
Task Force Meeting

of

SENATE TASK FORCE ON PUBLIC CONTRACTING

(Organizational Meeting)

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: May 18, 2000
10:00 a.m.

MEMBERS OF TASK FORCE PRESENT:

Senator Norman M. Robertson, Chairman
Senator Martha W. Bark
Senator Wayne R. Bryant
Senator Garry J. Furnari
Herbert J. Stern



ALSO PRESENT:

Marci L. Hochman
Office of Legislative Services
Assistant Legislative Counsel

Laurine Purola
Senate Majority
Task Force Aide

Patrick M. Gillespie
Douglas A. Wheeler
Senate Democratic
Task Force Aides

Peter J. Kelly
Office of Legislative Services
Task Force Aide

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APPENDIX:

SENATOR NORMAN M. ROBERTSON (Chairman): Good morning, ladies and gentlemen.

Good morning, and let me first offer my apologies to everyone here. We were quite prepared to have a timely convening of this meeting, but unfortunately, there was a very important conversation I had to have prior to coming up here, which I have had the opportunity to have.

And a couple of announcements, if I might. First of all, our thoughts and our prayers are with one of our members, Mike Horn, the former Treasurer of the State of New Jersey, who is having open-heart surgery today, I believe. This is something that had come up, not suddenly suddenly, but over the last couple of weeks it had been determined that he would need that surgery. As it turned out, they had scheduled it for today or tomorrow, but I know he's going into the hospital today.

Senator Inverso has also called in and indicated that he is ill. He's not going to be here at all today, even for the voting session.

So we are two short on our panel. I will say, however, that I've had an opportunity to discuss some of these matters with Mr. Horn and with Senator Inverso. And what I'd like to do, if I might, is go through a fairly straightforward agenda that hits some of the items that we will need to cover, with respect to the work that we will be doing.

First, let me thank all of the members of the committee -- of the Task Force, for their willingness to serve.

To Judge Stern, thank you, as a member of the public, for being willing to give your service to the State in this fashion.

To Senator Bryant, who has a very busy practice, I know. This is just an added responsibility.

To Senator Furnari, who has been very active in his own community, electorally and otherwise, in the last several weeks, and I appreciate your assistance.

To Senator Bark and also Senator Inverso, both of whom are members of the Budget and Appropriations Committee. I know that this doesn't come at a convenient time, certainly, but that's how things go. And I appreciate all of your efforts in this regard.

Now, what I'd like to do is give a report to the Task Force on each of the items that I have listed here. And there are six such items. I guess there appear to be enough agendas around for folks to take a look at.

The first of those items is the request for investigative powers. Just so that you understand procedurally what the law states, a body, such as this Task Force, which is organized, by direction of the Senate President, to be advisory in nature and to advise the Senate President and, ultimately, the Senate on legislative matters, is, in and of itself, not a formally organized body that -- to which can be conferred -- or upon which can be conferred investigative powers. In order to do that, you must, as I understand it, be a committee of the Legislature -- a committee of one of the houses.

The question has arisen, even originally in the Senate President's letter-- He indicated to us that if we found that there had not been sufficient cooperation on any front, that we would have the opportunity, certainly, to request of him the full investigative authority that we may need in order to get to where we felt we needed to go.

In speaking individually with various members of the panel, it became clear that there was a significant sentiment in favor of, at least, arming the Task Force with the ability to move forward, and move forward quickly, in the event that such powers would be useful. In order to do so-- In order to really-- And this is my feeling, as well. In order to adequately assure the public that the work that is being done by this Task Force is complete and is in enough detail to tell us what we need to know to meet our charge -- that these tools may be necessary. And in order to do that, we would have to have a resolution, passed by the State Senate, which conferred upon this body such powers.

Now, having said that, let me also say that we have been invited by the Senate President to give him a recommendation, with respect to this. And he has always told me, throughout the entire process here, that he will remain open to any advice that we give or any requests that we make. Understanding, obviously, that he is in a slightly different position than we are, in the sense that there are tremendous issues and questions of comity involved here, and that's c-o-m-i-t-y. Sometimes in Trenton, we have to make that distinction, I guess. There are issues of comity, meaning the ability for various branches of government to coexist, to get along, and to operate in good faith. That is the tone with which the Senate President originally sent us his letter, and I certainly respect that.

What I would like to do, and this is something that, obviously, is open for discussion by the committee-- We do have two people absent today. With respect to the notion of full investigative powers, and the resolution that is necessary, I took the liberty of having the Office of Legislative Services

prepare a resolution to that effect. The resolution tracks, almost exactly, the language that was used by the Senate President. I faxed, to every member, a copy of that resolution.

Have you had an opportunity to take a look at that?

And if you notice in the scope section, it does really track the language that Senator DiFrancesco had used in setting out the scope and, of course, in Section 3, it indicates that we should have all the powers that Title 52 can afford. I'm certainly prepared to introduce this resolution today, and I would call upon other members -- other Senate members of the Task Force to join me in that.

What I would request, respectfully, of the Task Force, however, because we do have two members who are absent today, is for us to get a sense of the group without necessarily taking a vote of the group, because Mr. Horn -- both Mr. Horn and Senator Inverso should have the opportunity to be part of the deliberative process. But at the very least, all of us, individually and collectively, should give our best advice to the Senate President.

Now, I will report to the body that I have yet to run into any problems with any cooperation on the part of anyone in the administration. Of course, the investigative powers that we're discussing here don't just go to getting cooperation from the administration, it goes to the extent to which we can expect cooperation, or hope to obtain cooperation, from those outside of government. But we've also-- I have sent out a request for the production of documents, and we'll discuss how to manage those or discuss those in just a moment.

But what I would like to do first is to go around to the various members and have them, at least, have the opportunity to get on the record what their opinions are, with respect to the granting of investigative powers to this body. My own opinion was contained in the statement. I think that the work that we are doing is important work, and the questions that we are asking are serious. This is a body that should speak with one voice whenever we can. And it is also a situation where the work that we do must not be viewed as a witch-hunt, and it must not be viewed as a whitewash. It has to be a serious, sober, complete examination of the two contracts involved and what we can learn from that examination. The tool of the investigative powers would be very useful in that regard, especially if we run into any noncooperation, which of course we have not yet run into.

And that is my opinion on it, and I'm prepared to give that advice, via resolution, to be introduced. And I've been assured by the Senate President that he will, certainly, take this input very seriously.

I'd like to turn to other members of the committee, if I might.

Senator Bryant.

SENATOR BRYANT: Thank you, Mr. Chairman.

Let me say that in some ways I'm somewhat taken back because, as I understand your statement, you're basically saying that we do not fall under 52:13-1. We're not a committee.

SENATOR ROBERTSON: Not as yet.

SENATOR BRYANT: Then it seems to be no need to talk about whether we have subpoena powers or not, if in fact it is the interpretation that we're not even of committee status. And I don't understand why we're here

if we're not here to investigate as to what went on. And if we're not a committee that has, or has the ability to request these powers of subpoena-- And I think that subpoena power is something that you can't really investigate or have people, unless they're under oath, to make sure and to ensure that the integrity of what it is that they're telling us-- I don't care who they are or whether they're cooperating. It is a difference. When people are under oath, they know then that their words can be used against them, if in fact they are not reported to this committee.

I am not, and I guess I would ask OLS at some point in time-- But I am not so sure we are not a special committee of the Legislature, as it is defined under 52:13-1. There is already a resolution before the Senate to give us subpoena powers. I don't see why we need to wait. And in all due deference to our two colleagues who are ill, as I understand it, at least one thought subpoena power was necessary. I don't see us doing them a disservice.

We've got to move the process forward, if not, we're just meeting, I guess, to delay. That is not, I think, the purpose of you, Mr. Chairman, or the purpose of the people who sit on this committee. I believe that answer to subpoena power, committee, or whatever else, needs to be resolved today by the Senate. And if the Senate is unprepared to do that, then I think, me for one, as a Senator, I don't need to participate in something that is not going to have the kind of teeth in order for us to do an adequate job.

That is my opinion, I will listen to others.

SENATOR ROBERTSON: Senator Furnari.

SENATOR FURNARI: Mr. Chairman, I agree with you. And I guess most of the members -- all of the members that I have talked to,

although, quite frankly, I have not had an opportunity to speak with Mr. Horn or Senator Bark -- but it was unanimous in our first discussions that this was appropriate and necessary that we have subpoena power. I know that there has been some correspondence to you suggesting the same. But I'm a little troubled about a new resolution being introduced. There was one sponsored by myself and Senator Bryant that is almost identical to some of the language that you have proposed today.

It would seem to me that the -- that we could just, if there's some language change -- and I'm not sure why that language change is necessary-- But it seems to me that we can simply amend it and put it out on the floor today if the Senate President is willing to post it for consideration. Any delay in waiting for sometime in the future for an introduction of another bill and potential amendments will only delay the work that we need to do. And I would certainly request that we move this. If there needs to be some amendment to the language, we should discuss it here and amend the resolution that's already in and request that it be on the board list today so that we can get on with the conduct of this meeting.

SENATOR ROBERTSON: Thank you, Senator.

And if I may, before going to you, Judge.

Let me turn to counsel from OLS to describe for us what our status is, currently, under the law, and how that status might change by operation of a resolution.

MS. HOCHMAN (Assistant Legislative Counsel): Presently, the Task Force was created by order of the Senate President. Since it was created that way, and not through a formal resolution, it's an informal study

investigative body, without subpoena powers. In order to have the subpoena powers that you're speaking of now, it would have to be formally reconstituted through a Senate resolution, such as the one that was in or the one that is being proposed today, which would formally constitute it, allow the Senate members, in their entirety, to vote on it, and to give it the powers in Chapter 13 of Title 52. And that would conform with Chapter 13, Title 52, and give it all of the necessary investigative powers to subpoena records and persons before it.

SENATOR ROBERTSON: And I'll also point out, just for purposes of information, that the resolution that I had had prepared-- I don't think there was anything wrong with the original resolution except that I wanted to track, even more exactly, the language that had been used by the Senate President in the scope. The scope, essentially, does the same thing. Either or both-- Either resolution could go forward today. What I hope to do is have a resolution that all of the Senate members of this Task Force can join in. And I think that would be an appropriate approach and would be, in sum and substance, the nature of our advice to the Senate President.

Judge Stern.

MR. STERN: I have not worked with you before, so--

SENATOR ROBERTSON: In Trenton, the red light means go.
(referring to PA microphone)

MR. STERN: I hope that won't be the subject of the separate inquiries. (laughter)

I have no view about the merits of the two resolutions. They seem to me to be, essentially, the same. What I'm very clear about, however, in my

own mind, based on my own background and experiences, is that you cannot have an authentic inquiry, you cannot have any authoritative findings, or any recommendations that make any sense, if it's simply based on people whispering in your ear who are not responsible for what they say by taking an oath and swearing to tell the truth.

So, from my point of view, the issue is not whether we're going to need it to overcome people who would otherwise thwart the inquiry, but rather, I believe it is a fundamental principle that we need it before we hear anybody, because everybody who testifies before us ought to testify. We cannot have-- I join with Senator Furnari's comments. We cannot have testimony, we cannot have responsibility for what is said unless it is under oath. And therefore, I'm of the firm view, as I have expressed to you, as you know, to be a real live body, you have to have investigatory authority.

SENATOR ROBERTSON: Senator Bark.

SENATOR BARK: Well, I am the only one who is not an attorney, so I think my perspective is probably somewhat different because I arrived at the Task Force more than willing to pursue the line of questioning that we had before us, thinking that we would get absolute cooperation, and I guess I didn't think people would lie. But perhaps I have too rosy a view of the world and have not sat in enough courtrooms. And I give you that. I had always felt that we should pursue this as rapidly as we could. If anyone became uncooperative, that was the moment in time to ask for subpoena power.

Now, I have to tell you that you have also presented to me, this morning, some other information that I was not particularly aware of. And one

was, are we a committee or aren't we a committee, and what we have to do to become a committee in order to even pursue subpoena power. So I'm not quite sure where we're going. However, it is quite obvious that I'm o u t n u m b e r e d .

But I have to express to you that I'm not unwilling to go for subpoena power. I just wasn't certain that that's the way that we should start this ball game because to me, when we have subpoena power, and we say we have subpoena power, we are ultimately in a confrontational position, I feel, because I know if somebody handed me a subpoena, I would say, "Oh, what are they looking for? What am I-- Is there something I should be hiding that I don't know I should be hiding?" But perhaps I have a different view of this.

As I say, you're all attorneys. You're extremely knowledgeable in the law, and I will accept your perspective of that law, but I also think that I have to put my view on record, and obviously, if everyone else feels that that is so -- everyone is an attorney -- I will accept that, and I will certainly live with that, and I will work within those confines.

I'm sorry, I just don't have the same legal view.

SENATOR ROBERTSON: No, and I certainly understand, Senator, and in fact, the view that you expressed actually points out some of the distinctions between courtroom processes and governmental process, and why comity becomes an important consideration in these things.

And I do wish to report, and again underscore to the body, that I have gotten nothing but adamant assurances of cooperation from everyone that I've spoken to, up to and including the Governor herself. And I've spoken to the Attorney General and the Department heads involved. And I will also

report to the body, and I had mentioned this-- I had sent this out to you as well. We had gotten input from staff -- from OLS staff, from majority staff, from the minority leader, with respect to what sort of documents we should be requesting. And I did send out-- On that basis, I sent out a request for documents that incorporates all of the suggestions that have been made. Certainly, it is within the purview of anyone from whom documents are being requested, even in legal proceedings, to interpose objections if they really feel that the objections are important to make.

I wanted to find out-- First of all, I wanted to report that to the body -- that those documents have been requested, and I have been told that we will be getting absolute cooperation with respect to that.

We are going to face, however, the notion of how to manage these documents because they will be very large in number. And the real question is how we're going to be managing those. I've been advised informally that even within the narrow scope of the Attorney General's inquiry, which involves just one of the two contracts, and only part of that, that in excess of 100,000 pages have been produced. One of the reasons that we spent a couple of weeks letting them do their work is that, at the time, I was advised by the Attorney General that he had two attorneys and three paralegals working full-time, cataloging the documents and putting them in some form of order that we may be able to take advantage of when it comes to finding the documents that we feel are important.

We are going to face a similar sort of situation. And I wanted to at least put that on the table to let you do some thinking about the extent to which, or the manner in which -- and we don't really actually have to decide

this today because a lot of this is going to depend on what we find out and what documents are produced and what their nature is. But we need to do some thinking about how we're going to give access to the documents on the part of staffs, minority staff, majority staff, on the part of Task Force members, and so forth. Certainly, we should all have an opportunity to have a copy of any document that we wish. The documents that we had sent to you a few weeks ago really only scratched the surface of the tip of the iceberg, and were really only intended in order to brief you, in the briefest manner possible, as to some of the issues that are involved here. But it is our understanding-- The documents that we have requested come to some 80 categories or so -- 80 or 90 categories when you consider the two sources. So we're going to have to take a look at that.

I was wondering if the Task Force had any specific concerns or suggestions to make at this point, before we see the documents, that we should incorporate into our procedures.

SENATOR BRYANT: Mr. Chairman.

SENATOR ROBERTSON: Yes, sir.

SENATOR BRYANT: Before we get to two, three, four, five, and six, I think we have to resolve one.

I don't know how the other members on the committee feel, but I think, unless we have some resolution today as to whether we're going to become or ask that the Senate make us a committee and we have our subpoena powers, there's no reason to discuss all the rest of them, at least from my standpoint. The rest of them can speak for themselves.

I'm prepared to make a resolution to adopt your resolution as long as we make it with the recommendation that the Senate President hear it today.

SENATOR ROBERTSON: Well, I understand what you are saying. I will disagree with one part of that, and that has to do with whether or not it's taken care of today. Given the Senate's schedule, we're meeting in a voting session on Monday, we're meeting in a voting session on the eighth, we already have a document request out. So in terms of time lines, it's not absolutely necessary for it to be disposed of today. Your motion would be a little more-- Just personally, it would be easier for me to support, if it didn't have that aspect to it.

SENATOR BRYANT: Well, Monday, we're not meeting in a session. I mean, we have a quorum call, but it's not a session. It's not a voting session.

SENATOR ROBERTSON: Oh, that has changed again?

SENATOR BRYANT: Yeah, it's just committees.

SENATOR ROBERTSON: I was advised yesterday that we did.

SENATOR BRYANT: That's the problem, we're just moving down the line. Let the rest of the committee speak, but I think-- That's the threshold before I even talk about the rest of them, for me.

SENATOR ROBERTSON: Judge Stern had asked for recognition.

MR. STERN: Well, I know nothing about your agenda scheduling.

It does strike me, Mr. Chairman, however, that if we are to be a properly constituted investigative committee, there are provisions of law that

would apply, which would give us the ability to have help, as I read 52:13-1, for example, which is one of the provisions that was provided to me in this packet. If either resolution which is before us were to be enacted, we would then get the benefit of that provision which says at the end, “any such committee shall also have the power to employ such legal and clerical assistance as it may deem necessary to the proper conduct of the i n v e s t i g a t i o n . ”

Now, I understand that that may well be the Office of Legislative Services here and so forth and so on, but it also seems to be that if that provision doesn't apply, we can't even get any help of any kind, necessarily. And I don't mean to beat a dead horse, to be sure. But either we're going to really be a committee and really going to do a job, or we're not. And I think we have to know what kind of wherewithal we're going to have. We're going to be inundated with documents, inundated with potential witnesses, inundated with things that various people are going to suggest that we ought to do. And it seems to be we ought to know what kind of tools we have in the bag to work with. And that's why I respectfully do suggest that the first issue before the house is, really, is this an authentic investigative committee?

SENATOR ROBERTSON: Senator.

SENATOR FURNARI: I tend to agree with both Judge Stern and Senator Bryant. I think that what we should do today, or what we should do right now, and I'll second his motion or move it, whatever, procedurally, we need to do, is to send the recommendation to the Senate President that one -- and we can do it either with your resolution or amend the resolution that was already in, and we can just simply amend your Paragraph 3 of the whereas as

Paragraph 2, and Paragraph 5, because those are the only places that some slight changes exist between the two. And we recommend that one be moved today, and that it establishes this committee so that we have the legal authority to do things that are necessary. And No. 2, that it gives this committee the legal power.

I think that's the first thing -- the first order of business, before we even talk about-- I don't even want to think, as the Judge has raised some questions about whether or not document productions that we send before we're established as a committee -- if they're not properly submitted to us, whether or not that affects our ability or rights on a challenge, that we were not legally constituted to request those as a legal committee.

Before we even get into all of those other issues, I think we ought to, No. 1, establish that we have the legal right and authority, give us the subpoena power, and make that recommendation to the Senate President today.

So, if Senator Bryant has moved that, I'll second it. If he hasn't, I'll move it.

SENATOR ROBERTSON: And just to let you know, even something that's informally requested, at some point, can be formalized down the road. Any information that isn't forthcoming can be requested in a more pointed manner than the informal request. The informal request is made not with the accent on informality, but with the accent on comity.

Well, a motion has been made and seconded to put forward the -- or to recommend, to the Senate President's consideration, the resolution that has been prepared for this meeting.

That's as I understood Senator Bryant's -- rather than amend another resolution. We have a resolution in blank here, so far, which I'm prepared to submit, in any event.

SENATOR BRYANT: Mr. Chairman, as long as that-- I mean, I don't want to get into the technical ways, but I mean, as long as they can be heard today, and there are ways that your resolution can be heard today, and that's fine with me.

SENATOR ROBERTSON: Either can be heard today.

SENATOR BRYANT: But what I'm saying is that if the Senate President is telling me it's not in a position to be heard today, then I will end up saying why don't we use Senator Furnari's resolution. I'll take my name off, put your name on it, whatever's necessary. I just want to move it today. Whatever. And the context of mine is to move a resolution that incorporates your language into -- adopt that today, so that we can end up becoming a standing committee.

SENATOR ROBERTSON: Well, all right. And I also wanted to point out to--

SENATOR BRYANT: And to make it bipartisan, I would suggest that maybe Senator Furnari go on it with you if it's going to be your resolution.

SENATOR ROBERTSON: Or yourself as the senior-- No offense.

Personally, I think any resolution that we put in should be cosponsored by all the Senate members, if they feel comfortable in doing so.

But I will also point out to Judge Stern that we've also gotten pledges of cooperation on any clerical or other assistance that we do need from the Senate President. So that's very clearly available to us. So it's not that we

have to be formally constituted in order to begin our work. If, for instance, the Senate President has encouraged us to give him our input with respect to this or other questions, his response, whether it's today or at the next voting session, doesn't really impact on our ability to proceed promptly.

MR. STERN: Mr. Chairman, I understand that. I didn't want to put it in terms that were, in any way, confrontational or disagreeable, but you see, I must agree with Senator Bryant in that if we are not going to be constituted in a way that I'm comfortable with -- in other words, given the tools to do the job -- I'm, frankly, concerned as to whether or not I have anything to add to this body. And so, I would feel kind of reluctant to express views about how we should manage this and how we should manage that unless I'm sure that I'm going to be with you. And I didn't want to be saying this, but for me, this is the first principle. I believe Michael Horn feels the same way. As you know, we've privately expressed these thoughts to you.

As I say, I'm not trying to be difficult or confrontational.

SENATOR ROBERTSON: Oh, no, not at all.

MR. STERN: But I'm just not prepared to start in with all this unless we're going to be, what is, at least, I respectfully submit to you -- is an authentic, investigatory body.

SENATOR ROBERTSON: I understand exactly what your position is, Judge. And I'm sensitive to that, and that's one of the reasons that I felt the way I did with respect to the investigative powers. But I'm also mentioning to you the fact that there's an awful lot that is done without the conferring of such powers every day in the Legislature and in every committee

up to and including the Oversight Committee, which does this on a more normal basis.

We don't normally go outside of the legislative ranks in order to obtain the assistance of people from the private sectors, such as yourself. So that's why your concerns are so very well placed and understood.

But I guess my point was that, even if we go forward with our own resolution today, the immediacy of the response on the part of folks that have a lot broader picture to take a look at should not impede our ability to go forward. If ultimately we all wish to make a decision or a determination as to our continued usefulness to the process, that's certainly always within our own realm.

I certainly appreciate your candor in that.

All right, so a-- So I can state a motion that-- See if this sounds like a fair statement of motion, that we move forward to make the recommendation to the Senate President to confer full investigative powers on the body, whether through a new resolution or an amendment of an existing resolution.

Is that a fair statement?

SENATOR BRYANT: Today.

SENATOR ROBERTSON: Yes, that's the nature of the--

Now, I had been advised that--

Is there any testimony from any other source that wishes to be heard with respect to this recommendation? (no response)

If there is none, I will ask if there are any more -- if there is any more discussion with respect to this.

Senator.

SENATOR BARK: Well, I suddenly have a feeling that boy, I better become an attorney ASAP, because I think I'm going to need to have the ability to deal with a lot of legal-- I hope you'll refrain from legalese and keep it simple. I don't consider myself a simple soul, but by the same token, I don't have the advantage of all of the legalese that you gentlemen do.

SENATOR ROBERTSON: Or disadvantages.

SENATOR BARK: Or disadvantages. There are times when it has become a disadvantage. As a matter of fact, I have not always spoken glowingly of attorneys, either. (laughter) That's just to let you know that.

However, your arguments are good. I guess my concern is, and just let me express this-- Having heard your arguments, I intend to join with you on this, but I feel like we are going to, very definitely, going to move into a court of law environment. And I'm not sure I'm comfortable with that. And I hope that that is not so. And I would hope that, along with this resolution, we are very clear on our scope so that when somebody says to us, "Oh, you ought to look into this, and you ought to look into that," that we know what our scope of inquiry is and we do not go beyond that scope of inquiry because frankly, gentlemen, I think, maybe, we've already ruined our summer, and I don't wish to ruin my entire year. And with that, I will, yes, join with you.

SENATOR ROBERTSON: And I might also point out that even with the use of full investigative powers, it's certainly my understanding, and I would ask to be corrected if it's not the understanding of other members of the committee-- It is my understanding that we obviously have an obligation to use those in the most responsible manner possible and only when it is

necessary to do so, based upon either a lack of cooperation or the need to reach beyond our normal ability to compel.

SENATOR BRYANT: That's not my understanding. My understanding would be that-- I agree with most of what you said, but I think everybody should be under oath who is going to speak before the committee.

SENATOR ROBERTSON: Oh, no, I don't suggest that.

SENATOR BRYANT: Okay, that's fine.

SENATOR ROBERTSON: I'm talking about the course of--

SENATOR BRYANT: You're right.

SENATOR ROBERTSON: --during the course of documentation production--

SENATOR BRYANT: Yes, absolutely.

SENATOR ROBERTSON: --because one of the downsides -- just so we have this out on the table and we understand this, too -- one of the downsides of subpoena power as such is that it slows the process because you could get into a situation where folks begin to question the authority for subpoenas, look to squash subpoenas, look to wind up in a spate of litigation over something that doesn't need to have litigation. If we can get the cooperation voluntarily, that's the easiest and best way to do it, and the quickest way.

Our charge, as we see, is really a legislative one. It's not a quasi-criminal one in any sense. There are other bodies that are more equipped to be able to do that than a legislative panel. Our duty, really, is to assess what lessons our experience with these contracts teach us and what

recommendations we can make legislatively with respect to how to avoid these sorts of things in the future if, in fact, we're critical of it.

And it is really toward that end that we would ask for these tools, not toward the end of creating an adversary relationship with anyone because I don't presume or assume any facts, and I don't presume to know what the answers are before we actually get into the work.

SENATOR BRYANT: I agree.

SENATOR ROBERTSON: Does that sound reasonable, Judge?

MR. STERN: I thoroughly endorse everything that you said, and I thought that your public statement, Senator, was that this was going to be an authentic inquiry. Neither a whitewash or a witch-hunt is exactly the right tone. And I endorse my friend, even though she doesn't admire all lawyers-- I endorse her thoughts that we have to use the powers responsibly and within the mandate of the authorizing act, if the Senate deems it to be passed.

I thoroughly agree.

SENATOR ROBERTSON: All right. That being the case and there being no further discussion, we'll move to a vote.

Roll call, please.

MR. KELLY (Committee Aide): On Senator Bryant's motion, Judge Stern.

MR. STERN: Yes.

MR. KELLY: Senator Furnari.

SENATOR FURNARI: Yes.

MR. KELLY: Senator Bryant.

SENATOR BRYANT: Yes.

MR. KELLY: Senator Bark.

SENATOR BARK: Yes.

MR. KELLY: Chairman Robertson.

SENATOR ROBERTSON: Yes.

MR. KELLY: Motion carries.

SENATOR ROBERTSON: Okay.

Now, secondly, on the production and management of documents, I had mentioned before, are there any-- Before we actually start seeing the documents -- are there any initial procedural concerns about how-- We've asked that they be sent in the first instance. As they come in, we'll have an opportunity to understand how difficult they are, or are not, to manage or catalog. And we can certainly keep a very open line of communication among us by telephone.

And is there anything that we should be aware of at the outset?

SENATOR BRYANT: Let me just ask, Mr. Chairman-- And I agree, OLS ought to be the people who handle the documents and distribute the documents. If a member would want to know certain information, it's a request that goes through you and then to-- Procedurally, I just want to know how you want it done.

SENATOR ROBERTSON: Well--

SENATOR BRYANT: I know that both staffs have looked at documents. There might be some-- I don't know whether Judge Stern or Mr. Horn -- Commissioner Horn or any of us, individually -- because I've looked at some of the things that staff has asked for, but there are probably some things that I would like to ask for that they haven't included. I just wanted to

make sure -- procedure-- I have no problems -- have to go through the Chair and the Chair forwarding them onto--

SENATOR ROBERTSON: I think the Chair would like to be--

SENATOR BRYANT: Fine.

SENATOR ROBERTSON: --advised of it, but I think every member should, obviously, have whatever access to whatever document is available and status.

SENATOR BARK: Mr. Chairman.

SENATOR ROBERTSON: Yes.

SENATOR BARK: I'm wondering if they hadn't all ought to go through you because I think it might be somewhat cumbersome for the Judge to want a certain document and then two days later, I wanted the same document. Perhaps you can be the clearinghouse, or someone from OLS could be the clearinghouse, so that we kind of combine our requests because otherwise I think you could put a tremendous burden on OLS.

SENATOR ROBERTSON: That's true.

Let me suggest this because this is true also with the identification of a witness, which again, we don't know now. I mean, we can make up a list in our head as to the folks that we will assume we will need to talk to, but there may be other folks that come to our attention as a result of the documents.

Let me make the suggestion that the documents -- that we suggest time lines to us, as members, to submit document requests and lists of witnesses that you feel may be appropriate and that they be directed to the Chair so that we can make it as easy for OLS as possible. We are dealing with

limited staff in this case. We don't have quite as large a department as the Department of Law and Public Safety.

Without objection, we'll do that, if that's okay. And we'll memorialize this and send this out to the members.

SENATOR FURNARI: I just want to clarify--

Once the documents are received by OLS, all staff and all of the members have access to those whenever they want them.

Is the issue -- what documents we may want beforehand.

SENATOR ROBERTSON: I'm just thinking about copying, more than anything else. For instance, if we have a catalog of documents -- and say, "I want to make sure that I get this and this--" If we get those requests from everybody, they can handle it as one group, if that makes sense.

SENATOR FURNARI: Would it be-- I'm just throwing this out. Would it be best if all of the documents, once they -- once any document comes in, that OLS makes a copy for the majority staff -- the minority staff, and then they can--

SENATOR ROBERTSON: You may want to defer in that just a little bit until you see how many we're dealing with. Certainly, they'll be here. Trenton will be the repository for the documents, and they'll be available to staff at any time.

SENATOR BRYANT: And I would think that any member should have any document they want to see.

SENATOR ROBERTSON: Absolutely, in any event. I'm just talking about when it comes to copying for your own use, it would be good to at least centralize that process so it's a little easier for OLS. And the same

thing is true for the identification of witnesses. At some point, as we have an idea of documents, we will send out a suggestion and a time line for you to identify whatever witnesses so that we can organize any hearings that we have -- a tentative hearing schedule. That's very difficult to say, obviously, because of the size and volume of the documents.

Now, let me say one general, cautionary thing. If we are, in fact, dealing with that many documents, there's a point at which one can reach paralysis by analysis. That's something that we should distinctly avoid. One of the ways that we can avoid that is by setting a hearing date, at least, an initial hearing date, where we can begin to have the opportunity to interview those folks that we know are most closely associated with some of these, even as we are reading some of the documents.

I know from talking to some of the public members that there is some concern about that way in which we might structure the dates for hearings. For instance, do you have two or three days in a row, or do you have one day each week for two or three weeks. It becomes very, very difficult, especially for those that we've asked to help us from the private sector to block out too big a chunk of time. What are your thoughts with respect to that?

SENATOR BRYANT: Mr. Chairman, maybe since the threshold question -- once that's answered -- might maybe be productive if, in fact, we can compare schedules as to-- You have the Republican Convention, so we know that week is out; the Democratic Convention -- that week's out. We have this legislative week, that week's out. And maybe if we can do a calendar between July and August, and then members on the committee may have

already scheduled for vacations somewhere. That may narrow the scope of what days we can use, and then--

That's the reality of where we are. And then that way we might be able to pick out five or six days where we can actually -- or 10 days over that period of time where we can do it. Maybe we can all submit that to you or to the staff within the next day or so. Then you can send out -- say, "Here looks like the 12 days that nobody -- everybody's going to be around. Will those be the 12 days you'd like to use?" And then we can, at our next meeting, maybe we can talk about whether we want to have a formal hearing because--

Let me just throw this out to the committee. I believe that, at least during this process, there's probably a couple of times that you're probably going to need it where it's not just folks that we ask to testify, but folks who might want to give us some input, like at an open hearing, maybe in the beginning-- Of course, we might gain some knowledge. And then, as we trudge through what we're crawling through, there might be another need for folks to add to that. That's just some of the things that I've been thinking about as we approach it. But that can be-- You could put those within that framework. But I don't think we can start anywhere until we know what everybody's doing this summer. And in that way, I think you can actually mark out six, seven, eight, or nine days.

SENATOR FURNARI: I think that we can -- probably can rely on staff. We give them all of our schedules, and they can mark together and give us a proposal.

But also joining with Senator Bryant, I think we probably, just from a standpoint of starting to understand and define the issues, begin the

process with allowing -- having a public hearing, with allowing people to come forward and discuss the issues for us so that we might then better understand what it is that we might want to examine more closely and eliminate some of the things we don't particularly think are necessary.

SENATOR ROBERTSON: Does it sound like it makes sense to you? Not so much the last -- I'm talking about the calendar.

SENATOR BARK: The calendar, absolutely.

SENATOR ROBERTSON: I mean, the other--

SENATOR BARK: It boggles my mind because if we take out the Republican Convention and the Democratic Convention-- And I'm very sorry, Mr. Chairman, but my daughter's having her third baby, and she lives in South Carolina, and I'm going, and that's in the middle of July. So we may have some problems here.

SENATOR ROBERTSON: Not to mention the fact that Mr. Horn will be on the mend, as well. We have about two weeks before we can really even approach him on some of this stuff, anyway.

All right, so we will funnel the various calendars through OLS so that we see what our options are. And we'll begin to get those documents in, begin to formulate ideas as to witnesses. We'll take note of whom we think we should call or listen to.

With respect to our findings and recommendations, this is very, very early even to be talking about this. I know that in my discussions with the Senate President, he is especially interested in knowing what legislative solutions or approaches there are to some of the things that we may find. Obviously, the facts, as they develop, will wind up speaking for themselves, but

I would just ask all members of the committee to bear in mind that as our principle charge and to be considering, as we go along, the types of legislation that may be necessary or advisable to come out as product from the meeting.

Is there anything else that we need to discuss at this point in time?

(no response)

I look forward to meeting with all of our complimentary members in the very near future. And we'll be sure to stay in contact between now and then.

SENATOR BRYANT: Thank you, Mr. Chairman.

SENATOR ROBERTSON: We're adjourned.

Thank you.

(MEETING CONCLUDED)