



state of new jersey

Acting Governor Richard J. Codey

PROPERTY TAX CONVENTION TASK FORCE



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1 STATE OF NEW JERSEY

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3 NEW JERSEY PROPERTY :

4 TAX CONVENTION TASK FORCE : TRANSCRIPT OF HEARING

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9 TRANSCRIPT ORDERED BY:

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11 Trenton, New Jersey 08625

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1 (Tape 1, Side A)

2 MR. VAN HORN: -- task force. I read

3 in an editorial this week that we are moving at a

4 "glacier pace," that was what the editorial said.

5 And I didn't know whether that was a compliment or

6 an insult, but I take it -- democracy moves slowly,

7 and so I am having no problem with that.

8 But I am pleased we could all be here

9 today, on this terrible weather day.

10 I do want to, before we introduce our

11 first witness, I want to recognize Mayor Passanante,

12 who wanted to introduce some testimony into the

13 record. Mayor.

14 MAYOR PASSANANTE: Thank you, Mr.

15 Chair.

16 I just wanted to bring everyone's

17 attention, in your packet there is -- at the back

18 end of the packet, there is a document that is from

19 the New Jersey Conference of Mayors. They are

20 unable to testify. They submitted this in lieu of

21 testifying personally. Our schedule has been such

22 that we've really been slammed with a lot of people

23 here, and we're doing our best to get everyone's

24 words in.

25 And we are -- I am asking everyone to

3

1 make sure they read what has been submitted and
2 written by the Conference of Mayors, and remind
3 everyone that the Conference of Mayors was at the
4 forefront of the movement for a convention many,
5 many years ago. I also serve on the property tax
6 committee for the convention of -- the Conference of
7 Mayors, as well. So I can say firsthand that the
8 Conference of Mayors has been strongly supportive of
9 a convention; and, in fact, several years ago had
10 held several seminars that really brought this issue
11 to light with the Legislature.

12 So I think it's important that we read
13 what they've submitted. They do have comments about
14 the delegate selection, they have comments about the
15 number of delegates. They have comments about both
16 the revenue and the spending side; they are
17 supporting us looking at both, although they feel
18 that the revenue side should be the strongest aspect
19 of our concern. So there's a lot of salient points
20 that are in this submission, and I'd just ask that
21 we move to make this a permanent and considered
22 exhibition for us. Thank you.

23 MR. VAN HORN: We'll certainly do
24 that. Thank you very much, Mayor.

25 I call your attention to -- we

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1 received testimony from -- written testimony from
2 Professor Howard, that was distributed last week. I
3 just want to underline that. I had a chance to read
4 that after the meeting, and I found it very useful;
5 it was distributed last week.

6 And we also have notes on a
7 conversation with Professor Dawn Netz (phonetic) of
8 the Northwestern Law School. Professor Netz was
9 unable to join us because of illness in her family.
10 But she was involved in the study and participated
11 in the Illinois constitutional revisions. And I
12 commend that -- those statements to you, as well.
13 We're going to -- we're blessed today
14 to have two outstanding witnesses; one from near,
15 one from far. The first witness is Richard Leone,
16 who is the President of the Century Foundation in
17 New York City. And I think all of us know that Dick
18 has a distinguished career in the public and private
19 sector, and was, of course, Treasurer of the State
20 of New Jersey and Chairman of the Port Authority of
21 New York and New Jersey in the public sector. And
22 I'm very pleased that you could join us here today,
23 Dick. And we look forward to your remarks.

24 MR. LEONE: Thank you.

25 (Off the record. Back on the record)

5

1 MR. LEONE: Okay. Thank you. And I
2 see many old friends here. If we're moving at a
3 glacial pace, I think probably that's better than
4 global warming on this issue, so I will ...
5 I do want to -- since I always assume
6 -- I've been an optimist about New Jersey politics
7 and public life for forty years, so I make all kinds
8 of assumptions, including the fact, since you have
9 my testimony before you, those of you who are really
10 interested can read it. And I will just summarize
11 it briefly for you. I do want to mention a bit of
12 background that I think is relevant.
13 I started out on this issues as a
14 member of Governor Richard J. Hughes's staff. I was
15 fortunate to actually be appointed to things by
16 Hughes, Cahill, Byrne, Kean, and Florio; it was Tom
17 Kean who put me on the Port Authority. It's a total
18 coincidence that, after I stopped being appointed to
19 things, New Jersey started going into debt.
20 But I do want to remind people that
21 when -- in my day -- the good old days are not what
22 they're cracked up to be, except in fiscal affairs
23 in New Jersey. We were a Triple A state, we honored
24 the obligations in the constitution, we didn't
25 borrow money for current expenditures, we had no

6

1 short-term debt.

2 The people who lived by those rules
3 suffered; they suffered great political harm and
4 damage. Remember one-term Byrne? We all know what
5 happened to Bill Cahill when he had the courage to
6 come out for a tax package that included an income
7 tax. We all know what happened to Jim Florio.
8 We went off the tracks in New Jersey
9 in the 1990s. We're not the only state that did.
10 I'm sure this commission has information about what
11 has happened across the country.
12 The bottom line in that information,
13 and I can provide you with this analysis if you need
14 it, is that, if those very popular, much desired
15 exercises in democracy, which amounted to cuts in
16 state taxes, had not taken place in the 1990s, the
17 states would not be in trouble now. They would not
18 be in debt. You would not see the spectacle of
19 governors being praised for borrowing in California
20 \$15 billion, and turning California into the number
21 one gambling state in the country.
22 I should mention I've been against
23 casino gambling and even the lottery when it was
24 first introduced, which puts me on the losing end of
25 just about every political decision in just about

7

1 every state for the last thirty years.
2 We're desperate in this situation

3 we're in now, and I understand the attraction of
4 desperate solutions. As I mentioned in my testimony
5 when I first heard of the idea of a constitutional
6 convention, it reminded me, as it reminds most
7 people, of really wise men; and, in the modern
8 context, men and women, probably in white wigs,
9 getting together and thinking of great solutions
10 that we could live with for the ages.

11 Then I remembered two things. I was
12 actually at the constitutional convention in 1966,
13 when reapportionment was done. And I remember
14 Richard J. Hughes, Governor Hughes, who I love
15 dearly, explaining to me some of the things that are
16 going on in words that are not fit for public
17 consumption, or for family newspapers, as they say;
18 although family newspapers cover a lot of things now
19 that they didn't cover in the 1960s.

20 I understand the attraction of a
21 constitutional convention, but I think it is the job
22 of politics, the Legislature, and the governors to
23 sort out the state's financial priorities, to
24 balance them now and in the future in the ways in
25 which make sense to them. I believe in democracy.

8

1 I do not believe in a system that
2 essentially says, we have to tie our hands because
3 we're incapable of making rational decisions. We

4 have to put things in constitutions or make things
5 unbendable because we can't solve them anymore,
6 we're incapable of it. We can't face the political
7 difficulty and pain of these decisions.
8 We're in a terrible spot now.
9 Personally, I think it's the worst spot we've been
10 in that I can find in New Jersey's financial
11 history. And there's a great temptation to lay it
12 off on a constitution -- and I speak rather bluntly
13 in this testimony about the fact that there's a
14 great attraction to people -- I always quote Dylan
15 Thomas about what you do when you're in a campaign,
16 you "do whatever gets you through the night."
17 And there's a great temptation to say,
18 oh, well, I'm for the constitutional convention, I
19 want to let the people decide, I want to find a
20 solution because the Legislature can't be trusted,
21 and the governors are no good. That will buy you a
22 year or two. It will be part of a larger lie to the
23 people, that somehow you can create a structure that
24 solves the problem of the mismatch between what
25 people want and what they're willing to pay for.

9

1 That has been the pattern around the country.
2 And, finally, the very situation that
3 leads us to this ought to expose the problem of
4 looking at property taxes all by themselves. There

5 are only three things you can do about this: You
6 can raise property taxes, which ain't on the table;
7 you can cut property taxes; or you can cut services.
8 Now if you do either of the second two
9 of those, what's going to happen? If you cut
10 property taxes, is there some other tax source that
11 is running big surpluses? Is the state in a
12 position to step in and fill the gap? If you cut
13 services, and that's -- you can do that back-door,
14 isn't that something that ought to be an explicit
15 decision of people? Shouldn't they decide they want
16 to spend less on the schools or less on police, or
17 less on fire or less on other local services?
18 In an ideal world, property taxes are
19 a lousy way to raise this much money. And in an
20 ideal world, guys in wigs make brilliant decisions
21 for all time. But again, to refer to my testimony,
22 we live in New Jersey, U.S.A., in 2004. It falls
23 somewhat short of an ideal world, and it will not be
24 cured by constitutional restructuring of the
25 financial affairs of the state.

10

1 I'll be glad to answer any questions.

2 MR. VAN HORN: Senator Van Wagner.

3 SENATOR VAN WAGNER: I thought I would

4 start with the last comment you made, and something

5 I've read in here.

6 We've been told and -- you know, some
7 of the legislators that are here today, that we have
8 a situation in the Legislature now that's completely
9 immovable, in terms of acting on any kind of overall
10 tax reform; that the ability to get consensus is not
11 there. And legislators who are on this committee
12 have even stated so, which is why they've supported
13 this particular approach.

14 Secondly, if you recall SLURP, back in
15 the '90s, I guess, or in the late '80s, which was
16 staffed by a number of distinguished legislators and
17 citizens. When that report was completed and went
18 to the Legislature, it was announced dead on
19 arrival. So we've kind of run out of options.

20 So, having said that, what is your
21 feeling about how, given the fact that a
22 constitutional or tax convention may be inevitable,
23 how it might be structured, in terms of the scope?

24 MR. LEONE: Well, I think a couple of
25 things. I do think there's a need for another

11

1 Cahill Commission or SLURP Commission, because I
2 don't think we've got these numbers cold.

3 I do think that it's not surprising
4 that tax proposals are dead on arrival, or that
5 legislators find their hands -- it's hard to raise
6 taxes. It ought to be hard to raise taxes in a

7 democracy because people don't want you to do it.

8 The choice that has to be forced before people,

9 usually through their representatives, is: What are

10 you going to cut if you don't raise taxes, what do

11 you want to give up?

12 I think the worst thing you can do is

13 offer an asymmetrical choice; a choice to cut taxes

14 without facing any of the consequences. That means,

15 not only is the Legislature and the Governor

16 avoiding their responsibility, but it's giving the

17 people a chance to avoid their responsibility.

18 So I believe that, if you go this

19 route, you have to marry both sides of the equation

20 in every choice you make. You can't create this

21 free lunch idea, that somehow -- and, you know, it's

22 a wonderful reform idea, well, we rely too much on

23 the property taxes, let's move it down to twenty-

24 five percent of what we raise. Okay. Let's look at

25 what that means. That decision has to be tied

12

1 together. If people want to make some sort of

2 historic turning, then they ought to understand

3 they're doing it.

4 I have a belief about New Jersey.

5 When I got -- I don't come from this state; I came

6 here to go to Princeton, and didn't have the sense

7 to avoid New Jersey politics or Richard J. Hughes's

8 invitation to join them. The state was fiftieth in
9 just about everything; fiftieth in higher education;
10 fiftieth in state support for elementary and
11 secondary schools; it was the last state to join the
12 food stamp program, the last state to have a
13 community college program. It sent more students
14 out of state for college than anybody in the
15 country. You could go down the list.
16 And it was an old, rust belt state
17 that was way down the list, in terms of per capita
18 income and per capita education. It went into
19 recessions quicker than the rest of the country; it
20 came out of them slower. And all of these terrible
21 notions about increasing the size of the public
22 sector, doing something about the environment,
23 raising taxes, creating higher education
24 opportunities. Do you know what they were going to?
25 They were going to mean all the businesses left New

13

1 Jersey and went to Mississippi or Alabama.
2 Well, here we are, thirty-five or
3 forty years later. We're about number one in
4 education, we're about number one in per capita
5 income. We're further ahead of Alabama and
6 Mississippi than we were thirty, thirty-five years
7 ago. And the same damn arguments are being used
8 about why we have to do something.

9 What we have to do is to keep this
10 place an attractive location to live and work in, so
11 that we provide a first-rate education, provide a
12 first-rate environment, provide a first-rate
13 transportation system, and understand that that's
14 why we've become what we've become.
15 And I think people have to carry that
16 message to the public. It is -- look, it is a
17 wonderful thing to go out in a political environment
18 and say, I'm going to cut your taxes, and say
19 nothing else. It's a wonderful thing to talk of
20 fraud, waste, and abuse, and say very little else.
21 It's appealing. Do you know why negative
22 advertising works in a campaign? Because it's
23 credible, sounds like the news.
24 You can join in on that, and you can
25 say, we're going to give you a mechanism that locks

14

1 it in, so that nobody can ever do anything else.
2 But that's not democracy. Democracy is hard.
3 SENATOR VAN WAGNER: So you would
4 include in the scope both the revenue and spending
5 side, and the -- of course, the borrowing side.
6 MR. LEONE: Everything you want to cut
7 on the revenue side ought to be tied to something
8 you're going to cut on the spending side. We're
9 already spending more than we're taking in; we have

10 a structural deficit.

11 One could argue that, if you really

12 want to face this honestly, you have to have more

13 cuts in spending than -- than anything else. In

14 fact, I would argue, from a fiscally responsible

15 point of view, you should first reduce the spending

16 to where it matches up with the revenues, and then

17 start cutting the revenues. I'm a fiscal

18 conservative, and I believe they ought to match.

19 And if -- and I think it's been -- it's been a

20 political game to keep spending while not doing

21 anything about the revenues.

22 If we had insisted that the -- if

23 treasurers had refused to certify a variety of

24 things; annual budgets and the so-called "pension

25 scheme" that was implemented some years ago, the

15

1 implementation of health benefits again some years

2 ago without finding it, we wouldn't be in this fix.

3 The last thing we need now is some gimmick that cuts

4 the revenues and doesn't do anything about the

5 spending.

6 SENATOR VAN WAGNER: No, I would agree

7 with that. Thank you, Mr. Chairman.

8 MR. VAN HORN: Other questions for --

9 yes, Mayor Schubert.

10 MAYOR SCHUBERT: Thank you.

11 All the things that you just said rang
12 true. You talked about the fact that there should
13 be -- you shouldn't be allowed to spend more than
14 what you actually bring in. As the mayor of a
15 municipality, we can't spend more than what we bring
16 in, we are tied to that, and the property taxes are
17 raised by us. So what are your thoughts on that?
18 MR. LEONE: Well, I mean, the sad part
19 of my story is that, years ago, when I was state
20 treasurer, I used to go to Washington and testify
21 that we're a state that has to balance our budget,
22 and we can't -- there are some good reasons,
23 macroeconomic reasons, why the federal government in
24 bad years should be spending more on other things.
25 We have to call the state back to

16

1 account, and we should not do that by punishing
2 municipalities, taking away their revenue sources,
3 unless we're prepared to do something about their
4 overall obligations, one way or the other; either on
5 the spending side or on the revenue side.
6 I think the cruelest trick of all
7 would be for people at the state level to enact some
8 reduction of property taxes without doing anything
9 about either the obligations that local governments
10 and school districts face, or the revenues they
11 receive. The way things have gone the last twenty

12 years, I think that's a distinct possibility. I

13 mean, it's every man for himself.

14 You know, California fascinates me.

15 When things got bad enough out there some years ago

16 because of their various constitutional amendments

17 about taxes, the state started taking money from the

18 local governments, and they've taken over this

19 period since the tax limits \$33 billion. Now they

20 just took another two and a half billion dollars to

21 balance this year's budget, although they said --

22 and this should sound familiar in the New Jersey

23 context -- we'll never do it again.

24 So it might get worse. It might -- it

25 is possible, taking -- looking around the country,

17

1 there are states that actually start taking money

2 from the local revenue base in order to balance

3 their budgets which, frankly, I would have thought

4 was impossible, but -- so I would be -- if I were a

5 mayor, I would worry.

6 MAYOR SCHUBERT: I do.

7 One other follow-up question. We had

8 some testimony the other day that talked about

9 regional tax sharing structure.

10 MR. LEONE: Uh-huh.

11 MAYOR SCHUBERT: What are your

12 thoughts on that? Do you think that's something

13 that could be included in this convention or --

14 MR. LEONE: You mean without a police

15 statute to implement it.

16 (Laughter)

17 MR. LEONE: I think it would be

18 worthwhile to put that out there. People are

19 attracted to a lot of regional ideas. It's never

20 turned out to be very easy to implement them,

21 although in other parts of the country it has, in

22 fact, happened, where there's a somewhat different

23 political culture.

24 You know, we have a highly localistic

25 political culture that has evolved over the years,

18

1 but it still, by national standards, very local.

2 And -- but that is -- that is changing as our

3 politics change.

4 Again, when I was -- got Politics 101

5 in New Jersey, there were twenty-one counties and

6 twenty-one organizations and twenty-one state

7 senators, and you had to deal with those realities.

8 Over the years, we've moved into the more modern

9 context, I think not as fast as other states because

10 we don't have television, and only recently we have

11 big-spending primaries.

12 But I think regionalization is --

13 there are a lot of positive things one could do. We

14 tried in the years I was at the Port Authority to
15 get some regional cooperation in the way that there
16 had been in years past. It turned out to be very
17 difficult. And over the years, the Port Authority
18 has evolved into a kind of holding company for two
19 state political organizations, from being a
20 professional organization, where a lot of
21 independent-minded people were named to the board
22 and tried to work together in a -- but that's
23 another bit of testimony that no one ever asks me to
24 give.

25 MR. VAN HORN: I wonder why.

19

1 MR. LEONE: I don't know. I can't

2 imagine.

3 MR. VAN HORN: Questions? All right.

4 Dr. Cole.

5 DR. COLE: You've been very articulate

6 about the reasons why you think we ought not to be

7 considering a constitutional convention. But were

8 we to propose one, are there any thoughts that you

9 have about what might make such an undesirable thing

10 better?

11 MR. LEONE: Yeah, I -- what is

12 undesirable is to create a convention with an

13 artificial context and with artificial rules.

14 That's what worries me the most, not the very idea

15 of a convention. I would love to see an honest
16 discussion of the state's options. And I do think
17 there are some things that can be fixed in our
18 constitution that relate to revenues and
19 expenditures.
20 I fear the constitutional convention
21 that becomes about cutting property taxes, which is
22 an -- irresistibly attractive, but only if you look
23 at it in isolation from all of the consequences. So
24 I think you have to -- you have to insist on
25 revenue-neutrality. You have to insist that, if you

20

1 wind up with choices, they involve choices on both
2 sides of the equation and other things are brought
3 into it.
4 And I do not think that you can --
5 that, ultimately, the Governor and the Legislature
6 can be let off the hook by this mechanism; I think
7 it's got to come back to the Governor and the
8 Legislature, and that's the way it comes back to the
9 people.
10 And we can't write a set of rules for
11 all time. People change, priorities change, needs
12 change, politics changes. And things that you can't
13 foresee will -- will be important in five or ten
14 years. So I think you have to still write a
15 constitution with sufficient flexibility.

16 You know, New Jersey has got an
17 enviable constitution in a lot of ways. The group
18 that put -- the group that put together that
19 constitution after World War II is -- did some
20 wonderful things. Do I think some things should be
21 changed? Yes, I do. Not beyond this, the scope of
22 this commission, but I don't -- I think what is
23 enviable about is that it's relatively simple.
24 And the most simple constitution in
25 the world is the U.S. Constitution, of any note, and

21

1 it -- because it works, it's flexible. It was
2 written for a rural country with a few million
3 people, most of them farmers, and it still works for
4 this colossus that we live in today, and that's
5 because it's simple. Some of it is a little
6 archaic, but it's a wonderful document. And we
7 should remember that. We should be -- do no harm
8 should be the first rule of a constitutional
9 convention.
10 And don't think you have the, you
11 know, ultimate wisdom. That's -- although there's a
12 line between religion and politics, it's not what it
13 used to be. It's not the role of people in politics
14 to think they have wisdom forever.
15 MR. VAN HORN: Yes. Vice Chairman
16 Cole.

17 MR. COLE: Mr. Leone, you suggested

18 before that everything should be in the mix, or

19 words to that effect. By that, I take it you mean

20 things dealing with the appropriation of state

21 revenues should also be fair game at a

22 constitutional convention.

23 MR. LEONE: I just don't know how you

24 can do something about property taxes -- I guess you

25 could. I mean, I guess you could say something

22

1 about the local -- the package of local services

2 that would make it. But if you're really talking

3 about -- since I assume -- this is a wild guess --

4 that the propositions will not involve raising

5 property taxes, and let's turn them into fifty

6 percent of the revenue we raise or something.

7 MR. COLE: I think that's fair.

8 MR. LEONE: If you're going to want to

9 do something to improve the situation on property

10 taxes and to reduce the dependence, in the past,

11 that has been done in the context of some major new

12 tax source, which enabled you to offset --

13 MR. COLE: Uh-huh.

14 MR. LEONE: -- some of these local

15 costs. And I don't know where -- I would argue, in

16 an ideal -- you have -- you have a mission that

17 you've been appointed to fulfill, and I think you

18 have to deal with that.

19 I would hope that everybody in this

20 room recognizes, though, logically, the first thing

21 that needs to be fixed is the state's structure

22 deficit, which is a huge, multi-billion-dollar

23 problem, not a one-year problem.

24 MR. COLE: It's been fifteen years, I

25 think, since we last had a budget that matched

23

1 current revenues with current expenditures at the

2 state level.

3 MR. LEONE: It's been a long time.

4 And I think that is the most pressing priority in

5 this state; in this state, and it probably won't get

6 addressed seriously for a couple of years, as it --

7 in practical terms. You know, and it may -- that

8 may require -- you know, I -- if you were looking at

9 this -- I guess I think you're looking at the wrong

10 set of taxes and the wrong set of expenditures,

11 because it's at the state level that the mismatch is

12 really unsustainable.

13 And, as my old friend Herb Stein used

14 to say, whatever is unsustainable will turn out not

15 being sustained. So some day, you know, we're

16 headed for a fall. And he was Nixon's first

17 Chairman of the Council of Economic Advisors. And

18 of course he moved on when they decided to do

19 unsustainable things with the federal budget.

20 MR. COLE: And at the state level, if

21 you're dealing with a four-billion-dollar structural

22 deficit, that means a lot of painful cuts or painful

23 tax increases.

24 MR. LEONE: I think the structural

25 deficit is a multiple of \$4 billion. The next

24

1 year's budget deficit, looking at it, is probably in

2 that order of magnitude. But that doesn't address

3 the built-in shortfalls, which -- which, you know,

4 are going to take years to work out. And I don't

5 think we can do it by introducing more gambling or

6 having -- which is -- I'm sure will come up, and

7 keeps coming up.

8 MR. VAN HORN: Mayor Passanante.

9 Mike, you're done, right?

10 MAYOR PASSANANTE: Thank you, Mr.

11 Chair.

12 Mr. Leone, I'd like to pick up with

13 Dr. Cole's comments, and I just need to get some

14 clarification, because I -- the message I'm getting

15 from you is clearly that you don't feel that this

16 process, this convention is the right direction to

17 go, and that -- I believe, and I don't want to put

18 words in your mouth, but I believe that what you are

19 implying is that you have a fear that we could go

20 off into the wrong direction, or we're looking at

21 the wrong things.

22 I believe that the task that we have

23 been addressed -- we are addressing right now is to

24 find some solutions to relief in property tax, but I

25 don't believe that we've been saddled, saying that

25

1 we can't look at all different aspects, which I'm

2 kind of reading in between your lines that you think

3 we are saddled with those things, we can only look

4 at certain aspects. And I believe we're wide open

5 right now to be looking at the revue side, the

6 spending side. And I don't think that it's been

7 said that we can't look at the deficit side, as

8 well.

9 So my question to you is -- you also

10 said in response to Dr. Cole's question, was that

11 you do feel that in some cases a convention could

12 work. And so I guess my question is: What do we

13 need to do to make this work? Is the process that

14 we're taking right now, in your opinion, the wrong

15 process, or --

16 MR. LEONE: Well, no. I would -- I

17 would think there's no reason why you can't say that

18 the sequence of events that ought to happen in this

19 state -- and it's easy for me to say because I'm

20 disengaged in some respects -- is we ought to -- we

21 ought to have the kind of analysis that was done for
22 SLURP and at other times, which would not take long.
23 This is not a multi-year process; it's a multi-month
24 process. We ought to have a plan to address the
25 state structural deficit. And only then can we see

26

1 what's realistic to do about property taxes and the
2 burden on local homeowners and local communities.
3 I think, if that's possible for you to
4 speak the truth about the situation we're in, I
5 think a little bit the way your mission has been
6 described, it's the other end, working -- working
7 back. And I think, you know, the expectation I keep
8 hearing from people is that there will be a
9 convention and it will cut property taxes.
10 MAYOR PASSANANTE: Well, I think the
11 hope is that the result of what will come out of
12 this will, in effect, reduce property taxes. But I
13 don't believe we've been told that anything is off
14 the table for consideration.

15 And so I guess I'd like to just
16 confirm from you that, if we take the approach or
17 consider the things that you're recommending, that,
18 in fact, you would say that the convention --

19 MR. LEONE: Yeah.

20 MAYOR PASSANANTE: -- would the
21 process by which we should follow.

22 MR. LEONE: I mean, I would give you a
23 specific example. I had always thought the language
24 about state finances in the -- in the constitution
25 was pretty strong, and was a significant impediment

27

1 to -- not a "significant;" an absolute impediment to
2 certain things happening. I went around for years.
3 I mean, I spent a long time working on
4 Wall Street, although never in the municipal area,
5 always on the corporate side. I had always said,
6 well, that could never happen in New Jersey because
7 of the constitution.

8 Well, obviously, the constitution,
9 those provisions need to be looked at, and they
10 probably have to be changed if we're going to lock
11 our -- if we're going to -- if we're going to have
12 in place the kind of rules that we thought we had in
13 place in -- of yore.

14 Now, as I say, there's a danger, when
15 you've been talking about looking at these things,
16 working on these things for many years to -- to
17 glamorize the situation. But I think, in this case,
18 we have crossed the line.

19 We're not -- you know, other states,
20 it always -- New Jersey has some things to be proud
21 of. At the Port Authority, it always impressed me,
22 when there was extra money for the states, New

23 Jersey would do a capital program, and New York

24 would plug an immediate budget gap. I remember one

25 year they tried to compel, and eventually succeeded

28

1 over my objections, the Port Authority to buy the

2 Aqueduct Race Track, I don't know, for something

3 like \$70 million, and then lease it back to the

4 state racing authority for a buck, which helped to

5 fill a seventy-million-dollar budget gap that year.

6 So I think we clearly need to address

7 the way the constitution works at the state level

8 before -- and that's -- you know, that's a

9 significant task, that's not an easy task. And I

10 don't know, I think a property tax convention task

11 force could say, we've looked at this, and we think

12 the only way we're going to fix property taxes is to

13 get the state's house back in order.

14 MAYOR PASSANANTE: Thank you very

15 much.

16 MR. LEONE: Thank you.

17 MR. VAN HORN: Okay. Thanks very

18 much, Dick. I appreciate your coming with us, being

19 with us today.

20 SENATOR VAN WAGNER: Mr. Chairman.

21 MR. VAN HORN: Yes, Senator.

22 SENATOR VAN WAGNER: I just want to

23 clarify in my mind. We're not here to recommend

24 methods to reduce the property tax. Is that

25 correct? Or are we?

29

1 MR. VAN HORN: I don't interpret our

2 charge that way, no.

3 SENATOR VAN WAGNER: Okay. Okay. I

4 just wanted to clarify that, because that seems to

5 keep popping up --

6 MR. VAN HORN: Well, it's --

7 SENATOR VAN WAGNER: -- and it seems

8 to me that we're really here to recommend whether or

9 not we should have a tax convention and what -- how

10 that convention should be operated, and recommend

11 that to the Legislature or not.

12 MR. VAN HORN: Yes.

13 SENATOR VAN WAGNER: Okay.

14 MR. VAN HORN: Professor Cornwell

15 here? Jack? Okay. Thank you. Professor Cornwell,

16 look forward to hearing from you.

17 Professor Cornwell is at Brown

18 University, I believe --

19 PROFESSOR CORNWELL: That is correct.

20 MR. VAN HORN: And he is a well known

21 constitutional scholar. He spent time in our state

22 at another university down the road, Princeton, and

23 we look forward to hearing from you, sir.

24 PROFESSOR CORNWELL: Well, I'm

25 flattered to have been asked to come and talk with

30

1 you. I will do anything I can to be helpful. I may

2 say things that are not congenial to everybody, but

3 let's see how it works out.

4 I -- I really don't have a kind of an

5 integrated presentation to make because I really

6 wasn't sure how I could be most useful to you. I'm

7 going to rely on your questions after I've made a

8 few comments to give me some guidance on things that

9 I might be able to make useful contributions on.

10 Some sort of basic professorial

11 comments perhaps are appropriate at the beginning.

12 Thinking back to the roots of our democratic systems

13 in this country, John Locke's Second Treatise, was

14 of course one of the documents that the framers

15 relied heavily upon, and Locke's theory of proper

16 government was that, of course, the citizenry were

17 sovereign, the people were sovereign; they would

18 delegate, and they did delegate to representatives

19 of their choice the authority to make laws. In

20 those days, the constitutional convention idea,

21 other than the one that met in Philadelphia, was

22 really not something that people knew very much

23 about or had -- had any acquaintance with.

24 So we sort of start with the

25 proposition that the ultimate sovereignty rests with

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1 the citizenry, with the people.

2 There has been mention -- my

3 predecessor at this table mentioned the federal

4 constitution. It -- you may or may not recall that

5 there is a provision in the federal constitution for

6 the calling of a new convention, and that has never

7 been used, never been suggested, as far as I'm

8 aware. They've gotten along without that, that

9 device.

10 The comments that I can make, I should

11 -- I should alert you to the fact that the

12 constitutions we -- the constitutional conventions

13 we studied were for the most part conventions that

14 had as their focus the structural aspects of the

15 various constitutions of the states in which the

16 conventions were called. They were pretty purely,

17 as I remember it -- and it's been many years since

18 I've addressed these questions. As I remember it,

19 essentially, policy issues of the sort that you're

20 concerned about or of any sort were rarely involved.

21 And so some of the things that we say

22 in the book, and some -- perhaps some of the things

23 that I will say here need to be thought of in terms

24 of the fact that it was a different kind of

25 convention that -- that was involved in the states

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1 in which we did our study, for the most part.

2 I am somewhat troubled, as the prior

3 speaker was, about the practice of legislating via

4 constitutional language and constitutional change.

5 As you probably know, some of the states do this on

6 a massive scale. New York State, I think at the

7 time that we studied it, had something like 150

8 amendments to its constitution, most of them, I

9 suspect, relating to what would be otherwise perhaps

10 statutory matter.

11 I think the prize is to be awarded to,

12 I believe it's Louisiana has two or 300 amendments

13 to its constitution. And, again, for the most part,

14 as far as I'm aware, essentially legislative matter.

15 Apparently, what happens in the other

16 states -- and you people have not gotten deeply

17 involved in this sort of practice at all yet. What

18 happens is that, when a decision is battled to a

19 conclusion in the Legislature, the people who won,

20 perhaps after great exertions, want it put into the

21 constitution, so that the opponents of that decision

22 can't get at it very easily in the future. That, I

23 assume, is the rationale for many of the amendments

24 that some of the states have so profusely added to

25 their constitutions.

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1 So legislating by constitution is --
2 I'm somewhat skeptical of it. And a few things
3 pertaining to a constitutional convention in its
4 operation, and how it fits into the system are, I
5 think, familiar to you, but I might mention a couple
6 of them.
7 In the first place, it's a one-shot
8 thing. The delegates, when elected to a
9 constitutional convention, are never going to have
10 to stand for reelection. That gives them a
11 perspective and a freedom in relation to the
12 decisions they have to make that may be unpalatable,
13 that a legislator does not have. Now whether that's
14 a good thing or a bad thing, it certainly is one of
15 the characteristics of a constitutional convention.
16 And, yet, on the other hand, it is
17 important to bear in mind that a constitutional
18 convention is a political body, it's a very
19 political body. I don't think any of you people
20 with your experience and background in state
21 government would have, perhaps, the kind of faith
22 that maybe some citizens might have, that somehow,
23 whereas legislators are pulled one way or another by
24 interests and concerns about reelection or whatever,
25 a constitutional convention's members are going to

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1 look only at what's best for the state.

2 I wouldn't -- I wouldn't bet the farm
3 on that in a great many cases. They are a political
4 body. And one of the things that this group is
5 going to, I think, need to look at very carefully is
6 the electoral system for choosing the delegates
7 because that can go a long ways toward influencing
8 what is likely to come out of the convention, one
9 way or the other.

10 Should the convention's delegates be
11 elected on a partisan ballot or a nonpartisan
12 ballot? The data that we present there -- some of
13 the data we present there suggests that, if you have
14 a nonpartisan ballot, you get a quite different
15 pattern of delegates and delegate backgrounds than
16 you would get if you had a partisan election.

17 Partly, I guess, because -- and quite clearly I
18 think, because in a situation, a nonpartisan
19 situation, the delegates, for the most part, run as
20 individuals, and have to develop or find the
21 resources for their -- for their electoral efforts
22 themselves. They do not have a pre-structured party
23 organization or anything of that sort to rely upon,
24 which means that probably, on average, the status
25 level of the delegates is somewhat higher on the

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1 socioeconomic scale than might be the case if you
2 had a partisan system.

3 Another question that is probably
4 going to be important for your consideration is: Do
5 you make sitting legislators eligible to run for the
6 constitutional convention, or do you rule out anyone
7 as a delegate who has a present position,
8 particularly a legislative position?
9 There are a number of other
10 considerations on the matter of the electoral
11 structure that you will need to look carefully at.
12 If you have a system in which people file in a
13 particular district to run for the convention, and
14 there are several filers in a particular district,
15 do you then prescribe a system whereby whoever gets
16 the largest number of votes in that district becomes
17 the winner, or do you have a runoff? How do you
18 work that?
19 Obviously, groups in the economy and
20 other vested interests in the state are going to be
21 very much concerned about the electoral process and
22 how it can be used for their advantage, to make sure
23 that their points of view are available to be
24 presented authoritatively by delegates.
25 One of the questions that came up as I

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1 chatted with Jack Donnelly, the question of limiting
2 a convention to certain subjects.
3 Now, as I -- I want -- what I

4 understand so far about the thinking here is that
5 you're thinking of a convention to deal
6 specifically, if not exclusively, with fiscal and
7 taxation issues. Do you want to, in an
8 authoritative fashion, try to ensure that that's the
9 only area -- those are the only areas that are to be
10 dealt with, or do you want to leave it open, so that
11 other issues can be raised that are not related to
12 that -- to those particular issues? So that's
13 another consideration.

14 We had this come up in Rhode Island in
15 the last few years. I might just say a word or two
16 about our little state, and my involvement in
17 constitution-making there, constitutional revision.
18 For many years during -- after a
19 decision by the Supreme Court in the 1880s, the
20 accepted constitutional view was, as enunciated by
21 the Court, that the State of Rhode Island could not
22 call a constitutional convention; that the only way
23 the constitution could be revised was through a very
24 complicated amendment --
25 (End of Tape No. 1, Side A)

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1 (Beginning of Tape No. 1, Side B)
2 PROFESSOR CORNWELL: -- the impact of
3 the Depression and the New Deal and so on, the new
4 Democratic, with a capital D, ruling authorities in

5 the state went back to the Supreme Court and said,
6 hey, what about this, is this really true. And the
7 Supreme Court said, no, we believe that you have an
8 inherent right to place before the voters a
9 resolution for the calling of a constitutional
10 convention. And the Court went on to say that that
11 could be, either open, or limited, as -- and you
12 could limit it if you made it clear to the voters
13 who were going to vote on the resolution for the
14 calling of the convention that it would be limited
15 to certain specified questions. Whether how much
16 that is the case in other state interpretations of
17 the situation, I'm not sure, but that is our
18 situation.

19 In fact, I was the research director
20 of the first major convention that was called after
21 the Court said conventions were legal, back in the
22 '60s. We wrote a whole new constitution, it was put
23 on the ballot for an up or down vote, and they voted
24 it down.

25 A little bit later, in the early '70s,

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1 there was a limited convention provided for with a
2 set of about a half a dozen topics, and those were
3 the only topics that would be allowed. And the
4 convention blithely ignored that and placed on the
5 ballot a couple of additional matters that went

6 beyond this limited group, and the voters approved
7 those additional matters, while a case was
8 proceeding through the court system in which one of
9 the delegates to the convention challenged the right
10 of the convention to exceed the limited list of
11 topics.

12 And, by the time it got to the State
13 Supreme Court, the whole business was over, the
14 referendum had been held, the things that had gone -
15 - that had been placed before the voters that went
16 beyond the listing in the original call had been
17 approved. And the Court said, it's moot, the voters
18 have spoken, the voters are sovereign, they have
19 accepted these, and the fact that it went beyond the
20 limits is not something that we can deal with at
21 this point. Now whether that will have any
22 relevance to your deliberations and the work of the
23 convention, I'm not sure.

24 Well, I think I'm going to end this
25 rather random list of comments and invite you to ask

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1 me questions, which I will do my best to try to
2 answer, and perhaps that will make my contribution
3 somewhat more relevant and helpful than it might
4 otherwise be.

5 MR. VAN HORN: Yes. Mr. Thannikary.

6 MR. THANNIKARY: Professor, thank you

7 for taking the time and coming to meet with us this
8 afternoon; it's a rainy day, and I want to thank you
9 for doing that.

10 And my question is: Based on your
11 experience, how do we organize a nonpartisan
12 delegates body? I looked at one of the tables you
13 have here, where under seven states, four of them
14 had nonpartisan delegates body.

15 PROFESSOR CORNWELL: Uh-huh.

16 MR. THANNIKARY: How did they do that?

17 Do you have any comments on that?

18 PROFESSOR CORNWELL: Well, obviously -
19 - and you people, I'm sure, are completely aware of
20 this, the -- if you're to have a convention, the
21 Legislature will have to pass a statute providing
22 for the mechanics of the choice of delegates. And
23 they would simply say that there will be a delegate
24 chosen from each, let's say of the House of
25 Representative districts, if that's what you decide

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1 on, and provide a system probably keyed to existing
2 state law, insofar as that's appropriate, state
3 electoral law, for people to file a document
4 indicating their desire to be elected a delegate.
5 They will perhaps be required, as they were in Rhode
6 Island, to get a certain number of signatures
7 supporting their quest for candidacy.

8 And then, you see, you have two
9 choices:
10 If you have three or four individuals
11 who seek to represent certain districts, who have
12 filed that intention, who have collected the
13 necessary signatures, then you can provide either
14 for a vote in which the ballot shows all four of
15 those names, and whoever gets the highest number of
16 votes is the -- is the elected delegate.
17 Or you could have a kind of a primary
18 system, and have a -- the voters in each district
19 indicate which of the individuals they would prefer
20 to have as the candidate for that district, or the
21 candidates for that district, and structure it in
22 that fashion.
23 But that -- those variations on those
24 approaches, I think, would be what you'd consider.
25 MR. VAN HORN: Yes. Dr. Reock.

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1 DR. REOCK: (Inaudible - not
2 recorded).
3 (Participants confer regarding recording equipment)
4 PROFESSOR CORNWELL: Oh, there it
5 goes.
6 (Participants confer)
7 PROFESSOR CORNWELL: There it goes.
8 Well, getting back to the question.

9 Assuming that your procedures in your rules are such
10 that the presiding officer, let's say, chooses the
11 members of the committees, as the Speaker would
12 normally do in the House. He would probably -- he
13 or she would probably ask each member to submit a
14 preference list for committee assignments, possibly
15 indicating the experience they had had in the area
16 in which they would particularly like to serve on a
17 committee; and then the presiding officer would make
18 his or her selections from those -- those lists.

19 There would be no way of doing it as
20 one would do it in a partisan setup, but I think it
21 could be done -- but even I believe it's true in
22 most legislatures that newly elected legislators are
23 often asked what their committee preferences are,
24 and are appointed to committees as much as possible,
25 to -- in relation to the proposals or suggestions

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1 they make.

2 DR. REOCK: Would you think that the
3 specific committees would be named in the enabling
4 statute?

5 PROFESSOR CORNWELL: Probably not.

6 What I think you would put in the statute would be a
7 -- would be language empowering the convention to
8 adopt rules, and the rules would be -- would include
9 the list of committees and their responsibilities.

10 Now there's no -- I don't think

11 there's any reason why that could not be put in the

12 -- in the original legislation, but I think leaving

13 -- leaving it up to the convention is perhaps the

14 preferable way to do it. The convention would

15 undoubtedly adopt a set of rules very similar to the

16 rules of probably the House of Representatives in

17 the particular state, and would intend to handle

18 proposed amendment language.

19 Again, another aspect of this, of

20 course, would be that the members of the convention,

21 once it has convened, would be free to submit

22 proposals for legislators -- for changing the

23 constitution in one way or another; and that those

24 would be part of the -- of the agenda, and they

25 would be sent to the appropriate committees and, you

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1 know, the process would be very similar to that of

2 the -- of a legislative body itself.

3 MR. VAN HORN: Senator Van Wagner.

4 SENATOR VAN WAGNER: Professor, I'm

5 looking at your table on 1.2, on the seven state

6 conventions.

7 PROFESSOR CORNWELL: Yes.

8 SENATOR VAN WAGNER: The top portion,

9 the referendum call, that was the date upon which

10 the voters decided that they would have a

11 convention. Is that correct?

12 PROFESSOR CORNWELL: Yes. Yeah.

13 SENATOR VAN WAGNER: And then the

14 bottom portion, the referendum was the result of

15 what the convention then recommended.

16 PROFESSOR CORNWELL: Yeah.

17 SENATOR VAN WAGNER: And voted.

18 PROFESSOR CORNWELL: Yeah.

19 SENATOR VAN WAGNER: So that, of the

20 seven conventions that you referred to here, all but

21 two were defeated, the recommendations.

22 PROFESSOR CORNWELL: Yes. In all

23 cases, as I recall, the convention developed a new

24 document, not just a series of --

25 SENATOR VAN WAGNER: Amendments.

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1 PROFESSOR CORNWELL: -- amendments,

2 but a new document, which of course would

3 incorporate a fair amount of the existing language

4 probably, but would make changes at every point at

5 which the delegates wanted -- felt changes should be

6 done. That was certainly the way it was done in

7 Rhode Island in the '60s.

8 But that, of course, kind of loads the

9 dice against approval because our efforts in that

10 convention were voted down, largely because of a

11 couple of specific provisions, one having to do with

12 lotteries, and I've forgotten what the other one
13 was. But people who didn't like the idea of
14 legalizing lotteries could only get at that by
15 voting down the whole constitution.

16 SENATOR VAN WAGNER: So, in other
17 words -- and I'm assuming something here, that in
18 each of these five defeats, there was a poison pill
19 inserted, or there was such broad revisions that
20 there was no chance of passage.

21 PROFESSOR CORNWELL: Yeah, yeah.

22 SENATOR VAN WAGNER: Because they were
23 defeated pretty handily.

24 PROFESSOR CORNWELL: Yeah, that's
25 apparently what happened. Yeah, yeah.

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1 SENATOR VAN WAGNER: Okay. Thank you.

2 MR. VAN HORN: Professor, I have a
3 couple of specific questions about the -- you've
4 stated about eleven of these conventions, I believe.
5 In how many cases were the delegates
6 selected separate from the referendum call for the
7 convention?

8 PROFESSOR CORNWELL: Well, I think in
9 all of them, or most of them.

10 MR. VAN HORN: So the preponderance of
11 them (sic) were special elections, subsequent to the
12 approval of the referendum call.

13 PROFESSOR CORNWELL: There may have
14 been -- I'd have to look, I don't remember exactly
15 how that was done. Most recently, what was done was
16 the call -- the question of calling a convention was
17 posed and voted on; and voted on affirmatively.
18 Then, at a subsequent election, the delegates were
19 chosen. And I -- as I remember it, that was pretty
20 much the process that was used in these other
21 states, though I'd have to look to be sure.

22 MR. VAN HORN: Yeah.

23 PROFESSOR CORNWELL: But I think that
24 -- I mean, you could do them both together, but --
25 and that -- you know, that wouldn't be impossible by

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1 any means. But I don't think that was the typical
2 way of doing it.

3 MR. VAN HORN: And you mention in your
4 -- again, back to your Table 1.2 You described --
5 you mentioned just that there were a number of
6 "preparatory bodies," as you called them. I just
7 wondered if you could elaborate a bit on that. What
8 were those preparatory bodies, what were their
9 charges, what did they do, and what were they -- and
10 how did they serve or not serve the conventions that
11 they were supposed to serve?

12 PROFESSOR CORNWELL: Yes. I can now

13 answer that best by talking about the Rhode Island

14 experience.

15 In the language that was adopted that

16 legitimized conventions and so on, that was then

17 challenged, one of the requirements in the process

18 was, before the question of calling a convention was

19 placed before the voters, actually some six months

20 or a year before that, but with -- I mean, the time

21 limit, it expired, so that it had to be put on the

22 ballot at that point. The language in the -- the

23 new language in the constitution required the

24 appointment of a preparatory commission. And that

25 commission was appointed, the members were appointed

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1 by the Governor, and I guess by the -- maybe some by

2 the Speaker, and some by the President of the

3 Senate, and they would meet.

4 And their purpose, as spelled out in

5 the constitutional language, was to review the

6 questions that might be considered by the

7 constitutional convention, and provide some

8 background on those questions, so that when the --

9 so that their report with this kind of information

10 in it could be made available, and was mandated to

11 be made available to the voters before they went

12 into the polling place and voted on the call of a

13 convention. And this happened in '04.

14 The -- I submitted some information at

15 the request of the leadership to the commission that
16 had been appointed, and that was duly circulated,
17 made available, and so forth. And on the basis, I
18 think of some of the things that were included in
19 that -- in that preparatory commission report, the
20 voters rejected the calling of a convention; I think
21 appropriately, because we had had one twenty years
22 earlier that had done some important things, that
23 had made certain other proposals, which were turned
24 down by the voters, quite important things like a
25 four-year term for governor, and judicial selection

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1 was another one.

2 And, yet, in the interim, between the

3 -- that convention and '04, the General Assembly had

4 proposed to the voters individual amendments that

5 went on the ballot, in several of those cases of

6 failure before to approve, and were approved.

7 So that a combination of the work of

8 the '86 convention and the proposals made by the

9 General Assembly in the twenty years following that

10 '86 convention, representative -- a package of --

11 quite a substantial package of reforms and changes.

12 that was sufficiently impressive, so that the voters

13 at the November election decided that the convention

14 was not really needed, and they voted it down. I

15 think that worked out pretty well, actually, but --

16 MR. VAN HORN: Could you describe any
17 mechanisms that have been used post-convention to
18 review or certify the convention process before it
19 goes to the voters, as was suggested in some of the
20 legislation in this state? Have any states availed
21 themselves of a mechanism such as that?

22 PROFESSOR CORNWELL: I'm not sure I
23 understand --

24 MR. VAN HORN: In other words, after
25 the convention reached a decision, one of the

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1 proposals is to have jurists, for example, review
2 it, to make sure that the activities of the
3 convention, the recommendations are consistent with
4 the charge of the convention, and to so certify that
5 before putting it before the voters.

6 PROFESSOR CORNWELL: There's no --

7 there's no language in Rhode Island that requires
8 that, and I don't know that there was in the other
9 states. So, again, I'm not sure that I recall
10 correctly. I think that's a good idea, as a matter
11 of fact, and I'll give you an illustration of that.

12 The reform groups in the state have
13 been beating the drums for a number of years to
14 refine our system of separated powers, as between
15 Governor and Legislature. The thing that bothered
16 them was that, in the -- in the constitution, there

17 is -- had been language which allowed the
18 Legislature to make appointments to regulatory
19 boards and commissions; and, indeed, to appoint one
20 or two legislators to sit on each of those boards
21 and commissions. That was viewed as a violation of
22 the concept of separation of powers, and language
23 was framed and approved by the General Assembly and
24 put on the ballot, and approved by the voters to --
25 ostensibly, to deal with that problem.

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1 Now I have some serious problems with
2 that language. I think that language should have
3 been reviewed by the courts.
4 For example, it says in that language
5 that any board or commission that exercises
6 executive authority may not have its members
7 appointed by the General Assembly; it's members must
8 be appointed by the Governor, and no legislator may
9 sit. Well, my question is: What is an exercise of
10 executive authority? And I think that's going to
11 have to be litigated.
12 As all of you know, I'm sure, are well
13 aware of the fact that much of our regulatory
14 legislation, when the regulation of some particular
15 activity is vested in a commission, say, the
16 Legislature delegates to that commission rule-making
17 authority to implement and detail the broad

18 objectives set forth in the legislation. It doesn't
19 seem to me that it's plausible to argue that the
20 process of rule-making in that kind of a delegated
21 legislative situation is executive. I think that's
22 still legislative. But there are those that
23 disagree with me on that.

24 Also, there are a couple of places in
25 the constitution in which the language in the

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1 constitution appears to vest directly in the general
2 assembly control over one thing or another. The
3 outstanding example is lotteries. And there -- the
4 only lotteries to be allowed in the state, the
5 constitution says, are those that are operated by
6 the General Assembly.

7 Well, the General Assembly created a
8 lottery commission and put on it a number of
9 legislators, as well as a number of other people.
10 And I'm not -- I don't know what will happen if
11 that's challenged because there is that specific
12 language in the constitution, and the word
13 "operated" is pretty clear.

14 So my point in this -- in these
15 illustrations is simply to agree that it would be
16 better if proposed constitutional language were
17 vetted by the courts before, on a sort of an
18 advisory basis or whatever, before it's put before

19 the voters. Because if that isn't done, then
20 there's a strong likelihood in some instances that
21 the courts will have to come back and look at it
22 once it's on the -- in the constitution, and may
23 find some problems.

24 MR. VAN HORN: Mayor Passanante.

25 MAYOR PASSANANTE: Thank you, Chair.

52

1 Professor, in your chart, there is a
2 column that indicates "Convention Length." And they
3 run from as little as two months to as long as nine,
4 with the bulk of them being three months.

5 PROFESSOR CORNWELL: Uh-huh.

6 MAYOR PASSANANTE: Are there any
7 comments or recommendations you have for us in
8 considering the length of the convention. We've
9 talked about this over several meetings, and I'd
10 like to hear your feedback on that.

11 PROFESSOR CORNWELL: I would be
12 cautious about putting a time limit on a convention.
13 We -- the first one that I worked with lasted four
14 years; it jolly well needed a time limit, no
15 question about that. The '73 one had, I think, a
16 sixty-day limit.

17 I think there -- you can make a case
18 for a time limit as a means of perhaps forcing the
19 issue, making sure that the -- that the convention

20 gets down to business and gets its work done, and

21 doesn't delay unnecessarily.

22 Judging what that time limit should be

23 becomes, I think, the problem. And given the kinds

24 of complex issues that the convention would have to

25 deal with here in the state, in the matters that I

53

1 understand it would be charged with looking at, I

2 don't know. I don't know what the -- what the time

3 limit should be.

4 I would not make it too short, I would

5 not try to hurry the process unduly by putting a

6 very narrow time limit on, but probably a time limit

7 of some sort would be a good idea.

8 MR. VAN HORN: Yes, Vice Chair Cole.

9 MR. COLE: Professor, recognizing that

10 once constitutional language is adopted it's

11 difficult to change, it's been suggested to us that,

12 since this convention will be dealing with complex

13 subjects of taxation and revenue and fiscal affairs,

14 that the convention should be permitted to make

15 statutory changes, as well as recommend

16 constitutional changes; the notion being that the

17 statutory changes, once adopted by the voters, could

18 thereafter be changed, as any piece of legislation

19 can be changed, without having to go back to the

20 voters. Have any of the conventions you've studied

21 had any feature like that?

22 PROFESSOR CORNWELL: Not that I

23 recall. And I read about that, and I was a little

24 puzzled now. Are you talking -- are they talking

25 about the initial convention or calling a new

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1 convention to do that?

2 MR. COLE: I think they're talking

3 about the initial convention and adopting an

4 amendment to the constitution --

5 PROFESSOR CORNWELL: Yeah.

6 MR. COLE: -- that would allow that

7 convention to act as a legislature.

8 PROFESSOR CORNWELL: That convention.

9 MR. COLE: That particular convention

10 to act as a legislature, and that that power, I

11 guess, would expire with the convention. Its

12 proposals, even for legislative changes, as I

13 understand it, would have to be presented to the

14 voters to have any force and effect. But the notion

15 was that, if they were technical and if they didn't

16 work, they could be corrected without having to

17 again go back to the voters. Do you have any

18 thoughts about that, that type of process?

19 PROFESSOR CORNWELL: I've had no

20 experience in any of the conventions I've looked at

21 with that. I'm skeptical of it. You -- I think the

22 -- this is not unrelated to the question a couple of
23 minutes ago about having the courts review the
24 language before it was placed before the voters. I
25 don't know.

55

1 I think you're going to lose -- see,
2 if there's an advantage to putting taxation
3 legislation -- or taxation provisions into the
4 constitution to protect it against manipulation
5 later, which I suppose is the purpose, one of the
6 purposes, then you sort of undercut that advantage
7 if you open up a possibility of the sort you're
8 describing, unless it's a -- and, of course, if you
9 could limit it to, let's say errors, mistakes in the
10 language or aspects of the adopted -- originally
11 adopted language that proved to have fundamental
12 flaws in it, in the -- after it was adopted, if you
13 could limit it to that, maybe.
14 But how do you prevent people who are
15 -- who feel that they are unfairly burdened by a
16 provision in some tax -- in a tax amendment that's -
17 - that's adopted from claiming the right to have it
18 changed by -- in the process that you're talking
19 about? It just seems to me that you -- that you
20 open the door again, that you had tried to close by
21 putting language of that sort into the constitution
22 in the first place, at least I would be concerned

23 about that possibility.

24 Also, we're getting more and more

25 confused as to who's the Legislature and who isn't,

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1 and that troubles me, too. I think you're going to

2 find -- you may find that you need to amend for --

3 depending on what comes out of the convention, you

4 may need to amend the language. And I'm sure your

5 constitution contains at the very beginning of the

6 legislative article, which says, the legislative

7 power of the State of New Jersey shall be vested in

8 the Legislature of two chambers, period, or

9 something like that. I think most state

10 constitutions have that.

11 Now if you're going to get into the

12 kind of suggestion that you -- that you pose

13 hypothetically, don't you have to change that

14 language, and at least put a proviso on it, that

15 would allow --

16 MR. COLE: I think you -- yeah, I

17 think you would, and that's what they -- those who

18 advanced it proposed by having the constitution

19 amended at the same time, simultaneously with the

20 call of the convention. The voters decide whether

21 to have the convention, and also decide whether that

22 convention shall have legislative power.

23 PROFESSOR CORNWELL: Yeah. But then

24 you're writing into your constitution that you've

25 got a conflict. And what's the Court going to say?

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1 If I -- if I challenged something that was being

2 done in that fashion and said to the Supreme Court,

3 look, what about this language that says, the

4 legislative powers shall be vested in the General

5 Assembly or in the Legislature --

6 MR. COLE: I think they -- I think

7 they would have to make it clear that this is a one-

8 time exception to that otherwise general rule.

9 PROFESSOR CORNWELL: Yeah. It would

10 have to be -- that would have to be dealt with

11 somehow, I think.

12 MR. VAN HORN: Mayor Schubert.

13 MAYOR SCHUBERT: Thank you.

14 It seems as though, looking at your

15 chart here, five of the seven that you studied

16 mostly went down in defeat, correct?

17 PROFESSOR CORNWELL: Uh-huh.

18 MAYOR SCHUBERT: One of the things

19 that we had talked about here was that when -- if

20 the convention were to be approved and meet, would

21 they present to the public for referendum, either

22 one question basically that dealt with everything

23 they -- all the recommendations they had come up

24 with, or would there be sort of a pick-and-choose,

25 where there might be ten questions that they could

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1 answer.

2 One of the concerns was, if we're

3 going to be dealing with spending and revenue,

4 people may be more likely to say, yes, we want all

5 of these spending cuts made and, you know, we don't

6 want to raise any additional revenue, which would

7 then sort of defeat the whole purpose of what was

8 being done, or it could drastically affect the way

9 government does business without making up for the

10 loss of revenue on the other side.

11 What would your recommendation be?

12 Would it be that there be just one question, or a

13 pick-and-choose kind of --

14 PROFESSOR CORNWELL: Gee, that's a

15 tough one. Again, getting into the legislative

16 area, I can see the problem you're posing. And if

17 you had two proposals, one for spending and one for

18 revenue-raising, and they knocked down the revenue-

19 raising one, then you're really stuck. I suppose

20 you'd probably need to put them together. I don't

21 know.

22 I -- again, I am troubled by the

23 notion of legislating by constitutional amendment.

24 I just think the -- I don't mean to hurt anybody's

25 feelings, but I just think that the Legislature

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1 should bite the bullet, that's what they were

2 elected for, would be my feeling, and do what they

3 feel is proper in a given situation.

4 MR. VAN HORN: I see no other

5 questions being posed by task force members.

6 Professor, thank you very much for

7 visiting with us today and sharing your views. It

8 was very helpful, I believe, and we thank you very

9 much for coming down here, and wish you a safe trip

10 back. Thank you.

11 PROFESSOR CORNWELL: Well, I was happy

12 to do it. And if there's anything further that

13 comes up that I can be of any help on, don't

14 hesitate to get in touch with me.

15 MR. VAN HORN: Thank you very much.

16 The remaining two pieces of business,

17 ladies and gentlemen, for today is, I'd like to ask

18 the staff perhaps to help distribute this one

19 memorandum. Ed, if you could help, or somebody.

20 I want to talk about how to proceed to

21 the next phase, which is the deliberative phase.

22 And the vice chairman and I have discussed this, and

23 we have a proposal circulating around. I mentioned

24 this before.

25 Essentially, what I'm proposing --

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1 Michael and I are proposing, is that on the 23rd,
2 when we convene, that we begin with a discussion
3 around the issues of delegate selection, and the
4 potential election process that would govern that
5 selection.

6 There are -- there are obviously other
7 issues, which we will get to in due course,
8 including the operation of the convention and the
9 issues about how to deal with convention proposals;
10 and, of course, certainly we will spend time talking
11 about financing the convention and the scope of the
12 convention.

13 But it was our feeling that the
14 delegate selection is a matter that we should
15 address first and foremost, and talk about that.
16 And the way -- basically what this memorandum does
17 is lay out a set of, you know, questions that we
18 feel that we need to discuss and try to come to some
19 resolution on through our discussions. We've heard
20 a lot of testimony already.

21 And what I -- what we intend to do is
22 to have at our disposal experts sitting with us, who
23 can perhaps answer questions on the spot, if there
24 are factual questions that need to be answered about
25 how these have been handled in other states, or how

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1 they've been handled before in our state; also to
2 advise us on election law, if necessary, and so on.
3 And if they can't answer the question here, then we
4 would charge them to go off and answer the question
5 and come back to us at a subsequent meeting. But I
6 think a lot of these are issues of judgment that the
7 task force will make with respect to these issues.
8 And, in so doing, we would then begin,
9 in a sense, to incrementally build our report. We
10 would go through these issues and come to
11 conclusion, and then go on to other issues. And the
12 staff would be charged then with going off and
13 translating it into language, which would then, of
14 course, come back to us for our subsequent review.
15 So that's my proposal and Michael's
16 proposal, and I'm happy -- both of us are happy to
17 entertain any comments you have. We certainly don't
18 mean this list to be exhaustive; you know, it is a
19 beginning point.

20 Senator.

21 SENATOR ADLER: First of all, Mr.

22 Chairman and Vice Chairman, thank you very much for
23 helping us frame the initial discussion that you
24 contemplated for November 23rd. I think this sheet
25 is helpful, but I think it omits the preliminary

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1 question, which I think is very suggestive of your

2 thinking of the two of you, as the leaders of this

3 task force.

4 It seems to me the preliminary

5 question is: Should there be a convention? And the

6 fact that you're talking about delegate selection,

7 to me, presupposes that the two of you recommend to

8 the task force that we conclude there should be a

9 convention. I think that's a worthy discussion,

10 maybe to skip over because we're all here, committed

11 to this convention concept, and it's a question of

12 shaping the process and the substance; or maybe we

13 should have that discussion as the first point --

14 MR. VAN HORN: Yeah.

15 SENATOR ADLER: -- on November 23rd.

16 Because if the majority of the people on this task

17 force think there should not be a convention, the

18 Point No. 2 and 3 and 4 will probably be moot at

19 that point, so --

20 MR. VAN HORN: Yeah. Senator, I'm

21 glad you brought that up, and I should have actually

22 introduced it that way because the vice chairman and

23 I have discussed that.

24 And my question to the task force is

25 really whether the members believe that we need to

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1 take a vote and have that discussion. It seems to

2 me that, as I interpret the law that we were -- our

3 charge, that is essentially a moot question because
4 we've been asked to give recommendations about this
5 matter, if the Legislature decides to go ahead with
6 it.

7 On the other hand, obviously, if the
8 members wish to discuss that and have a vote or
9 something like that, I'm certainly willing to do
10 that, and that would make sense. But I am just
11 assuming that our responsibility eventually is to
12 make these recommendations regarding the process,
13 whether or not -- and, again, it's the Legislature's
14 decision. What's your reaction?

15 SENATOR ADLER: Well, I don't want to
16 dominate the debate (sic), but my sense is, I think
17 it is symbolically important for this task force to
18 take a position of whether or not there should be a
19 convention.

20 MR. VAN HORN: Uh-huh.

21 SENATOR ADLER: I don't want to
22 presuppose the consensus within this group, but I
23 don't -- I think we would be missing an opportunity
24 --

25 MR. VAN HORN: Yeah.

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1 SENATOR ADLER: -- for us not to make
2 a statement to the Legislature that we've looked at
3 this, we've had testimony from many stakeholders in

4 the community, many private citizens; and, having
5 heard the people who are a good cross-section of New
6 Jersey, we've reached the conclusion that, no, we
7 shouldn't have a convention, it goes too far, and we
8 couldn't control it, it's the Legislature's
9 responsibility; or, conversely, having heard from
10 many people, yes, it's absolutely an appropriate
11 thing for the Legislature to move forward on, and as
12 part of what we're recommending to the Legislature,
13 we recommend that, in fact, the Legislature should
14 move forward.

15 MR. VAN HORN: Senator Van Wagner?

16 SENATOR VAN WAGNER: I absolutely
17 agree with that, Mr. Chairman. In fact, I was going
18 to say that. I think, in fairness to the
19 legislators who serve on this committee -- and I was
20 only being facetious before when I mentioned the
21 picketing, since both Tom Kean and I were picketed
22 when we acted -- when we bit the bullet the last
23 time. We were able to welcome a lot of strangers to
24 our houses, although Tom Kean's driveway is somewhat
25 longer than mine.

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1 (Laughter)

2 SENATOR VAN WAGNER: But in fairness,

3 I think -- I totally agree with Senator Adler. I

4 think we have to have a rather extensive discussion

5 on that issue because we've had rather extensive
6 testimony from a number of experts, who have
7 indicated to us that they're a little concerned
8 about trying to do this by convention. And I think
9 we ought to discuss that.

10 MR. VAN HORN: Dr. Reock.

11 DR. REOCK: I think it's perfectly
12 appropriate for us to take a vote on whether to have
13 a convention or not. But I -- I would find that I
14 could not vote on that until I knew what the
15 convention looked like, so I would not want to take
16 that vote as the first order of business. I'd like
17 to make it the last order of business, when I know
18 what sort of convention we might be proposing.

19 MR. VAN HORN: Senator?

20 SENATOR LANCE: There are all sorts of
21 conventions. For example, in 1943 -- and I'm not
22 sure this is generally known -- the people were
23 asked to determine whether the Legislature should
24 meet as a convention. And, indeed, in 1944, the
25 Legislature met in two distinct forms: Its normal,

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1 regular method of meeting; but also in 1944, based
2 upon a vote of the people in 1943, at the general
3 election in 1943, the Legislature met distinctly,
4 discreetly as a convention. And its recommendations
5 went to the people at the next, subsequent general

6 election; the general election in 1944. We've not
7 yet discussed that, but certainly that is in the
8 history of this state.
9 And then, regardless of a discussion
10 of that, Mr. Chairman, at some point we're going to
11 have to have a discussion of whether any convention,
12 either a legislative convention or a citizens
13 convention, should have statutory, as well as
14 constitutional power. And I'm not suggesting that
15 that should be the first order of business, and
16 perhaps a discussion of delegates, as you suggest,
17 should be the first order of business. I have no
18 preference regarding the order of discussion of
19 these momentous decisions. But at some point, we're
20 going to have to discuss all of these issues.
21 Regardless of all of that, I have
22 suggested, and I now suggest publicly that we
23 instruct staff to analyze over the course, perhaps,
24 of the last generation -- and I now define a
25 generation more generously than I used to define a

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1 generation --

2 (Laughter)

3 SENATOR LANCE: -- I would suggest,

4 since 1970, but I defer to younger members of the

5 panel, what has been the experience across the

6 United States; how many constitutional convention

7 have there been in the fifty jurisdictions in the
8 last generation, however we wish to determine
9 definitionally the word "generation;" have they had
10 statutory, as well as constitutional power; have
11 legislators been permitted to be delegates; the
12 length of the convention; have delegates run in a
13 nonpartisan basis, and other issues that I may have
14 not mentioned.

15 But I would like to see an analysis
16 from staff, or from whoever we might wish to employ,
17 as to what the experience has been across the United
18 States regarding constitutional conventions over the
19 last generation.

20 MR. COLE: We have some of it from
21 Professor Cornwell.

22 MR. VAN HORN: And I think --

23 SENATOR LANCE: I noticed some of it
24 in his --

25 PROFESSOR CORNWELL: Some of it, not -

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1 -

2 SENATOR LANCE: But not to the extent
3 that I think would be useful to this task force.

4 (Participants confer)

5 MR. VAN HORN: I think, Senator, the
6 staff is underway with that assignment. Is that
7 right, Ed? The --

8 MR. MC BRIDE: Yes. The chart that's

9 in there is (Inaudible - not recorded.)

10 MR. VAN HORN: Right. So we're

11 underway with that. But I agree with your request,

12 Senator.

13 SENATOR LANCE: Thank you very much,

14 Mr. Chair.

15 MR. VAN HORN: Senator Adler.

16 SENATOR ADLER: I'm sorry to keep

17 harping on this point. I'm in like a litigation

18 analogy to make my point, again, about the process.

19 When you go to court, a party can file

20 a motion to dismiss, to throw the court case out

21 completely before you go through the litigation

22 process, discovery, before you have witnesses and

23 depositions, before you actually appear before a

24 jury and have a resolution or have a summary

25 judgment motion to conclude it, based on the law.

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1 What I'm suggesting is we have a

2 preliminary discussion at the outset of the 11/23

3 meeting, to determine whether or not,

4 philosophically, this group is opposed to a

5 convention under any circumstances.

6 If, in fact, the majority of the

7 people on this task force think that a convention,

8 regardless of how you set up the delegate selection

9 process, the financing, the scope, whether the
10 convention process itself is fundamentally flawed, I
11 don't think those other steps may be or are going to
12 be as fruitful. We may still proceed with them, but
13 I think it's important for us to establish
14 philosophically whether this group of people in this
15 room on this task force is prepared to go ahead with
16 the concept of a convention, assuming we can work it
17 at; understanding, as Dr. Reock suggested, that
18 maybe we're not necessarily voting on substance,
19 we're voting on whether or not the process should
20 continue to this task force, and whether, based on
21 what we've heard --

22 (End of Tape No. 1, Side B)

23 (Beginning of Tape No. 2, Side A)

24 SENATOR ADLER: -- this process at

25 this point, we should establish that now, and not go

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1 through the agonies and the anguish of the nuance,
2 recognizing the philosophy is already flawed for
3 most of this.

4 (Mr. Cole not identified for the record)

5 MR. COLE: Yeah. But Senator, don't

6 we have an obligation under the legislation to

7 complete the process, whether we think there should

8 be a convention or not?

9 SENATOR ADLER: I don't know. I think

10 like I mentioned --

11 MR. COLE: I mean, we --

12 SENATOR ADLER: -- we can set some

13 around scope (sic), I think it's one of our

14 responsibilities.

15 I think the other part of this task

16 force was to be an expression of sort of public

17 education. And I think if our task force decides

18 collectively from the beginning, we don't want a

19 convention, but we're going to go ahead with this

20 anyway, that's very symbolic, and I think that's

21 destructive for the Legislature, and maybe for the

22 people who may or may not get a chance to vote on

23 it.

24 Conversely, if we decide, based on

25 what we've heard, we think the property tax

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1 situation is such a crisis that we have to do

2 something, and now let's try to figure out if we can

3 get a consensus on that. I think we should say that

4 from the outset, and then move forward with the

5 process issues and the scope issues.

6 MR. VAN HORN: Yes. Mr. Thannikary.

7 MR. THANNIKARY: Thank you, Chairman.

8 With due respect to Senator Adler and

9 all the legislators here, the way I read enabling

10 legislation, our mandate is to discuss or come up

11 with the structure of the -- the scope of the
12 discussion, not to discuss whether we need a
13 convention or not. Like Senator Lance said, that's
14 the role of the Legislature. And, apparently, you
15 have a legislation in the Senate, we support that,
16 asking for a convention.

17 We're simply saying that this -- if
18 there is -- if the Legislature decides to have a
19 convention, this is the way we think it ought to be
20 structured. Am I missing something here or --
21 that's my understanding, the way I read the
22 legislation?

23 MR. VAN HORN: Well, obviously,
24 they're different interpretations, Cy. But let me
25 speak -- Mr. Leader. Yes.

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1 (Assemblyman Roberts not identified for the record)

2 ASSEMBLYMAN ROBERTS: Thank you very
3 much.

4 I actually think that both Senator
5 Adler and Dr. Reock are right. There -- I think
6 there is value, symbolically, preliminarily, in
7 saying that we've listened to an enormous amount of
8 public input, expert testimony, as well, and we
9 validate the authorizing legislation that was
10 passed; namely, that we've concluded that, under the
11 right circumstances, with the right mission, with

12 the right parameters, with the right delegate
13 selection mechanism, that we could conceivably
14 support the convention; or that we're ultimately
15 (sic) opposed to it, based upon what we've heard so
16 far. I view it as a very brief discussion, and
17 something that simply gives some credence to us
18 going forward and dealing with all the other
19 elements of this.

20 I think it is a good way to proceed,
21 based upon what we've heard so far. And then I
22 think you've sketched out, Mr. Chairman, a very fine
23 delineation of the delegate selection and some of
24 the other issues, as well.

25 MR. VAN HORN: Other views. Yes,

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1 Mayor Schubert.

2 MAYOR SCHUBERT: Thank you.

3 I think I agree that the first thing

4 we have to do is just have a brief discussion about

5 -- so we sort of get a feel, also, for where we all

6 stand. We've been sitting here for several weeks,

7 listening. We haven't had any real interactions

8 with each other. We don't know where each person on

9 the panel stands.

10 But I also think it would be good at

11 the end, as Dr. Reock suggested, once we have set

12 the perimeters, if we decide to go that way,

13 complete that process, to then take a vote and see
14 that everyone is in agreement that the parameters
15 that we've set out are something that should be
16 moved forward. But if it turns out that there's too
17 many inequities, or people don't feel comfortable
18 with the entire -- what we've set out, the majority
19 don't feel that it's something that should move
20 forward, then we take that vote at the end, as well.
21 So I think that might be a good way to structure it.

22 MR. VAN HORN: Dr. Cole.

23 DR. COLE: I will add my agreement to
24 the idea of a preliminary discussion. It does make
25 sense to me.

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1 But I would want to add something
2 else, which is, I don't have a strong view about
3 what -- the order in which we discuss various
4 elements of this. But I do think it would be
5 helpful if we spelled out now the major headings,
6 topic headings of what we need to discuss and the
7 time table for that.
8 So we don't just say, on November 3rd,
9 we're going to talk about delegate selection. I
10 think we need to set out the full time schedule, and
11 the major topics that we're going to discuss at each
12 of those, so we get a feel for how we're going to
13 head through this process.

14 MR. VAN HORN: Well, I'm prepared to
15 talk about the topics, but not the time schedule
16 because I think the reality -- the practical reality
17 is that it depends on how long people feel they need
18 to deliberate about some of these issues. But we've
19 already set the dates, the number of dates that we
20 have set aside.

21 But the issues are -- and they've been
22 circulated before, and they're also in the matrix,
23 but I'll just go over them again. And I'm going to
24 distribute this pretty soon. I -- the vice chair
25 and I haven't had a chance to look at this issue,

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1 frankly, this memo. But, you know, essentially it
2 will be distributed fairly soon.
3 Another -- another set of topics has
4 to do with the operation of the convention, you
5 know, when and where, the duration, you know, all
6 those kinds of issues; how it should be staffed, and
7 who should staff it, and so on. So that -- I don't
8 know that that will take long, but we certainly need
9 to discuss that.

10 We also need to discuss the issue of
11 convention proposals, especially the issue of
12 legislation or just constitutional changes or both.
13 You know, this is obviously a very important and
14 somewhat complicated issue.

15 We need to talk about the financing
16 and -- of it. I mean, I think one of our
17 responsibilities is to think through the way in
18 which we would -- how much we think this is going to
19 cost. I mean, obviously, the Legislature has -- and
20 we will benefit from the work that they've already
21 done in thinking through this, but we need to talk
22 about that.

23 And last, but not least, we obviously
24 have to deal with the scope questions and the
25 spending and revenue side, and whatever limitations

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1 people believe we should place upon this. This is,
2 after all -- generally speaking, it is a limited
3 convention. But then, within that, what limits do
4 we choose to add? And, of course, the Legislature,
5 some of the bills have several limits; some have
6 none, or almost none. So those are the kinds of
7 issues, and those are the issues.

8 And I think that we will work through
9 those, depending how quickly -- certainly we need to
10 reserve a substantial amount of time to talk about
11 the scope questions.

12 Frankly, I did not want to start there
13 because I don't think that's the best place to
14 start. I think that it would be better if we
15 started at -- on issues that were perhaps somewhat

16 less contentious, that's a judgment call that I'm
17 making. You know, one could obviously argue the
18 other side of it, but, you know, that was my call.
19 Yes.

20 DR. COLE: If I can just respond to
21 that. I certainly take your point, Mr. Chair, about
22 not knowing how long a debate about any one of these
23 subjects is going to take. But, nevertheless, if we
24 knew that on thus-and-so a date, we were going to
25 talk about financing questions; thus-and-so a date,

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1 we were going to talk about scope of issues
2 questions, it would enable us as a task force to be
3 better prepared for those discussions in advance,
4 pacing our own thinking about all of these issues.
5 And let us say, at the end of November
6 23, we are not anywhere near closure on delegate
7 selection issues. We might want to decide about how
8 we are going to continue to pursue that issue, while
9 continuing to start discussion of other issues at
10 established times; so that, as we get to the end of
11 December, we don't have to crush into a very small
12 period of time important issues.
13 So it's just a suggestion, but I think
14 it does help to kind of chart out the work. And I'm
15 not suggesting we need to do that today. Obviously,
16 you and Michael --

17 MR. VAN HORN: Well, I -- yeah, I'm

18 willing --

19 DR. COLE: -- will want to talk about

20 that.

21 MR. VAN HORN: I'm willing to put

22 rough estimates on it. I just want to be candid in

23 saying that I -- if I say on 11/30, we're definitely

24 going to talk about this, that will be a guess. And

25 so -- you know, but trust me, there will not be any

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1 discussion without advance notice of what the topics

2 are that we're doing to discuss that day.

3 And, you know, I do want to point out

4 that the week of the 29th is a very intense week. I

5 mean, we are intending to meet four times that week.

6 So, you know, that's -- we're going to see a lot of

7 each other that week. And I hope and trust that

8 this is enough time to go through it. I mean, we've

9 basically set aside approximately, I think it's

10 sixteen hours of discussion. And if this were a

11 faculty meeting, that would certainly be not enough

12 time for us to conclude anything. But with this

13 group, it probably will be.

14 SENATOR VAN WAGNER: Mr. Chairman.

15 MR. VAN HORN: Yes, Senator.

16 SENATOR VAN WAGNER: Just one

17 question. Just listening to the discussion of

18 nomenclature and how we're going to proceed.

19 I am assuming at this point -- now

20 maybe this is a broad assumption -- that what we're

21 really talking about, in terms of our deliberations

22 here, is a tax convention; not so much a

23 constitutional convention, but a tax convention, one

24 which focuses on fiscal affairs, et cetera.

25 Are we going to arrive at that en

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1 blanc (sic), or -- as you say, or is that something

2 that we have to examine and get an opinion on, in

3 terms of what our charge is here? Because there

4 seems to be some confusion about what our charge is.

5 I don't know if anybody has any

6 thoughts on that, but that's what my feeling is;

7 that we -- from the testimony we've heard, from the

8 discussions we've had, we're really talking about a

9 tax convention, not a full-scale constitutional

10 convention. Is that correct?

11 MR. VAN HORN: Yes, and I think that's

12 one of the clearer things in our charge.

13 But let me just summarize, and see if

14 anyone disagrees. I think that the -- there seems

15 to be a consensus that we need to have -- let's

16 label it a "preliminary discussion" as the Senator

17 and the Assemblyman have described it. Let's have

18 that on the beginning, on the 23rd, and we can of

19 course decide at that time whether we want to vote
20 or not vote, but let's have the discussion; if
21 people want to move a question at that time, we
22 will. And then we'll go into the discussion of the
23 delegate selection process of that meeting, and
24 conclude as much business as we can on that subject
25 as possible on that date.

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1 The following week, after
2 Thanksgiving, we will then take up the other
3 questions. As I said, very shortly, I will
4 distribute this list of questions. I urge you to
5 look at that and comment back to us on that, those
6 questions, if there are issues that we're leaving
7 out.

8 The judgments I'm making here, and
9 Michael and I are making, have to do with, we've
10 made some judgments about what we think are the
11 essential questions based on the testimony we've
12 heard and the legislation that has been previously
13 discussed and, of course, the legislation
14 establishing this task force. But there are other
15 questions that one could clearly add to that list;
16 in fact, there are many, many questions one could
17 add to that list. And, of course, that's something
18 that we will want to -- you know, if there are
19 strong opinions, we will add them to them.

20 I also urge you to think very much
21 about, as Senator Lance has already proposed, other
22 research questions we do -- that need to be
23 answered, that you're not satisfied that you have
24 the evidentiary base to be able to deliberate upon.
25 So if there are other questions that you think need

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1 to be answered, please forward them to me or to
2 staff directly, so that we can try to get those
3 questions answered, and so we're ready to go.
4 For example, one of the -- just to
5 give you an illustration, there has been some
6 discussion here, I guess I fomented some of it,
7 about the possibility of a mail-in election. I've
8 asked the staff to look at that question, you know,
9 what are the costs of that, what are the practical
10 issues. You know, if, in fact, we consider that, we
11 want to know what the consequences are.
12 But there are many other questions
13 that people may have of that ilk, and I encourage
14 you to bring them to our attention as soon as
15 possible.
16 What I have in mind, again, from a
17 staffing standpoint, is to ask Mr. Kelly from OLS,
18 the Governor's staff people that have been assisting
19 us, and also Professor Williams and Professor Tarr
20 from Camden, to sit with us and to provide advice as

21 we go along; and, again, then to go answer questions
22 as they arise in the process.
23 Any other questions? Is that a fair
24 summary of where we are as a group? I do want one
25 other -- did you want to say something? Okay.

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1 One other piece of business. I had --
2 I do want to -- I'm seeking your approval to retain
3 Professor Tarr and Professor Williams to work with
4 us, and I have a memo here to that effect. As
5 you've already approved the general budget, but as I
6 said to you before, any large expenditure, I want to
7 have your approval.

8 And what I am proposing in this is a
9 retainer agreement, whereby they would be available
10 to us up to \$10,000, to work with us throughout this
11 deliberative phase.

12 (Participants confer)

13 (Senator Adler not identified for the record)

14 SENATOR ADLER: Are you looking for a
15 motion, or do you already have the motion?

16 MR. VAN HORN: Yes, sir. Yeah.

17 SENATOR ADLER: Because I'll make the
18 motion. I will tell you, having been one of the
19 senate sponsors of this measure -- of a measure for
20 a number of years, along with Senator Schluter, that
21 Professors Tarr and Williams are enormously

22 invaluable resources, and are so well versed in some
23 of the nuances of constitutional conventions and
24 constitutional law and statutory law, and how they
25 interrelate, I think they could only benefit this

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1 task force enormously. And the price seems right,
2 but their value is inestimable for New Jersey. So I
3 make that motion.

4 MR. VAN HORN: May I have a second?

5 UNIDENTIFIED PARTICIPANTS: Second.

6 Second. Second.

7 MR. VAN HORN: Okay.

8 (Vote taken. Motion carried unanimously)

9 MR. VAN HORN: Okay. Well, thank you

10 all very much, and look forward to seeing you on the

11 23rd. We're reconvening here in this room from two

12 to four o'clock.

13 (Proceedings adjourned)

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1 C E R T I F I C A T I O N

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3 I, Coleen Rand, do hereby certify that

4 the foregoing transcript of proceedings by the New

5 Jersey Property Tax Relief Task Force, recorded on

6 audiotape on November 12, 2004, is a true and

7 accurate non-compressed transcript of the

8 proceedings to the best of my knowledge and ability.

9

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12 Coleen Rand AD/T 419 Date

13 For Guy J. Renzi & Associates

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