates:

This matter was thoroughly discussed by the Executive Committee many weeks ago. It was the opinion of that committee that the crime of treason against the State was considerably more heinous than that of murder. It was our feeling that no one, no Governor, should be vested with the power to pardon for the crime of treason.

It was the feeling of the committee that no one man should pardon for treason, but rather that if there was going to be a pardon it should be only by legislative enactment.

Your committee feels that the crime of treason against the State is such a great crime that it should be included with the prohibition against the pardon in the event of an impeachment and removal from office, and, accordingly, these words were inserted in the section.

PRESIDENT: Mr. Cowgill.

MR. COWGILL: Mr. Chairman, I rise to a point of order. I believe that if this were effectuated it would be a substantive change, is that correct?

PRESIDENT: Yes.

MR. COWGILL: And in order to do so, there must be unanimous consent, is that correct?

PRESIDENT: Now it goes back to second reading. Am I correct, Senator O'Mara?

MR. O'MARA: I would think so, but I think the proper procedure Mr. President, would be first to reconsider the vote by which the Article was adopted. If that carries by a majority vote, the Article would then be back on third reading. When it's on third reading, it would require unanimous consent to amend. However, a motion might be made to return the Article to second reading for the purpose of amendment. That would require a majority vote, and then if the Article was returned to second reading, it would be open to amendment by a majority vote.

MR. COWGILL: Mr. Chairman, I don't know if we will ever get back here today to second reading, but if we get back to third reading, I serve notice now that I shall object to this change.

PRESIDENT: Is there any further discussion on this motion? . . . Mrs. Streeter.

MRS. RUTH C. STREETER: Mr. President and fellow delegates:

I think this entire question on the proper handling of "treason" needs to be considered in the light of paragraph 17, Article I, which says that

> "Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort."

Surely, it is a very serious crime, much more serious than an individual murder, because it would be likely to involve the death of many people. And continuing,

> "No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, . . ."

which as you all know, is extremely difficult to get—

> "or in confession in open court."

Now the theory that there might be a great deal of hysteria in war time has been tested. We have just gone through a very long and a very severe war. There have been extremely few attempts to convict anyone of treason. There were a couple of men who spoke over the radio in Germany and who were brought back for trial. They have been tried in Boston. One of them, I think, was adjudged insane, and I am not sure just what happened to the other. But those are the only two cases that I know of—of trials for treason —and they certainly were not hysterical, nor were there any witch-hunts going on in this war.

I think that treason is a particularly dastardly crime, and I agree entirely with the delegates who have said that it should not be pardonable by the governor.

PRESIDENT: Senator O'Mara, may I ask for a bit of information as to the proper procedure—whether or not this motion should be preceded by a motion to reconsider our vote on the Report of the Committee on Arrangement and Form, which was just adopted?

MR. O'MARA: I make a motion to reconsider the Report of the Committee on Arrangement and Form.

PRESIDENT: Senator Van Alstyne.

MR. VAN ALSTYNE: I don't pretend to be a parliamentarian, but Delegate Winne pointed out Rule 44, page 18:

> "A motion to reconsider any vote must be made before the end of the second convention day after the day on which the vote proposed to be reconsidered was taken, . . ."

We have had many more than two Convention days since the last vote was taken.

PRESIDENT: Mr. O'Mara.

MR. O'MARA: Mr. President, I move that Rule 44 be suspended.

(Laughter)

FROM THE FLOOR: The motion is not seconded.

(Laughter)

PRESIDENT: Mr. Cavicchia.

MR. CAVICCHIA: Mr. President, I suggest that Rules are made in order to facilitate the transaction of business in any deliberative assembly. I think the Convention's Rules were well made when they were made, but I don't think they contemplated any situation such as has now arisen.

There is a controversy before us. I think we are all men and women of substance and sense, and I don't think we require any precedent or rule for the purpose of this consideration, since we have not yet finally agreed, by resolution, upon the Constitution in final form.

I would, therefore, suggest, in order that there may be no feeling with respect to technicality, that a motion be made that all Rules be suspended and that certain words be deleted from the Constitution as now drafted, and that in the event 41 votes for the motion are had, then, in that form, at that point, the Constitution will have been agreed upon, pending final agreement as to the whole by due resolution.

PRESIDENT: Senator O'Mara, is that agreeable to you?

MR. O'MARA: I think that is a very sensible suggestion, Mr. President, and I second Mr. Cavicchia's motion.

FROM THE FLOOR: Question!

PRESIDENT: Are you ready for the question? . . . It has been moved—Mr. Cavicchia, I will ask you to state it again.

MR. CAVICCHIA: I am not making the motion. I was suggesting that someone move that all Rules be suspended.

PRESIDENT: Senator O'Mara, has, I understood, made that motion.

MR. O'MARA: I will move that the Rules of the Convention be suspended and that Article V, Section II, paragraph 1, page 12, be amended by striking out the words "and treason" from the second line.

PRESIDENT: Is the motion seconded? . . . Mrs. Streeter.

MRS. STREETER: Mr. President, I object to the gentleman from Hudson's motion on both grounds. I intend to vote against giving the Governor the power to pardon for treason. I also see no reason why, at this stage of the game, we should change our Rules. In the middle of a football game you don't change your rules. The game is started and played out under the same rules.

As I understand it, this bill is on third reading. On third reading, you have to have unanimous consent for a change. I feel very strongly against any change. I see no reason why we should now throw all that overboard when everybody here has had this matter before them for a long time. If they didn't think about it before, it's too bad; but I don't see any particular reason why we should suspend all the Rules in any matter at this stage of the game. So, I am sorry to say that I disagree with my colleague from Hudson on both counts.

PRESIDENT: Judge McGrath.

MR. EDWARD A. McGRATH: I have no desire to prolong this, but I would like to point out that as far as the memory of any man in this hall goes, I am sure we have never had a trial for treason. The obvious reason is that New Jersey is only one of 48 states in the Union; treason can only be committed in time of war, and treason against the State of New Jersey is treason against the United States. The United States, of course, would have the first call on

any person accused or indicted for treason, and neither the Governor of New Jersey nor the governor of any other state would have the right to pardon any person convicted of treason against the United States. Treason against the State of New Jersey would be treason against the United States, so that no matter what we put in our Constitution, the Federal Government would have the first right to take anybody accused of treason and try him in the federal courts. It seems to me that the matter is not so important that we ought to waste further time on it or open our deliberations by encouraging delegates to bring up questions which may delay our departure from the good old City of New Brunswick.

FROM THE FLOOR: Question!

PRESIDENT: The question is called for. All in favor of this motion, please say "Aye."

(A few scattered "Ayes")

PRESIDENT: Those opposed, "No."

(Majority of "Noes")

PRESIDENT: The motion is lost . . . The chair recognizes Mr. Clapp.

MR. CLAPP: Mr. President: I think this is the appropriate time to bring forward a resolution which the Committee on Arrangement and Form was asked to prepare. I have it here, and it has been circularized and put on each member's desk. *(Reading):*

> "RESOLVED, that the delegates of the people of New Jersey, in Convention, do hereby agree upon the following new State Constitution:
>
> (Here follows the preamble and the text of the Constitution as ordered by amendment to the Committee on Arrangement and Form Report)" [1]

FROM THE FLOOR: I second it!

PRESIDENT: You have heard the resolution, and it has been seconded. Is there any discussion? . . . Is the question called for?

The Secretary will call the roll. All those in favor, please say "Aye" as their names are called. Those opposed, please say "No."

SECRETARY *(calls the roll):*

AYES: Brogan, Camp, Carey, Cavicchia, Clapp, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Emerson, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter,

[1] The full text appears in the Appendix in Vol. 2.

Struble, Taylor, Van Alstyne, Walton, Wene, Winne, Young—74.

NAYS: Berry—1.

PRESIDENT: The proposed resolution has been adopted by the Convention.

There is a matter of the timetable which may be of interest to the delegates. I think we shall be able to conclude the afternoon program reasonably soon. I had expected it to adjourn before now. I imagine it will be agreeable to most of the delegates that we continue for such time as is necessary, rather than convene again tomorrow, before Wednesday.

If that is the case, the chair will recognize Dr. Saunders.

MR. SAUNDERS: Mr. President and delegates:

Your Committee on Submission and Address to the People makes its Report, first quoting Rule 75: "There shall also be referred to the Committee on Submission and Address to the People the preparation of an Address to the People consisting of a summary and explanation of the proposed Constitution or the part or parts agreed upon" and "said committee shall prepare such an Address and report the same."

The committee has complied with this requirement and copies of the proposed Address to the People, consisting of a Summary and Explanation, are now on the desks of all the delegates. This work has been completed under the direction of a sub-committee consisting of Messrs. Paul, Montgomery and Moroney. Effective assistance has been rendered by Mr. Brower and Mr. Cameron of the firm of Batton, Barton, Durstine and Osborne. The committee wishes to express its gratitude to this firm.

It is our belief that the attractiveness with which this document is printed will enhance its chances of being widely read. We would like a two-color job and at least 50-pound paper. In order that the typography may meet our desires, we wish to have certain plates prepared under our direction and have asked the Business Committee for an amount not to exceed $500 for that purpose. We believe that 3,000,000 copies of the Address and Summary should be printed. This number will take care of the legal requirement that a copy be mailed to each voter, and will leave 500,000 for general circulation.

Since the report made to you by our committee on August 28 two matters have been questioned by some delegates. One concerns itself with our recommendation that when local questions are also to be placed on the ballot for referendum, the constitutional question be placed at the top and other questions at the bottom. In the final recommendation, which by law we must make on Wednesday after the return of the document approved by the Secretary of State, our recommendation will omit the latter part of this and recom-

mend only that the constitutional question be placed at the top of the ballot.

The second question arises from the fact that our committee brought in no recommendation for paid advertising—the printing of the text of the new Constitution in daily and weekly newspapers.

Attention is called to these two items so that, if it is so desired, the Convention may reverse any decision either made or implied in the acceptance of our Report with its recommendations.

Today we have four resolutions to present. The first of these is one which the Secretary of State tells us is necessary concerning the matter of submission as a whole. I present it now, for the Secretary to read.

SECRETARY *(reading):*

> "RESOLVED, and it is hereby directed by the Constitutional Convention that the proposed new State Constitution agreed upon and framed by this Convention be submitted, as a whole, to the people for adoption or rejection at the general election to be held on the fourth day of November, one thousand nine hundred and forty-seven, upon certification to the Convention by the Secretary of State that the same complies with the instructions as voted by the people pursuant to Chapter 8 of the Laws of One Thousand Nine Hundred and Forty-seven."

MR. SAUNDERS: I move the adoption of this resolution.

FROM THE FLOOR: Seconded.

PRESIDENT: It has been moved and seconded. Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted.

MR. SAUNDERS: The second resolution which we present has to do with the Address to the People as presented to you. I turn this over.

SECRETARY *(reading):*

> "RESOLVED by the Constitutional Convention that an Address to the People, in the form following, be and the same hereby is adopted as the Address to the People required to be prepared and distributed pursuant to the provisions of Chapter 8 of the Laws of One Thousand Nine Hundred and Forty-seven, that is to say: . . ."

MR. SAUNDERS: I move, through you, Mr. President, the adoption of this resolution.

FROM THE FLOOR: Seconded.

PRESIDENT: It has been moved and seconded. Is there any discussion?

MR. SAUNDERS: Mr. Schenk has an amendment, I know.

PRESIDENT: Mr. Schenk?

MR. SCHENK: On page 3, Dr. Clothier and fellow delegates, it is my suggestion that we strike the last seven lines and substitute the following language, which I will ask the Secretary to read.

MR. SAUNDERS: While it is being read, Mr. President, may I say that this change has the approval of such members of the committee as have been able to see it.

SECRETARY *(reading):*

> "On page 3, strike out the last seven lines and substitute the following:
> 'THE LEGISLATURE MAY PROVIDE FOR "ABSENTEE VOTING" BY MEMBERS OF THE ARMED FORCES IN *PEACE TIME.* This is an extension of the rights guaranteed the Armed Forces in time of war.'"

MR. SCHENK: Dr. Clothier, in explanation I would merely like to say that as it is now found on page 3, the heavy type which reads, "In time of war, no voter in the armed forces can be deprived of his vote because of absence from his election district"—this is not an addition or extension. That is a provision which is found in the 1844 Constitution. And inadvertently, I think, those words were given, to use the language of the day, top billing, when they should not have been given such a billing. The proper language, I believe, is the language which the Secretary has read, and I believe it is approved by Dr. Saunders and his committee.

PRESIDENT: Do you offer that as an amendment?

MR. SCHENK: I do, sir; yes, sir.

PRESIDENT: Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The amendment is adopted. Are you ready for the question on the original motion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Adopted.

MR. SAUNDERS: The third resolution has to do with the necessary instructions about printing. I'll ask that the Secretary read it.

SECRETARY *(reading):*

"Whereas, the 'Address to the People' just adopted by this Convention must, by law, be sent to all registered voters in the State, and

Whereas, the cost of the printing of the number of copies, together with additional copies which will be desired by citizens and civic groups, cannot be determined at present; therefore be it

RESOLVED, that the Committee on Credentials, Printing and Authentication is hereby authorized and instructed to have printed 3 million copies of the 'Address to the People' in accordance with the layout and typographical arrangement to be submitted by the Committee on Submission and Address to the People and, be it further

RESOLVED, that the president and secretary of the Convention be hereby authorized to sign vouchers for the cost of pattern plates, paper, printing and distribution of said document."

MR. SAUNDERS: I move through you, Mr. President, the adoption of this resolution.

PRESIDENT: Is the resolution seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: Are you ready for the question? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted.

MR. SAUNDERS: The fourth resolution is one legally required to enable what you voted the other day—the printing of 600,000 copies of the Constitution. I'll ask the Secretary to read it. While that is going up, may I say that the committee will have eight resolutions next Wednesday which legally cannot be brought before you now, but they are only the legal resolutions necessary to the carrying out of our instructions to the Secretary of State about the submission to the people:

SECRETARY *(reading):*

"RESOLVED, that 600,000 copies of said proposed new State Constitution be printed at the expense of the Convention, on the order of the Committee on Credentials, Printing and Authentication of Documents of the Convention, and be delivered to the Secretary of State to be disposed of by him as shall be directed by this Convention."

MR. SAUNDERS: I move the adoption of this resolution.

PRESIDENT: Is the resolution seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried.

MR. SAUNDERS: This completes our Report at this time, Mr. President.

PRESIDENT: We have several other resolutions here on which action should be taken. Do you wish recognition now, Mr. Orchard, or will you wait?

MR. ORCHARD: I'll wait.

SECRETARY *(reading):*

"Amended Resolution
Introduced by: William J. Dwyer, Hudson County.

Whereas, it is the judgment of this Convention, that a record of the proceedings of the Constitutional Convention and its committees be preserved in permanent form because of its legal, historical and research value; and

Whereas, the records of the Constitutional Convention and its Committees are to be turned over to the Bureau of Archives and History, in the Division of the State Library, Archives and History, State Department of Education, after the close of the Convention;

Now, Therefore, be it Resolved:

1. The Secretary of the Convention shall proceed after the close of the Convention to prepare and have printed an official Journal of the Convention, and shall thereafter turn over to the Bureau of Archives and History of the State of New Jersey, all the records which have come into his possession as Secretary, as provided in the Rules of the Convention.

2. The Head of the Bureau of Archives and History of the State of New Jersey shall proceed after the close of the Convention to edit, prepare and deliver to the Secretary for printing, the complete proceedings of (1) the Constitutional Convention itself, and (2) the Standing Committees of the Constitutional Convention, within the limits of funds available.

3. All bills incurred in connection with carrying out the provisions of this resolution shall be signed by the President and the Secretary and the Chairman of the Committee on Rules, Organization and Business Affairs.

4. There shall be printed in the following order and within the limits of the funds available:

(a) 500 copies of the Journal of the Constitutional Convention;

(b) 500 copies of the proceedings of the Constitutional Convention;

(c) 500 copies of the proceedings of the Standing Committees of the Constitutional Convention.

The said copies shall be distributed as follows:

(a) 2 copies each to the Governor, Secretary of State, Attorney General, State Treasurer, State Comptroller, Chief Justice of the Supreme Court and Chancellor;

(b) 2 copies to each delegate and to the Secretary of the Convention;

(c) 1 copy to each member of the 1947 Legislature and to the new members elected to the 1948 Legislature;

(d) 3 copies to the State Library; the Library of Rutgers University, the State University of New Jersey; Princeton University Library; and the Library of Congress;

(e) 1 copy to the state libraries of the 47 states and Hawaii;

(f) The balance of the said copies of each printing shall be delivered to the Bureau of Archives and History of the State of New Jersey."

PRESIDENT: Mr. Dwyer, do you wish to speak on this resolution?

MR. DWYER: I think the resolution, fellow delegates, is self-explanatory. I think it would be in keeping with the dignity of the State of New Jersey if we were to establish in proper form a permanent record of the proceedings of this Convention from the day that we convened until the day that we adjourn.

The objection that has been raised—and I say without much effect upon me, I'm naturally a thrifty man—is that it is going to cost some money. I think the State of New Jersey can well afford to spend some money in connection with the preservation of the archives of this great assembly here today. It sets us thinking—it represents an effort after 103 years to give to the people a new Constitution, and I would feel that the State were failing in its duty if we did not preserve the proceedings of this Convention in their entirety.

Now, I'm given to understand that there is some trouble about the availability of the funds in the hands of the committee charged with watching our treasury here. The purport of my resolution is to have those funds which are available after all other commitments are made, allocated to the preservation of our archives.

PRESIDENT: You move the resolution, Mr. Dwyer?

MR. DWYER: I offer the resolution and move its adoption.

PRESIDENT: Mr. Ferry?

MR. LELAND F. FERRY: I wonder if the mover of that resolution would accept an amendment, namely, that one copy of each be delivered to each daily newspaper in the State?

PRESIDENT: Do you accept the amendment, Mr. Dwyer?

MR. DWYER: I'll accept the amendment, yes.

PRESIDENT: Is the resolution seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Judge Drewen?

MR. DREWEN: Mr. President, I recall that as the Secretary read the resolution it dealt with available funds for the purpose of defraying this expense. However, to make sure of that, I offer as an amendment—say to be paragraph 2 (a) of the resolution—the following: "All funds of this Convention unexpended or unappropriated or any part thereof are hereby appropriated to pay for the cost of such printing."

PRESIDENT: Any further discussion on this resolution?

MR. DWYER: I'll accept that as an amendment.

PRESIDENT: Mr. Rafferty?

MR. RAFFERTY: Mr. President and delegates: The resolution provides for sending a copy of this report to Rutgers and Princeton. There are other institutions of higher education in this State and I would like to offer an amendment that Rutgers and Princeton, as the language may be, be stricken out and substituted therefor shall be the words, "To each institution of higher learning in the State."

PRESIDENT: Mr. Dwyer?

MR. DWYER: I'll very gladly accept that amendment.

PRESIDENT: Any more amendments to be accepted? Are you ready for the question?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Scattered "Noes")

PRESIDENT: All in favor, please raise their hands.

(Majority of hands)

PRESIDENT: All opposed, please raise their hands.

(Minority of hands)

PRESIDENT: The resolution is adopted.

MR. COWGILL: Were there 41 votes, Mr. Chairman?

SECRETARY: 22 and 19.

SECRETARY: Resolution by Mr. Saunders *(reading):*

> "RESOLVED, that the chairman and secretary of the respective standing committees of the Constitutional Convention of 1947, shall forthwith, after the close of the Constitutional Convention, turn over to the Bureau of Archives and History, in the Division of the State Library, Archives and History of the State Department of Education, all the records, including minutes and proceedings, correspondence, and such briefs, memoranda and drafts, as may have been prepared by or submitted to the said committees in connection with their hearings and deliberations."

MR. SAUNDERS: I move its adoption, Mr. President.

PRESIDENT: Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried.

SECRETARY: Resolution by Mr. Dixon *(reading):*

"RESOLVED, that it is the opinion of this Convention, that in order to use every available and efficient means to bring before all of the people of our State the substance of the proposed revised Constitution, that the Secretary of State be directed by this Convention to have published in the newspapers of the State, as well as presented by radio, summaries showing the new material and changes in the proposed revised Constitution, compared with our present Constitution; and be it further

RESOLVED, that the Convention approve for this purpose the expenditure of not more than $80,000 of funds set aside for the expenses of the Convention."

MR. AMOS F. DIXON: Mr. President, I move the adoption of the resolution.

FROM THE FLOOR: Seconded.

PRESIDENT: Seconded. Judge Stanger?

MR. FRANCIS A. STANGER, JR.: Mr. President and fellow delegates:

We must not forget that the newspapers of this State have been eminently fair to this Convention, both reportorially and editorially, and most generous. We must not forget that the newspapers influence the thought of the people in a major sense. Aside from all this, we want the people to know what is in the new proposed Constitution. If we do, I'm confident that they will vote its approval.

The newspapers are an essential and indispensable means to impart this information to the people. Many will read the newspapers who will not bother to read a separate booklet. I feel it is highly important that the summary of this Constitution, rather the summary of the work of this Constitutional Convention, be printed in one or more newspapers published in each county. The radio also may be used as an important contributor to the dissemination of the information concerning the new Constitution. I most heartily favor the resolution offered by Delegate Dixon, and shall support it.

MR. DIXON: Mr. President, ladies and gentlemen of the Convention:

Fellow delegates, I spoke last week about this matter of newspaper publicity and during the past week I have given the matter a great deal of consideration. I have discussed it with a fair cross-section of the people in our State, in regard to their understanding of the matter. I feel very strongly that we have a definite obligation to the people of New Jersey to inform them in regard to what in this Constitution is different from our present Constitution, and why we have made these changes.

We want for this Constitution not just a small vote, but we want to interest the people and get them out to cast their ballots so as to show that the people in the State are fully back of this Constitution we are presenting to them, and that they are not just neutral on the subject, or not paying any attention to it.

We have a grand opportunity here to educate a great many of our citizens in regard to our fundamental law. Now, there are a

tremendous number of people who will not read these pamphlets that we are passing out, who will not read any pamphlets, but they do read the newspapers. If we can present this Constitution to them in a very short form, rather small doses at a time, in the way of advertisements, showing them the differences between our new Constitution and the one that it replaces, I feel that we have met our obligation to the greatest extent that we possibly can in informing our people.

I am sure each one of you who has studied this Constitution realizes what a job it would be and how impractical it would be to ask anyone to take our new Constitution and our old one and sit down and for themselves try to study out the differences. But we do know that the people will read the newspapers, particularly in our smaller communities, and even in our larger communities, where we have weeklies, they depend a great deal upon those papers for their information. I was very much impressed by seeing some articles that were sent to me, I don't know by whom—and I think most of the other delegates have had them from the *Elizabeth Journal*—in which they put these differences in a form that a man running could read and understand just exactly what we have done with this new Constitution. It is my thought that a comparison of that kind is of tremendous value in getting this message across to our people.

Now, as far as cost is concerned, we had an estimate last week by Chairman Saunders that it might cost $75,000 to advertise in the newspapers. I don't know what it would cost. We have taken a fling, at least, for $80,000 to cover the newspaper advertising and some radio broadcasting. I feel that this Convention would certainly be very wrong indeed if we felt at this time that we could not spend up to $80,000 to get our message across. The Summary that we have prepared is a grand summary and it may be a basis, perhaps, in working this thing out—which, to my mind, is going to fall upon our Committee on Submission and Address to the People, and I hope Mr. Saunders heard that. We can very carefully check the information and make sure that it is right.

I urge, and urge strongly, the delegates to support this idea of going out and telling our people in language that they can understand what we have been doing down here for these last three months. Thank you.

PRESIDENT: Mr. Cowgill?

MR. COWGILL: Mr. Chairman and fellow delegates:

I support the suggestion of Mr. Dixon. I would like to point out to the delegates, and particularly to Mr. Dwyer, when we spend his $80,000 there will be practically no money left to distribute these lovely journals to all the institutions of higher education.

PRESIDENT: Are you ready for the question? Mr. Hadley?

MR. WILLIAM L. HADLEY: I'm a newspaper man and normally I should be heartily in favor of this thing, but I'm very frank to state that if you had to be on one end of the telephone line for an hour and twenty minutes when you had nine guests in your house, as I was one evening recently, and listened to the tirade that was put into my ears by the publisher of a small town newspaper, you would want to run out on that class of people and run out on that class of business. I'm naturally, normally for this; but it is awfully hard to swallow the kind of program they are putting on to put it across. I want to be on record as saying that.

PRESIDENT: Mr. Dwyer?

MR. DWYER: I just want to give casual recognition to Brother Cowgill's remarks and say that it is more important to attempt to reach one reader out of a hundred, even of the rural newspapers, than to preserve to the future generations of our State the history of this Convention.

PRESIDENT: Any further discussion? Mr. Lloyd?

MR. FRANCIS V. D. LLOYD: As a member of the Committee on Submission and Address to the People, I was in the minority in my recommendation or suggestion that the Summary, or an intelligent, easily readable summary of this Constitution, be published in the newspapers in the State. I think it should be because I believe that ten days before election is too short a time first to present the people of the State of New Jersey with the final deliberations of this Convention on their Constitution. After all, it belongs to the people and not the delegates. And I agree with Mr. Dixon, who is notoriously careful, I know, in the expenditure of money, that it will be money well spent. I disagree entirely with Mr. Hadley and hold no brief for any newspapers. Nobody has contacted me and I was a member of the committee.

I recommend and urge that we do publicize this in the newspapers as soon as we can, so that the people will become acquainted with our work more than ten days before election.

PRESIDENT: Are you ready for the question? Mr. Gemberling?

MR. ARTHUR R. GEMBERLING: I was listening to these very strong appeals and I was reminded of the codfish:

> "The codfish lays a million eggs,
> The helpful hen lays one,
> But the codfish doesn't cackle,
> To tell us what she's done.
>
> And so we shun the codfish,
> The helpful hen we prize,
> Which indicates to you and me
> That it pays to advertise."

(Laughter)

PRESIDENT: The question is called for. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried. The chair recognizes Mr. Gemberling.

MR. GEMBERLING: The Committee on Rules, Organization and Business Affairs submits the following report:

The Committee on Rules, Organization and Business Affairs at a meeting held Monday, September 8, 1947, voted the payment of a bonus to all state employees who gave their time and service to the Constitutional Convention in a total sum of $11,223, the individual amounts being fixed on the basis of hours performed and the type of service rendered. Compensation in the sum of $2000 each was voted by the committee to each of the three state employees who acted in a supervisory capacity. Compensation has been voted for technicians employed by various committees in a total of $3500. A budget of $25,000 was made available to the Committee on Public Relations and Information. As of September 8, 1947, the committee reports the following financial status: Appropriation $350,000; expenditures $46,059.32; commitments $58,866.66—total of $104, 925.98, leaving a balance of $245,000.

Those balances get some of us crazy here. We go wild. Last week I thought that we had $271,000 and didn't have any place to put it. There was $275,000 that had to be spent. Now, we have to take into consideration that we have a lot of money to spend. The copy of the Constitution, your Address to the People, Summary, this matter of Mr. Dwyer's resolution, and Mr. Dixon—so there is a bottom to the treasury and we have to go very carefully.

PRESIDENT: Do you offer that report for acceptance, Mr. Gemberling?

MR. GEMBERLING: Yes.

PRESIDENT: It has been moved and seconded that the report be accepted. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

SECRETARY: Resolution by Mr. Gemberling concerning the winding up and termination of the business affairs of this Convention *(reading):*

"CONSTITUTIONAL CONVENTION OF NEW JERSEY OF 1947
RESOLUTION

Introduced by MR. GEMBERLING

Concerning the winding up and termination of the business affairs of the Convention.

RESOLVED, that the Committee on Rules, Organization and Business Affairs be, and it hereby is, authorized and empowered to continue to act after adjournment of this Convention in such capacity and in such manner as may be necessary to wind up and terminate the administrative and business affairs of this Convention. To this end the Committee shall:

(a) Check and audit the remaining expenditures of the Convention; and

(b) Contract for and purchase such supplies and services as may be required in the winding up and termination of the business affairs of the Convention within the limits of funds remaining from the appropriation heretofore made for the expenses of the Convention; and

(c) Examine and certify to the President and Secretary of the Convention, the correctness of all remaining bills heretofore incurred by the Convention and all bills hereafter duly incurred by said Committee on Rules, Organization and Business Affairs, in the winding up and termination of the business affairs of the Convention; and

(d) Perform such other functions as may be necessary to wind up and terminate the administrative and business affairs of the Convention.

AND IT IS FURTHER RESOLVED, that the President and Secretary of the Convention be, and they hereby are, authorized and empowered to certify to the State Treasurer all vouchers for payment of the remaining expenditures heretofore incurred by the Convention and all vouchers for payment of expenditures which may hereafter be incurred by the Committee on Rules, Organization and Business Affairs, in the winding up and termination of the business affairs of the Convention as aforesaid."

PRESIDENT: Mr. Gemberling, will you speak for that resolution.

MR. GEMBERLING: I don't think it's necessary.

PRESIDENT: Do you move it?

MR. GEMBERLING: Yes.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Any discussion? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Adopted . . . Next resolution.

SECRETARY: Resolution by Mr. Proctor *(reading):*

"Whereas, this Convention has memorialized the Legislature to establish by law a Joint Committee of the two houses for research to determine the new and amended legislation needed to carry out the mandates and facilitate the operation of the new State Constitution; and

Whereas, in the interest of economy of time and money it is desirable that said research shall be conducted through existing state agencies wherever possible;

RESOLVED, that this Constitutional Convention memorialize the Legislature as follows:

That immediately upon the ratification of the proposed new State Constitution by the people a joint committee of the two houses of the Legislature be established for the purpose of conducting research to determine the new and amended legislation needed to carry out the mandates and facilitate the operation of the new State Constitution and to formulate and report to the Legislature its recommendations as to the same, and that said joint committee, in performing its duties make use of existing state agencies so far as may be possible, and that where necessary the personnel, facilities and appropriations of such agencies be extended and increased sufficiently to enable them to render the necessary assistance to such joint committee."

PRESIDENT: Senator Proctor.

MR. PROCTOR: Mr. President and members of the Convention: I spoke upon this earlier this afternoon, and as I believe the resolution is self-explanatory, I move its adoption.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Any discussion? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted.

SECRETARY: Resolution by Mr. Montgomery *(reading):*

"Down in Monmouth County, and throughout the State, there are many of us who worked on the document we are about to present to the Governor with a sense of inspiration gained from one who many years ago urged that New Jersey adopt a new Constitution.

We wish that Theron McCampbell were here to help write the new Constitution we have prepared, and we know that his spirit delights in the knowledge that the task has been sucessfully accomplished.

Back in 1933 there arose among the fair vineyards Mr. McCampbell had developed, a voice calling for better government. Grape farmer and vigorous student of public affairs, Theron McCampbell knew that many of the failings he witnessed as an Assemblyman were attributable to an outmoded Constitution entirely inadequate to New Jersey's expanding needs. Mr. McCampbell was not one to accept an unhealthy situation without proposing a remedy. With a vigor inherited from forebears who fought beside Robert Bruce, he urged upon his fellows in Monmouth County and throughout the State a new, responsive Constitution as the foundation of a greater democracy in New Jersey.

Many of the specific provisions that Mr. McCampbell proposed are, I am happy to relate, embodied in this splendid document before us. In some instances we may have deviated from his specific suggestions, but it is a tribute to his foresight, and perhaps to our good judgment, that the essentials for which he fought a decade and a half ago have been adopted. There were doubtless others who, before and after Theron McCampbell first raised his voice, called for a more enlightened basic law in New Jersey. But to many of us it was that voice which gave the greatest impetus to the thinking and planning that resulted in this Convention.

Mr. McCampbell would have preferred to have escaped being called a prophet. He was far too active to have hoped only to inspire others.

His zeal was directed toward immediate objectives. But it was only ar untimely death in a highway accident that prevented him from being here today to rejoice as the new Constitution for which he called is readied for submission to the voters. Fate has placed him among the prophets of this achievement rather than among those who performed it

I know that you join me in saluting the memory of a gallant citizen whose spirit has been a major force in New Jersey's drive toward a fuller and richer democracy."

PRESIDENT: Will you speak on this, Mr. Montgomery?

MR. JOHN L. MONTGOMERY: Mr. President and fellow delegates: I move that this be placed in the minutes of the Convention.

PRESIDENT: You've heard the motion. Is there any discussion? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Few "Noes")

PRESIDENT: All in favor please raise their hands.

(Majority of hands raised)

PRESIDENT: I'll have to call for hands on this side of the aisle again. I'm sorry.

(Indicating right hand side)

PRESIDENT: All opposed, please raise their hands.

(Few hands raised)

PRESIDENT: The motion is carried by a vote of 41 to 5 . . Next resolution.

SECRETARY: Communication *(reading):*

"Mr. Arthur R. Gemberling, Chairman
Rules, Organization and Business Affairs Committee
Constitutional Convention
Rutgers University
New Brunswick, New Jersey

Dear Sir:

Pursuant to your request, a continuation examination of the financial accounts of the Constitutional Convention at New Brunswick, New Jersey has been made for the month of August 1947. The results of this examination are reflected in the attached Schedule of Operations to August 31, 1947.

I hereby certify that the attached schedule presents a true and correct report of the financial transactions of the Constitutional Convention as determined by an examination of the minutes, accounts, papers and records of the Convention and Department of Taxation and Finance.

Respectfully submitted,

/s/ FRANK DURAND
Frank Durand,
State Auditor

September 5, 1947

CONSTITUTIONAL CONVENTION
SCHEDULE OF OPERATIONS UP TO AUGUST 31, 1947

Appropriation (Chapter 8, P. L. 1947)				$350,000.00
Refund-Delegate's Meals, Checks on Hand				15.00
				$350,015.00
Expenditures	*Paid*	*In Process of Payment*	*To be Billed*	
Salaries	$ 7,423.93			
Stationery & Office Supplies	5,589.50	$ 1,418.02	$ 58.62	
Office Equipment	347.00			
Educational & Library	20.00			
Operating Expenses	162.91			
Printing	3,059.76			
Expenses of Delegates	4,645.00		851.00	
Travelling Expenses & Meals	211.17		993.00	
Postage	207.50	19.50		
Rent of Equipment	2,470.00	137.00		
Telephone & Telegraph		649.79	1.44	
Freight, Express & Cartage	240.00			
Photography		6.50		
Opening Day Expenses	6,639.02		331.21	
Preparatory Expenses			1,842.86	
	$31,015.79	$2,230.81	$4,078.13	
				37,324.73
				312,690.27

Commitments Item	*Balance of Commitment*	
Salaries—Regular	$ 2,049.00	
Stationery & Office Supplies	659.99	
Rental & Equipment	860.00	
Freight, Express & Cartage	240.00	
Telephone Installation & Rental	246.57	
Clipping Service—Minimum Charge	30.00	
Salary of Secretary	5,000.00	
Special Services—Judiciary Committee	1,000.00	
Copywriter—Committee on Submission	1,000.00	
Committee on Public Relations & Information	21,600.60	
Pictures of Convention	170.00	
		32,856.16
Balance Available August 31, 1947		$279,834.11

PRESIDENT: That completes our resolutions. May I ask whether any of the committees have any reports to present? . . . Mr. Paul.

MR. WINSTON PAUL: I would like to report on the work of the Committee on Public Relations and Information, but because of the lateness of the hour, if you have no objection, I will waive the reading of all of the report except the last two sentences and ask that it be printed in the minutes to the same extent as though I had read it. I'll just read the last two sentences because many delegates have asked whether the Committee on Public Relations and In-

formation was compiling data for the use of delegates, and I would state that we have. Our research staff is supplying additional data. I'll refer to the report for the certain data that we have prepared and which will be available for the use of delegates, organizations and individuals desiring same *(reading):*

> "In conclusion may I express the warm appreciation of our committee, and I am sure I speak for the whole Convention, for the intelligent, able and conscientious work of the reporters, radio men and the press generally in so fully reporting the work and proceedings of this Convention?"

I ask that the report be received and incorporated as part of our minutes.

(The following is the report submitted by Mr. Paul:)

"Immediately after the Committee on Public Relations and Information was authorized by this Convention on July 15 a staff was recruited and office space was obtained in the Library Annex.

Its major activities to date have been as follows:

PRESS

The Committee has directed particular attention to rendering service to those newspapers of the State, specifically weeklies, which have not had their own reporting coverage of the Convention. A summary of the Convention work has been sent to all such newspapers at the conclusion of each week, which was supplemented in the middle of the week with a summary of the activities of Mondays and Tuesdays. Its service to local papers has been of real value and has been heartily commended by them.

The editors of foreign language newspapers, and the editors of the Negro press have been special guests of the Convention at luncheon, after which they were given the opportunity of seeing the Convention at work.

In the case of the editors of foreign language papers, we plan to provide translations of the document. They already have made generous use of the committee's 'releases.'

The need for continuing this information service to the above classes of papers seems obvious. The committee plans to continue this service which also would be extended to the 'dailies.' Our future work in this connection will involve closer liason with the officers of the Convention, the chairmen of the standing committees and with appropriate state officers.

Agricultural, labor, women's and other specialty papers and magazines will be requested to carry articles on the Constitution.

RADIO

Our Radio staff has arranged with nine stations to broadcast recorded programs of the Convention and its deliberations. These programs have included 'Constitutional Press Gallery,' and individual interviews with Convention delegates. WTTM of Trenton carried a series of programs. Columbia Broadcasting Station featured a program; WOR recently had our vice-chairman, Amos Dixon, as a guest speaker. Special information prepared by the committee has been used on certain national programs by Kate Smith, Arthur Godfrey, and the Fitzgeralds. A weekly news letter and background material have been sent to radio newscasters in New Jersey, Philadelphia, and New York City.

At the final session of the Convention on the 10th, several New Jersey stations, as well as WCBS, will broadcast the proceedings. On Wednesday night, from 6:20 to 6:45 P.M., WNBC and other stations will carry a documentary program on the New Jersey Constitution.

In addition, the four major New York stations will on September 1

make reference in their programs to the Convention, and on that day all New Jersey stations will salute the Convention and its 81 delegates.

On the morning of the 10th, Delegate Wene will appear on Tom Paige's WNBC Farm Program and Delegate Streeter on 'Hi-Jinx' program.

For the period from September 11 to November 4 the following is planned:

1. A weekly program for regular daytime radio listeners.
2. A continuation of the weekly 'Constitutional Press Gallery' for evening listeners.
3. The use of established programs, such as CBS' 'Country Journal.' The program this Saturday, with our vice-chairman as the guest speaker, will—through CBS—take news of the Convention to over 170 stations.
4. Radio spot announcements, prior to September 25, will urge people to register, and previous to the election will urge voters to go to the polls on November 4.
5. The WNBC Documentary Program will be rebroadcast during the week previous to Election Day.

RESEARCH STAFF

Our research staff has been providing background material for press and radio and has also compiled the following reports: 'Survey of the Desires and Gains to Special Groups by the New Constitution,' and 'The Most Important Changes in the Constitution of the State of New Jersey by the New Revision.' The above material is available to any interested groups or individuals.

Our research staff is also preparing additional data, as may be requested, which will be available for the use of delegates, organizations, and individuals desiring same.

In conclusion, may I express the warm appreciation of our Committee, and I am sure I speak for the whole Convention, for the intelligent, able and conscientious work of the reporters, radio men and the press generally in so fully reporting the work and proceedings of this Convention?"

PRESIDENT: Do you offer that as a motion?

MR. PAUL: I offer that as a report of the committee.

PRESIDENT: It has been moved and seconded that we accept this report. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Motion carried.

MR. FRANK H. EGGERS: Mr. President, this is rather late to allude to this, but I'd like to ask your indulgence and the indulgence of the delegates for unanimous consent to record Judge Hansen in the affirmative in the acceptance of this Constitution. The Judge was on his way down here and he got a personal call and had to turn back. I know he would want to be recorded in the affirmative.

PRESIDENT: You've heard the motion. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: Carried . . . I'll recognize Mr. Park.

MR. PARK: Dr. Clothier and ladies and gentlemen:

Again the hour is late, and I'll not take much time. We've worked very hard and we haven't had much time to play. We got a letter in the early part of the Convention to bring our golf sticks, and so on. I talked this matter over with several members, in fact four or five individuals here, and I am now going to offer a motion that this Convention, in an unofficial capacity, meet in June of next year for the purpose of having some fun, and that the President appoint a committee of five. I suggest as a date, for the want of a better date, the last Friday in June; otherwise, it will probably conflict with Rutgers' schedule. I think it will be a time to really get together and enjoy meeting each other, and sort of be a home week. I so move.

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion? . . . All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is adopted . . . Mrs. Streeter.

MRS. STREETER: I was merely going to suggest that it will be awfully hot the last Friday in June and possibly the suggestion might be for another time.

PRESIDENT: We'll refer that to the committee, Mrs. Streeter, if it is agreeable to you.

SECRETARY: Resolution by Mr. Dixon *(reading):*

> "RESOLVED, that when today's session of this Convention adjourns it be to meet on Wednesday, September 10, at 3:00 o'clock in the afternoon."

PRESIDENT: Is the motion seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Any discussion? . . . All in favor of Mr. Dixon's resolution, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Motion carried . . . Mrs. Sanford.

MRS. OLIVE C. SANFORD: In line with what Delegate Park has said, I wish to ask a question. We have spent a good deal of

time here as delegates, and to many of you this has been your first introduction to your State University—Rutgers. You are going to go away from here with the name of Rutgers in your mind. Will it only mean to you this building and the Commons across the street, or is there not some way in which the delegates may be able to see the whole university which pretty well covers this ground here? I believe it's two miles in both directions. Mrs. Katzenbach and I, as members of the State Board of Education, have often thought of arranging a day when the delegates might visit all the branches of the university, but there seemed to be no convenient time. I would like to ask if it would be possible for us to arrange later, or for the powers of the university to arrange later, to bring us together here so that we might see the whole university under working conditions? Would that be possible?

PRESIDENT: Why, Mrs. Sanford, we'll be happy, indeed, to have the delegates come back. We can make adequate provisions. As a matter of fact, I think we'll invite you to have lunch with us, if that will help swell the attendance . . . Mr. Orchard.

MR. ORCHARD: May I be pardoned a moment of facetiousness? The delegates, I'm sure, want to congratulate the delegates from Hudson County, for the fact that just yesterday the Jersey City baseball team won the championship of the International League.

(Laughter)

PRESIDENT: Is there any other business? It can't blame that on the Convention.

(Laughter)

MR. EGGERS: May I thank the gentleman from Essex? It's the first time in a long time that we have won.

PRESIDENT: The chair recognizes Mr. Struble.

MR. CLYDE W. STRUBLE: Mr. President and delegates of the Convention:

Along the lines of Mayor Eggers' motion, I would like unanimous consent of this Convention to have Delegate Cafiero of Cape May County registered in favor of the adoption of this document. Judge Cafiero was not here today. He will not be here on Wednesday. He is confined to his court in a very important trial that has been held over during his stay in New Brunswick and he feels that he can't delay it any longer. He will not be here today or Wednesday. Therefore, I would like the unanimous consent of the Convention.

PRESIDENT: You have heard the motion. Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

PRESIDENT: The motion is carried. Will you tell Judge Cafiero, Mr. Struble? . . . Mr. Paul.

MR. PAUL: May I ask the same privilege for Mrs. Barus who is unavoidably detained today?

PRESIDENT: The motion is made and seconded. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed?

(Silence)

MR. HADLEY: I know that during the time from June 12 to today a lot of these delegates have wondered just why I've been in New Brunswick. I've had my own reasons and if they think they can make enough noise to drown me out on this they have another guess coming, because I learned how to do this a long way back and I'm not going to forget. I do have a propensity for showing people and I have something here to show them what's been going on as far as people are concerned. And while I know it's awfully late, I'm perfectly willing to stay long enough to project the two reels of colored moving pictures I have here for any of the delegates who want to stay after the conclusion of today's session. I'd be very happy to do it.

PRESIDENT: Mr. Hadley, may I ask on behalf of the delegates, whether you would be equally willing to show them, say, at 2:00 o'clock on Wednesday.

MR. HADLEY: I would be very happy to accept that amendment to my proposal.

PRESIDENT: Is there any other business to come before the Convention? We are not adjourned yet.

I just want to ask that question before engaging in a presentation myself. It occurred to me that the delegates might be interested in the program for Wednesday. We shall meet at 3:00 o'clock and I would like the delegates to be prompt. The "Star Spangled Banner" will be sung by an artist, yet to be selected. We shall not impose upon the delegates for that function, which I think is a good thing. Then there will be a roll call of attendance and two or three of the delegates will speak very, very, *very* briefly. After that the Constitution will be signed. The law provides that it be signed by the President and the Secretary, but it would seem well for all of us that all of the delegates sign the Constitution, and we shall proceed, unless the Convention decides otherwise, to plan it that way. It will take a little time, but I am sure it will be agreeable to all to have the signatures appended of all those who have worked here this

summer. The invocation, I should have said, will be pronounced by Rabbi Pilchik of the Temple B'nai Jeshurun of Newark, the prayer of dedication by the most Reverend Thomas J. Walsh. Then following the prayer of dedication by Archbishop Walsh, there will be the presentation of the Constitution to the Governor, and his response. At that time, there will be certain resolutions, I believe, to be adopted which cannot be adopted prior to that time. The benediction, pronounced by the Right Reverend Theodore R. Ludlow, President of the New Jersey Council of Churches, will close the Convention.

I don't know just how long this program will take. I imagine about two hours, allowing for the delegates to sign the instrument. It will allow us generous time before the dinner Governor and Mrs. Driscoll are to give us that evening in the University Commons across the street.

May I request, then, that so far as possible, you be prompt at 3 o'clock on Wednesday afternoon?

And now may I ask again if there is anything else to come before the meeting today? . . . Mr. Hadley.

MR. HADLEY: Tell them to be prompt at 2 o'clock if they want to see the pictures.

PRESIDENT: Two o'clock to see the pictures.

A motion to adjourn is in order. All in favor, please say "Aye."

(Chorus of "Ayes")

(The session adjourned at 5:45 P. M.)

STATE OF NEW JERSEY

CONSTITUTIONAL CONVENTION OF 1947

Wednesday, September 10, 1947

(The session started at 3:00 P. M.)

PRESIDENT ROBERT C. CLOTHIER: Will the delegates kindly take their seats?

We have assembled this afternoon for the last session of the Constitutional Convention of 1947, authorized by the people of the State at the special election on June 3. We have the honor of having with us Governor Driscoll, other state officials, and other distinguished guests.

I shall ask the delegates, the spectators, and all our guests to rise for the invocation to be made by Rabbi Ely E. Pilchik, Rabbi of the Temple B'nai Jeshurun of Newark. Following the invocation we shall remain standing while Mrs. Emory P. Starke sings "The Star Spangled Banner."

RABBI ELY E. PILCHIK: Almighty Author of liberty Who guides the destinies of men and nations, we invoke Thy blessings upon these proceedings dedicated to the noble task of bringing a fuller measure of opportunity and freedom to Thy children.

At this historic moment in the life of our beloved State our thoughts go back to the beginning of time when Thou, O Lord, didst draft the constitution for the government of the universe. Therein didst Thou legislate the ways of the stars in their heavenly courses and the movements of the atoms in their infinitesimal orbits. Therein didst Thou set a boundary for the sea and the directions for the winds. By Thine executive order were the mountains brought forth and each blade of grass tinted. At Thy supreme throne of justice every living thing is judged in righteousness and mercy. For man, the crown of Thy creation, didst Thou provide a spark of Thy divine spirit, enabling him to seek truth and beauty, dignity, freedom and peace.

Emulating Thee, following in Thy footsteps, we, Thy children, come before Thee on this day with our new Constitution. May the self-sacrificing labors of our delegates find favor in Thine eyes, O God. May this new Constitution inspire us to reconsecrate ourselves to the highest ideals of American citizenship. May this new Constitution strengthen our faith and our free form of government. May this new Constitution inaugurate an era of genuine peace among men within our State, within our nation, yea within our troubled world. Fervently we pray that Thy blessing may descend

upon those whom the people have chosen to uphold this Constitution.

Enlighten with Thy wisdom and sustain with Thy power the Governor, his counsellors and advisors, the judges, lawgivers and all those who are entrusted with our safety and the guardianship of our rights and our freedoms. May they so serve under this new charter as to hasten the day when all men shall live in joy under Thy universal constitution, O Thou Almighty Author of liberty. Amen.

(At this time "The Star Spangled Banner" was sung by Mrs. Emory P. Starke)

PRESIDENT: The Secretary will call the roll.

SECRETARY OLIVER F. VAN CAMP *(the Secretary called the roll and the following delegates answered "present"):*

Barton, Barus, Berry, Brogan, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne.

SECRETARY: Quorum present, sir.

PRESIDENT: The Secretary announces that a quorum is present.

It is with a sense of deep sorrow that I have to report the death, this morning, of Sigurd Emerson, delegate from Union County. Apparently his death resulted from a heart attack. As you know, Mr. Emerson had taken a prominent part in the work of the Convention, bringing sound judgment to its discussions and always evidencing that open-mindedness and spirit of fair play which has had so much to do with the success of our common endeavors. He would have had a sense of pride—I imagine even something of a triumph—in taking part in these ceremonies today, and it is a source of added sorrow that he is not here to share in them. Unless I am directed otherwise, I shall assume that the Convention instructs that an appropriate resolution and an appropriate message of sympathy and appreciation be prepared and sent to the members of his family. It is proper, I think, that we should now stand a moment in silence as a final tribute of our fellowship to him.

(A moment of silence was observed by the assemblage)

PRESIDENT: The chair recognizes Senator Farley.

MR. FRANK S. FARLEY: Mr. President, I desire to request unanimous consent to permit Delegate Leon Leonard to be re-

corded in the affirmative for this document. We well appreciate the fact that he has been ill. He has been in the hospital and is presently recuperating. Acting in accordance with his physician's instructions, he is not present here today. Also in the motion, I seek permission that he may affix his name, after today, to this most famous document.

(Seconded from floor)

PRESIDENT: You have heard the motion. It is seconded. Is there any discussion? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT Carried . . . In like manner, if I may, I'd like to trespass on the patience of the delegates to ask a personal favor. I have felt that the presiding officer should not vote on motions before the Convention except in the case of a tie. Fortunately, there have been no ties. But I do wish to cast my vote, as far as the Rules of the Convention permit it, in favor of the adoption of the Constitution. It is an honor which I naturally share with the other delegates, and I shall appreciate it if someone will make a motion enabling me to do so.

MR. WILLIAM L. HADLEY: I so move.

PRESIDENT: Is there any discussion? All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried. Thank you.

I want to express our thanks to Wayne McMurray and his associates for the services of the Asbury Park Municipal Band which is performing for us this afternoon and whom we are glad to have here as our guests. Also, while making preliminary announcements, I would like to report that a radio recording of the proceedings this afternoon will be delivered from 6:20 to 6:45 this evening. A radio has been set up in the University Commons where the Governor's dinner is to be served and those who would like to hear it a second time may hear it there. I would also like to remind you that Mr. Hadley has been very generous and patient in taking motion pictures of the proceedings of the Convention and has offered to show them to the members of the Convention and their guests who would like to see them here at the conclusion of these ceremonies.

So, today, we complete the task which the people of the State directed us to discharge when they went to the polls on June 3rd.

The 12 weeks we have devoted to it have constituted an adventure in cooperative effort and have produced a Constitution which we believe corrects the inadequacies of the old and will, I trust, meet with the approval of the people at the polls in November. When we have advanced to the point in this afternoon's program at which I shall have the privilege of representing you in presenting the proposed Constitution to the Governor of the State, I shall have the opportunity of saying a word or two about the integrity and workmanship which has characterized the Convention from start to finish. But before then, I am sure that Governor Driscoll and our other honored guests would like to hear directly from a few of the delegates who day after day and week after hot week have borne the real burden of the work. We cannot ask all to speak but we have asked five representative delegates, representing on this occasion no committees and no counties, but the Convention as a whole and the people of the State as a whole, to speak very briefly in behalf of all of us.

I would like first to recognize, if I may, Senator Van Alstyne.

MR. DAVID VAN ALSTYNE, JR.: Governor Driscoll, Mr. President, fellow delegates and fellow citizens:

This is a solemn moment, a solemn moment in the forward progress of a free people. Perhaps at this time it might be fitting to review the constitutional history of the State of New Jersey from its beginning.

After the Continental Congress, assembled in Philadelphia in the summer of 1776, had issued the world-stirring Declaration of Independence, it performed one more very important duty. It passed a resolution calling on the delegates to return to their respective colonies, call themselves into convention and form themselves into states. This the New Jersey delegates did with great despatch. Before the year was over, Colonial delegates met in convention at Haddonfield—I believe you have heard of Haddonfield before—declared New Jersey a State, and began working on a constitution.

The story goes that after two days of deliberation, a New Jersey Paul Revere arrived to tell them that a raiding party of British was coming up the river. They hastily concluded the first Constitution in two more days and rushed off to fight the enemy, promising themselves that when the British were thoroughly whipped they would return to do a proper job. Although the British were defeated in 1781, New Jersey didn't get around to revising its first Constitution until 68 years later, in 1844.

Those people of Colonial days had to fight a bitter war to determine for themselves under what form of government they should live. They had a reason to appreciate the priceless privilege of self-

government. They had to fight for it.

Coming down to the present, did not the young men and women of World War I and World War II fight so that we here in New Jersey, part of the free peoples of the United States, could meet in this hall to determine the fundamental law of this State? To me the comparison is so startling, the lesson it teaches so compelling, that I am only sorry every citizen doesn't appreciate its significance.

And lest anyone think I exaggerate, let me remind you that the final deliberations of this body do not have to be referred to any one man, or to any party executive committee, but back to all the people, the free people of this State. This Convention was created by the people, it has deliberated as representatives of the people, and now with pride refers its result back to the people. This body truly represents democracy at work through the representative form of government.

Each of us, in coming to this Convention, has sacrificed more or less, depending upon the individual—or at least we thought we did. But I believe I can speak for every delegate, the sacrifice has become negligible compared to what we have gained. Every one will leave this Convention hall today inspired and enriched by the experience gained in this summer's work.

In closing, let me repeat a pledge that has been made before in this hall: This Constitution is not perfect; every delegate here would have preferred a somewhat different result. But the Constitution has been arrived at openly after thorough debate on the part of men and women of good will, motivated by an honest zeal to do their best and to achieve their best.

I intend to support it to the fullest extent of my ability.

(Applause)

PRESIDENT: Senator O'Mara.

(Applause)

MR. EDWARD J. O'MARA: Mr. President, distinguished guests, ladies and gentlemen of the Convention:

It is a privilege to say a few words on this happy occasion. I was about to say a few words on behalf of the Democratic delegates to the Convention, but that would be singularly inappropriate in a Convention in which there have been no Democrats or Republicans, but only 81 men and women who have been honored by their fellow citizens with the grave responsibility of drafting a fundamental law, a fundamental law which in the words of the preamble will enable us to secure and to transmit unimpaired to succeeding generations the blessing of civil and religious liberty which Almighty God has so long permitted us to enjoy.

It is my firm conviction that we have succeeded in drafting a

Constitution which will achieve that happy result. But whether we have or not, only the verdict of posterity will determine. Whether the Constitution which this Convention has voted to submit to the people lives up to the high expectations which are in the hearts of all of us today, or whether it shall be found wanting by our fellows or by our children, no one can deny that it represents the honest, composite judgment of 81 men and women who have discharged their sacred obligations to the very best of their ability.

As the deliberations of this Convention draw to a close, it is fitting, I think, to recall a scene which was enacted on the stage of the War Memorial Building in Trenton less than eight months ago. A new Governor had just taken his oath of office and had dedicated himself to the service of the people of the State of New Jersey as their chief executive. Forthwith the power and the prestige of that great office were pledged to the support of a call for a Constitutional Convention which would be truly representative of the people, which would transcend partisan political considerations and which would dedicate itself earnestly and unselfishly to the task of rewriting the fundamental law of the State in a statesmanlike and in a forward-looking manner.

As we stand here today and look back over the work of the past three months, we can feel with confidence the assurance that the Convention to which we have had the honor of being delegates has lived up to the exalted standard which Governor Driscoll set for it, and that we have kept faith with the people who have done us the great honor to send us to this historic gathering as their elected representatives. Happily for the people of the State of New Jersey, politics have not ruled this Convention. Happily for our children and for their children, a difficult and exacting task has been performed without conscious deviation from what we earnestly believe to be the greatest good of the greatest number. Today, as we close our deliberations, let us hope and let us pray that posterity will find that our judgment was good. We have the boundless satisfaction of knowing that our motives were.

(Applause)

PRESIDENT: Mr. John F. Schenk.

(Applause)

MR. JOHN F. SCHENK: Governor Driscoll, Mr. President, guests and fellow delegates:

"We, the people," that moving and historic phrase from the preamble of our Federal Constitution, today in our Nation and our State certainly means "We, the people" as one people, indivisible and united in our firm belief in American political principles which

give us a form of government that is the hope of freedom-loving people everywhere.

Persons of many national origins, Americans all, worked and fought together in the early days of our nation establishing our society of free men. Other similar generations forwarded the great cause, implementing and developing the American dream. Great milestones in New Jersey in this development were the Constitutions of 1776 and 1844.

We live in "every person's" country, as was well said in 1772, and New Jersey is "every person's" State, and hence, for us, a Constitution sets down the ideals of government of a free people.

Proof to all humanity is found in our country, in New Jersey, and I feel in our proposed Constitution of 1947 that government by and for the people, all the people, is a reality.

The proposed charter of 1947 before us follows basic American principles of government. Under Rights and Privileges we have continued all those of the splendid Bill of Rights of the present New Jersey Constitution, making only such changes, additions and extensions as are required to implement the Article so that it serves the needs of our present-day, diversified, agricultural and industrial society, and recognizes the present-day rights of all the people. At New Brunswick in 1947, therefore, we have reaffirmed the faith of our forefathers who gave us the fundamental principle of rights and privileges.

So it is with the historic and proven doctrine of the division of the powers of government into three parts or branches. Changes made by us in the interest of promoting simplification, soundness and efficiency of government are all within the frame of our proven basic principle of the distinct separation of powers and responsibilities among the three branches and, hence, are in the pattern of a check and balance in governmental process. So with our amending Article, providing for orderly and careful consideration before a change is made in our fundamental constitutional law.

All these basic principles of government, all of which we have continued, are fundamental philosophies handed down to us, by the "blood, sweat and tears" (to borrow another great phrase) of those who have gone before, and who set the beacon lights to guide us.

Fellow delegates, it was a privilege to work with you in helping to mold the charter of 1947. That part of the task is behind us, so that today I speak as a delegate from a small town and as a lifelong resident of one of our rural counties, who feels that we have written what is truly an "every person's" charter, one to be supported by people from all walks of life, in every section of the State, be it rural or urban; a charter providing for the needs of our agri-

cultural and industrial society of this age, and for such changes, in an orderly fashion, as may some day be needed but are presently over the horizon, beyond our sight.

There is a strongly held belief in fundamental American principles of government among rural people which I share deeply. Government is close to those of us in the small towns and on the farms, and seeing it work every day in the American pattern makes us cherish our ageless political principles.

We have here today a people's Constitution, an American Constitution, one for persons rural and urban, because in our hopes and beliefs about government we are all one. Our interests are parallel, believing as we do in a Constitution drawn in our historic pattern, as is this proposed document; a pattern that has been proven best by the acid test of time and trouble over the years; an enduring one which makes the statement of Madison truly prophetic, wherein he said that the Federal Constitution which set the pattern would be "a rock to resist the storms of the ages."

Reasonable people everywhere support fundamental principles such as those found in our proven system of government. Therefore, reasonable people in New Jersey can support in good conscience this proposed Constitution, happy in the knowledge that, though it is not perfect—being our area of agreement after concession and compromise—it meets quite well the needs of the day and of the indefinite future, of all sections of our State, rural and urban, and of all people whatever their walk of life, and does it within the pattern of our cherished ideals and principles, in the great American tradition of government.

It is with the sincere belief that the task has been sincerely and equitably performed that I go back to my county—to my rural friends—and urge them to give deserved support to this proposed 1947 Constitution, a charter "by and for the people," molded within the pattern of American principles, and therefore one to command the respect and support of "We, the people."

(Applause)

PRESIDENT: Senator Arthur W. Lewis.

(Applause)

MR. ARTHUR W. LEWIS: Mr. President, ladies and gentlemen here assembled:

It is quite true that since June 12 of this year we have not only been witnessing but we have been experiencing democracy at work. It is equally true that the non-partisan approach that we made toward this problem during the summer has in a large measure been responsible for our success in solving that problem. There is also

another factor which I think is worthy of mention, and I refer to the spirit of compromise that seems to have prevailed throughout the daily sessions in this Convention. I refer not to compromise of principle—no, never—but rather to compromise of details, the compromise of incidents, in order to preserve a principle. I refer to the spirit of give and take. I refer to the readiness to make minor concessions for a major objective. I refer to the willingness of the delegates here assembled to place upon the altar of sacrifice their own personal convictions, thoughts and prejudices, for a good cause and for the people of a great State.

Someone has said that when man smiles and agrees, progress weeps. We may go further and say that when man refuses to smile and refuses to agree, then progress becomes the victim of war, the victim of torture and the victim of death. It is only when men can or may disagree, and yet intelligently resolve or compose or arbitrate their differences, that progress marches on towards a civilization of government that will be a government of brotherhood and a government of lasting peace.

It has been said here today that we did not attempt, we have not drafted, a perfect Constitution—and how true that is. A perfect Constitution in the rural counties of the South would hardly be a perfect Constitution in the industrial counties of the North, and vice versa. A perfect Constitution in the agricultural hinterlands of our State would hardly be a perfect Constitution in the counties along the Atlantic seaboard. We did not attempt to draft a perfect Constitution. All we can claim, ladies and gentlemen, is this: that 81 delegates honestly, conscientiously and sincerely tried to draft not only a better Constitution but the best possible Constitution under all of the facts and circumstances and conditions of today, and as far as they can be foreseen in the future.

It was only about four months ago—there were many throughout this great State of ours who said, "It can not be done." They said, "A majority, a substantial majority of 81 delegates, will never agree upon a Constitution as a whole. It would be easier for the biblical camel to pass through the eye of the needle." They argued, "There will be alternates, and alternates will create issues that will defeat the Constitution. The only way to change our Constitution is through the amending process."

Now, ladies and gentlemen, we are here assembled, when practically all, if not all, delegates are willing to subscribe to and sign this proposed Constitution due to that spirit of democracy, that spirit of non-partisanship, that spirit of compromise. And in signing that Constitution we are looking forward with confidence to that morning of November the fifth. And on that morning humbly, and yet with perhaps justifiable pride, we will probably recall to

memory a little poem of our childhood. May I quote and paraphrase just one verse of that poem?

> Somebody said that it could not be done,
> But we, each of us, chuckled and replied,
> That maybe it could not, but we would be some,
> Who would not say so until we tried.
>
> So we started right in with a trace of a grin,
> On our faces; if we worried, we hid it,
> We tackled the thing that could not be done,
> Under the leadership of our Governor, and by George we did it!

Thanks to his Excellency, our Governor, whose vision and leadership led us to this Convention; thanks to our President, who has so kindly and courageously and fairmindedly led us through the days of this Convention; thanks to the people of this State of ours, who placed their confidence in us and inspired us with that spirit of democracy, non-partisanship and compromise. Last, but not least—thanks to Him to Whom we have already declared our gratitude in the preamble of our proposed Constitution, and upon Whom we look for blessings upon our humble endeavors.

(Applause)

PRESIDENT: As our last speaker, I shall call upon Dean Frank H. Sommer.

(Applause)

MR. FRANK H. SOMMER: Mr. President, fellow delegates and guests of the Convention:

On Monday last I offered my swan song and bade farewell in what was to be a final appearance. Today, only two days later, I find myself billed, by a shamelessly immodest management, to offer a final farewell anew.

I assure you that this appearance is not of my making. I realize, if the management does not, that "The pitcher that goes to the well too often is broken." Urging that "silence is golden," I was met by the comment, "Oh no, not in this day, or we would only find it buried in the underground vaults of the Government at Fort Knox."

Seriously, I will substitute for an address the reading of three brief petitions to the Father of us all, voiced at the opening of the sessions of the United States Senate by the inspired and inspiring chaplain of that body. I attribute the high degree of success attending the efforts of the members of this Convention here on the banks of the Raritan to the fact that we acted in and were guided by the spirit of these petitions *(reading)*:

> "Our Father, Thou knowest the clamor of voices in the ears of these Thy servants, the constant tugging at their sleeves, forever trying to influence them; the small voices of little men; the blatant voices of agressive pressure groups; even the whispering inner voices of personal ambition. Amid all the din of voices, give them the willingness to take

time to listen to Thy voice, knowing that, if they follow the still small voice within, all Thy people will be served fairly, and all groups will get what they deserve."

"Deliver us, we pray Thee, from the tyranny of trifles. Teach us how to listen to the prompting of Thy spirit, and thus save us from floundering in indecision that wastes time, subtracts from our peace, divides our efficiency, and multiplies our troubles."

"Our Father, we would not weary Thee in always asking for something. We pray that Thou take something from us. Take out of our hearts any bitterness, any resentment that curdles and corrodes our peace. Take away the stubborn pride that keeps us from apology and confessing fault, and makes us unwilling to open our hearts to one another."

So ends, this time positively, a last appearance!

(Applause)

PRESIDENT: Thank you very much, gentlemen. The chair recognizes Senator Barton.

MR. CHARLES K. BARTON: Mr. President: In view of my absence on Monday last, which was caused by some duties I had to attend to as Acting Governor, I would respectfully ask that I be recorded in the affirmative on the vote for acceptance of the Constitution.

(Second from the floor)

PRESIDENT: The motion is made, seconded and carried.

The law provides that the President and the Secretary of the Convention shall sign the new Constitution before it is presented to the Governor, and these two officers will, of course, be glad to comply with the law. But it would seem wholly appropriate that all of the delegates who have had a hand in the shaping of this instrument should affix their signatures as well, so that a permanent record continuing perhaps down through the centuries shall preserve the names and signatures of those who have labored here so long and so earnestly. So I shall ask the Secretary to call the roll of the delegates to the Convention, representing all of the people of the State, allowing time for each to sign the four official copies of the Constitution before yielding place to his successor. If I may, I am going to ask George Smith, who is an intimate friend of Sigurd Emerson, to sign in Sigurd Emerson's behalf. During the time necessary for the signing of the Constitution the Convention will be in session but will be at ease.

Mr. Orchard.

MR. WILLIAM J. ORCHARD: Prior to the affixing of any signature on this Constitution, will you be good enough momentarily, sir, to surrender the gavel to Vice-Chairman Dixon for a report of the special committee of the delegates?

PRESIDENT: Mr. Dixon.

(Applause)

FIRST VICE-PRESIDENT AMOS F. DIXON: The chair will recognize Delegate Orchard.

MR. ORCHARD: Reporting for the special committee of delegates, Mr. Chairman, I ask that Mrs. Robert C. Clothier be extended the privileges of the floor of this Convention, and so move.

FROM THE FLOOR: Seconded.

FIRST VICE-PRESIDENT: It has been moved and seconded that Mrs. Robert C. Clothier be extended the privileges of the floor of the Convention. All those in favor, say "Aye."

(Chorus of "Ayes")

FIRST VICE-PRESIDENT: Opposed, "No."

(Silence)

MR. ORCHARD: Mr. Chairman, with your permission I will ask Mrs. Barus, Judge Smalley, and Colonel Walton to serve as a committee to escort Mrs. Clothier to the floor.

FIRST VICE-PRESIDENT: You have the permission of the chair. Will the delegates named please so act?

(Applause as Mrs. Clothier enters)

FIRST VICE-PRESIDENT: The chair will recognize Delegate Orchard.

MR. ORCHARD: No words of ours, Mr. Chairman, could do justice to the degree of leadership that has existed during these past three months in the direction of the affairs of this Convention. We, the delegates, well know the degree of fairness that has been used in presiding over our meetings. So that our feelings might be recorded and the people of this fine State know full well the way we feel, I offer the following resolution *(reading):*

> "In affectionate respect for the leadership and accomplishments of our President, Robert C. Clothier, we the delegates to the Constitutional Convention of the State of New Jersey, have unanimously adopted this resolution at our meeting, held in New Brunswick, New Jersey, on September 10, 1947:
>
> Whereas, the citizens of the State of New Jersey by referendum at a special election on June 3, 1947, directed that a Constitutional Convention be held to revise the Constitution of the State of New Jersey; and
>
> Whereas, the eighty-one delegates to the Constitutional Convention elected at said election and duly convened at Rutgers University, the State University of New Jersey, in New Brunswick on June 12, 1947, elected Robert C. Clothier as President of the Constitutional Convention; and
>
> Whereas, his devoted leadership, sound judgment, uniform good nature, and earnestness of effort have contributed immeasurably to the conduct of our deliberations in an atmosphere of harmony and constructive effort for the good of the people of the State of New Jersey; and
>
> Whereas, his unquestioned personal integrity, known and respected during a lifetime of good deeds in our State and elsewhere, inspired in all of us who worked with him a confidence that is not often given to a contemporary; and

Whereas, under his leadership there has been drafted a Constitution which we will submit with pride to the voters of this State on November 4, 1947; now, therefore,

Be It Resolved, that these sentiments be suitably engrossed and presented as tangible evidence of the gratitude and respect we feel for Robert C. Clothier, whose whole way of life is a living exemplification of the democracy we hold dear; and

Be It Further Resolved, that each delegate to this Convention be privileged to affix his signature to this scroll as an earnest of his personal gratitude to the man whose leadership we have all admired."

Mr. Chairman, I move the adoption of this resolution.

FROM THE FLOOR: Seconded.

FIRST VICE-PRESIDENT: It has been moved and seconded that this resolution be adopted and that a copy of the resolution be presented to our leader, President Clothier. All those in favor will signify by standing and giving a hearty round of applause for our leader.

(Loud applause)

MR. ORCHARD: Mr. Chairman, I ask Vice-President Katzenbach to please present this engrossed memorial to Dr. Clothier.

FIRST VICE-PRESIDENT: Vice-President Katzenbach, will you please bring it to the platform?

(Second Vice-President Katzenbach presents engrossed memorial to Dr. Robert C. Clothier)

PRESIDENT: Thank you very much.

MR. ORCHARD: And Mr. Chairman—speaking to Mr. Dixon—I ask Mrs. Barus to present these roses to Mrs. Clothier in appreciation of the generous way in which she has shared her distinguished husband with us these past three months.

(Applause)

(Mrs. Barus presents roses to Mrs. Clothier)

MRS. CLOTHIER: Thank you very much.

(Applause)

PRESIDENT: Ladies and gentlemen, I am a little bit speechless and I know Mrs. Clothier is also. I have always had an instinctive suspicion or dislike of people who go into a well-organized program and disrupt it.

(Laughter)

I can only say that we both appreciate very much, more than I have any way of saying, the kindly gesture on your part—almost as much as if it were deserved. We thank you very much. This resolution will certainly have a cherished place among our possessions. Thank you very much.

(Applause)

(President Clothier resumed the chair)

PRESIDENT: Senator O'Mara.

MR. O'MARA: May I disrupt the well-organized proceedings for another moment by offering this resolution and moving its adoption?

SECRETARY: Resolution by Mr. O'Mara *(reading):*

"Whereas, the Constitutional Convention of 1947 is about to conclude its deliberations, and

Whereas, the officers and employees of the Convention have, by their unswerving devotion to the performance of their respective tasks, contributed greatly to the accomplishments of the Convention and have made possible the efficient conduct of its deliberations, and

Whereas, this happy result was accomplished only by great personal sacrifices of time and convenience on the part of the officers and employees of the Convention; now, therefore,

Be It Resolved, that the Constitutional Convention of the State of New Jersey does hereby record its whole-hearted recognition and its enduring appreciation of the tireless efforts of the following of its officers and employees, and expresses the sincere hope that the future will hold for them a rich measure of happiness and prosperity:

To Mr. Amos F. Dixon, First Vice-President of the Convention and delegate from Sussex County, who, in addition to his arduous duties as a member of the Committee on the Judiciary and his frequent participation in the debates on the floor of the Convention, presided over the deliberations of the Convention, when called to do so, with skill and ability;

To Mrs. Marie Hilson Katzenbach, Second Vice-President of the Convention and delegate from Mercer County, who not only was a most helpful and constructive member of the Committee on Rights, Privileges, Amendments and Miscellaneous Provisions but who also, on the numerous occasions when she was called to the chair, discharged the duties of Acting Chairman with tact, impartiality and understanding;

To Mr. Oliver F. Van Camp, Secretary of the Convention, whose efficiency in the discharge of his exacting duties and whose familiarity with the rules of parliamentary procedure were of inestimable value to the President and delegates of the Convention;

To Messrs. Sidney Goldmann, Herman Crystal and Albert B. Ari, whose careful planning, indefatigable energy and scrupulous attention to countless details not only made available to the delegates precise and accurate information on the progress of the proceedings of the Convention, but also made possible a complete record of its deliberations for the benefit of future generations;

To the following members of the staff of the Convention who, within the scope of their appointed tasks, performed their respective duties with meticulous fidelity, and immeasurably aided the delegates in the performance of their duties:

Hon. Homer C. Zink
William Miller
Charles Besore
John White
Milton Conford
Morris Schnitzer
Colonel John P. Read
Vincent Padula
C. Lillian Ayres
Helen Delaney
Jane Brown
Marion Mintz
William Johnson
Betty Levie
Paul Lutich
Ada Phillips
Madeline Stickel
Ann Hart
Russell Harris
Donald Benson
Anthony De Angelo
Raymond Male
Andrew Doskos
Mildred Nevil
Rose De Pietro
Ruth Messler
Toni Brandoni
Kathryn Webber
Rose Valsac
Ann Moo

Emma Begley
Meta deBlois
Ann Kerr
Betty Demko
Louella Peterson
Beatrice Hunt
William I'Anson
Eddie Chira
Nicholas Gerenday
Raymond Helsel
Andrew Demko
James Pandak
George Walker
Richard Schnorbus
Richard Martin
George Conover
Graham Conlin
William Bohonyi
George Buchanan
William Scott
William Hoffman
Christopher F. Messerschmitt
Edward Taft
Charles Brennan
Peter Venanzi
Bessie Singer
Anna Mituri
Helen Stearn
Joseph Volk
Margaret Haven
Helen Matthews
Irene Russert
Francis Luminari
Robert Bodine
Robert Gardner
Frances Lavine
Evelyn Megules
John Janosky
Fred Poinsett
Matthew R. O'Rourke
Jennie Szendrey
Richard A. Mathews
Georgia H. Wiener
Sybil Denbo
Mildred Weeks
Evelyn E. Hickey
Irene G. Murphy
Dorothy W. Wenzlan
Harry Heher, Jr.
Joseph Paul, Jr.
Edward O'Mara, Jr.
H. Randolph Brokaw
Henry N. Gehman
Donald W. Rich
Richard N. Baisden
Dan McConnell
Herbert Bryant
Norah Braun
Turnley Walker
Harold Bartlett
Robert McManus
Blanche Wilson
Dorothy Reynolds
Edward Maypother

And

Be It Further Resolved, that the Convention does also express its profound gratitude to the following members of the staff and employees of Rutgers University, the State University of New Jersey, the gracious host to the Convention, who have in countless ways aided in the work of the Convention by their untiring solicitude for the physical comfort and the general convenience of the delegates:

A. A. Johnson
Wallace S. Moreland
John L. Davis, Jr.
Edward R. Isaacs
Marshall G. Rothen
Professor James L. Potter
Mario Tondini
Barbara J. Brace
John McCormick
Chester W. Snedeker
Members of the janitorial staff of Rutgers University
Members of staff and waitresses of the Cafeteria."

MR. O'MARA: I move the adoption of the resolution.

MR. FRANCIS D. MURPHY: I second the resolution.

PRESIDENT: Is there any discussion on this resolution.

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted.

PRESIDENT: Mr. Paul?

MR. WINSTON PAUL: May I offer a resolution and ask to have it read on behalf of the Committee on Resolutions? I move its adoption.

SECRETARY: Resolution by Mr. Paul *(reading):*

"RESOLVED, that the Constitutional Convention does hereby express its sincere gratitude to the following members of the Governor's Committee on Preparatory Research whose scholarly assistance was of inestimable value in the framing of the new Constitution:

Sidney Goldmann, Head, Archives and History Bureau of New Jersey, Chairman and Editor
Eugene E. Agger, Professor of Economics, Rutgers University
Bertram C. Bland, member of the New Jersey Bar
Dr. William S. Carpenter, President, New Jersey Civil Service Commission
Alfred C. Clapp, member of the New Jersey Bar
Henry W. Connor, Director, Bureau of Municipal Research, Inc., Newark
Professor L. Ethan Ellis, Department of History and Political Science, Rutgers University
Abram S. Freedman, member of the New Jersey Bar
John J. George, Professor of Political Science, Rutgers University
W. Brooke Graves, Chief, State Law Section, Legislative Reference Service, Library of Congress
Israel B. Greene, member of the New Jersey Bar
Joseph Harrison, member of the New Jersey Bar
Willard C. Heckel, Assistant Professor of Law, Rutgers University
Francis W. Hopkins, Professor of Economics and Sociology, New Jersey College for Women
Joseph M. Jacobs, member of the New Jersey Bar
Richard P. McCormick, Department of History and Political Science, Rutgers University
William Miller, Research Director, Princeton Surveys, Princeton University
Leon S. Milmed, member of the New Jersey and New York Bars
Aaron K. Neeld, Division of Taxation, Department of Taxation and Finance
Roscoe Pound, former Dean, Harvard Law School
Bennett M. Rich, Assistant Professor of Political Science, Rutgers University
C. Thomas Schettino, member of the New Jersey Bar
Morris M. Schnitzer, member of the New Jersey Bar
Evelyn M. Seufert, member of the New Jersey Bar
Thornton Sinclair, member of the New Jersey Bar
George C. Skillman, Chief Auditor and Secretary, Division of Local Government, Department of Taxation and Finance
G. Dixon Speakman, member of the New Jersey Bar
Amos Tilton, Administrative Assistant, Division of Taxation, Department of Taxation and Finance
Eugene T. Urbaniak, Deputy Attorney-General of New Jersey; Director, Division of Legal Affairs, Department of Institutions and Agencies
Joseph Weintraub, member of the New Jersey Bar"

MR. PAUL: I move its adoption.

FROM THE FLOOR: Seconded.

PRESIDENT: The resolution has been moved and seconded. Any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted. Senator O'Mara?

MR. O'MARA: Mr. President, may I offer this short resolution? *(reading):*

> "RESOLVED, that the thanks of the Constitutional Convention be extended to West Publishing Company for its kindness in furnishing at its own cost one hundred copies of the present Constitution of the State of New Jersey, with annotations, for the use of the delegates to the Convention."

I move the adoption of the resolution.

PRESIDENT: You have heard the resolution. Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The resolution is adopted. Are there any other resolutions at this time? Mr. Gemberling?

MR. ARTHUR R. GEMBERLING: I have two short resolutions I wish to offer, and move their adoption.

SECRETARY: Resolution by Mr. Gemberling *(reading):*

> "Whereas, the Bell Telephone Company, Bell Laboratory and Western Electric Company have rendered invaluable service to the Constitutional Convention in installing adequate and proper loud speaker and public address equipment; and
>
> Whereas, said Companies have indicated that they do not intend to bill the Constitutional Convention for said installations;
>
> Be It Therefore Resolved, that the appreciation of the Convention is hereby expressed to the officials of the Bell Telephone Company, the Bell Laboratory and the Western Electric Company for such contributions."

PRESIDENT: You have heard the resolution. Is it seconded?

FROM THE FLOOR: Seconded.

PRESIDENT: Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried. Are there any other resolutions? Another resolution by Mr. Gemberling.

SECRETARY *(reading):*

> "Whereas, the Honorable Frank Durand, State Auditor, has generously given of his time and the time of his staff in auditing the accounts of the Convention,
>
> Be It Resolved, that the Constitutional Convention extend to the Honorable Frank Durand its sincere apreciation of said services."

FROM THE FLOOR: Seconded.

PRESIDENT: The resolution is moved and seconded. All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Carried. Are there any other resolutions?

(Silence)

PRESIDENT: We shall proceed, then, with the signing of the Constitution. The President and the Secretary will sign. I would like to ask the delegates to refrain from using their own fountain pens. I have been instructed to advise the delegates that pens will be provided and they will be provided with a special kind of ink which, through some chemical process, I am told, will endure for 700 years and will not fade. We shall, then, approach the platform by the end stairs as our names are called. The Secretary will call the names—not so quickly as he calls the roll, but so that two or three or four delegates will be in process at one time.

(The Secretary called each delegate to the platform by name. The Constitution was signed by all the delegates present, and then by Governor Alfred E. Driscoll and J. Lindsay DeValliere, Secretary to the Governor)

PRESIDENT: Will the delegates kindly take their seats, and will the guests kindly take their seats in the balcony?

It is highly appropriate at this time that we invoke divine blessing upon the results of our efforts. I will ask the delegates and all present to rise while the Most Reverend Thomas J. Walsh, Archbishop of Newark, leads us in the prayer of dedication.

REVEREND THOMAS J. WALSH: Oh my God, I believe in Thee, do Thou strengthen my faith. All my hopes are in Thee, do Thou secure them. I love Thee, teach me to love Thee daily more and more. I am sorry that I ever offended Thee, do Thou increase my sorrow. I adore Thee as my first beginning, I aspire after Thee as my last end. I give Thee thanks as my constant Benefactor, I

call upon Thee as my Sovereign Protector. Vouchsafe, oh my God, to conduct me by Thy wisdom, to restrain me by The justice, to comfort me by Thy mercy, to defend me by Thy power. To Thee I desire to consecrate all my thoughts, words, actions and sufferings, that henceforward I might think of Thee, speak of Thee, refer all my actions to Thy greater glory and suffer willingly whatever Thou shall appoint.

Lord, I desire that in all things Thy will may be done because it is Thy will, and in the manner that Thou willest. I beg of Thee to enlighten my understanding, to inflame my will, to purify my body and to sanctify my soul. Give me strength, oh my God, to expiate my offenses, to overcome my temptations, to subdue my passions, and to acquire the virtues proper for my state. Fill my heart with tender affection for Thy goodness, hatred of my faults, love of my neighbor and contempt of the world. Let me always remember to be submissive to my superiors, courteous to my inferiors, faithful to my friends and charitable to my enemies. Assist me to overcome sensuality by mortification, avarice by almsdeeds, anger by meekness and tepidity by devotion.

Oh my God, make me prudent in my undertaking, courageous in dangers, patient in afflictions, and humble in prosperity. Grant that I may be ever attentive at my prayers, temperate at my meals, diligent in my employments and constant in my resolutions. Let my conscience be ever upright and pure, my exterior modest, my conversation edifying and my deportment regular. Assist me that I may continually labor to overcome nature to correspond with Thy grace, to keep Thy commandments, and to work out my salvation. Discover to me, oh my God, the nothingness of this world, the greatness of Heaven, the shortness of time, and length of eternity. Grant that I may prepare for death, that I may fear Thy judgment, escape Hell, and in the end obtain Heaven through Jesus Christ, our Lord, Amen.

PRESIDENT: In presenting the new Constitution to the Governor of the State in accordance with the provisions of the law and the referendum which brought this Convention into being, there is little I can add to what others have already said so eloquently.

Three months have elapsed since we first met here on June 12 to begin our work. During these long, and at times hot, weeks, the 81 delegates to the Convention have not spared themselves. Both in committee and on the Convention floor, they have brought their honest efforts to bear on the task of producing the best Constitution it was possible to achieve.

It has been a high and unforgettable privilege to all of us to find ourselves associated with a group of men and women, elected by the people of the State, who have possessed the vision to take

the long view, who have placed principle above expediency or selfish purpose, who have exalted the interests of the people of the State as a whole above the interests of any group, who have contended for the things they believed right with forthrightness and courage—but always in good part, always honoring the integrity of those with whom they differed, always preserving the principle of intelligent compromise which is the essence of the democratic process. In speaking for myself I know I speak for all the delegates when I say that the honor of being a member of this Convention and participating in its labors is one I shall cherish as long as I live.

The Constitution we have prepared for the approval of the citizens of the State is not a perfect document for, as has been said, there is no such thing. A perfect document would have the full approval, in every detail, of everyone and, in a democratic society, that is impossible. Honest differences of opinion are wholesome evidences that democracy is very much alive. No less a wholesome evidence that democracy is very much alive is the ability of a group of citizens such as this, when their differences have been argued, to forget their differences, to agree on the product of their common effort and to get behind it in a spirit of unison. It is a tribute to the continuing integrity of the democratic process in America that, at the conclusion of our labors, we have approved the new Constitution by all but unanimous vote.

The new Constitution is not a perfect document but it represents a great advance over the old Constitution under which we had been living for the last hundred years, contrived for us by a convention similar to this, in a day when New Jersey was a small agricultural state; when the railroads were but feeble beginnings of the great arteries of commerce they have become; when our so-called highways were only dusty lanes in summer and muddy ruts in winter; when it took a week to go from Sussex to Cape May; when such things as the telegraph and the telephone, the electric light, the automobile, the motion picture, the radio, the airplane and now television—when such things as these were far more impossible and incredible than the inter-planetary ships and similar devices of present-day phantasies; when such developments as since then have made New Jersey one of the great industrial states of the Union were unheard of and undreamed of. Governor Driscoll is one of those who saw clearly that the Constitution written in 1844 for a society such as this had become gravely inadequate for this contemporary society of 1947, and it was due to his initiative and enterprise that we have met here to write this new Constitution which, we firmly believe, will correct the inadequacies of the old, will give us better government, will expedite the administration of

justice, will provide for the social well-being of our citizens, and will continue to preserve the rights and freedoms of the people in this new age which awaits us.

Will the delegates please rise?

Governor Driscoll, in accordance with the law of the State and the will of the people, I am privileged, in behalf of the delegates now standing before you, to present to you the proposed Constitution of the State of New Jersey which they have written in the course of the three months which have elapsed since they began their labors. We present this to you with the confident hope that it will meet with the approval of the citizens of the State and that it will continue to be the instrument through which the best interests of all the people of the State will be preserved and advanced and those same rights and freedoms which are our priceless American heritage.

(The new Constitution was then presented by President Clothier to Governor Driscoll amid loud applause)

GOVERNOR ALFRED E. DRISCOLL: Mr. President, ladies and gentlemen of the Convention:

Your Governor accepts this document with the humble realization that he stands today as he has stood on several other occasions in the presence of fine representatives of the sovereign people of the State of New Jersey.

We stand today on the threshold of reality. Our hope and your inspired work for constitutional revision have established another great milestone on the tortuous road that leads to the accomplishment of a modern Constitution for the sovereign State of New Jersey. Under favorable auspices we are within reach of a goal that has captured the imagination, enlisted the energies, thoughts and some of the best days of a whole host of public-spirited Jersey men and women.

Under Divine Guidance you have labored through the heat of the summer and now, in the fullness of the harvest season, you are reaping the product of your toil. It is a goodly harvest, one that merits the admiration and plaudits of your fellow citizens.

You have done what many said could not be done, and what a few even now cannot believe has been done. Upon this momentous occasion in the history of our State, you require no assurance from me of a work well done, nor need you fear criticism from others. This task of Constitution-making has been yours and yours alone. The responsibility for the great decisions upon which this document is founded was yours and yours alone.

The final document that your President has delivered to me was

forged in free and open debate, in a spirit of tolerant understanding of the many different viewpoints that necessarily had to be reconciled. It was only by this means that you were able to produce a Constitution designed to guide this State for decades to come.

The delegates, I am sure, will agree with me that a great contrast between the Convention of 1844 and that of 1947 is to be found in the scope and skill of the reporting of the activities of the Convention. To the reporters and to the newspapers of this State and to the radio stations, both large and small, our citizens owe a debt of gratitude for the manner in which the news of the hour in New Brunswick has been reported. The product of this Convention represents a triumph of intelligent service dedicated to the public welfare.

This spirit has prevailed from the beginning. Senate No. 100, later to become chapter 8 of the Laws of 1947, was adopted, as you so well know, by a unanimous vote in each house of the Legislature. In the nomination and election of delegates to this Convention petty partisanship was not permitted to prevent the election of men and women of great vision, real experience, and proven devotion to the public welfare.

The selection of your President, a man whose professional life stamps him with the independence which rightfully and traditionally goes with academia, was itself marked by a spirit of non-partisanship. In the organization of the work of this Convention, and in the selection of its standing committees, non-partisanship was both the rule and the practice.

While I have not had the inclination to analyze the vote on each and every issue faced by this Convention, I believe that you will share with me the distinct impression that there was not a single issue upon which the vote of the Convention followed partisan lines.

As the representative of all the people of the State it was part of my task, working in cooperation with the fine men and women of the 171st Legislature, to initiate the program that led to this great Convention. The recognition of the need for a new Constitution for our State, however, was not a new idea. Governor Joel Parker in 1873 advocated a Constitutional Convention. My distinguished predecessors, including particularly Governor Woodrow Wilson and, more recently, Governors Charles Edison and Walter E. Edge, did much to convince the citizens of this State that there was a real need for a revision of our present inadequate fundamental law. We build today upon the foundation of public support developed by these men and all the members of the Hendrickson Commission and other eminent men and women too numerous to mention at this time.

As Governor, it has been my privilege to counsel with you from

time to time. In every instance I found the delegates committed to the accomplishment of their great task, determined to decide each issue on its merits without fear or favor, entirely apart from any other consideration or objective.

I am confident that as you complete your work, you know there are no hidden reservations, no secret fears. The record is clear for all the world to read.

On the day this Convention was first convened we expressed a hope that has now become a reality, when we quoted James Madison's appraisal of the work of the Convention in Philadelphia in 1787. You will remember that he said:

> "Whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men [and women], charged with a great and arduous trust, who were . . . more exclusively or anxiously devoted to the object committed to them. . . ."

It is easy for anyone with no responsibility for the consequences of his decisions to speak with quick assurance. As everyone of you so well knows after a summer-long demonstration of democracy at work, it is not easy to take the floor and to persuade 41 other independent and thinking delegates of the justice and wisdom of your position. It is not easy, however strongly you may feel, to carry a cause in the bright light of free and open opposition. It is inevitable in any such exchange of ideas that some delegates and many citizens will fail to see in the finished Constitution some of the changes that they have wanted and indeed they may see some changes which from their point of view had better been omitted.

As dissident delegates themselves have so eloquently stated on the floor of the Convention, and as the practically unanimous vote on the adoption of each Article has underscored, everyone should be willing to abide by the will of the majority on specific issues for the greater good of the whole Constitution.

Your position was not unlike that described by the President of the Federal Convention. In Washington's letter of transmittal to Congress, dated September 17, 1787, he declared that a unity of purpose "led each State in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected."

Many times over the past three months you must have asked yourself questions such as these: What should a Constitution be? What belongs in a Constitution? What should be left to the Legislature? In truth, there are no answers to these quesions beyond the answers you yourselves, in the exercise of the sound judgment and good sense we know you to possess, have given. The very nature of

a Constitutional Convention as a constituent assembly representing the sovereign authority of the people, established you as the final arbiters of these perplexing questions.

A Constitution must of necessity be what you say it shall be; it is complete when you say it is completed; it is fundamental when you determine that it is fundamental. While the Constitution you have drawn is remarkably free of matters that have heretofore been thought to lie within the province of the Legislature, it is well to keep in mind that any constitution is and must be an act of legislation. It is a superior and more lasting type of legislation which can be changed only by a special procedure, including a vote of the people, but it is still legislation in that its every word partakes of a rule of law for the protection of our people and for the government of our State.

The process of inclusion and exclusion of matters in the Constitution requires a balancing of values, and you have balanced those values in excellent fashion—the value of a semi-permanent and direct rule of law established by the people, as compared with the value of flexibility which goes with legislative freedom to make day-to-day adjustments in the rule of law as changing times may dictate.

I, for one, do not presume to review the choices you have made in free and open Convention. Who is to say that the law of libel which has been fixed by paragraph 6 of the Bill of Rights since 1844 is any more fundamental in character than the law of taxation or of labor relations, or than equal rights for women?

You have discharged your mandate, to revise, alter or reform the present Constitution, by producing a new Constitution of approximately 10,000 words. This concise document would be one of the shortest Constitutions among the 48 states. Its length would compare most favorably with 19,000 words in New York, 16,000 odd words in Massachusetts, or the 46,000 words in our sister State of California. Its provisions reflect the best thought and practice of American states and offer a thoroughly modernized structure of government for our State of New Jersey.

When you return to your respective counties and are called upon to explain the proposed Constitution, as we know you will be, you may well keep in mind those timeless words of the elder statesman and philosopher, Benjamin Franklin, delivered on the last day of the Federal Convention of 1787:

> "I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt

my own judgment, and to pay more respect to the judgment of others. . . ."

Then Franklin continued with these significant words:

"In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a General Government necessary for us, and there is no form of government, but what may be a blessing to the people if well administered; and believe further, that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other Convention we can obtain may be able to make a better Constitution.

For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; . . . Thus I consent, sir, to this Constitution, because I expect no better, and because I am not sure, that it is not the best. . . ."

Judging the present document by the yardstick established by Benjamin Franklin, you, ladies and gentlemen of this fine Convention, are entitled to congratulations.

The sagacity of Franklin's judgment is to be found in the record of a great nation in the years that have intervened since the adoption of the Federal Constitution. The correctness of your appraisal of the difficult issues that have confronted you in this Convention will, I am confident, be confirmed in the years immediately ahead.

The significance of your activities, however, extends far beyond the historic document that you have presented to your Governor today. Your activities in this Convention constitute a challenge to future Legislatures, particularly the 172nd, and to all the citizens of our State to follow your example, to lay aside prejudice and bias and to strive mightily to make this document work for the betterment of mankind.

Those who will be called upon to implement this document will have an opportunity to demonstrate, as you have done, that the men and women who fought in the wars to make and keep us a free nation did not die in vain. No more fitting memorial could ever be offered by a grateful State than the one to which you have affixed your signatures today. Inspired by your accomplishment, other states may be expected to follow your example, and even nations groping for world order may be expected to be encouraged by your activities.

I know that I speak for the people as a whole when I say to you that we are grateful for the manner in which you have discharged your trust. We shall approach the fruition of your work in the same spirit in which it was begun and carried forward.

May I, ladies and gentlemen, say to you, not only are we grateful

to you for the manner in which you have accomplished that which has been achieved, but we shall carry with us during the next two years of our administration, and we hope those who will succeed us, will carry likewise, the inspiration that when men and women determine to reason together, much good can be accomplished.

Mr. President, I accept the document, and pursuant to the provisions of the law, I am handing the document to Lloyd B. Marsh, Secretary of State, who, I am sure, will certify that this document complies in every respect not only with the mandate of the people, but with the spirit that motivated our citizens to go out and vote last Spring in favor of calling together this Convention.

(Applause)

(Governor Driscoll handed the Constitution to the Secretary of State)

SECRETARY OF STATE LLOYD B. MARSH *(reading from certificate):*

"To the Constitutional Convention of the State of New Jersey:

I, Lloyd B. Marsh, Secretary of State of the State of New Jersey, do hereby certify, that I have reviewed the proposed new State Constitution and the several parts thereof, framed and agreed upon by the State Constitutional Convention and filed in my office by Governor Alfred E. Driscoll, on the tenth day of September, in the year of Our Lord one thousand nine hundred and forty-seven.

And I find and determine that the said proposed new State Constitution and the parts thereof, comply with the instructions and restrictions that were voted by the people, pursuant to Chapter 8 of the Laws of 1947.

And I find and determine that the Convention has complied with its instructions and restrictions as so voted by the people.

I do further certify that I have compared the attached copy of the proposed new State Constitution with the original thereof filed in my office, as aforesaid, and that it is a true and accurate copy of the said original proposed new State Constitution.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this tenth day of September, in the year of our Lord one thousand nine hundred and forty-seven."

(Applause)

PRESIDENT: The chair will recognize Mr. Saunders.

MR. WILBOUR E. SAUNDERS: Mr. President and delegates: The law states that only upon such certification may the Convention proceed to arrange for the submission of the Constitution to the people, and it is therefore necessary for the Committee on Submission and Address at this time to present a resolution, which is in eight parts, which I will ask the Secretary to read.

SECRETARY: Committee Resolution by the Committee on Submission and Address to the People *(reading):*

"RESOLVED and it is hereby directed by the Constitutional Convention that:

1. The question to be placed upon the ballot submitting to the people for adoption or rejection the proposed new State Constitution agreed

upon and framed by this Convention, at the general election to be held on the fourth day of November, one thousand nine hundred and forty-seven, hereby is framed as follows:

If you are in favor of the adoption as a whole, of the new State Constitution prepared and agreed upon by the Constitutional Convention, mark a cross (X), a plus (+) or a check mark (√) in the square at the left of the word "Yes." If you are opposed to its adoption and ratification, as a whole, mark a cross (X), a plus (+) or a check mark (√) in the square at the left of the word "No."

	Yes	Shall the new State Constitution prepared and agreed upon by the Constitutional Convention be adopted?
	No	

2. Said public question shall be submitted as part of the official general election ballots to be used in such election in the several election districts of this State and shall be placed first at the top of said ballots.

3. The Secretary of State shall arrange for the submission of said public question, and the ballots shall be counted, the result thereof returned by the election officers and canvas of such election shall be had, and the result of the vote shall be determined and certified, in accordance with the provisions of these resolutions and directions and with the provisions of Chapter 8 of the Laws of One Thousand Nine Hundred and Forty-Seven and with those provisions of Title 19 of the Revised Statutes for the submission to the people of public questions to be voted upon by the voters of the entire State, which are not inconsistent with the provisions of these resolutions and directions and with the provisions of Chapter 8 of the Laws of One Thousand Nine Hundred and Forty-Seven.

4. Said public question shall be stated in the notices required, by section 19:12-7 of the Revised Statutes, to be published in the several counties and municipalities of this State, after the day fixed for the closing of the registration books for such election.

5. There shall be delivered to the Secretary of State 2,400,000 copies of the Address to the People prepared and adopted by this Convention, which shall be distributed by him to the several county clerks in such number that a copy thereof may be mailed, with each sample ballot for said election, to each registered voter in the country, and the same shall be delivered to, and mailed with said sample ballots by, the officers required by law to deliver and mail such sample ballots, respectively.

6. There shall be delivered to the Secretary of State 600,000 copies of the proposed new State Constitution agreed upon and framed by this Convention and 600,000 copies of the Address to the People prepared and adopted by this Convention, which shall be distributed by him in such manner and in such number as he shall see fit to such citizens and civic organizations as shall request them and to state officers, county clerks, libraries, superintendents of schools, superintendents of elections, election boards, mayors, municipal clerks, and to such other state, county and municipal officers as he may deem advisable, for the use of, and for distribution to, the public.

7. The expenses of the Secretary of State in making delivery and distribution of the copies of the proposed new State Constitution and of the copies of the Address to the People, provided to be delivered and distributed by him pursuant to these resolutions, not to exceed in the aggregate the sum of twenty-five hundred dollars ($2,500.00), be paid from the funds remaining from the appropriation heretofore made for the expenses of the Convention, when certified by him to the Committee on Rules, Organization and Business Affairs of the Convention.

8. The Secretary of the Convention is hereby directed to forward to the Secretary of State a true copy of these resolutions, certified by him."

MR. SAUNDERS: Mr. President, I move you the adoption of this resolution.

MR. JOSEPH W. COWGILL: I second the motion.

PRESIDENT: Is there any discussion on this motion?

FROM THE FLOOR: Question!

PRESIDENT: All in favor, please say "Aye."

(Chorus of "Ayes")

PRESIDENT: I understand a roll call is provided for in the regulations, and the Secretary will call the roll. All those in favor, please say "Aye" as their names are called. All those opposed, please say "No."

SECRETARY *(calls the roll)*:

AYES: Barton, Barus, Berry, Brogan, Carey, Cavicchia, Clapp, Clothier, Constantine, Cowgill, Cullimore, Delaney, Dixon, Drenk, Drewen, Dwyer, W. A., Dwyer, W. J., Eggers, Farley, Feller, Ferry, Gemberling, Glass, Hacker, Hadley, Holland, Hutchinson, Jacobs, Jorgensen, Katzenbach, Kays, Lance, Lewis, Lightner, Lloyd, Lord, McGrath, McMurray, Miller, G. W., Miller, S., Jr., Milton, Montgomery, Moroney, Morrissey, Murphy, Murray, Naame, O'Mara, Orchard, Park, Paul, Peterson, H. W., Peterson, P. H., Proctor, Pursel, Pyne, Rafferty, Randolph, Read, Sanford, Saunders, Schenk, Schlosser, Smalley, Smith, G. F., Smith, J. S., Sommer, Stanger, Streeter, Struble, Taylor, Van Alstyne, Walton, Wene, Winne—75.

NAYS: None.

SECRETARY: 75 in the affirmative, none in the negative.

PRESIDENT: The resolution is adopted by a vote of 75 to nothing.

Mr. Saunders, have you anything else to present before the Convention?

MR. SAUNDERS: No.

PRESIDENT: The chair will recognize Senator Lewis. Is Senator Lewis on the floor?

MR. LEWIS: Mr. President, it is unfortunate that a number of delegates are not able to attend this session of the Convention. I would like, therefore, to move, Mr. President, that the Secretary of this Convention be directed to contact all delegates who were not able to be here today to affix, if at all posssible, his or her signature to this Constitution. . . . I so move.

FROM THE FLOOR: Seconded.

PRESIDENT: You have heard the motion, which has been seconded. Is there any discussion?

(Silence)

PRESIDENT: All in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: Is there any further business to come before the Convention?

(Silence)

PRESIDENT: Mrs. Miller has informed me that the funeral services for Mr. Sigurd Emerson are to be held at the First Presbyterian Church in Elizabeth, tomorrow, Thursday, at 3:00 o'clock.

This, then, ladies and gentlemen, brings the final session of the Constitutional Convention of 1947 to a close. By law the Convention passes out of existence this Friday.

Before our last adjournment I want to pay my tribute once more to the delegates on the floor who have borne the brunt of the task and whose devotion to duty has been an inspiration to all the people of the State.

A motion to adjourn is now in order, and upon its adoption we shall stand while the Right Reverend Theodore R. Ludlow, President of the New Jersey Council of Churches, pronounces the benediction.

Is there a motion to adjourn?

FROM THE FLOOR: I so move.

FROM THE FLOOR: Second the motion.

PRESIDENT: It has been moved and seconded that the Convention be adjourned. All those in favor, please say "Aye."

(Majority of "Ayes")

PRESIDENT: Opposed, "No."

(Silence)

PRESIDENT: The motion is carried. . . . We shall rise while Bishop Ludlow pronounces the benediction.

RIGHT REVEREND THEODORE R. LUDLOW: God of our fathers, we commit to Thy care our efforts to provide a new instrument of government for our State. We thank Thee for Thy guiding hand and pray for its continuance during the consideration of this work by the people of our State.

Save us from partisanship; and in that task may the blessing of God Almighty and the Holy Spirit be with us and with all the citizens of our State. Amen.

(The Convention adjourned at 6:00 P.M.)